

General Framework of Indian Model of Governance

LