

Module I

CONSTITUTION OF INDIA

Unit Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 India's Constitution
- 1.3 Basic features of the Indian constitution
- 1.4 Conclusion
- 1.5 Unit end questions

1.0 OBJECTIVES

Each and every institution functions according to certain basic rules. State is a political institution. The basic rules of the state are called constitution. As a citizen of India and the student of political science every person should know about the constitution. It make the learners enlightened citizen of this country.

1.1 INTRODUCTION

The knowledge of the constitution of India is important as it lays the foundation for citizenship training. The study of the constitution aims at preparing citizens with greater consciousness. In this unit we will learn about following points: -

- 1. India's Constitution
- 2. Basic features of the Indian constitution.

1.2 INDIA'S CONSTITUTION

The constitution of India is made by constituent Assembly. According to the cabinet Mission plan, the legislative Assemblies of the provinces were to elect their representatives to the constituent Assembly. Total members of the constituent Assemblies were 389 Dr. Rajendra Prasad was elected as the President of the constituent Assembly.

Pt. Jawaharlal Nehru moved the objective Resolution which reflected the ideals and philosophy that shaped the Indian constitution.

The constituent Assembly completed the work in two years eleven months and eighteen days. From 26th January 1950 constitution of India came in force. Hence, 26th January is celebrated as the Republic day.

1.3 BASIC FEATURES OF THE INDIAN CONSTITUTION

1.3.1 Meaning:

The basic rules for the behaviour of members of a state are called the constitution of the state.

1.3.2 Importance:

In India it is the highest law of the land, constitution establishes rule of law and give political stability to the state.

The constitution of India is both evolved and enacted. It is evolved out of various Acts made during the British period. It is enacted and prepared by the constituent Assembly.

The constituent Assembly was composed as per the cabinet mission Plan. Its first session began in 19415. Dr. Rajendra Prasad with the chairman of the constituent Assembly, Dr. B.R. Ambedkar was the chairman of the Drafting committee.

The constituent Assembly prepared the constitution in two years eleven months and eighteen days. In its original form, the constitution had 395 Articles and & 8 schedules. Now it has 397 Articles and 12 schedules.

1.3.3 Salient Features of the constitution are as follows:

1. Longthiest constitution in the world.
2. Sovereignty resides in the people
3. Parliamentary form of Government.
4. Unique blend of rigidity and flexibility.
5. Fundamental Rights.
6. Directive principles of the state policy.
7. Quasi – federal in nature.
8. Adult suffrage.

9. Independence of Judiciary
10. Judicial Review.
11. Fundamental duties
12. Sovereign.
13. Democracy.
14. Republic.
15. Secular.
16. Single citizenship.
17. Uniformity in Basic Administration.
18. Revolutionary.
19. Lawyer's paradise.
20. Judicial Review and parliament sovereignty.

1. Longest constitution in the world:

Indian constitution adopted by the constituent Assembly on November 2, 1949 is the longest constitution originally containing 395 Articles, divided into 22 parts and 9 schedules. It is described as 'elephant size' constitution. We have incorporated 93 Amendments to the constitution on January 2003. It has been a model, for many developing countries. Now it has 397 Articles and 12 schedules.

The length of the constitution is because of several factors: -

1. It incorporates the experience of all leading constitution.
2. It prescribes constitution for the union as well as for the states.
3. It incorporates detailed provisions regarding centre – state relations.
4. It incorporates special provisions for Jammu Kashmir.
5. It includes justifiable and non – justifiable rights.
6. It contains special provisions to meet regional problems.

2. Sovereignty resides in the people:

The introduction of the constitution declares that the constitution of India was adopted and enacted by the people of India and they are the custodians of the republic.

3. Parliamentary form of Government:

The constitution of India establishes parliamentary form of government both at the centre and the states. In a Parliamentary form of government, the Prime Minister and council of Ministers are

responsible for all their actions to the government, particularly to the Lower house, Lok Sabha. Parliament keeps control on executives by various means i.e. by asking questions, no confidence motion etc.

Also in Parliamentary system there are two types of head; one is nominal and one is real. In India President is nominal and Prime Minister is real head.

4. Unique blend of Rigidity and Flexibility:

Though India has a written constitution; the Indian constitution is not as rigid as the American constitution. It has incorporated the flexible nature in the procedures for amendments. There are three methods by which the constitution is amended. The procedure for amendment is simple.

5. Fundamental Rights:

The fundamental Rights are guaranteed by the constitution to all its citizens through Part III of the constitution. The fundamental Rights. It guarantees Right to Equality, Right to freedom, Freedom of religion, Right against Exploitation, Educational and Cultural right and Right to constitutional Remedies. One can approach the Supreme Court directly in case of violation of Fundamental Rights.

There are certain restrictions on fundamental rights in the interests of public order, the sovereignty and integrity of India, public decency, morality etc.

6. Directive Principles of the state Policy:

Part IV of the constitution deals with Economic and cultural Rights. However, they are not justifiable in the court of law. The idea of a 'welfare state' envisaged in our constitution can only be achieved if the states try to implement them with a high sense of moral duty.

7. Quasi – federal in nature:

The nature of the Indian state is federal, in the sense that the powers are distributed between the Union and the state. But in times of emergency Government assumes a unitary character.

It is federal because:

1. It has two sets of government.
2. There is division of powers between the centre and the states.

3. There is independent judiciary.

It is unitary because:

1. It is described as “union of states”.
2. There is single citizenship.
3. There is single integrated judicial and administrative system.
4. There is integrated machinery for elections, audits.
5. State Governors are appointed and removed by President,
6. States depend upon the union’s grant – in – aid.
7. During emergency, it can be converted into unitary system.

8. Adult Suffrage:

All adult citizens above 18 are given the right to vote. There are no separate electorates for people belonging to different communities. Thus in India there is Universal Adult Franchise without Communal Representation.

9. Independence of Judiciary:

The constitution has made Judiciary independent from legislature and executive. Judges are free from the interference of other organs of the government, so that judges can give judgement without fear and favour. The Indian Judiciary is independent as per the norms of separation of powers. The feature that goes with the independence of judiciary are direct appointment by the President, given decent salaries and perks, judges can not be removed simply by executive.

10. Judicial Review:

It means the power of the courts to declare any law passed by the legislature and any act of executive as void, if it violates any provision of the constitution. It emphasise supremacy of judiciary.

11. Fundamental Duties:

The Fundamental Duties are incorporated in the constitution through the 42nd amendment. A set of ten duties are incorporated as fundamental Duties under Article 51A.

12. Sovereign:

India is a free and independent country. India is no more under the domination of any foreign country and any external force cannot influence its decisions.

India is a member of commonwealth Nation. But its membership does not affect the sovereignty of India.

13. Democracy:

India has representative and responsible government. Democracy has been introduced with a view to realize the political, economic and social democracy.

14. Republic:

It means that the head of the state, president, will be periodically elected by the people. Citizens' partnership in the affairs of the state is ensured.

15. Secular:

The constitution of India has created a secular state. It means

- 1) The state gives equal protection to all religions.
- 2) The state does not uphold any particular religion as the state religion.
- 3) Freedom of Religion is guaranteed in the constitution.
- 4) Equal respect for all religions.

16. Single Citizenship:

The constitution of India confers single Indian citizenship. This helps in creating feeling of oneness.

17. Uniformity in Basic Administration:

There is uniformity in most important matters of administration. e.g. single integrated judicial system, uniformity in civil and criminals laws, All India services.

18. Revolutionary:

The constitution of India has abolished several unjust practices and at the same time has provided special opportunities for the upliftment of the weaker sections.

19. Lawyer's paradise:

The constitution of India is very complex for the common man to understand. The complexity gives rise to litigation and constitutional amendments. Lawyers gain importance from this.

20. Judicial Review and Parliamentary Sovereignty Compromised:

The constitution of U.S.A. recognized judicial supremacy. The British system recognizes Parliamentary sovereignty i.e. the court can not declare any law of parliament as cancelled on any ground.

The constitution of India compromises between the two, it empowers the judiciary the power of declaring any law as null and void if it violets the Basic framework of the constitution. But the judiciary does not have the power of judicial review over the wisdom of any legislative policy i.e. important questions of public policy are to be decided on the floor of the House. Constitution gives the legislature the power to amend the constitution without destroying the basic structure.

1.4 CONCLUSION

The constitution of India is one of the most remarkable constitutions in the world. It is a confluence of East and the West.

1.5 UNIT END QUESTIONS

- 1 Examine the salient features of the Indian constitution.

SUBSTANTIVE AMENDMENTS AND RELEVANT CASE LAWS (THE CONSTITUTIONAL FRAMEWORK)

Unit Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Procedure for Amendment
- 2.3 Substantive Amendments
 - 2.3.1 Constitution (4th Amendment) Act, 1955
 - 2.3.2 Constitution (16th Amendment) Act, 1963
 - 2.3.3 Constitution (25th Amendment) Act, 1971
 - 2.3.4 Constitution (42nd Amendment) Act, 1976
 - 2.3.5 Constitution (44th Amendment) Act, 1979
 - 2.3.6 Constitution (52nd Amendment) Act, 1985
 - 2.3.7 Constitution (62nd Amendment) Act, 1989
 - 2.3.8 Constitution (73rd Amendment) Act, 1992
 - 2.3.9 Constitution (74th Amendment) Act, 1992
 - 2.3.10 Constitution (86th Amendment) Act, 2002
 - 2.3.11 Constitution (92nd Amendment) Act, 2003
- 2.4 Unit End Questions
- 2.5 References

2.0 OBJECTIVE

This unit explains:

- Importance of amendment
- Describes substantive amendments
- Discusses relevant case laws along with amendments

2.1 INTRODUCTION

The Constitution is a set of fundamental basic rules governing the politics of a nation reflecting the exercise of political power. It lays down the framework and principal organs of the

government together with their functions as well as the modalities of interactions between the state and its citizens. The Constitution of India generally regarded as the lengthiest constitution of the world, came to be enforced on 26th January, 1950. It originally had 395 articles divided into 22 Parts and 8 Schedules. Although a constitution is drawn up to meet the needs of a society at a given point of time, it cannot actually be fully adequate to meet the growing and changing future needs of a modern state. Hence, a constitution is expected to be a dynamic document. It should grow with a growing nation. It should undergo suitable change to suit the changing needs and circumstances of a growing and changing people. All constitutions therefore, acknowledge the need and significance of an amendment of the constitution and accordingly provide for it. An amendment of the constitution implies 'an addition or change within the lines of original instrument, as will effect an improvement or better carry out the purpose for which it was framed.' An amendment of the constitution does not imply fundamental change or destruction of the 'basic structure' of the constitution. Article 368 (1) of the constitution of India empowers the Parliament to amend by way of addition, variation or repeal any provision of the constitution in accordance with the procedure laid down in article 368(2).

Moreover, an amendment of the constitution can be initiated only by an introduction of a bill in either House of Parliament. In each case, prior assent of the President of India is obligatory. Without the prior assent of the President the constitution cannot be amended. However, the President cannot refuse his final assent to the amendment proposals once it is passed by the Parliament.

2.2 PROCEDURE FOR AMENDMENT

Article 368(2) prescribes the following procedure for amendment of the Constitution

2.2.1 Amendment by a simple majority:

There are certain articles in the Constitution which can be amended by a simple majority (i.e., more than 50 percent) of the total members present and voting. Admission of a new state under article 2, Schedule IV and article 11 etc. for example can be amended under this category.

2.2.2 Amendment by special majority:

There are some articles in the Constitution which can be amended by a special majority (i.e., 66 percent) of not less than two thirds of the members of that House present and voting.

2.2.3 Amendment by special majority and ratification by State Assemblies:

Article 368 lays down that if the said amendment seeks to make any change in 'certain specified provisions of the Constitution' the amendment will have to be passed by special majority (i.e., 66 percent) in the Parliament followed by ratification by at least half of the State legislatures. Once this process is complete then the Bill is presented to the President for his assent.

2.3 SUBSTANTIVE AMENDMENTS

2.3.1 Constitution (4th Amendment) Act, 1955:

The Constitution (4th Amendment) Act, 1955 brought about significant changes in the Constitution with effect from April 27, 1951. It effected a change in Article 31 and substituted Articles 31-A and 305 with an objective to overcome the decisions and observations of the Supreme Court in cases like the State of West Bengal v. Bela Banerjee (A.I.R. 1954, S.C. 170)

In the mentioned case, the Supreme Court put forth the following principles.

- i. That an owner must be paid full market value, as a compensation, in every case of compulsory deprivation of property;
- ii. That the court of law is competent to determine whether or not the quantum of compensation was adequate.

In view of the above directions of the Supreme Court, it was nearly impossible for the Government to implement any scheme of socio-economic reform which was planned by the state. Hence, this necessitated the amendment of the relevant provisions of the Constitution.

The Constitution (4th Amendment) Act, 1955 therefore provided that Article 13(2) which mentions about an adequacy of the compensation, would be non-justiciable in any court of law. Moreover, the obligation to pay compensation under Article 31(2) was restricted only to two classes of cases namely 'acquisition and requisition' of property. Finally, Article 31-A was broadened in its scope, in order to enable the Government to attain the socialistic pattern of society. It also authorized the state to nationalize any trade.

2.3.2 Constitution (16th Amendment) Act, 1963:

The Constitution (16th Amendment) Act, 1963 imposed certain restrictions on the fundamental rights of citizens in the interest of the sovereignty and integrity of the country. It also made changes in the form of oath given in the Third Schedule by adding the words 'I will uphold the sovereignty and integrity of India'.

2.3.3 Constitution (25th Amendment) Act, 1971:

The Constitution (25th Amendment) Act, 1971 came into force on April 20, 1972. It introduced two significant changes in the Constitution.

- i. It amended Article 31(2) and provided that 'anybody's property may be acquired on payment of an 'amount' instead of 'compensation'. The intention was that the citizen's right to property should be transformed into the state's right to confiscation and the state should be able to deprive anyone of any property in return for any amount, payable at any time, on any terms, and the executive action, however arbitrary, or irrational, should not be subjected to the court's scrutiny. {R.C. Cooper v. Union of India (1970) 3, S.C. R. 530}
- ii. It also inserted Article 31-C which provides that 'no law giving effect to the policy of the state towards securing the principles specified in clause (b), or clause (c) of Article 39, shall be deemed to be void on the ground that it is inconsistent with, or, takes away or abridges any of the rights', conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy, shall be called in question, in any court, on the ground that it does not give effect to such policy.'

Criticizing the above provision as mentioned in Article 31-C, eminent legal jurist Nani A. Palkhiwala stated, 'Article 31-c is monstrous outrage on the Constitution.' It has damaged 'the very heart of the Constitution.' This poisonous weed has been planted where it will be trouble us a thousand years. Each age will have to reconsider it. '

2.3.4 Constitution (42nd Amendment), Act, 1976:

The Constitution (42nd Amendment) Act, 1976 was the most comprehensive amendment to the Constitution and carried out major changes. It received the assent of the President on December 18, 1975. Some of the far reaching changes in the Constitution introduced by this amendment are as follows:

- i. In the Preamble to the Constitution, it substituted the words 'sovereign, socialist, secular, democratic republic' for the words 'sovereign, democratic republic'. It also substituted the words 'unity and integrity of the nation' for the words 'unity of the nation'.
- ii It amended Article 31-c and provided that no law giving effect to the policy of the state towards securing all or any of the directive principles as laid down in Part IV of the constitution, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the fundamental rights, conferred by the Articles 14, 19 or 31.
- iii It inserted a new article 31-D which provide for saving of laws relating to prevention or prohibition of anti national activities and association.
- lii It inserted a new article 32-A which prohibits the Supreme Court from considering the Constitutional validity of any state law, in any proceeding under Article 32.
- iv It inserted new articles 39-A, 43-A and 48-A in the Constitution. Article 39-A provided for 'equal justice and free legal aid' to economically backward classes'. Article 43-A provided for 'participation of workers in management of industries' and Article 48-A provides for 'protection and improvement of environment and safeguarding of forests and wild life'.
- v. It provided for the 'fundamental Duties' of a citizen of India.
- vi It amended Articles 83 and 172 to increase the duration of the Lok Sabha and every Legislative Assembly from five to six years during a situation of emergency.
- vii It asserted the supremacy of the Parliament with regard to the amendment of the Constitution.
- viii It curtailed the power of the High Court and the Supreme Court with regard to the issue of writs and Judicial Review.
- ix It made it obligatory for the President to act on the advice of the Council of Ministers.
- x It transferred subjects like forests, education, population control from the State List to the Concurrent List.
- xi It provided for administrative tribunals for speedy and substantial justice.
- xii It granted the Union Government the power to deploy armed forces in any state to deal with a 'grave situation of law and order'.

- xiii It authorized Parliament to make laws to deal with the anti national activities and such laws were to take precedence over fundamental rights.

2.3.5 Constitution (44th Amendment) Act, 1979:

The Constitution (44th Amendment) Act, 1979 received the assent of the President on 30th April, 1975. The 44th Amendment is significant because it seeks to remove partially the distortions that were introduced into the Constitution by the Constitution 94th Amendment) Act, 1975. Some of the other features of this amendment are as follows.

- i It modified the emergency provisions of the Constitution to ensure that these were not misused in future.
- ii It restored to the Supreme Court and High Courts the jurisdiction and power they enjoyed before the 42nd amendment was passed.
- iii It deleted the right to property from the list of fundamental rights.
- iv It took away from the centre the power to send its armed forces to any state to meet a grave situation there.
- v A new directive principle was inserted by adding a new clause to Article 315. It stated that the state shall, in particular, strive to minimize the inequality in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations.
- vi The Constitution (42nd Amendment) Act, 1976 had amended Article 71 so as to make ministerial advice binding on the President. This provision is now amended by adding a new provision to Article 74(1). It stated that the President may require the Council of Ministers to reconsider its advice to him, either generally or otherwise. However, the President shall act in accordance with the advice tendered such reconsideration.
- vii The Constitution (42nd Amendment) Act, 1976 extended the life of Lok Sabha and State Legislative assemblies from five to six years. The 44th amendment reduced it again to five years by amending articles 83 and 172 accordingly.

2.3.6 Constitution (52nd Amendment) Act, 1985:

The Constitution (52nd Amendment) Act, 1985 was unanimously passed by Parliament to curb defection of a Member of Parliament or State Legislature by disqualification. The main features of this amendment are as follows:

- i A Member of Parliament or State Legislative Assembly belonging to any political party shall be disqualified from being a member of that House. (a) if he/she voluntarily gives up his/her membership of such political party or (b) if he/she votes or abstains from voting in such House, contrary to any direction issued by the political party to which he/she belongs, unless there is a prior permission or condoning of the act by such political party within 15 days from the date of such voting or abstention.
- ii An elected member of House who has been elected as such, set by any political party shall be disqualified for being a member of the House if he/she joins any other political party after such election.
- iii However, the amendment permits a group of people to leave a party and split it in the process.
- iv A nominated member of the House shall be disqualified from being a member of the House if he joins any political party after the expiry of six months, from the date on which he takes his seat.
- v The amendment also added the Tenth Schedule to the Constitution which contains provisions regarding disqualification on ground of defection.

2.3.7 Constitution (62nd Amendment) Act, 1989:

The Constitution (62nd Amendment) Act, 1989 was enacted with an objective to amend article 334 of the Constitution which provides for the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of Anglo-Indian Community by nomination in the Lok Sabha and in the Legislative Assemblies of the states. This amendment was necessitated as this particular provision's validity was to expire after a period of forty years from the commencement of the Constitution. There was a general political agreement that although the Scheduled Castes and Scheduled Tribes have made progress in the last forty years, there are enough compelling reasons which require this provision to continue. Through this amendment therefore, the reservation for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indians by nomination was extended for a further period of ten years.

2.3.8 Constitution (73rd Amendment) Act, 1992:

The Constitution (73rd Amendment) Act, 1992 inserted Part IX containing Articles 243 to 243-O relating to establishment and operation of the three tier system of panchayat in the rural areas, (a) the village panchayat at the village level (b) the district

panchayat (c) the intermediate panchayat which stands between the village and the district panchayat.

This amendment also provided a constitutional guarantee to formation of panchayat, direct elections to all seats in panchayats, reservation of scheduled castes, scheduled tribes, etc. It fixed the term of panchayat at five years and provided for mandatory election at the end of the term. It incorporated XI Schedule in the Constitution which contains 29 subjects, on which the panchayats shall have the administrative control.

2.3.9 Constitution (74th Amendment) Act, 1992:

The Constitution (74th Amendment) Act, 1992 added Part IX-A to the Constitution which lays down the procedure for constitution and composition of urban local bodies or municipalities and Wards Committees. It also provides for reservation of seats for women, scheduled tribes in the municipalities. It also added a XII Schedule to the Constitution which contains 18 subjects on which municipalities shall have administrative control.

2.3.10 Constitution (86th Amendment) Act, 2002:

The Constitution (86th Amendment) Act, 2002 was carried out in 2002. It made free and compulsory primary education a fundamental right. It stipulated that the government shall provide fee and compulsory education to all children from the age of six to fourteen in such a manner as the state may by law determine. Further, it seeks to compel parents to send their children to school by making it a fundamental duty under article 51-A. The amendment also enjoins on the state to make endeavor to provide early childhood care and education to all children till they complete six of age.

2.3.11 Constitution (92nd Amendment) Act, 2003:

This amendment has added four new languages – Bodo, Dogri, Maithali and Santhali – to the Eighth Schedule of the Constitution. With these additions the total number of languages in the 8th Schedule has risen to 22.

2.4 UNIT END QUESTIONS

1. Discuss the need and importance of amendments in the Constitution.
2. Explain the main features of the Constitution 42nd and 44th amendments.

3. Discuss the constitutional significance of 73rd and 74th amendments.
4. Explain why the constitution 86th amendment is important.
5. Discuss how the Constitution 92nd amendment is relevant today.

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Module II

PHILOSOPHY OF THE CONSTITUTION

Unit structure

- 3.0 Objective
- 3.1 Introduction
- 3.2 Philosophy of the Constitution
- 3.3 Preamble and Philosophy of the Indian Constitution
- 3.4 Fundamental Rights Meaning and Nature of Rights.
- 3.5 Fundamental Rights - Meaning of Fundamental Rights
- 3.6 Directive Principles of State Policy
- 3.7 Unit End Questions
- 3.8 References

3.0 OBJECTIVE

‘Unity in diversity’ is the important feature of Indian society. In this type of society list of fundamental rights gives security and safety to the people.

In this unit we will learn about following points: -

1. Preamble and philosophy of the Indian constitution
2. Fundamental Rights

3.1 INTRODUCTION

Rights are indispensable for the development of human personality. In the absence of rights, no individual can attain progress, In a democracy great importance is given to an individual's growth and therefore the citizens rights get prominence.

3.2 PHILOSOPHY OF THE CONSTITUTION

Decades before the enactment of the constitution, the political leadership of the country had evolved the philosophy of the future Indian state. These were summed up by the constituent Assembly in ‘The objective resolution’, moved by Jawaharlal

Nehru. This resolution was adopted by the Assembly on 22nd January 1945.

The Objective Resolution:

The fundamental source of philosophy of the Indian constitution is the objective Resolution It was as under: -

1. Constituent Assembly declares India as an independent, sovereign, republic and to draw up for her future governance a constitution.
2. India shall be union of states.
3. All powers and authority of India and Government are derived from the people.
4. People will get guarantee about Justice, equality and liberty.
5. Adequate safeguards shall be provided for minorities, backward and depressed.
6. Whereby shall be maintained the integrity of the territory of the Republic.
7. State will contribute to the promotion of world's peace and the welfare of mankind.

Indian constitution has embodied the objectives expressed in this Resolution. The ideals embodied in the objectives Resolution are reflected in the preamble to the constitution.

3.3 PREAMBLE AND PHILOSOPHY OF THE INDIAN CONSTITUTION

3.3.1 Meaning:

The Preamble is an introduction of the constitution.

3.3.2 Importance:

It is a summary and essence of the constitution. It sets out the goals, the values and the ideals for which our country stands. The objectives specified in the preamble contain the basic structure of our constitution. The Preamble is a part of the constitution. It highlights the important principles and philosophy of the Indian constitution. It is regarded as the soul of the constitution.

3.3.3 The Preamble reads as:

“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:

Liberty of thought, expression, belief, faith and worship.

Equality

of status and of opportunity; and to promote among them all;

Fraternity

Assuring the dignity of the individual and the unity and integrity of the nation;

In our constituent assembly this twenty – sixth day of November 1949, do hereby adopt, enact and give to ourselves this constitution.

The 42nd amendment to the constitution in 1976 incorporated terms such as 'socialist and secular' and unity and Integrity' of the nation in the preamble.

3.3.4 Philosophy of the constitution:

Preamble shows the philosophy and important principles of the constitution. It contains following important points: -

1. Sovereignty of the people.
2. Nature of the Indian state.
3. Goals and objectives of the constitution.

1] Sovereignty of the people:

When we read the preamble, introductory words shows that Indian people made Indian constitution and accepted for them. The power to govern is drawn from the people of India therefore; sovereignty resides with the people of India.

2] Nature of the state of India:

Preamble shows the nature of the India is as follows –

1. Sovereign:

This means that India is no more under the domination of any foreign country and any external force can not influence its decisions. it is a free and independent country. It is supreme over its internal and external matters. It is free to take its own decisions.

2. Socialist:

This word was inserted in the preamble by the 42nd amendment. It envisages the goal of a 'welfare state'.

3. Secular:

This was also inserted by 42nd amendment. India is a secular country; it means there is no official religion in India. It is separation of state and religion. People enjoy right to freedom of religion. People can profess practice and propagate religion of their choice. All religions will receive equal treatment. It is neither a theocratic nor an atheistic state. Freedom of religion is guaranteed in articles 25-29 of the constitution.

4. Democratic:

India is a democratic country. The democratic has been introduced with a view to realize the political, economic and social democracy. Political democracy means one vote for one person and rotation of government. There will be representative and responsible system of government. Social democracy means absence of discrimination on the basis of caste, religion, race, gender etc. Economic democracy means to bridge the gap between rich and poor in terms of income and distribution of wealth.

5. Republic:

India is a Republican form of govt. there is sovereignty of the people. Head of the state 'President' is elected by the people. After independence we have put an end to the hereditary rule of British Crown. Thus the nature of the Indian state is sovereign, socialist, secular, Democratic and Republic.

3] Objectives of the state:

Preamble shows the aims and objectives of the state i.e. Justice, liberty, Equality, Fraternity and to maintain unity and Integrity of the country.

1. Justice

Social : Justice in social spheres means no discrimination in the society. It stands for a welfare state.

Economic : Justice in economic sphere means economic equality, equal opportunities to all.

Political : Justice in political sphere means equal protection to all and equality of law.

It intends not only creating an environment in which social, economic and political justice is assured but also work positively against any form of discrimination existing in the society on the basis of caste, community, race, religion etc.

2. Liberty:

Our constitution believes in freedom of different nature – social, civil and political as articulated through the fundamental rights in the constitution. e.g. freedom of thought, expression, belief, faith and worship.

3. Equality:

It means equality of status and opportunity, 'Equality before law' and 'equal protection of law', equality at public places, equal opportunities to all are guaranteed under the fundamental Rights in Right to Equality.

4. Fraternity:

Fraternity means a sense of common brotherhood and sisterhood of all Indians". Liberty, equality and fraternity forming a union of trinity in the sense that, if we divorce one from the other, it defeats the very purpose of democracy. All the three values are necessary to maintain the dignity of the individual and unity and integrity of the nation.

5. Dignity of the individual:

It is essential for attaining democracy as a way of life, it means that the personality of each individual should be recognized and respected.

3.3.5 Evaluation:

The structural part of the constitution is, to a large extent, derived from the Government of India Act, 1935.

Whereas it's philosophical part has many other sources. In our constitution, fundamental rights partly derive its inspiration from the Bill of rights enshrined in the American constitution, Directive Principles of state policy from the Irish constitution. We have added the principle of cabinet government and executive – legislature relationship from the British experience. Besides these, we have

also many indigenous and innovative ideas like Panchayats, international peace and security.

The objectives specified in the Preamble contain the basic structure of the constitution which cannot be amended in exercise of the power under article 368 of the constitution.

Pluralism is the keystone of Indian culture whereas religious tolerance is the bedrock of Indian secularism.

The Preamble may be involved to determine the ambit of fundamental rights and Directive principles of state policy. From the preamble it is clear that India has emerged as a sovereign, socialistic, secular, Democratic, republic ensuring to its citizens Justice, Liberty, Equality and Fraternity.

Check your progress :

- 1) What is the objective Resolution ?
- 2) State the objective of Resolution.
- 3) What do you mean by Preamble of the Constitution ?
- 4) Give meaning and importance of Preamble .
- 5) How preamble reads ?
- 6) Discuss how Preamble expresses the philosophy of the Constitution ?

3.4 FUNDAMENTAL RIGHTS

Rights are our own demands for our own development when recognized by the society and state, these demands become rights. According to Harold Laski, 'Rights are those conditions of social life without which no man can seek to be himself at his best'.

Nature :

1. An individual is entitled to rights because he is a part of society.
2. Rights are never unrestrained. Certain restrictions have to be imposed on an individual's rights for the sake of common interest.

3. The nature of rights changes as the society undergoes change. People put forth new demands. Out of these demands new rights emerge. For example the demand for transparency in administration resulted in recognizing the 'right to information'.
4. Besides individual development, 'rights' have other objectives to attain. Rights provide special opportunities of development to the socially and economically weaker sections of society. It gives minorities a sense of security.

3.5 FUNDAMENTAL RIGHTS - MEANING OF FUNDAMENTAL RIGHTS

3.5.1 Meaning:

Basic civil and political rights of the citizens are called fundamental Rights. Part III of the Indian constitution has made elaborate provisions in regard to the fundamental rights.

3.5.2 Importance:

Fundamental rights have paramount importance in the constitution as it declares that all laws inconsistent with the fundamental rights shall be void. State shall not make any law which takes away or abridge the rights conferred in part III of the constitution.

The fundamental rights are provided to protect the dignity of the individual and to create conditions in which every human being can develop his or her personality to the fullest extent possible. The constitutional remedies make the fundamental rights active, alive and functional. These rights create positive conditions for the civilized social economic and political life.

3.5.3 Classification of fundamental Rights:

Fundamental rights are classified in six, based on nature, are as follows: -

1. Right to Equality (Arts 14-18)
2. Right to Freedom (Arts 19-22).
3. Rights against Exploitations (Arts 23-24).
4. Right to freedom of Religion (Arts 25- 28).
5. Cultural and educational rights (Arts 29-30).
6. Right to constitutional Remedies (Arts 32- 35)

**(Summary Table on)
Fundamental Rights.**

1	2	3	4
Meaning of fundamental rights	Importance of the fundamental rights	Classification of the fundamental rights	Restrictions on fundamental rights
		1. Right to equality	
		2. Right to freedom	
		3. Right against exploitations	
		4. Right to freedom of religion.	
		5. Cultural and educational rights.	
		6. Right to constitutional remedies.	

1. Right to Equality (Arts 14-18): -

Right to equality has five aspects. These aspects are as follows.

Right to Equality				
1	2	3	4	5
Equality before law.	No discrimination at public places.	Equality of opportunity	Abolition of untouchability	Abolition of titles

1. Article 14:

The state shall not deny any person 'equality before law' and 'equal protection of law' within the territory of India. Equality before law implies the absence of any special privilege in favour of an individual. Equal protection of law means that all people will get equal treatment in similar circumstances.

2. Article 15:

Directs that the state shall not discriminate against a citizen on grounds of religion, race, caste, sex or place, birth or any of them. Art 15 also prohibits discrimination by the state and the citizens with regard to access to shops, hotels, public entertainment, wells, roads etc.

Limitation on this right are:

Recognizing need of special protection, it offers special protection for women and children. State can provide reservation for socially and educationally backward classes.

Art 16 Gives equal opportunity to all in public employment. No citizen shall be discriminated against or be ineligible for any employment under the state on grounds of religion, race, caste, sex, place of birth, descent or residence.

Art 17 provides for abolition of Untouchability:- In pursuance of this article the Parliament enacted Untouchability offences Act in 1955, It has been renamed as protection of Civil Rights Act 1995 Thus untouchability has been abolished by law.

Art 18 State has abolished all the titles to create equality among citizens. Military and Academic distinction are exempted from the provision for they are an incentive to further efforts for the perfection of the military power of the state. During British rule some titles were conferred on people along with certain privileges. This practice has been abolished.

Check your progress

- 1) Explain meaning and nature of rights
- 2) What do you mean fundamental Rights?
- 3) Why fundamental Rights are important?
- 4) Give the list of fundamental Rights.
- 5) Write on various aspects of right to Equality

2. Right to Freedom (Art 19-22) :

This right includes six types of freedoms essential for the around development of human personality. They are –

- a) Freedom of speech and expression.
- b) Freedom to assemble peacefully without arms.
- c) Freedom to form associations and unions
- d) Freedom to move in any part of Indian Territory.
- e) Freedom of occupation, trade and business.

Freedom as fundamental rights has been explained under Arts 19-23. All citizens shall have the right to freedom of speech and expression, peacefully assembly without arms, forming association, free movement and freedom to settle anywhere within country. Citizens have been granted freedom to express one's conviction and opinions freely by word, writing, printing, pictures. It includes the freedom of press. Therefore, pre- censorship of

newspapers are invalid. The rights have some reasonable restrictions: -

1. The grounds of restrictions for freedom of speech and expression are-
 - a. Security of the state
 - b. Friendly relation with foreign states.
 - c. Public order.
 - d. decency and morality
 - e. Contempt of court.
 - f. Defamation,
 - g. Sovereignty and integrity of India.
- 2 The right of assembly includes the right to hold meeting and to take out processions. This right is subject to the restriction of being peaceful and without arms.
3. Citizens have right to form, to join an association or trade union, every citizen of India has also the right to reside and settle in any part of India but the grounds of restriction include the interest of general public as well as state.

Article 19 (1) (f): was related to Right to property. Under this right citizens have rights to acquire, hold and dispose of property. This is dropped through the 44th amendment to the constitution in 19715. Hence Right to property is not a fundamental right but it is a legal right. All citizens shall have the right to practice any profession, occupation, trade or business, with reasonable restrictions, in the interest of general public.

Right to life and personal liberty:

The right to freedom guarantees the right to life and personal liberty. Accordingly, no person can be deprived to his life and personal liberty without the authority of law. No person can be arrested or detained without substantial reason.

Protection of life and personal liberties means that “No person shall be deprived of his or her life and personal liberty except according to procedure established by law’. Thus assures personal liberty of citizens against the arbitrary action on the part of the law enforcing authorities. Accordingly, Article 22 guarantees four rights to the person who is arrested under an ordinary law. i- The right to be informed as soon as, may be the ground of one’s own choice. ii – The right to consult and to be represented by a lawyer of one’s own choice. iii. The right to be produced before a magistrate within 24 hours . iv. The freedom from detention beyond the set period except by the order of the magistrate.

Further sub-classes of Art 22 deals with the preventive detention. Preventive detention is opposite to punitive detention. While the purpose of punitive detention is to punish a person for what he has already done.

The objective of preventive detention is not to punish a person for having done something but to intercept before one does it and to prevent him from doing it. The following are some of the preventive detention laws in operation.

1. MISA – Maintenance of Internal security Act 1971.
2. COFEPOSA – Conservation of Foreign Exchange and Prevention of smuggling Activities Act 19715.
3. TADA – Terrorist and Disruptive Activities Act 19815.
4. POTA – Prevention of Terrorist Activities Act, 2002.

3] Right against Exploitation: - Arts 23 -25 –

Art 23 prohibits trafficking in human beings, beggar, slavery and other similar forms of forced labour. Art 23 – clause 2 – permits the state to impose compulsory services for public purposes.

Trafficking in human being means selling and buying men, women and children like commodities. This has been prohibited by law. Art 24 – Children below the age of fourteen can not be employed in hazardous places like factories and mines.

This provision is important as it enables people to live a life with dignity

Summary Table on - Right Against Exploitation

1	2	3	4
Importance of this right	Prohibition of traffic in human beings and forced labour	Prohibition of employment of children	Establish dignity of the individual

4] Right to freedom of Religion: - (Art 25 to 28)

It guarantees secularism as one of the ideals of the constitution. It guarantees freedom of conscience, freedom to profess, practice and propagate any religion.

Restrictions:

Reasonable restrictions to this freedom are religious liberties subject to public order, morality, and health.

Every religious section can establish and maintain institutions for religious and charitable purposes.

But to ensure the secular character Art 27 provides 'no one shall be compelled to pay any tax for the promotion or maintenance of any particular religion.'

There is prohibition of religious instruction in state aided institutions. This is to ensure the secular character of the state.

Summary Table on - Right to freedom of Religion

1.	2	3
Importance of this right	Aspects	Restrictions
	1. Freedom of conscience, profess any religion, 2. Freedom to manage religious affairs 3. Freedom to establish religious institutions 4. No religious education in educational institutions	

5] Cultural and Educational Rights: - (Art 29 – 30):

India is a multi – cultural, multi linguistic, multi religious country. There is a common desire to preserve and promote one's own language and culture. That is why cultural and educational rights are given to citizens. This enables them to maintain their distinct languages and culture and establish educational institutions for promotion of the same.

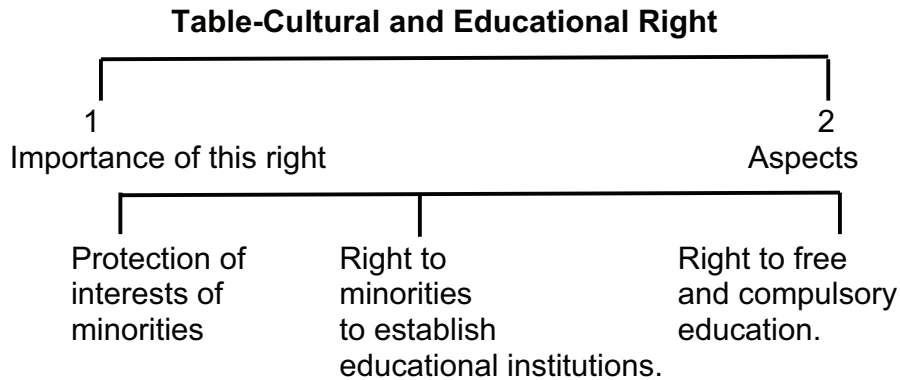
Art 29 confers on minorities' right to establish and administer educational institutions and provides following four distinctive rights:

- a. Right of any section of citizens to conserve its own language script or culture. (Art 29(1),
- b. Right of the citizen not to be denied admission to any state maintained institutions on grounds of religion, caste, race and language (Art 29 (2)
- c. Right of all religious and linguistic minorities to establish and administer educational institutions of their choice (Art 30(1)
- d. Right of an educational institution not to be discriminated in matters of state aid on grounds that it is managed by a religious or linguistic minority (Art 30(2)).

Importance of this right is, minorities shall be protected in respect of their language, script and culture.

Right to free and compulsory education :

Eighty-sixth (86th) amendment of the constitution in 2006, lays down that the state shall provide free and compulsory education to all children of the age of six to fourteen years.



6] Right to constitutional remedies: (Art 32 – 35):

The right to constitutional remedies protects the citizens against encroachment on their fundamental rights. This right ensures that no person is deprived of his rights. It empowers the citizens to approach the court against any act of violation of fundamental rights. Dr. Ambedkar called it “the very heart and soul of the constitution.”

Art 32 guarantees to a person the right to move the Supreme Court directly for the enforcement of their fundamental rights. The Supreme Court can issue various kinds of writs for the enforcement of these rights. One can seek redressal through following petitions.

1) The writ of habeas corpus:

It is a powerful safeguard against arbitrary acts not only on private individuals but also of the executive. This writ can be filed by anyone including the arrested person, his relatives, friends etc. This petition will force the arresting authorities to produce the person bodily in the court.

2) The writ of Mandamus:

This writ commands the person to whom it is addressed to perform public or quasi public legal duty which he has refused to perform and the performance of which cannot be enforced by any other legal remedy.

3) The writ of Prohibition:

It simply means to stop. The Supreme Court or high court issues directions to an inferior court forbidding the latter to continue

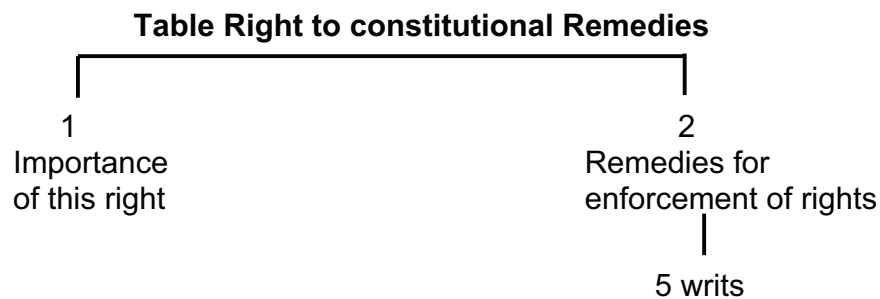
proceeding in a case in excess of its jurisdiction or to encroach on jurisdiction with which it is not legally vested.

4) The writ of certiorari:

It is issued to a lower court after a case has been decided by it denouncing or abolishing that order. The objective is to secure that order. Jurisdiction of an interior court does not encroach the jurisdiction which it does not possess.

5) The writ of quo warranto:

It is a proceeding by which the court inquires into the legality of the claim, which a party asserts to a public office and to remove from his or her employment if the claim is not found.



Check your progress

- 1) Write on Right to Freedom.
- 2) What is the importance of Right to freedom ?
- 3) What are the limitations on right to free freedom ?
- 4) Explain Right against Exploitation.
- 5) Explain Right to freedom of Religion.
- 6) Give short note on cultural and Educational Right.
- 7) Give importance of Right to Constitutional Remedies.

3.6 DIRECTIVE PRINCIPLES OF STATE POLICY

In Part IV of the constitution, Directive principles of the state policy are explained from Art 36 – 51. It is borrowed from the Irish constitution.

3.6.1 Meaning:

Directive Principles are in the form of guidelines for the state in deciding the socio – economic development of India.

3.6.2 Significance:

1. Welfare state:

The objective of directive principles is to embody the concept of 'welfare state'. The Indian constitution guarantees its citizens justice, freedom and equality. Hence citizens have been given certain rights. However, by merely guaranteeing freedom and equality, people cannot be made happy and their life prosperous. The state must formulate various projects for its citizens and through them must secure individual welfare and the nation's progress.

2. Development:

After independence, India faced many challenges. This country was to be transformed into a developed and progressive country. Therefore, it was necessary to implement a dynamic and rigorous programme of development. Guidance was necessary to decide priority areas to be focused on. Such guidance came from the directive principles of state policy. It shows the path to the state for development.

3. Supplement of fundamental rights:

Directive principles deal with the social, economic and cultural rights. These principles have enabled the government to make laws to protect the weaker sections of society and abolish inequality and eradicate poverty.

3.6.3 Nature of Directive Principles:

Directive Principles are fundamental in the governance of the country. But they are not justifiable in the court of law when it is violated. Their nature is moral. These principles are only the directions to the state and law making bodies to keep in mind while framing policies and laws.

3.6.4 Directive principles in the constitution:

For the easy understanding of the Directive Principles, they are classified into four categories: -

A Social principles

B Economic Principles

C Political principles

D International principles.

A] Social Principle:

1. The state must provide free and compulsory education to all the children below fourteen years of age.
2. It should promote the interests of the weaker sections especially for the SC and ST.
3. The state should strive to improve public health and impose a ban on intoxicating drugs harmful to health.
4. The state should support the development of agriculture and animal husbandry on scientific lines.
5. The state shall strive to preserve and protect the environment, forests and wild life.
6. The state should protect and preserve historical and national monuments.

B] Economic principles:

1. The state should provide adequate means of livelihood to all its citizens.
2. It should use the material resources of the country for the well being of the entire society.
3. It should prevent the concentration of wealth in the hands of a few.
4. It should ensure equal pay for equal work to all men and women alike.
5. The state should ensure that no person is compelled to enter into a vocation unsuited to his age and ability.
6. The state shall strive to create conditions that will help children grow in a free and healthy atmosphere
7. The state shall create a legal system that promotes justice and provides free legal aid to the weaker sections of society.
8. All citizens should be given the right to work and the right to education. They should be provided assistance in old age and illness.
9. The state shall strive to secure just and humane conditions of work for the workers.
10. The state shall promote cottage industries.
11. It should ensure workers participation infactory management by making suitable laws.

C] Political Principles:

1. The state shall organize village Panchayats for enhancing people's participation in political affairs.
2. The state should strive to implement uniform civil code for all the citizens of India.
3. The Judiciary should be separated from the Executive to secure the independence of the former.

D] Principles concerning International Relations:

1. The state is expected to devise a foreign policy that promotes international peace and security.
2. It shall promote honourable and friendly relationships among nations.
3. It shall resolve international disputes by peaceful means and arbitration.

3.6.5 Distinction between Fundamental rights and directive Principles:

1. Fundamental rights have judicial protection. Whereas directive principles of state policy do not have such protection. We cannot approach the court in case of nonimplementation of the directives.
2. Fundamental Rights provides individual freedom and liberty to the people. These are basic civil and political rights of the citizens.

Directive Principles are the guidelines for the state. It shows the path to the government for formulating policies towards welfare state.

Directive Principles deals with the social, economic and cultural rights.

3. Both together bring balance between individual liberty and public good.
4. In case of a conflict between Directive Principles and fundamental rights, the latter must prevail. But Parliament can amend the constitution and modify fundamental Rights to give effect to Directive Principles.

3.6.6 Table Directive principles:

Table Directive principles				
1	2	3	4	5
Meaning	Significance	Nature	Classification	Difference
Guidelines to the state.	1) Welfare state 2) Development 3) Social 4) Economic 5) Cultural 6) Rights.	Not justifiable	1) Social 2) Economic. 3) Political. 4) International.	

3.7 UNIT END QUESTIONS

1. Discuss 'preamble' as expression of the philosophy of the Indian constitution.
2. Discuss the unique and outstanding features of the constitution of India
3. Discuss the unique and outstanding features of the constitution of India.
4. Critically examine the significance and utility of the preamble to the constitution of India.
5. Discuss the philosophy of the constitution of India.
6. Elaborate Right to Equality and Right to freedom.
7. Critically examine the provisions regarding fundamental Rights.
8. Attempt and discuss classification of the Directive principles.
9. Write short notes on
 1. Objective Resolution. 2. The Preamble
 - A) Right to freedom of religion. B) Right to constitutional Remedies. C) Fundamental Duties. D) Relationship between fundamental Rights and Directive principles. E) Importance of Directive principles.

3.8 REFERENCE

1. Introduction to the constitution of India by Durga Das Basu.
2. Dr. M.V. Pylee – constitutional Government of India.
3. The constitution of India – 2004.

Module III
**INSTITUTIONS: STRUCTURE, POWER
 AND FUNCTIONING PARLIAMENT**

Unit structure

- 4.0 Objective
- 4.1 Introduction
- 4.2 Parliament the structure
- 4.3 Powers and functions of Parliament
- 4.4 Relationship between two houses
- 4.5 Changing Role of the Parliament
- 4.6 Issue of Parliamentary sovereignty
- 4.7 Role of Parliament
- 4.8 Decline of Parliament
- 4.9 Conclusion
- 4.10 Unit end questions

4.0 OBJECTIVE

To learn about the law making body of the government.

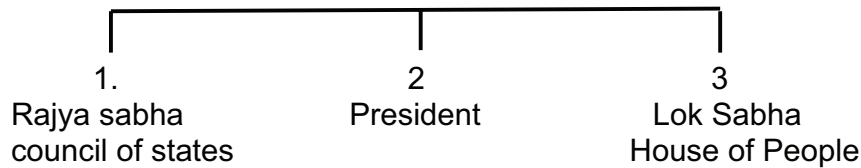
4.1 INTRODUCTION

The Indian parliament is the legislative organ of the government. It represents the people as well as epitomises unity of India. Articles 79 to 122 of the Indian constitution describe the Parliament; which is known as 'sansad', Indian Parliament is bicameral.

4.2 STRUCTURE OF THE PARLIAMENT OF INDIA

Article 79 says "There shall be a parliament for the Union, which shall consist of the president and two Houses, to be known as the council of state and House of the people."

Composition of Parliament



4.2.1 President:

President is not the member of any House, but he is considered as an inseparable part of the Parliament. Every Bill passed by the Parliament must have his assent to become an Act. He has a special power of summoning meetings of the parliament.

4.2.2 The Rajya Sabha (The Council of states)

Composition of the council of States:

It represents the states. Rajya Sabha promotes and protects the interest of various states in India. This the upper House of Parliament. It (Total seats) consists of 250 members. Out of these 238 members are indirectly elected by state assemblies and union territories and 12 members are nominated by the President. These are the people who have knowledge and skill in the field of arts, science, literature and social service. Their nomination to the Rajya Sabha makes their services available to the nation.

Division of seats:

In Indian federal system there is not equal representation in the Rajya Sabha, like American senate. In India every state has different number of representatives depending upon the population of the state. E.g. Uttar Pradesh sends 31 members, Maharashtra sends 19 and Goa send 1 member in the Rajya Sabha.

Election:

Out of 250 members of the Rajya – Sabha, 238 are indirectly elected. For the purpose of this election Proportional Representation by means of single transferable vote system is used. In this system, the voter is supposed to indicate his choice by giving numbers to the candidates as per his order of preference. The system of proportional representation is complicated. A candidate cannot get elected unless he secures certain proportion of votes. People are not directly involved in this election. The elected members of Legislative Assemblies elect the Rajya Sabha members. The nominated members and the Legislative Council members do not participate in this election.

Tenure:

Rajya Sabha is a permanent body. Members are elected for a period of 6 years. After every 2 years 1/3rd of its members retire by rotation. It is a continuous house

Qualifications of members:

1. He must be a citizen of India.
2. He must have completed 30 years of age.
3. Additional qualifications may be prescribed by parliament from time to time.

Disqualifications:

1. A person will occupy only one seat at time.
2. A person will be disqualified if he holds any office of profit under the central Government or state Government.
3. If he is of unsound mind.
4. If he has indulged into corrupt electoral practices and proved guilty then he is disqualified from elections for a period of 6 years.

Chairman and Deputy Chairman:

The Vice President is the ex- officio chairman of the Rajya Sabha. In the absence of the chairman, the Deputy Chairman functions as the chairman. He is a member of the House and elected by the House.

Table Composition of Rajya Sabha

1	2	3	4	5	6
Representation	Strength	Election	Tenure	Qualifications	Chairman
Represents the states	250	Indirect	permanent house.		Vice president

The Lok Sabha (The House of People) :**Composition:**

Lok – Sabha is known as the lower House of Parliament. It is known as House of people because it represents the people of India. The members of Loksabha are directly elected by the people.

Strength:

There can be a maximum of 552 members in the Loksabha. Out of these not more than 530 members are from the federating units i.e. states. Not more than 20 members are representatives from union territories and 2 members may be nominated by the President from Anglo – Indian community, if he feels that the community is not adequately represented.

Distribution:

The seats are distributed on the basis of population. Uttar Pradesh sends maximum members 80 to the Loksabha whereas Mizoram, Nagaland and Sikkim send one member each to Loksabha. Maharashtra sends 48 members to the Lok – Sabha.

Tenure:

Normal life of Lok Sabha is Five years. It can be dissolved earlier by the President. In case of emergency, the parliament can extend the life of Lok Sabha by one year. Fresh elections must be conducted within six months after emergency has been lifted.

Qualifications : - A person must possess following qualifications for membership of Lok Sabha. -

1. He must be a citizen of India.
2. He must have completed 25 years of age.
3. He must possess other additional qualifications as decided by the parliament from time to time.
4. His name should appear in the voter's list.

Mode of Representation:

All citizens of India who have completed 18 years of age can vote for Lok Sabha. It is a direct election. Representation is on geographical basis. For the purpose of elections entire territory is divided into smaller geographical units. Each one of this unit is called a constituency. Each constituency represents more or less same number of people. In case of Lok Sabha only one representative is to be elected from each constituency. Hence it is called as a single member constituency. The candidate who secures maximum number of votes is declared elected.

e.g. –

Candidate	Votes polled	Result
A	10,000	elected.
B	9,000	
C	8,000	

Candidate 'A' is declared elected as he has polled maximum number of votes. However, it must be noted that he is not supported by majority. Candidates 'B' and 'C' have polled 1700 votes together. These votes are more than the votes polled by 'A', But these votes being fragmented 'A' gets elected.

Speaker and the Deputy Speaker:

The speaker is the presiding officer of the Lok Sabha. His position is of dignity and honour. His status is equivalent to the Chief Justice of India. In the absence of the speaker, the Deputy Speaker presides over the house.

Election:

The speaker and the Deputy Speaker are elected by majority by members of Lok – Sabha. Generally, the majority party decides the speaker and the opposition gets the post of Deputy Speaker.

Tennure :

Of the speaker and the Deputy Speaker- The speaker and Deputy Speaker hold the office during the life of Lok Sabha. They remain in office till the newly elected members choose the speaker and the Deputy Speaker.

His office may be terminated earlier if

1. He ceases to be a member of Lok Sabha
2. He resigns.
3. He is removed.

The members of Lok Sabha can remove the Speaker. Such a resolution should be tabled with 14 days notice. When the resolution comes for discussions, he can participate and vote. In case of a tie on this resolution he cannot vote.

Table - Composition of Lok Sabha

1	2	3	4	5	6
Representation	Strength	Tenure	Qualifications	Election	chairman
↓	↓	↓	↓	↓	↓
Represents the people	552	5years		direct	speaker

Powers and Functions of the speaker:

The powers, *position and functions of the speaker are similar to* those of the speaker of the House of Commons in England.

1. The speaker presides over the meetings of the House.
2. He maintains order, decency and decorum in the House.
3. In the absence of quorum, he adjourns the House. Quorum is the minimum number of members required for the functioning of the House. Generally it is 1/10th of the total membership. In the absence of quorum House has to be adjourned.
4. He decides to admit questions, motions, Bills etc. he is the sole authority to decide the urgency of any matter.
5. He adjourns the House in case of chaos.
6. If the answer given by a minister is not satisfactory, then he can pressurise the minister to give proper answer.
7. He protects the special privileges of the members.
8. He presides over the joined sitting of both the Houses.
9. He should be impartial and does not vote. But in case of a tie he has a casting vote that decides the dispute.

Powers and Functions of the Parliament:

India has adopted parliamentary form of government. In this system executive is a part of the legislature and can remain in power only so long as it enjoys the confidence of the legislature. Executive i.e. the government is responsible to the legislature. Hence in Parliamentary system Parliament is the most important organ of the Government. It has dual responsibility 1. Legislative functions 2. Executive functions.

1. Legislative function:

The basic function of the Parliament is to make laws. As the situation changes there is a need to amend old laws, to make new laws and repeal old laws. This is done by parliament. In the modern welfare state this function has substantially increased. The Parliament has the power to make laws on the subjects given in the union list and the concurrent list.

2. Formation of the Cabinet:

It is the function of Parliament to form cabinet by the leader of majority party. The cabinet looks after the day to day administration and decides policies of the government. Such a government is responsible to parliament.

3. Control of Cabinet:

Union parliament exercises control over the union executive and administration. Council of Ministers is collectively and every minister is individually responsible to the Union Parliament. It enforces responsibility through questions, resolutions, adjournment motions, budgetary discussion, vote of no confidence etc. Question Hour is the most important instrument of parliamentary control. The first hour of every working day is reserved for this purpose. By raising questions, the members of parliament can focus public attention on the policies and activities of the government.

Debates on Adjournment Motions is a tool of day to day control. It is utilized for raising a discussion in the House on any specific questions of urgent nature and of public importance.

The cabinet remains in power as long as it enjoys the confidence of the Parliament. Any minister can be asked questions and supplementary questions by the member of parliament. The cabinet has to resign if a no confidence motion is passed. Ministers are responsible to the parliament. Matter of urgent public importance are discussed by the member of the Parliament. It ensures accountability of the executive in the parliamentary system.

4. Financial Powers:

The Union parliament enjoys absolute control over the purse of the nation. The parliament alone has power to levy a new tax. The finance Minister submits the Annual Budget before the Lok Sabha. The parliament discusses it in detail and approves it.

Money Bills are introduced only in the Lok Sabha and requires sanction only of the Lok Sabha.

5. Judicial Powers:

The Parliament can remove the President, Chief Election commissioner, the judges of the high court and Supreme Court by impeachment. The parliament has the power to punish any one for breach of its privileges or for its contempt.

6. Power of amending the constitution:

Parliament has the authority to amend the constitution. Approval of both the Houses is essential for amendment. However, amendment cannot change basic framework of the constitution.

7. Electoral Functions:

Parliament elects the president and the Vice – president.

8. Venting of Grievances:

It vents the grievances of the people through various parliamentary measures. The Parliamentary debates, questions etc are highly informative. The legislature plays vital role in mobilizing popular support for the regime as well as for developmental activities.

Table- Powers and Functions of Parliament

1	2	3	4	5	6	7	8	9
Legislative	Formation of cabinet	Control on cabinet	Financial	Judicial	Power	Electoral of amending the constitution	Venting of Grievances Emergency	

4.4 RELATIONSHIP BETWEEN THE TWO HOUSES

Except for the Money Bill both the Houses have equal powers. However, as far as money bill is concerned it can be introduced only in the Lok Sabha and requires the sanction of the Lok Sabha.

The Lok Sabha can pull down a government where as a Rajya Sabha cannot do it.

This does not mean that the Rajya Sabha is a powerless house - Rajyasabha has some special powers such as creation of All India services, shifting a subject from the state list to the concurrent list, approval of proclamation of emergency etc. It is important to note that Rajya Sabha cannot be destroyed by Lok Sabha. If the Lok Sabha is dissolved, all powers of parliament are enjoyed by the Rajya Sabha. Thus Lok Sabha has superior position regarding money bill, But Rajya Sabha has some special powers.

4.5 CHANGING ROLE OF THE PARLIAMENT

The Legislature constitutes the heart of the representative democratic system. Enactment of laws is its main function but it also supervises and controls the whole governmental system. In developing countries like India, the legislature plays vital role in mobilizing popular support for the regime as well as for developmental activities. But the decline in powers and significance of the legislature during the 20th century is a world – wide

phenomena and India is no exception to this trend. In this context we will study about issue of parliamentary sovereignty the role of parliament and decline of parliament, in India.

4.6 ISSUE OF PARLIAMENTARY SOVEREIGNTY

The position of the Indian Parliament is half way house between the British Parliamentary sovereignty and the American supremacy of the constitution.

British Parliament is supreme. British parliament can do everything that is not naturally impossible. The laws enacted by the British parliament are regarded as the supreme laws. Court cannot decide its validity. Thus English courts are denied any power “to sit as a court of appeal against parliament”. Theory of the Parliamentary sovereignty is maintained in England.

In USA there is supremacy of constitution. It means constitution is supreme and courts have the power of interpretation of the constitution. Supreme Court has power to invalidate a law enacted by the congress (Parliament) not only on the ground that it transgresses the legislative powers vested in it by the constitution or by the prohibitions contained in the Bill of rights but also on the ground that it is opposed to such general principles as due process of law. Thus the supremacy of the constitution is maintained.

Indian constitution embodies a healthy combination of the theory of the supremacy of the constitution like US and the theory of the parliamentary sovereignty like England. Indian Judiciary is empowered to declare a law as unconstitutional if it is beyond the competence of legislature and against the constitution. But at the same time, judiciary has no power to ascertain wisdom of legislative policy.

Secondly constitution can be amended by Union parliament and can overcome difficulties created by judicial decisions.

It was expressed by Pandit Nehru that “No supreme Court can stand in judgment over the sovereign will of parliament. It can pull – up that sovereign will if it goes wrong; but where the future of the community is concerned, no judiciary can come in the way, It means Legislature must be supreme and must not be interfered with by the courts of law in such measures as social reform.”

Thus compromise between judicial review and parliamentary sovereignty is one of the basic features of the constitution of India.

Disturbance:

In 1976, 42nd amendment Act disturbed the balance between the Parliamentary sovereignty and Judicial review by moving towards the former by introducing some new provisions to the constitution. But in 1977, 43rd and 44th amendments Acts restored it,

Thus balance between the parliamentary supremacy and the judicial review has been achieved which makes the Indian parliament not as omnipotent as British Parliament and not as helpless as American Congress.

4.7 ROLE OF PARLIAMENT

The role and functions of Parliament assume great significance in view of the basic principles associated with parliamentary democracy.

A parliamentary form of government acknowledges the fact that in this system, parliament derives its power directly from the consent of the people expressed through periodic elections and that it exists to implement the will of the people. In this system the executive not only emanates from parliament but is also accountable to parliament for all its acts of omission and commission. This accountability of the executive to parliament represents the will of the people, it should be able to oversee and keep the executive under control and constant surveillance.

Parliaments have now become multi – functional institution.

It is the political nerve centre of the country, acting as a mirror of the society. Parliament performs a variety of functions such as: -

1. Law making or Legislative function.
2. Ensuring executive accountability through control of cabinet.
3. Control over the budget, financial powers.
4. Amending the constitution.
5. Representational role, formation of the cabinet.
6. Educational role.
7. Venting of Grievances of the people.
8. Training and recruitment of leadership, electoral function
9. Powers relating to emergency.

Thus parliament is a multi – functional institution. But the decline in powers and role of the legislature during the 20th century is world – wide phenomena and India is no exception to this trend.

4.8 DECLINE OF PARLIAMENT

Day-to-day parliament is losing in its effectiveness. Factors responsible for the decline of Parliament and erosion of its powers are as follows: -

- 1 Usurpation of powers by the executive branch
- 2 Judicial intervention
- 3 One party Dominance system
- 4 Rigid party discipline
- 5 Disinterested Attitude
- 6 Complex nature of Governmental Business
- 7 Delegated legislation
- 8 Lack of knowledge of the member of parliament
- 9 Weak opposition
- 10 Internal emergency
- 11 limitations on the powers of parliament

4.8.1 Usurpation of powers by the executive branch :

Indian parliament is primarily a law – making body, however, the initiative in this regard has gradually shifted by the council of Ministers.

- A The council of Ministers** initiates almost all legislations described as “official bills”
- B Speaker determines** the weekly business in consultation with the minister for parliamentary affairs. Discussions on the public policies are initiated by ministers. Parliament looks upon executive branch for guidance and assistance and follow the lead provided by council of Ministers.
- C In addition**, it hands over substantial powers of ‘subordinate legislation to the executive branch.
- D President Summons** and prorogues the sessions of the parliament, places the agenda of his government in his ‘Inaugural Address’. President can dissolve House of People and make very extensive use of power to issues ordinances when Parliament is not in session.
- E A Bill enacted by** parliament can become a law only when it receives President’s assent. President can return any bill for reconsideration or refuse assent Thus there is transformation of parliamentary government into Cabinet Government or Prime –

Ministerial Government. From 1947 to 1989, the executive branch in general and the prime Minister in particular usurped sizeable powers of Parliament and rendered the Parliament to “post-facto approval giving body”.

2. Judicial Intervention:

Doctrines of supremacy of constitution and judicial Review have effected decline of Parliament. Many laws enacted by parliament have been set aside by the Supreme Court.

In 1967, Supreme Court tried to curb Parliament's power to amend fundamental rights. In 1974 Supreme Court laid down doctrine of the 'Basic structure'. In 1980, Supreme Court, invalidated part of forty – second amendment. This 'on-going war' between Parliament and Supreme Court has contributed to the decline of Parliament. Parliament, in 1970's, supported doctrine of 'committed judiciary' and strengthened the executives branch.

3. One party Dominance system :

Most of the time (except 1969 to 1970, 1977-79 and 1989-93) Union Parliament was dominated by the congress party. Hence decisions and policies were decided on party forum and only formal sanction was accorded by parliament. Thus the real centre of power was the High Command of the Congress party and parliament played secondary role.

4. Rigid party discipline:

Leadership of the dominant party insisted on observance of the party directives by the members of the parliamentary party. They were required to account and vote as per the instructions of the party leadership. They cannot violate party directive. If they act contrary to party directive, they attract disqualification from the membership of parliament. With the passage of the Anti-Defection bill in 1985, independence of members of parliament has been curtailed. On the name of party discipline party members in the parliament became 'yes-man' or 'no man',

6. Disinterested attitude:

Very few members of the Parliament have interest or aptitude for legislative work. Hence most of the time members of parliament just give their presence in the working of parliament. Result is parliament is losing in its effectiveness.

7. Complex nature of governmental Business:

Nature of governmental Business had become more technical and complex. it is beyond understanding of the large

majority of the members of parliament. Hence civil servants have abrogated powers owing to their expertise.

8. Delegated legislation:

Logical consequence of the complex nature of law making has been delegated legislation. Parliament lays down the broad outline of legislation. Parliament lays down the broad outline of legislation and delegates power to the executive branch to make detailed rules and regulations. The quantum of delegated legislation is increasing which indicates decline in the powers of the legislature.

9. Lack of Knowledge of the members of parliament:

The scope and variety of legislations has increased and lack of technical knowledge prevents parliament from exercising effective control.

10. Weak opposition:

Parliamentary system is based on two equally strong party systems. In Indian party system one, party is dominant. In the era of the one party dominance, the government could brush aside all opposition because of weak opposition party.

11. Internal Emergency:

During the internal Emergency (1975-77) parliament was a mere “rubber – stamp” of the council of ministers.

4.8.2 Limitations on the powers of Parliament:

Indian parliament is not sovereign or supreme in the sense the British parliament is. The limitations on the powers of parliament are as follows:

A. Supremacy of the constitution:

In India there is supremacy of the constitution. Constitution defines and limits powers of parliament. Owing to the federal system of India, there is division of powers between the Union and the states. Parliament cannot enact laws on subject in the state list. Owing to supremacy of the constitution, any law enacted by parliament is liable to be declared as ‘Ultra vires’ by the Supreme Court. Parliament can enact only such laws which confirm with the provisions of the constitution. Thus supremacy of constitution limits the powers of parliament.

B. Amendment of the constitution:

Parliament can amend the constitution. But parliament has to seek approval of legislatures from more than one half states for enacting certain amendments to constitution

C. President's Assent:

A bill enacted by parliament can become a law only when it receives president's assent. President can return any bill for reconsideration or refuse assent.

D. Financial matters:

Parliamentary control over financial matters is not absolute. No tax can be levied and expenditure cannot be incurred without approval of the parliament. However, parliament has no power to vote on the non – votable items of the Budget. No money bill can be introduced in parliament without prior- permission of president. Parliament can accept or reject budget proposals but does not have power to alter these proposals.

Thus all above factors are responsible for the decline in the powers of the parliament.

Revival of parliament:

A section of Indian scientists are of the view that the parliament has reasserted its powers. A vote of no confidence had forced the national Front Government to resign in November 1990. The parliament had initiated impeachment proceedings against a Supreme Court judge who was facing corruption charges.

The Parliament compelled the Rao Government to constitute the joint parliamentary committee on the stock scam and at least four Ministers, involved in the scam have been made to resign. A number of amendments had to be withdrawn as there was not sufficient support for them in the parliament.

Secondly the pattern of committee system has been adopted in India. This would enable the parliament to exercise greater degree of control and ensure accountability of the executive branch.

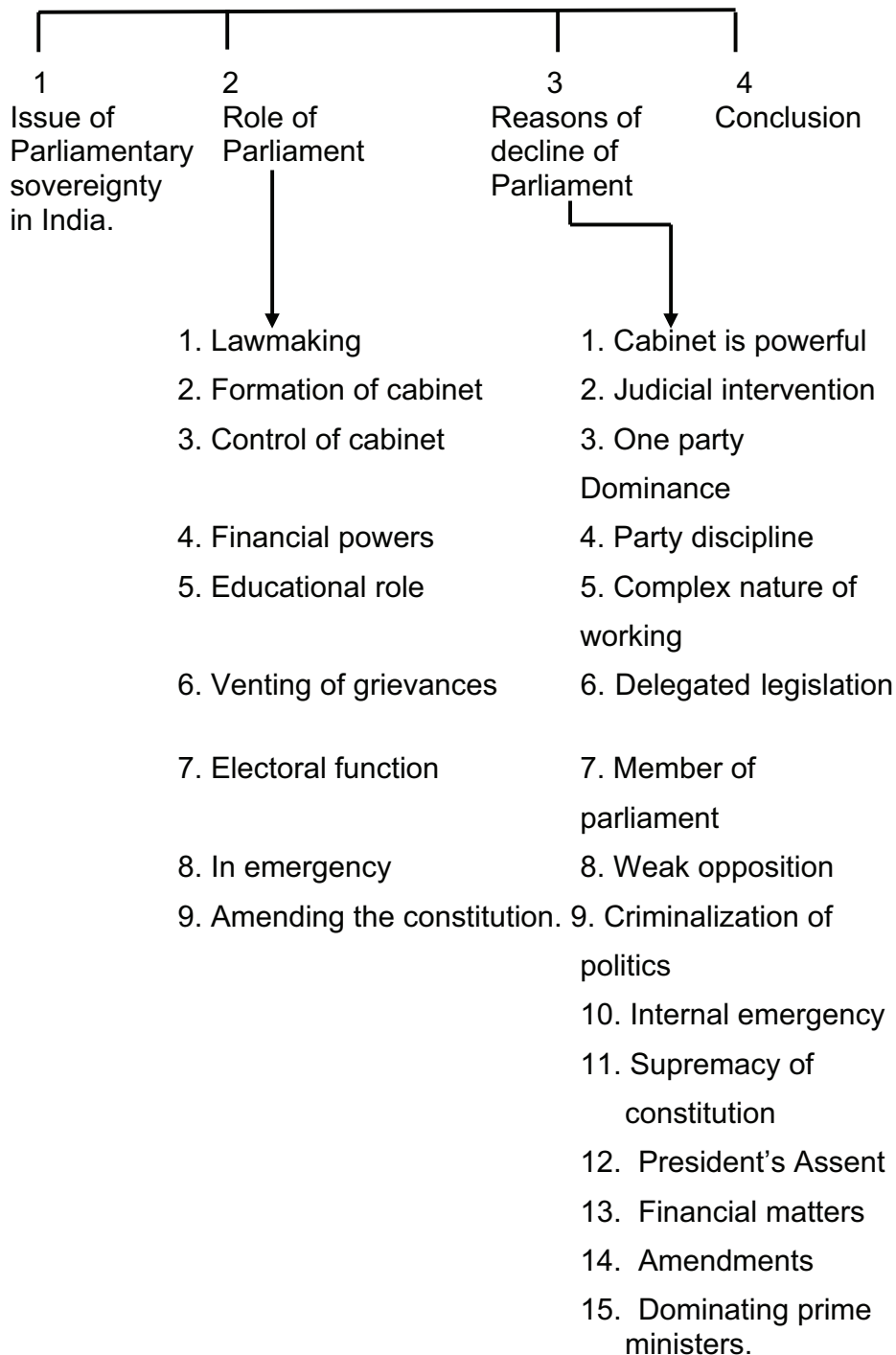
4.9 CONCLUSION

Though role of parliament is losing in its effectiveness and the government of day is safe behind the support of majority in the Lok – Sabha. Though important decisions are taken elsewhere the

parliament is still treated as a formal centre and focus in political system of India.

Table:

Changing Role of Parliament and decline of parliament



4.10 UNIT END QUESTIONS

1. Discuss the composition of the parliament.
2. Write on the powers and functions of Parliament.
3. Write short note on:
Importance of Parliament in parliamentary system of India.
4. Account for the decline of the Parliament.
5. Write on the changing role of parliament in India.
6. Give reasons of decline of parliament.

THE UNION EXECUTIVE

Unit structure

- 5.1 Introduction
- 5.2 The President-Power's and role
- 5.3 The Prime-Minister- Powers and Role
- 5.4 The Council of Ministers
- 5.5 Unit end questions

5.1 INTRODUCTION

The modern world has been witness to many forms of governance. There have been monarchies, one party rule, military rulers, dictators and democracy. Even in democracy we find two broad categories: parliamentary system [which can be roughly called British model] and presidential system [which is American system]. In our Constituent Assembly there was a lot of debate about the form of government. After lot of debate, we decided to opt for Parliamentary form.

Even in Parliamentary form one can identify two sub-forms. One is called Monarchy-democracy and other is republic-democracy. For simplicity purpose the monarchy-democracy can be identified with UK and republic-democracy can be identified with India. For the students of political science what is necessary to know is that in Monarchy-democracy, the Head of the State is a hereditary position whereas in republic-democracy like India, such office is an elected office, directly or indirectly. In India the office of the President is elected by the MPs and MLAs. Our President Mrs. Pratibha Patil is the 14th President of Indian Republic. In case of the USA, the presidency is known as Executive Presidency where the powers of the Head of the State as well as the Head of Government are concentrated in one person. In India these two offices are separate. The Head of the State is indirectly elected by the elected members of the people [MPs/MLAs] whereas the Head of the Government is normally the leader of the majority party/coalition who is called the Prime Minister.

5.1.1 Nature of the President of India:

In our Constitution we find elaborate provisions about the office of the President. The article 53 provides that “the executive

powers of the Union *government* will be vested in the President of India”, But he cannot exercise these powers on his own, It is exercised by him either directly or through the officers sub-ordinate to him and that too, in accordance with the Constitution.

Article 54 provides that ‘the President is not elected directly by the people, but by an Electoral College consisting of [1] all MPs of Lok Sabha and Rajyasabha [2] all MLAs of Vidhansabhas [not MLCs]. The MLAs of the Union Territories are not eligible to vote. The article 54 further provides that each member of the Electoral College will have only one vote. But the value of each vote of MP will vary from state to state depending upon the population. Similarly the value of vote of each MLA will vary from state to state depending upon the population of the state.

Article 55 provides that two principles shall govern the election, [1] the Constituent state of the Indian Union are given uniformity or near uniformity in the scale of representation and [2] parity is established between the states as a whole of Indian Union. Article 52 of the constitution establishes the office of the ‘President of India’ But it is not specified whether the Indian President is the head of the state or head of the government. The article mentions that ‘there shall be a President’. The framers of the constitution were quite clear in their minds about the nature of the office of the President. The President represents the nation but he does not rule it.

5.1.2 Functions and Powers:

By now it is clear that Indian President is quite close to the British Monarch. We have article 53 which mentions that ‘there shall be a....’ For better understanding of the powers and functions of the Indian President the article 53 must be read with article 74 which makes the advice of the council of ministers binding on the President

The powers given to the President of India are quite vast and numerous, These powers can be grouped as under:

A] Executive Powers:

- [1] As noted before article 53 vests all executive powers of the Union in the President. Also article 77 mentions that the entire business of the government of India is conducted in the name of the President.
- [2] In his capacity as the executive head, the President makes all important appointments like the Chairmen and the members of

the UPSC, Attorney-General, Comptroller and Auditor General [GAG].

- [3] Article 53 provides that the President is the Supreme Commander of the armed forces. He can declare war, can enter into peace treaties. However parliamentary approval is necessary for such actions.
- [4] Article 78 provides the President shall have the right to be informed about all the decisions of the cabinet. Similarly he has right to seek information about the activities of the government.
- [5] As far as foreign affairs are concerned, he appoints India's ambassadors to other countries. He also receives visiting heads of the state of other countries. He confirms recognition to the ambassadors of other countries appointed to India,

B] Legislative Powers:

Here we must begin by mentioning article 79 which provides that 'there shall be a Parliament with two houses and a President' Though the President is not a member of the Houses, he enjoys legislative powers.

- [1] He summons and prorogues the Union Parliament. He can dissolve the Loksabha.
- [2] Article 85 enjoins that he must ensure that a period of not more than six months lapses between two sessions of Union Parliament.
- [3] He can summon a joint session of the Loksabha and Rajyasabha to resolve a deadlock about a non-money bill.
- [4] The President inaugurates the first session of Parliament after every general election. Similarly every year, the first session of the Parliament is inaugurated by the President. While doing this, he addresses the House in which the domestic and foreign policies of the government of the day are specified.
- [5] Article 86 empowers the President to send messages to either house regarding a bill pending before the house. The message may contain some issues which he thinks are important.
- [6] Each and every bill passed by both houses goes to the President for his assent. He cannot return a money bill as it is presented with his prior permission. But he can return a non-money bill for reconsideration with or without his suggestions.

- [7] The President has power to nominate 12 persons as MP to Rajyasabha. Such persons are eminent people from art literature, sports and science etc. For example Shabana Azmi [cinema], R K Narayan [literature] was nominated on Rajyasabha.
- [8] In addition to money bill, there are some bills which require prior permission of the President. For example a bill for the formation of new states or alteration of boundaries [art 3].

C] Financial powers:

- [1] No money bill can be introduced unless it has received prior permission of the President Similarly article 112 provides that the President shall cause to lay before the house every year an annual statement of estimated income and expenditure which is popularly known as 'Budget'.
- [2] The President appoints the Finance Commission [FC] every *five* year. The FC is to recommend some formula for sharing of the resources of the Union government between the states.
- [3] He can sanction expenditure from the Contingency Fund of India to meet emergencies like flood, earthquake, famine, etc.

D] Judicial Powers:

- [1] If an impeachment motion is carried by both Houses, the President removes the concerned judge from the office.
- [2] He can transfer judges of High Courts.
- [3] The President has powers to grant amenities, pardons. In some cases he can commute sentences.

[E] Powers relating to the States:

- [1] The President can give or refuse to give consent to the bills reserved for his approval by the Governors of the state.
- [2] He appoints the Governors of the state. They remain in office during the pleasure of the president.
- [3] He can issue instruction to the Governors. The compliance of these instructions is mandatory.

F] Emergency Powers:

The President of India enjoys some unusual, extra ordinary powers to face emergency situations which are discussed below:

- [1] Article 352 provides that in case there is a national emergency due to war external aggression and internal armed rebellion, then the President is empowered to declare emergency covering the entire country or some part thereof
- [2] Article 356 provides that when the affairs of the state cannot be carried on as per the provisions of the Constitution, the President, on the basis of the Governor's report or even without the report, can dismiss the state government either by dissolving the state assembly or put it in suspended animation. In such a case the Governor **runs** the state in the name of the President. This is popularly known as 'President's rule.
- [3] Article 360 provides that in case the financial stability of the country **is** threatened, the President can declare financial emergency. The financial emergency can never in force for more than a month, unless it is extended by the resolution in Parliament In independent India we have had no situation to declare the financial emergency.

5.2 ROLE OF THE PRESIDENT

On one hand the President of India has tremendous powers and on the other hand he is merely a rubber stamp. There is clear provision in our constitution which mentions that there shall be a council of minister to aid and advise the President', This provision makes it amply clear that there shall always be a council of ministers to help the President to discharge his constitutional duties. The various provisions about his role are discussed below:

a] Executive powers:

- [1] The article 53 provides that 'the executive powers of the Union shall be vested in the President'. These shall be exercised by him either directly or through officer sub-ordinate to him. Similarly article 75 provides that 'other ministers [but not the Prime Ministers] will be appointed by the President but only on the advice of the Prime Minister
- [2] Article 74 provides that 'there shall be a council of ministers headed by the Prime Minister to aid and advise the President who shall act in accordance with the advise.' Till 1976 this was the legal position. It is clear that by definition it is an advise

which can be rejected. Till 1976 there was hardly any situation when the President had rejected the advice tendered by the Council of Ministers. Mrs Indira Gandhi, the then Prime Minister brought in clarity in this relationship. She piloted 42nd amendment in 1976 which made explicitly clear that the advice given by the council of ministers would be binding on the President. The amended article 74[1] now reads as 'provided that the President may require the council of ministers to reconsider such advice, totally or partially. The President shall act in accordance with such advice when it comes back to him with or without modifications.

[3] In India we have provisions for the President's rule at the state level but no such provision is made for the President's rule at the Centre. There shall always be a council of ministers to aid and advise the President. At state level, the government can be run by the Governor with the help of senior bureaucrats which is commonly known as 'President's Rule'. But no such provision is available for the President's Rule at the Centre. There shall always be a Council of ministers headed by the Prime Minister to aid and advise the President. This is described as 'President-in-council'

[4] It is also provided that no court is empowered to inquire into either the content or the wisdom of the advice given by the Council of ministers to the President. This has been specified in the article 74[2].

Check your progress :

- 1) Explain nature of the President of India.
- 2) Write on constitutional functions and Power of President.
- 3) Evaluate the role of the President.
- 4) Is Indian President Nominal.

5.3 PRIME MINISTER

5.3.1 Position:

As noted our system is based on British model where the Prime Minister is the real executive who heads the council of ministers. This is why the Prime Minister becomes the most

powerful person in the parliamentary system. His position could be understood as under:

[1] Head of the Council of Ministers:

Article 74 provides that there shall be a council of ministers headed by the Prime Minister to aid and advice the President. This was amended by 42nd amendment 1976 which clarified that 'there shall be a council of ministers with the Prime Minister at the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice.' The wording 'the Prime Minister shall be at the head of the council of ministers' clearly proves the eminent position the Prime Minister occupies in the council of ministers.

[2] Appointment of the Prime Minister:

According to the well established Parliamentary conventions, the leader of the majority party is appointed as Prime Minister by the President. Only when no party gets a clear majority the President can use his discretionary power to appoint the Prime Minister as was the case in 1989 when V P Singh was appointed as Prime Minister.

[3] As ministry-maker:

Though the Prime Minister is appointed by the President, the other ministers are appointed by the President on the advice of the Prime Minister. The article 75[1] clearly provides that 'the other ministers shall be appointed by the President on advise of the Prime Minister'.

[4] Tenure of Council of Ministers:

Though article 75[2] provides that 'the ministers shall hold the office during the pleasure of the President*' in reality it means the pleasure of the Prime Minister. The Prime Minister can sack, promote, and demote any minister. A minister may resign on his own but does not offer any threat to the entire council of ministers. But if the Prime Minister resigns then the entire ministry has to go. This proves the preeminence of the Prime Minister.

[5] Collective responsibility:

The article 75[3] provides that 'the council of ministers shall be collectively responsible to the House of the people'. This is possible only through the Prime Minister. As noted resignation of a minister does not mean resignation of the entire ministry. But the

resignation of the Prime Minister means the resignation of the entire ministry,

[6] Link between the Presidents:

Council of Ministers and the Parliament: The Prime Minister acts as a link between the President on one hand and the Parliament on the other hand. Article 78 provides that 'the Prime Minister has to perform functions like [a] to communicate to the President all important decisions of the Council of ministers regarding the administration of the country, [b] to provide such information as demanded by the President about the various policies and plans of the government, [c] Submit the suggestions of the President for the consideration of the council of ministers.

5.3.2 Functions and powers of the Prime Minister:

By now it is clear that the Prime Minister is the most powerful person in the parliamentary system. He enjoys vast powers and has to look after many functions discussed below:

1] Leader of the council of ministers:

Once the President has appointed the Prime Minister, the next step is the ministry formation which is the sole responsibility of the Prime Minister. The Prime Ministers not only forms the ministry but also allots portfolios. Also others ministers must enjoy the confidence of the Prime Minister to remain in the office. All important decisions are taken only after consultation with the Prime Minister.

2] Leader of the Cabinet:

Cabinet is nothing but a small group out of the Council of ministers. Normally a cabinet minister is the senior leader of the ruling party is a departmental head of a ministry. The Prime Minister leads the cabinet meetings by chairing them, by influencing the discussion in the cabinet. Also there are many important sub-committees of the Cabinet. For example, Cabinet committee on Security [CCS], Cabinet Committee on Appointments [CCA], etc. These sub-committees are headed by the Prime Minister.

3] Leader of Loksabha:

Conventionally the Prime Minister is always a member of Loksabha. There can be exceptions to this rule. Dr Manmohansingh is a member of Rajya Sabha. If the Prime Minister is member of Loksabha, it automatically gives him the leadership of

the Lok Sabha. The Prime Minister often uses the platform of the Lok Sabha to announce major policy decisions of the government.

4] Leader of the Parliament:

Though normally the Prime Minister is a member of Lok Sabha, he has the role of the leader of the entire Parliament. He is regularly consulted by the Speaker of the Lok Sabha and Chairman of the Rajya Sabha about forming the agenda of the house.

5] Federal system:

India is a quasi-federal system. There are some nationally important bodies like the Planning Commission, the National Development Council, etc. In these platforms the Prime Minister gets to discuss regional leaders to understand their problems.

6] Foreign Policy:

Right from the days of our first Prime Minister Pandit Nehru, the foreign policy was always shaped by the Prime Minister. Though there is normally a foreign relations minister, one can see the stamp of the Prime Minister on the main policy direction. It was Pandit Nehru's vision that gave us 'Non-alignment Movement'. In addition to the policy planning the PM attends many international conferences, seminars, various UN meetings as a representative of India.

7] Main administrator:

As a leader of the country the Prime Minister is also the main administrator of the system. He has to take interest into defence, economic, commercial matters as well as internal security issues. For this purpose he gets assistance from the Cabinet Secretariat, the Research and Analysis Wing [RAW], the Intelligence Bureau [IB], etc.

8] Patronage:

Though most of the important appointments are made by the President, all of them are done on the advice of the Prime Minister. To that extent the PM enjoys enormous power of patronage who can appoint people to powerful posts like Governors, Ambassadors, etc. He can favour or disfavour a particular industrial group.

9] Elections:

In democracy elections are very important as they test the popularity of various political parties. The election also decides the

future rulers of the country. As a PM it becomes the main responsibility of the PM to campaign extensively to get his party back into power. Hence he has to shoulder the major share of the campaigning. He becomes the star campaigner for the ruling party.

10] Leader of ruling party:

As per the convention, the leader of the majority party becomes the Prime Minister. It also means the PM leads the ruling party. This puts on him another set of responsibilities about the ruling party and its members. He functions like a link between the organizational wing and the parliamentary wing of the party.

[11] Public Opinion:

As leader of the entire country the PM gets to mould public opinion towards some progressive measure or the other. Take the example of Women's Reservation Bill. The ruling coalition led by the Congress is trying to get this passed. For this Dr Manmohansingh is trying to create a broad-based consensus of like-minded parties. This is the way he can mould public mind towards progressive policies.

5.3.3 Role of the Prime Minister:

By now it is clear that the position of the PM in modern parliamentary system is very important. In a traditional society like India, the position of the PM becomes all the more powerful. He can make or mar ministers. Each and every minister must enjoy his confidence. He allocates portfolios. He can shuffle, reshuffle his team. He can drop some ministers, promote some, and demote some. His word is final. While in the House, he shapes the debate, clarifies the issues of the day, add value by giving direction to the debate. Through various platforms he shapes public opinion towards better tomorrow. As a leader of the council of ministers he interacts with the President, the House and co-ordinates many important policy initiatives.

Here we must mention some reality. A PM is normally quite powerful. But it does not mean all the PMs have been powerful. This depends upon some other factors as well. If the ruling party does not enjoy clear majority in the House and is dependent upon the support of the allies, then the PM becomes weak. He has to go on consulting his allies. Also the personality of the incumbent matters a lot. A strong person like Mrs Indira Gandhi would always be a powerful PM whereas a mild person like Lal Bahadur Shastri will always be a mild PM. A lot would depend on many factors.

In the case of Indian democracy one can find two phases of PM's position. Till 1977, the PMs enjoyed enormous power and prestige. The Janata Party rule 1977-79 like a coalition where the PM had to keep everybody happy. Also he had to worry about fights within the ruling party. This made Morarji Desai a weak PM, Then again the phase of weak PMs began from 1989 when V P Singh became the PM. Since then India has been witnessing the coalition era where the PM has to depend on the support of over dozen parties.

5.4 THE COUNCIL OF MINISTERS

The Parliamentary system functions on the principle of collective responsibility. It means that the team of ministers led by the PM is collectively responsible to the House. This shows that in Parliamentary system the council of ministers is quite an important body. Also it is provided in our Constitution article 74[1] that there shall always be a council of ministers headed by the Prime Minister to aid and advise the President. This provision also informs us about the importance of the council of ministers. In case one government has lost the confidence of the House, the old government continues to function as 'caretaker ministry' till new team takes over. This did happen in India in April 1999 when the Vajpayee ministry lost of vote of confidence. But Loksabha elections were held in October 1999, Till then Vajpayee government continued as caretaker ministry.

As we have noted while discussing the President and Prime Minister that the President functions with the aid and advice of the council of ministers headed by the Prime Minister. If we read this provision carefully it becomes clear that what the council of ministers tenders is an 'advice' and not an 'order'. In the strict legal sense an advice can be rejected. What would happen the President was to reject the advice of the council of ministers? Initially it was expected that such situation would not arise. However our first President Dr Rajendra Prasad was not very happy with this provision and wanted clarity about the nature of the advice given. This clarity came by 42nd amendment 1976 which made the advice binding on the President. The 44th amendment 1979 made a slight change in this position. It empowered the President to return the advice only once with or without suggestions. But if the advice comes back to the President with or without changes, then he must accept it. This has happened often in the past couple of decades. In March 1991 the then PM Mr Chandrashekhar advised the President to hold assembly elections in Punjab. The President R Venkataraman was not in favour of this decision. He sent it back to the council of ministers for reconsideration. The council of ministers did not change its advice and the President had to sign the order.

5.4.1 Formation of the council of ministers

We have seen the importance of the council of ministers in the parliamentary form of government. Now let us understand the process of formation of council of ministers. Here we need to discuss two steps [1] appointment of the Prime Minister by the President and [2] appointment of other ministers. The appointment of the Prime Minister is a mere formality if any party/coalition has got clear majority. At this stage we are interested to know about the formation of council of ministers. Article 75[1] provides that 'other ministers shall be appointed by the President on the advice of Prime Minister'. This article makes it amply clear that ministry-making is the prerogative of the PM. As noted the PM allocates ministry, he can shuffle, reshuffle his ministry. He can drop some ministers, promote/demote some ministers.

In terms of tiers, the council of ministers is a three-tier body. The first level is 'Cabinet ministers', the second level is 'minister of state' with or without independent charge and the third level is 'deputy ministers'. Very rarely there can be fourth tier which is 'Parliamentary secretary'. These levels are discussed below:

Cabinet Ministers:

A cabinet minister is the head of the department. This post normally goes to the senior leaders of the ruling party/alliance. The Cabinet is the highest policy and decision making body, which is a small group of the council of ministers. Their number is normally 15 to 20. They run their departments quite independently. However they consult the Prime Minister for major policy decisions.

Ministers of state:

They are number 2 in the hierarchy. They assist the Cabinet ministers. If the department is big, they get independent charge of a section. If the department is not big, then they help the cabinet minister in the day to day administration of the department.

Deputy Ministers:

They are number 3 in the hierarchy. They are either attached to the Cabinet minister or minister of state. They help their seniors in running the department. But they do not enjoy any independent decision making power.

Parliamentary Secretary:

Their ideal description is 'trainee minister'. For this young politicians are appointed so that they get experience of running the ministry. They assist the ministers in parliamentary work.

5.4.2 Functions, powers and role of the Cabinet:

It is interesting to note that the Indian constitution did not make a mention of “cabinet” till 43rd amendment which was passed in 1971. Till then the Constitution discussed the ‘council of ministers’ and not the ‘cabinet’. By now we know about the cabinet ministers, ministers of state. The ultimate decision-making policy-making body is cabinet where only cabinet ministers are invited. But the decision taken by the cabinet are regarded as the decisions of the council of ministers. Similarly ALL ministers are collectively held responsible for the decision taken by the cabinet.

It is clear that in the parliamentary system cabinet is the most powerful body where important decisions are taken, policies are decided. The cabinet meeting is held every week. The agenda for the meeting is prepared by the Cabinet Secretariat which is headed by the Cabinet Secretary, the senior-most IAS officer. The cabinet meetings are recorded by the Cabinet secretary. The decisions in the cabinet are taken by consensus. In case a minister disagrees with any decision, he has to resign. He cannot disown the decision or policy. This is the basis of collective responsibility. If he disagrees with any decision he has to resign or the Prime Minister can sack him.

Functions of the Cabinet:

According to the ‘Rules of Business’ framed, the Cabinet has to perform following functions:

[1] Policy formulation:

As we noted, the cabinet is the highest policy making body. In cabinet meetings domestic issues as well as international issues are thoroughly discussed and *policy* is formulated. Once policy is decided, decisions are taken, they are communicated to the concerned ministries by the Cabinet secretary. In case an urgent issue is scheduled for discussion which needs the presence of a junior minister, he is invited to attend only for that item on the agenda.

[2] Legislation:

In Parliamentary system, law-making is the most important job. The draft legislation is discussed in the cabinet meetings before it is presented in the Legislative body. In cabinet meeting, all aspect of the proposed legislation is discussed from various perspectives. Once a draft is cleared in the Cabinet meeting, the next step is its introduction in the legislative body.

[3] Ultimate control:

In addition to policy formulation, the cabinet is also the ultimate controlling body which supervises, controls the functioning of important projects, schemes, etc. In other words, the administrative machinery of the government is supervised by the cabinet.

[4] Co-ordination:

As noted detailed discussions are held in the cabinet meetings. This leads to effective co-ordination among the various departments. During the course of the implementation of policies, there are possibilities of overlap, confusion, duplication of work, etc. All this gets resolved in the cabinet meetings as all important ministers are present in these meetings.

[5] Financial Control:

If on one side cabinet is the ultimate decision-making body, on the other side it is also a place where financial control is exercised. In the cabinet meetings, review of various schemes is regularly taken and cost control is put into practice. Since the Finance Minister is a senior member of cabinet, he gives regular briefing to the cabinet and corrective actions are taken in time.

[6] President's rule:

In our constitution article 356 provides for the President's rule in the state. When the state government cannot be run according to the provisions of the constitution, the state government can be dismissed and President's rule is imposed. This decision is taken at the cabinet level.

[7] Appointments:

Important appointments are finalized in the cabinet meetings. The Governors, Ambassadors, Chief Election Commissioner, etc are decided in the cabinet meetings. Now we have committee system. For appointments, there is a cabinet sub-committee known as 'Cabinet committee on Appointments [CCA]'.

5.5 UNIT END QUESTIONS

- 1 Critically examine the role of the president under Indian Constitution.
- 2 Elaborate powers and functions assigned to the President.
- 3 Discuss the role of the Prime Minister in the Indian Polity.
- 4 How is the Council of Ministers formed? What are its functions?

JUDICIARY-SUPREME COURT OF INDIA

Unit Structure

- 6.0 Objective
- 6.1 Introduction
- 6.2 Structure of Indian Judiciary
- 6.3 Independence of the Judiciary
- 6.4 Functions and Powers of Supreme Court
- 6.5 Meaning of Judicial Review
- 6.6 Development of Judicial Review
- 6.7 Judicial Activism
- 6.8 Unit end questions
- 6.9 References

6.0 OBJECTIVE

- Learning objectives of this unit are to study about.
- Structure of Judiciary.
- Independence of Judiciary.
- Powers of Supreme Court.
- Understanding Judicial Review and Judicial Activism.

6.1 INTRODUCTION

Democratic states provide for division of power between three institutions of the state viz Legislature, Executive and Judiciary. Legislature makes law, executive implements law and Judiciary interprets the law. India being democratic country its constitution has provided elaborate machinery for dispensation of justice & interpretation of Constitution is a living document that provides oxygen to the body politic, Constitutional Principles remains same but its application must be made relevant according to changing times. Further, provision of fundamental rights is meaningless if they are at the mercy of the executive. Judiciary therefore, plays vital role in protecting the principles and values of constitution.

6.2 STRUCTURE OF INDIAN JUDICIARY

Dr. Ambedkar said that “The Indian federation, though a dual polity, has no dual judiciary at all. The High Court and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases under Constitutional law, civil law or Criminal law” It mean India has single Judiciary with supreme Court at the top followed by High Courts at the state level. Below the High Court are district and session courts. It must be known that every state doesn't have separate High Court, e.g. The jurisdiction of Mumbai High Court extends to Diu and Daman and Goa. Kolkata High court jurisdiction extends to Andaman and Nicobar Union Territory. In all there are twenty one High Courts for 28 states of India including 7 Union territories.

The single integrated judicial system has brought jurisdictional unity in India. The judges of Supreme Court are drawn from the High Court. Again the judges of High Court are transferable across Indian state. This has provided uniformity in judicial standards and ethos.

6.3 INDEPENDENCE OF THE JUDICIARY

The Constitution has made provisions so as to maintain independence of the Judiciary.

1. Composition:

Art124 of the constitution provides that there shall be supreme court of India with consisting of chief Justice and seven judges. Further it says Parliament by law may increase the number of judges. The supreme court of present comprises 25 judges including chief Justice of India.

2. Appointment of Judges:

Art 124 (2) Provides that judge of supreme court shall be appointed by the president of India after consultation with the Judges of the supreme court and of the High courts. In case of chief Justice appointment the president may not consult other judges. After 1993, Supreme Court decision it is now convention that senior most judge of Supreme Court becomes chief Justice of India.

3. Qualifications for appointment of Judges:

Act 123 provides following qualification

- a. He must be a citizen of India

- b. He has been Judge of a High court for at least five years continuously; or he has been an advocate of High court for at least ten years continuously or he is in the opinion of the President of India a distinguished jurist.

4. Tenure:

A person continues as judge of Supreme Court during his good behaviour or till he attains 65 years, whichever is earlier.

5. Removal:

Under Article 124 a Supreme Court Judge can be removed on the grounds of misbehavior or incapacity only. The procedure to remove a judge is called impeachment. Any house can initiate impeachment motion and if it is passed by 2/3rd majority in each house the judge will be removed.

6. Immunities:

Action and decisions of the judges in their official capacity are immune from criticism. Under Article 121 conduct of Supreme Court judge cannot be questioned in parliament.

6.4 FUNCTIONS AND POWERS OF SUPREME COURT

1. Original Jurisdiction:

Article 131 deals with original jurisdiction. The functions are purely federal in character that may include disputes between Union and the states, Government of India and government of states or between two or more states. The original jurisdiction is exclusive that means such disputes can come only to Supreme Court and not any other court. If a suit is brought against government by private party it cannot be tolerated.

2. Writ Jurisdiction:

If there is violation of fundamental rights a person under Article 32 can ask the Supreme Court to issue writs. But this applies only if fundamental rights of a person are infringed.

3. Appellate Jurisdiction:

Supreme Court is a court of appeal. When lower or High court gives a judgment the person can appeal to the supreme court against the judgment of the lower court. Appeal to the Supreme Court can be made in three types of cases.

- a. Cases involving interpretation of the constitution
- b. Civil cases, irrespective of any constitutional question
- c. Criminal cases, irrespective of any constitutional question

4. Appeal by special Leave:

There may be some instance where Supreme Court may interfere with the judgment of High Court or tribunals where the question of justice is involved. Such residuary power is given to Supreme Court under Article 136.

5. Advisory Jurisdiction:

In some circumstance the President may refer the matter to Supreme Court to seek opinion. The president may consider that the matter involves important question of law or public interest, hence it will be appropriate to seek opinion from Supreme Court.

6. Court of Record:

All the proceedings of the Supreme Court are recorded and assume the form of case law. Such decisions are binding on all courts in India.

6.5 MEANING OF JUDICIAL REVIEW

Judicial Review is the power of Supreme Court to declares law made by parliament as null and void if it goes against the principles of Indian constitution. Judicial Review is nowhere mentioned in the constitution. The Court has assumed this implied power on basis of its role as protector or interpreter of Indian constitution.

The Indian constitution has provided the doctrine of 'procedure establish by law' whereby parliament can enact law but at the same time will practice self restraint so that fundamental rights of people are not violated. The Supreme Court under Article 32 can issue writs to protect the fundamental rights of people.

6.6 DEVELOPMENT OF JUDICIAL REVIEW

The first time judicial Review was invoked was during Shankari Prasad vs Union of India in 1951. Here the petitioner challenged the first Amendment to the constitution on the grounds it violates fundamental rights. The same objection was raised in Sajjan Singh vs state of Rajasthan. In both cases supreme court stated Parliament has power to amend Fundamental Rights. In

1967, in the case of Golaknatha, Supreme Court in its verdict said parliament has no power to take away fundamental rights. Thus it questioned parliament's power to amend the constitution. The parliament later passed the 24th & 25th amendment to restore it powerback. Finally in the Keshavanand Bharti case Supreme Court struck balance between power of parliament to make laws and its power to judicial review. Supreme Court for the first time invoked the doctrine of 'Basic structure' whereby it said parliament can amend constitution but cannot harm basic principles of the constitution. Unfortunately Supreme Court didn't lay down as what constitute 'Basic structure' It evolved over period of time. Later Indira Gandhi made some drastic changes in the constitution through 42nd amendment during emergency. The 42nd amendment was reviewed in the Minerva Mills case where Supreme Court struck down major portion of 42nd amendment and restored the balance between parliament and Supreme Court to the 1976 status quo. In the 1980 and 1990's Supreme Court has time and again used judicial review as a tool to prevent the legislature and executive from transgressing into its area. In 2005 the Supreme Court questioned the validity of Ninth schedule by stating laws incorporated into 9th scheduled can be subjected to judicial review if it infringes fundamental rights of individuals.

6.7 JUDICIAL ACTIVISM

In the 1980s politics in India was undergoing major transformations like weakening of congress rule, increased regional politics, growing corruption and criminalisation, decline of parliament etc. The welfare state was failing to deliver promises to the poor masses. The parliament and the Executive were lacking the will and efficiency to implement public policies. In the scenario the Supreme Court assumed the role to itself of acting as guardian of the poor and deprived sections of the society,

The Supreme Court started looking into issues related to poverty, public service, corruption, rights of dalits, adivasis women and children, environmental protection, labour problems etc. This was done through the mechanism of public Interest Litigation. (PIL) it is a kind of litigation where court can take issues that affect the public at large. This is different from adversarial litigation where parties in conflict can only approach the court. In PIL court can take on issue if brought by any person of the society who is genuinely concerned about issues that affect the society. eg. M.C Mehta, environmental lawyer filed cases regarding pollution in Delhi and supreme court gave judgement on it.

In other case called Prakash Singh case the Supreme Court gave clear guidelines on how to reform the police system in India.

The court in Unnikrishnan case said that education is fundamental right of every child. The effect of this judgement was parliament amended the constitution to make primary education a fundamental right.

Judicial Activism started due to eminent judges like Justice Bhagwati and Justice Krishna Iyer who believed that it is the duty of Supreme Court to protect the rights of the weaker sections of the society through judicial means. Judicial activism played vital role in reinforcing constitutional values that were flouted by the executive and legislature.

It is sometimes said judicial activism is not healthy practice because Supreme Court should not decide public policy which is in the domain of parliament. Further court lacks the resources to implement the judgement. It can direct the legislature or executive but cannot force the latter.

6.8 UNIT END QUESTIONS

1. Discuss the composition and powers of the Supreme Court
2. What is independence of judiciary and what Provisions have been made to ensure independence of the Supreme Court?
3. Write short notes on the following:
 - a) Judicial Review
 - b) Judicial Activism

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MODULE IV
THE FEDERAL STRUCTURE AND ITS DYNAMICS
CENTRE-STATE RELATIONS

Unit structure

- 7.0 Objective
- 7.1 Introduction
- 7.2 Legislative Relationship between Center and States
- 7.3 Executive and Administrative Relations between the Center and the States
- 7.4 Financial Relations between the Center and the States
- 7.5 Unit end questions.

7.0 OBJECTIVES

Today Indian Union comprises of twenty eight states and seven union territories. Student of political science should know nature of Indian federal system.

- To study about center–state relations.
- To study about conflicts between the state and resolution mechanism on that.
- To study about actual working of Indian federal system.

7.1 INTRODUCTION

Indian constitution establishes a quasi – federal system. It means the outward structure of the government is federal but spirit is unitary. In case of national or economic crisis it is transformed into a unitary system. Federal government is stronger than the regional governments. In this unit we will learn about nature of Indian federal system.

Indian federation is the product of an evolutionary process. The Government of India Act, 1935, introduced the element of federalism in view of the fact that India was a country of sub continental size. It is multi – religious multi – racial and multilingual

nation. In view of this reality the Indian constitution adopted federal system.

The word 'Federal' is nowhere used in the constitution of India. Article 1 merely states that "India, that is Bharat, shall be a union of states." About the nature of Indian Federal system Dr. B.R. Ambedkar clarified that 'it established a dual polity with the union at the centre and the state in the periphery, each endowed with sovereign powers to be exercised in the field, assigned to them by the constitution. The union is not a league of states, united in a loose relationship; nor are the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the constitution. The one is not subordinate to the other in its own field; the authority of one is not subordinate to the other in its own field; the authority of one is co –ordinate with that of the other."

There are different parties in power in the center and state. There is no co- operation between two. The reality of Indian federalism is conflict as well as co- operation between two sets of government. There is no denying of the fact that the Indian constitution makers intended to establish a strong center to preserve the unity and integrity of the Indian state. Their intention has been made clear by centralizing tendencies imbibed in the constitution itself. Till 1967 inspite of a strong centre, the state did not feel that their autonomy was jeopardized. In 1967, in eight state the non- congress governments came in power and after that the issue of preservation of autonomy of the state was raised. In this unit we will study about the working of the Indian federal system during the 20th and 21st century.

Center-state Relation:

Indian federal system is quasi-federal. It is federal in its form and Unitary in its spirit. Even the pattern of the Union state relation defined in the constitution accounts for greater centralization. Hence, it is a cause for the grievance on the part of the states.

Centre-state Relation are as follows:

- 1] Legislative Relation
- 2] Executive and administrative Relationship
- 3] Financial Relationship.

7.2 LEGISLATIVE RELATIONSHIP BETWEEN CENTER AND STATES

(A) Three List of Legislative Items:

- 1) Union List 2) State list, 3) Concurrent list.

Union List consists of 97 subjects of all India importance. The most important subjects in the union list are – Defence of India, Naval, Military and Air forces, Atomic energy, foreign affairs, Railways etc. The subjects of the Union List are placed under the exclusive jurisdiction of the Union government.

State list consists of 66 subject, which are primarily of regional interest .The state governments have full authority to make laws on any of the subjects mentioned in the state list, e.g. public order, police ,prisons, local government ,public health etc

Concurrent list consist of 47 subjects. The subjects included in the concurrent list have varying degrees of local and national interest. Hence both the union and states have powers to make laws on any of the subject included in the concurrent list. Incase of a conflict between the union law and the state law over the same subject, the union law would prevail over the state law .

(B) Residuary power with the union:

All the subject and power are divided into three lists. But there may be some subjects who might not have been included in any of the above three list. Such subjects are known as residuary powers .In U.S.A. and AUSTRILA the residuary powers are left to the states and not to the Union. Hence, there the state are stronger than the center. But in India the residuary powers are left to the union. It made the union stronger than the states.

(C) Power of parliament to legislate on state list in the National Interest :

The union can pass a law on any of the subjects of the state list, if Rajyasabha passes a resolution, supported by a majority of 2/3 rd members present and voting, to the effect that, in the national interest, the Parliament should make a law on a subject included in the state list.

(D) National Emergency:

When proclamation of a national emergency is issued by the President, the scheme of division of powers is set aside. Union Parliament has authority to pass a law even on those subjects, which are included in the state list. Thus in case of emergency the Indian constitution becomes unitary.

(E) On request from state:

The union can pass law on the state list, if two or more state legislatures so desire and pass a resolution to that effect. Such a

law passed by the parliament, will be applicable only to those states, which have asked for it. Such a law is valid for a period of one year.

(F) International Treaties and Agreements:

The parliament has power to make laws on any of the subjects included in the state list to implement any international treaty. It should be noted that no other federal constitution has such a provision.

(G) During president's rule:

When the president issues a proclamation of the failure of constitutional machinery in the state, he may declare that the power of the legislature of the state shall be exercisable under the authority of the parliament.

(H) Power of parliament to legislate for union Territories:

The distribution of legislative and executive power does not apply to the union Territories, for which, the parliament is empowered to legislate on any subject included in all the three list.

7.2.1 Conclusion:

Legislative relationship between the union and the states shows that the Indian constitution has created a federation with a strong union and weak states.

7.2.2 Summary Table

Summary Table On Legislative Relations between the center and States	
1)	Three lists of legislative subjects
2)	Residuary powers with the union
3)	Power of Parliament to legislate on state list in the national interest
4)	National emergency
5)	On request from state
6)	International treaties
7)	During President's rule
8)	Power of parliament to legislate for union territories

7.3 EXECUTIVE AND ADMINISTRATIVE RELATIONS BETWEEN THE CENTER AND THE STATES

Its significant aspects are as under-

7.3.1 (1) Executive power :

Executive power of the union and of the states is co-extensive with their legislative power.

(2) Obligation of states and the union:

Article 256 of the constitution lays down an obligation on union and the states. Every state is required to exercise executive power as to ensure compliance with the laws, enacted by parliament. Union executive is required to give necessary direction to states.

(3) Control of the union over states:

In normal times Article 257 empowers Union to give directions to the states in the following matters:-

- 1) To ensure that exercise of executive power of every state shall not impede or prejudice the exercise of the executive power of the union.
- 2) To construct and maintain means of communication of national or military importance.
- 3) To ensure protection of railways within state
- 4) Government of India may deploy any armed force of the union or any other force for dealing with any grave situation of law and order in any state. Such armed force shall act in accordance with direction of the Government of India.

(4) Control of the union over the state during Emergencies:

According to the constitution Union exercise control over the states during emergencies, as explained below.

(A) When a National Emergency is proclaimed by the President, the union Government can issue directives to the state regarding the manner in which the executive power of the state is to be exercised.

(B) During a proclamation of financial emergency union is empowered to give direction to states to observe financial property specified directions. These include reduce salaries and allowances of all or any class of person serving in connection either the affairs

of a state or the union, including the judges of the supreme court and the High court, and to reserve all money bills or other financial Bills for the consideration of the president after they are passed by the legislature of the state.

(5) The president can give power and Duties to state:

President of India, with the consent of the state Government is empowered to give certain power and duties relating to state officials.

(6) Sanction for enforcement of Directives:

When any state fails to comply with, direction given by the union, President treats that as failure of constitutional machinery and propose president's rule under Article 357.

(7) Control of the union over state during peace time:

(A) To ensure the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled Tribes in the state.

(B) To secure the implementation of the provision of adequate facilities for instruction in the mother tongue of the primary stage of education to children belonging to linguistic minority groups.

(C) To ensure the development and enrichment of the Hindi language so that it may serve as a medium of expression for all the elements of the composite culture of India. Thus the union exercises control over the states in the above mentioned matters during normal peace time also.

(8) Adjudication of Disputes relating to water of interstate rivers:

Article 262 empowers the parliaments to provide by law for the adjudication of any dispute, with respect to the use, distribution or control of water of any interstate river. Parliament may also provide by law, that neither the supreme court nor any other court shall exercise any jurisdiction in respect of any such dispute. The provision is very significant in the light of the many inter-state multi – purpose river valley project such as Damodar –Valley corporation. Accordingly, parliament has passed the Interstate water disputes. Act 1956, under which the Union Government empowered to appoint a tribunal for the adjustment of an inter-state river disputes.

(9) Establishment of an Interstate council:

Art, 263 empower the president to establish an inter- state council as and when necessary, which will be charged with the following three specific duties-

- (A) To enquire in to and advise upon disputes which may have arisen between states.
- (B) To investigate and discuss subjects, in which some or all of the states or the union have a common interest.
- (C) To make recommendations upon any such subject and, in particular recommendations for the better co- ordination of policy and action with respect to these subject.

10) Establishment of All India services:

If the council of states has declared by a resolution supported by not less than 2/3 members present and voting, that it is necessary in the national interest to do so, parliament may by law, provide for the creation of one or more all India service, common to the union and the states and regulate the recruitment and the condition of services of person appointed to any such service.

7.3.2 Conclusion:

Thus constitution of India has made elaborate provision regarding Administrative and executive relationship between the union and the states .The pattern of relationship shows centralized tendencies of the Indian federal relationship.

Summary Table On Executive and Administrative Relationship

- 1) Executive powers co-extensive
- 2) Obligation of states
- 3) Control of the Union over the states
- 4) During emergencies control of the Unions
- 5) President can give duties to states
- 6) Sanction for enforcement of Directives
- 7) During peace time control
- 8) Adjudication of disputes
- 9) Establishment of an Inter-State council
- 10) Establishment of All India Services

7.4 FINANCIAL RELATIONS BETWEEN THE CENTER AND THE STATES

The scheme of distribution of the resources of revenue between the union and the states is as under.

(1) Union sources:

The main sources of the revenue of the union are income tax, corporation tax, currency, coinage and foreign exchange, custom duties, excise duty on tobacco and other goods produced in India, on income other than agricultural income etc.

(2) State sources:

The following are the main sources of revenue of the states- Taxes on agricultural income, taxes on lands and buildings, sales tax, taxes on vehicles, taxes on luxuries, entertainment tax, Tolls, land revenue etc.

(3) Union financial assistance to the states:

The constitution makers were aware of the inadequate financial resources of the states. Therefore provisions have been made to allot or share a number of union resources with the states. The constitution lays down that duties levied by the union Government on stamp and medicine and toilet preparation are collected and appropriated by the states. Certain taxes are levied and collected by the union but distributed between the union and the states e.g. the tax on income other than agriculture income. Certain taxes are levied and collected by the union but given to the state e.g. duties on succession to property and estate duty on property.

(4) The finance commission:

President can appoint a finance commission after every five years. The finance commission recommends the distribution of funds between the union and the state. The constitution also provides for the financial assistance to the state in the form of grants-in-aid. The principle on which such assistance is to be given is recommended by the finance commission.

(5) Financial control by the union in emergencies:

While a proclamation of national emergencies is in operation, the president may direct that distribution of revenues between the union and the states shall be suspended for a period

not extending beyond the expiration of the financial year. President can also give direction to states to reserve all money bills for the consideration of the president.

(6) Grants in Aid:

Grants in aid have become a common device to adjust the finances between the federal and the state Government in the federal politics. Grants in aid can be given to particular projects or to help a state in any situation. Grants in aid used to help the economically poorer states so as to produce disparity between states as far as possible. All the Grants in aid are paid on recommendation of the finance commission they are statutory grants. Provision for the payments are already made from the consolidated fund of India.

7.7.1 Conclusion:

Financial relationship between the union and the states shows that the centre has more sources of revenue.

7.7.2 Summary Table On :

Financial Relations between the Center and the States
(1) Union sources
(2) State sources
(3) Union financial assistance to the states
(4) The finance commission
(5) In emergencies Financial control
(6) Grants in Aid

7.5 UNIT END QUESTIONS

- 1 Examine the working of the center state relation in India in the administrative and financial field.
- 2 Explain the legislative relationship between center and the state.
- 3 Write on financial relationship between center and the states.

DEMAND FOR SMALLER STATES

Unit Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Demand for smaller states
- 8.3 Why the demand for smaller states
- 8.4 Changing federal perspective in India
- 8.5 Assessing the demand for small states
- 8.6 Conclusion
- 8.7 Looking ahead
- 8.8 Unit End Questions
- 8.9 References

8.0 OBJECTIVES

This unit introduces:

- The demand for smaller states
- Explains the reasons for such demands
- Discusses the demands in changing situations
- Assesses the demands objectively
- Analyses the demands from future perspectives

8.1 INTRODUCTION

The Indian model of federalism is unique in its own way. In practice it is quite different from the classical models found in countries like the United States, Canada and Australia. One distinguishing feature is the unilateral power enjoyed by the Union Parliament to reorganize the political structure of the country by forming new states and to alter the areas, boundaries or names of the existing states. However, despite having the constitutional power, the national leadership initially was dissuaded from conceding to the demands for creating the smaller states. It was mainly because of the overwhelming concerns for nation building and economic reconstruction of a young nation. Even most states were not formed on the linguistic basis which was in fact an

acknowledged principle of the formation of independent nation states in 19th Century Europe.

However, the formation of linguistic states began to be emphasized in the post independent India. The Congress, the ruling party at the centre took considerable time in implementing its assurance to recognize the states on a linguistic basis after it came to power in independent India. Many believed the formation of linguistic states as an important step towards the democratic restructuring of the India state. Under British rule, there were multi-lingual provinces based on administrative needs. There were host of princely states too. The formation of linguistic state was regarded as a democratic move so that people speaking the same language could have the administration and the education in their own language.

The communists along with others were in forefront of the mass movements which developed for linguistic states. After the martyrdom of Potti Sriramulu Andhra Pradesh became the first state to be formed on linguistic basis. Potti Sriramulu was a Gandhinian and a revolutionary who went on a hunger strike for the creation of a separate state for the Telugu speaking people of Madras Presidency, and he lost his life in the process. The States Re-organisation Commission in 1956 led to other linguistic states being formed.

Although due to the popular unrest, linguistic states were finally created in the late 1950s and 1960s but the process remained incomplete. During the following decades, only some of the centrally administered union territories were upgraded to full-fledged states. However, long standing demands for the smaller states like the Vidharba, Saurashtra, Telangana continued to be sidelined.

8.2 DEMAND FOR STATE AUTONOMY

The arrival of new millennium witnessed the creation of three new states – Chhatisgarh, Uttarakhand and Jharkhand carved out from the parent states of Madhya Pradesh, Uttar Pradesh and Bihar. As a logical consequence, India has more recently, witnessed a renewed assertion from historically constituted regions for the creation of smaller states. These regions include Telangana in Andhra Pradesh, Gorkhaland and Kamtapur in West Bengal, Coorg in Karnataka, Mithilanchal in Bihar, Saurashtra in Gujarat, Vidharba in Maharashtra, Harit Pradesh, Poorvanchal, Braj Pradesh and Avadh Pradesh in Uttar Pradesh, Maru Pradesh in Rajasthan, Bhojpur comprising areas of eastern Uttar Pradesh, Bihar and Chhatisgarh and Bundelkhand comprising areas of Uttar

Pradesh and Madhya Pradesh, a greater Cooch Behar state out of the parts of Assam and West Bengal.

8.3 ADMINISTRATIVE REFORMS COMMISSION

The renewed demand for smaller states can be attributed to the following three factors. First, electoral politics in the 'post-congress dominance' has been marked by the politicization and mobilization of social cleavages (a division between two groups of people or things) along territorially confined lines of caste, religion and region by state-level 'ethnic' political parties. Symptomatic of the federalization of the party system, even the national parties with distinct regional character increasingly adhere to region specific electoral campaign and policies.

Second, centralized federalism under the shadow of the development planning model failed to achieve its avowed aim of bringing about equitable development across and within the regional states. The subsequent transition to a neo-liberal market economy model based on competitive federalism has further accentuated regional inequalities in terms of income and consumption begetting the perception of neglect and discrimination in the peripheral regions. Relatively developed regions within the larger states have invariably benefited more from the flow of private investment as compared to regions on the periphery with disturbed law and order situation and poor economic and social infrastructure, e.g., Telangana in Andhra Pradesh or Vidharba and Marathwada in Maharashtra.

Third, India has also been witness to what may be called the 'secession of the rich' as regions attracting huge private investment and registering impressive growth, have started resenting the dependence of relatively under-developed regions on the revenue transferred to them, e.g., Harit Pradesh in Uttar Pradesh. Local elite complain of 'reverse' discrimination as other politically dominant regions manage to corner financial deals/grants/lucrative portfolio. In response, they want statehood with the full powers.

8.4 SARKARIA COMMISSION REPORT

The above mentioned developments mark the shift in India's federal perspective. First, regional identity, culture and geographical differences now appear to be better recognized as valid bases for administrative divisions and political representations as democracy matures, deepens and widens.

Second, smaller states are being proposed on the ground of good governance and development rather than merely on the linguistic or cultural principles as was the case of the first two phases of reorganization.

Third, recently even dialect communities have been asking for their own territorial homeland while underlining the cultural and literacy distinctness and richness of the dialect, e.g., the demand for Bundelkhand.

8.5 ASSESSING THE DEMAND FOR STATE AUTONOMY

Do we really need smaller states in India? If the answer is affirmative then the following three arguments in favor of the demand could be considered. First, if the argument that 'small is beautiful' does find resonance in the developmental experiences of the newly created smaller states. Factual analysis shows the development and efficiency argument does work in favor of the new states when compared with the parent states. During the tenth five year plan period, Chhatisgarh averaged 8.2 percent growth annually compared with 8.3 percent by Madhya Pradesh, Jharkhand averaged 8.1 percent annually compared with 8.7 percent by Bihar and Uttarakhand achieved 8.8 percent growth annually compared with 8.6 percent by Uttar Pradesh. It apparently suggests that, getting 'a territory of their own' unleashes the untapped/suppressed growth potential of the hitherto peripheral regions.

Second, comparatively smaller but compact geographical entities tend to ensure that there is better democratic governance, as there is greater awareness among the policy makers about the local needs. Smaller spatial units having linguistic compatibility and cultural homogeneity also allow for better management, implementation and allocation for public resources in provisioning basic social and economic infrastructure services. A relatively homogeneous smaller state allows for easy communicability, enabling marginal social groups to articulate and raise their voices.

Third, smaller states provide gains for the electorates in terms of better representation of their preferences in the composition of the government. In a patronage – base democracy like in India, the amount of the transfer of state resources /largesse a constituency/region gets depends crucially on whether the local representatives belongs to the ruling party. Understanding this electoral logic of patronage distribution, the electorates of a smaller region have a propensity to elect representatives with preferences more closely aligned to those of the bigger regions within the state.

Such a motive, however, would no longer operate once the region constitutes a separate state.

Apart from the favorable arguments there are some apprehensions which have been raised against creating smaller states.

First, reminiscent of 'partition anxiety' many fear the rise of regional and linguistic fanaticism as threats to national unity and integrity. A global surge in ethno-nationalist conflicts serve to rekindle these fears. No region however, has ever experienced secessionist movement, after being recognized as a separate state except for a brief period in Punjab.

Second, many believe that bigger states ensure cohesion and stability as against smaller states. However, there are myriad forms of political violence going on unabated in the big states, e.g., in Uttar Pradesh and Andhra Pradesh and West Bengal. In these cases, violent movements are expressions of a demand for recognition, justice and autonomy. Relatively homogenous smaller states would always be better poised to provide a wide range of policies in response to local conditions.

Third, smaller states like mineral rich Chhattisgarh and Jharkhand are often viewed as being much more vulnerable to the pressures of the corporations and multi-nationals due to their small scale economies and the greed of the newly emergent regional elite. This however, is not confined only to the smaller states otherwise how do we explain the presence of coal mafias and land sharks in the bigger states like Andhra Pradesh and Karnataka.

Fourth, political expediency and opportunism rather than the objective evaluation of democratic and developmental potential are set to be involved in the making of the new states. Even if this was present in some instances, it is not the norm. Certain principles have always been adhered to without exception with the establishment of the states in the past. The demand for a new state; (a) is not to be communal or secessionist in nature; (b) should have popular support and enjoy a broad consensus; (c) should be agreed upon by the parent state; (d) aims at the creation of socially and economically viable state.

8.6 CONCLUSION

According to some scholars, the linguistic basis is the main principle. It is on this basis that the federal system operates. The federal structure functions on homogeneous, well defined states. Those who advocate the breaking up of existing linguistic states

and the creation of smaller states are asking for the weakening of the federal structure. It will lead to the centre dominating the states. Currently, India has strong language based states, like the four southern states, Maharashtra, Gujarat, Punjab and so on. It is mainly because of them, the states are able to have their role in federal system. The powers and rights of the states will get weakened further if the identity and role of linguistic states are weakened. Indian states like Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra and Gujarat have better scope for economic, social and cultural development because they are clearly defined linguistic units.

Those who oppose the demand for smaller states feel that it is an idea being promoted by the vested interests. The enemies of the nation want to balkanize India. They want to break into small bits and pieces which can be gobbled up at will or left to languish in their fragmented insignificance. Those who are agitating for smaller states are actually promoting the interests of those who wish to weaken the unity and integrity of the country.

However some argue that smaller states lead to better administration and more development. Some political analysts including those from the ruling Congress and the UPA demanded the bifurcation of Uttar Pradesh on various grounds. Many Marxist leaders however, argue that there can be no hard and fast rule about the size of states, and correlating them to development and better administration. Most of the linguistically reorganized states are the better administered ones. They are also bigger in size like Maharashtra, Tamil Nadu, Karnataka and so on. Some of the smaller states like Himachal Pradesh have also developed better. However, it ought to be remembered that there are a number of states which are smaller in size but they suffer from maladministration and have also failed to develop economically. Many advocate that it is better not to divide the linguistically homogeneous states as it will undermine federalism and allow the centre to dominate.

The demand for smaller states, according to some scholars, is based on the principle that in a mature democratic country like India, it is important to have grassroots representation. In other words, the people responsible for governance in any particular administrative area must be aware of, and sympathetic to, the needs and aspirations of the general population which inhabits that area. When, for example, Uttarakhand was carved out from the large Uttar Pradesh, it was argued that an administration based in distant, and very different, Lucknow could have little idea of and less empathy with, the requirements and desire of the hill people of Kumaon and Garhwal. A similar rationale is put forward for Gorkhaland: why should plains dwelling Bengalis control the lives

and fortune of the people who live in the tea rich hills of Darjeeling and Kalingpong?

The situation in Hindi states, however, needs to be viewed differently. There is a demand that a large state like Uttar Pradesh be broken up. Most of the states in north India have not been organized on a linguistic basis like the non-Hindi states. All the northern states belong to the same Hindi region. So the division of these states will not be on the same level as that of the linguistically reorganize states. So the division of Madhya Pradesh into MP and Chhattisgarh cannot be seen on a par with the division of the state which had been formed on the basis of linguistic reorganization. The question of UP being divided is not doing violence to the linguistic principle.

With Telangana issue almost resolved and it being likely the 29th state, the agitation for Gorkha Land, Bodoland and Karbi Anglong have been revived. This is in addition to the existing demands for a separate state in Maharashtra and Harit Pradesh and Poorvanchal in Uttar Pradesh. It may eventually mean that the government will increasingly find it difficult to put them aside.

Irrespective of these demands being raised with new vigour, the central government had the full knowledge of the severity of the demands for separate states and the agitation for them when the decision was arrived at in favour of Telangana. If division of a state like Andhra Pradesh is acceptable to the government, what legitimate reason could be advanced to deny the demands for separate states in other areas? However, if the view that the states formed on a linguistic basis should not be broken up is upheld, then the demand for Vidharba in Maharashtra, or Gorkha land in West Bengal or Bodoland in Assam will have no valid ground for political acceptability. However, the case of certain ethnic or tribal minorities inhabiting some defined areas within a linguistic state needs serious introspection. According to those who oppose further division of linguistic states, such areas could be considered for regional autonomy within the some agreeable framework.

Despite its relevance in a broadened democratic set up, such demands and movements may in the long run be used to divert the attention from the real issues. This danger may be promoted by certain political class who may wish to cash in on regional and parochial sentiments.

Moreover, the critics are of the opinion that the demand for smaller states may not, in some cases, be based on genuine concerns about administrative equity. It probably could be a disguised excuse for a land grab. The moment a new state is formed a new capital for it has to established, together with all the

pomp and paraphernalia of statehood: a new assembly, secretariat and so on. As a result property prices in the newly designated capital shoot up and the land mafia hits the jackpot yet again.

Further, the critics say that such demands are generally based on the politics of sub-regional identity. If realized it would further erode India's already threatened and fragile unity. It is often said that Indians tend to be Gujaratis or Tamils or Punjabis, or whatever first and Indian second. The fulfillment of demands would multiply the emergence of regional chauvinists and fanatic regionalists and advocates of sons of soil policy. If each state or sub-state sprouts its own home-grown regional chauvinists, the Indian union will soon be disunion of disparate parts.

There is a section among the political elite in the country who believe that in view of the increasing demands of smaller states, it is perhaps the right time to set up a second reorganization commission. Those who wish to see the further division of India especially the vested political interest would surely not hesitate in opting for such a commission.

8.7 LOOKING AHEAD

According to a dominant view, the federal polity in India does need to accommodate the on-going demands for smaller states. In most regions, even if the local urban entrepreneurial, middle classes lead the demands, these demands represent the democratic aspirations of the hitherto politically dormant, neglected and discriminated masses from the peripheral regions. In order to have broader democratic negotiation towards addressing such demands, a second reorganization commission may be constituted by the centre. The commission could have the quasi-judicial power to ascertain a set of objectives and coherent criteria that can be uniformly applied like in the case of the first state reorganization commission set up in 1953. It could be a constitutional body to oversee transparency of the consultation process.

Federalism as an idea and a process thus enriches democracy in multi-national/cultural country like India. It certainly tends to promote democratic values and temperament by recognizing, accommodating and protecting diverse regional identities and rights. The creation of smaller states would contribute to the federal agenda of enhancing democratic development based on decentralized governance and greater autonomy for the states.

8.8 UNIT END QUESTIONS

1. Discuss the political importance of the demand for smaller states in India.
2. What are the main reasons of the demand for smaller states in India?
3. Discuss the changing federal perspective in relation to the demand for smaller states in India.
4. How do assess the demand for smaller states in India?
5. Critically analyze the demand for smaller states in India.

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DEMAND FOR STATE AUTONOMY

Unit Structure

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Demands for state autonomy
- 9.3 Administrative Reforms Commission
- 9.4 Sarkaria Commission Report
- 9.5 Assessing the demand for state autonomy
- 9.6 Conclusion
- 9.7 Unit End Questions
- 9.8 References

9.0 OBJECTIVES

This unit introduces:

- the demand for smaller states
- explains the reasons for such demands
- discusses the demands in changing situations
- assesses the demands objectively
- analyses the demands from future perspectives

9.1 INTRODUCTION

The demand for state autonomy constitutes a core factor of centre-state relations. The federal system adopted in India involves division of authority between the Union and the states. Both the centre and the states derive authority from the Constitution and each is sovereign within the field assigned to it. In fact the authority of one is coordinate with that of the other.

Despite the Constitutional clarity the Indian political system, since the inauguration of the Constitution has been plagued by two opposite tendencies. On the one hand, attempts have been made by the ruling parties at the centre to further enhance the power of the Union Government and on the other there has been a persistent demand for greater autonomy for the states. The

exponents of the idea of greater autonomy for states in India are explicitly clear in demanding more powers for the states. The supporters of this view including the DMK in Tamil Nadu consider this as the basis for proper and ideal centre states relation. In more appropriate and precise terms this concept could be referred to as demand for autonomy for the states.

It is generally believed that the demand for restructuring the centre state relations more or less on the principles of autonomy continues to be an important area of debate since the adoption of the Constitution of India in 1950. In order to have a clear view of the idea of autonomy, the emergence of Indian nation with a new structure of constitutional government will have to be viewed in a historical context with an emphasis on the objective political situation which existed at that time. The political imperatives which emerged out of the movement for independence in a historical context along with the unavoidable partitioning of the country influenced the design of the government as reflected in the Constitution of India. The framers of the Constitution being inspired by the spirit of the independence movement found the principles of federalism in Indian context most appropriate for the country. However, factors which led to the partitioning of the country created apprehensions for centrifugal elements particularly at the nascent stage of the nation building process.

During the entire period of the struggle for independence efforts to find an appropriate solution to India's gigantic diversity was never overlooked. Even while mobilizing for national movement efforts were made to adhere to the federal principles. The mobilization of this kind was instrumental in emphasizing the language as the basis for redrawing the provincial boundary in the post independence period. The principles of federalism as practiced in India and the framework, within which the centre and state relations operate, continues to be the source of political disagreement and often creates enough room for controversy. Some of the states are more vehement in criticizing the present federal set up and term it as improper and unacceptable. However, there are states which feel otherwise. They are of the opinion though such efforts have not yet resulted in any major constitutional changes towards a more acceptable federal structure, the struggle has not been entirely fruitless. Even the ruling elite at the centre are more inclined towards transferring some powers from the centre to the states. The slogan, 'autonomy for the state; federalism at the Centre', given by the DMK of Tamil Nadu in February 1970 became a popular source of discussion throughout India in the context of the issue of autonomy.

9.2 DEMANDS FOR STATE AUTONOMY

The relation between the centre and the states continued to be quite smooth till 1967 when Congress was in power both at the centre and most of the states. However, after 1967 strains and stresses began to appear in the centre-state relations. It was mainly after Congress lost power in nine states and the opposition parties got the chance to form coalition governments. In 1977, the Congress lost power at the centre and the Janata Party with Shri Morarji Desai as the Prime Minister formed a government. Soon after taking over the reins of power, the Janata Government dismissed Congress ministries in nine states. But in 1980 Congress returned to power at the centre and dismissed Janata ministries in nine states. In view of the above developments, the demand for greater autonomy for the states began to be raised vociferously and soon gained ground. It was the DMK, a regional party in Tamil Nadu was the first to openly voice its opinion in favor of political autonomy. The Akali Dal in Punjab while supporting the demand for state autonomy wanted the Union Government to confine itself to defense, external affairs, currencies and communications. Further lead in this direction was taken by West Bengal, Jammu & Kashmir, Maharashtra, Kerala and Andhra Pradesh, etc. These states accused the centre of encroaching upon the powers of the states.

9.2.1 Areas of Conflict:

As mentioned above, the functioning of the federal system in India underwent considerable change in the post 1976 period. The non-congress governments in the pre-1989 period found themselves in an uncomfortable position with regard to the role of the central government. As a result, the non-Congress parties mostly categorized as the regional parties began to voice their opinion against the dominance of the centre and emphasized the need for redefinition of the centre-state relations. The broader areas of political disagreement which were the main source of conflicts and strained the relations between the centre and the states are as follows:

9.2.2 Political autonomy:

It was the DMK which first raised the banner of political autonomy for the states. As a regional party from Tamil Nadu, the demand of DMK became a source of inspiration for many other states who were nurturing the similar feelings. The Akali Dal in Punjab while supporting the demand wanted the Union Government to confine itself to defense, external affairs, currencies and communications. However this demand of the Akali Dal did not find much support and was broadly thought to be something which

would weaken the integrity of the nation. Most of the political parties and non-Congress governments found such resolution against the national interest. Most scholars too feel that the given the political situation in India and vast socio-economic diversity, it is important for the Union to be strong enough to maintain the unity and integrity of the country.

9.2.3 President's Rule:

The frequent use of article 356 by the centre to impose the President's rule in the state has been an important irritant in the centre-state relations. The use of this particular constitutional provision which was supposed to be used in an extra ordinary situation came to be used as a tool in the hands of the union government on pretext or the other. Its rather free use since 1977 and mostly for political reasons became a serious area of friction between the centre and the states. The provision of article 356 was approved by the framers of the Constitution with a strong hope that the occasion for its use to impose President's rule in the states may not arise at all. However, the political reality has proved to be otherwise.

9.2.4 Role of Governor:

The kind of role the governors have played in the past at the behest of their political masters, it has become an important area of controversy. As the President of India appoints the Governor he is expected to enjoy his position during the pleasure of the Head of the Nation. The President of India has also been vested discretionary powers even with regard to the nature and responsibilities of the Governors. In this sense the governors have wide-ranging powers which can be utilized on behalf of the Centre for some political purposes. Due to some controversial played by the governors in several states, they have termed more as an agent of the state than constitutional head of the state.

The states have also voiced their displeasure over the manner in which some Bills were reserved by the governors for the assent of the President. The Governors have also faced criticism by the states for the manner they taken decisions with regard to their role as the chancellors of the universities. Efforts have been made by the centre to make the Governors more politically active in the respective states. The Governors' conference which is organized by the centre periodically is often used as a forum to lay down guidelines to the Governors about their role and functions by the President. In such conferences the Governors are told by the President to be better equipped to handle constitutional crisis. It said that their role needs to be further defined in this regard. As Head of the federating states they were told to play active in the

affairs of the respective states. They were also expected to take greater interests in some of the significant issues of the country like the unity and integrity of the nation, law and order situations, educational issues of the states, socio-economic status of the minorities and their welfare, similar needs of the members of Scheduled Tribes and other backward classes. It was not only confined to this level. They were expected to send periodic reports to the President highlighting the current developments in these areas and corresponding sensitive issues along with an assessment of personalized nature of the ground realities. Obviously, such an active Governor will keep the state leadership always unsettled and on his toes.

9.2.5 Status of Concurrent List

The status of concurrent list is another area which is proving to be a source of controversy. It is mainly because the laws passed by the Union Legislature on any item mentioned in the Concurrent List generally will have primacy over the State Laws. In this situation the Union has an advantage over the state as these subjects can be used to exercise its influence over the states. Obviously most of the states are not quite comfortable and want this area to be looked afresh.

9.2.6 Financial Resources

Most of the states in India are having grievances against the Union Government and suffer from a sense of deprivation in this area. In regard to the financial and economic relationship, the states have major complaints against the centre and nurture a strong feeling of dissatisfaction. The Centre has the financial advantage as it has more elastic sources of revenue. It is in a position to meet its financial deficits through the facility of overdraft which has been restricted in case of the states. Most of the states where non-Congress parties are in power have a strong feeling that the existing distribution of financial powers is not quite fair and rather inequitable in terms of implementation. The Centre often uses its financial superiority to extend undue support to the Congress ruled states and to deliberately deprive the non-Congress states.

9.2.7 Encroachment in Industries and Minerals

The Centre has also been accused of encroaching in the field of industries and minerals. Although the Constitution provided the industries and minerals should remain part of the State List and should be dealt with primarily by the states. However, those industries which need to be controlled by the Centre in public interest could be regulated by the Union. The Union List therefore, gives permission to the Union Parliament to legislate in respect of

'industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.' Hence, the Industries (Development and Regulation) Act was passed by Parliament in 1951 which specified those industries that needed to be controlled by the Centre in the public interest. Today, the Union Government is in a position to control 93 percent of the organized industries in terms of the value of the output. The status of minerals is almost the same. The decision to pay the royalties to the states can be hardly be a source of satisfaction to the states.

9.2.8 Planning Commission:

The structure and function of the Planning Commission and its overall role came under criticism by most of the states. The nature of role played by the Planning Commission was such that it became a major source of contention till early 1990s. It was mainly because it had become highly centralized and in the process acquired increasing and intensive control over the processes of economic development. Criticizing the role of Planning Commission, the Rajamannar committee appointed by the Government of Tamilnadu stated that 'the centre imposed its will on the states in the formulation and execution of the plans by virtue of the non-statutory grants under Article 282, which are dependent on the absolute discretion of the Centre.'

The criticism against Planning Commission was sought to be justified by the states as the amount of grants to states as recommended by the Finance Commission constitutes only 30 percent while 70 percent grants given to the states come on the advice of the Planning Commission. This is apart from the usual dependence of the states on the Centre for grants and loans. In this context most of the states have an opinion that while desirability of the Planning Commission as a national body cannot be undermined, the states should have enough freedom to formulate their own plans and implement them according to the localized needs and aspiration of the people. Finally, the states must enjoy adequate financial autonomy so that they can take their own financial decisions.

In order to deal with the above grievances and also to have a better theoretical perspective several committees were appointed to examine as to how far the centre had encroached upon the state power and how the states could be granted genuine autonomy. These committees after in depth deliberation came out with a number of recommendations.

9.3 ADMINISTRATIVE REFORMS COMMISSION

Administrative Reforms Commission set up in 1966 recommended several important steps to address the issue of greater autonomy to the states. It recommended an inter-state council under article 263 of the constitution. It wanted persons having long experience in public life and administration and having non-partisan attitude as governors. It also recommended delegation of powers to the maximum extent to the states. It asked for transfer of more financial resources to the state to reduce their dependency on the centre. It also recommended deployment of central armed forces in the states either on their request or otherwise.

Akali Dal's Anandpur Sahib Resolution on Punjab was announced in 1973. It demanded that the centre's jurisdiction should be restricted to the areas mentioned above. It further demanded that the entire residuary power should be vested in the state.

9.4 SARKARIA COMMISSION REPORT

Similarly, Sarkaria commission headed by Justice R.S. Sarkaria came out in 1988 with a comprehensive list of 247 recommendations. It suggested the formation of inter-governmental council consisting of the Prime Minister and the chief ministers of the states to decide collectively on various aspect of governance that caused friction between centre and states.

It also recommended the sparing use of article 356 of the Constitution should be made and all possibilities of formation of an alternative government must be explored before imposing presidential rule in the state. It further suggested the three language formula should be implemented in its true spirit in all the states in the interest of the unity and integrity of the country.

It favored amendments for sharing certain taxes between the center and the states, even though it generally opposed the curtailment of the centre's power. It did not favor banning of all India services in the interest of the country's integrity. Instead, it favored new all India services. It favored retention of the National Development Council and suggested activation of the Zonal Council.

Despite their significance, neither the Congress (I) government under Rajiv Gandhi nor the National front government under V.P. Singh accepted the recommendations of the Sarkaria Commission. After the Congress (I) government came back to power under P.V. Narasimha Rao it decided to implement some of

the recommendations of the Sarkaria Commission. However, the United Front government under Deve Gowda in 1996 decided to fully implement the Sarkaria commission recommendations to impart true federal character to the Indian polity. This policy was continued by the BJP led coalition government. In January 1999 when the inter-state council decided to accept 124 recommendations of the Sarkaria commission.

In April 2007, a new commission was set up to re-examine centre-state relations. The commission headed by the former chief justice of India M.M. Punchhi and three other members submitted its report to the union government with significant recommendations in relation to centre –state relations.

9.5 ASSESSING THE DEMAND FOR STATE AUTONOMY

The practice of federalism in India has not been an easy task. Dealing with demands of state autonomy while strengthening the idea of India, was often conflicting and full of complexities. In effort to have a balancing act, one has to confront two opposing forces which are always at work; one trying to bring about integration and other, in its efforts to fulfill regional aspirations, work in opposite direction and at times conflicting in essence.

The post-1950 period began, until late 1960s, moving towards making the centre more powerful to the point of assuming autocratic regimes, leaving behind, the concept of cooperative federalism as Austin had visualized. The 1960s, 1970s and 1980s saw the Indian federalism in crisis, the centre trying, during the times of Indira Gandhi to intimidate the states, another challenging both the centre and the Indian model of federalism. Kothari rightly says, 'the political constitutional sphere has itself become prone to the same tendency of centralization, domination and inequity' leading to 'institutional disorder'.

The post 1980 political situation is much different from what it was earlier. States are becoming more assertive if not dominating; the centre is becoming more accommodative if not weakening itself: integration is not at risk and regional identity has earned acceptance.

Whatever be the merits and demerits of coalition system, it has made the regional parties in India see the nationalistic perspective rather clearly and in the process has strengthened the integrative forces on the one hand, and helped, on the other, fulfill the regional aspirations. The national regional parties have now

become more considerate, and the regional political parties, rather relatively more assertive.

9.6 CONCLUSION

Towards the end, one may conclude that the demand of greater autonomy for the states, in a limited sense, sounds reasonable. At least in financial matters, the state may granted more powers so that each may launch its independent development plans in the light of its own needs and resources. However, some radical champion of state autonomy would like to reduce the functions of the union government to merely the administration of foreign affairs, defense and communications which is not acceptable rather dangerous for the integrity of the nation. It might create a situation of anarchy in the country.

9.7 UNIT END QUESTIONS

1. Discuss the political significance of the demand for state autonomy.
2. What are the main recommendations of Administrative Reforms Commission? Discuss
3. Discuss the main recommendations of the Sarkaria Commission Report.
4. How would you assess the demand for state autonomy?
5. Is state autonomy a threat to the unity and integrity of the nation? Critically examine.

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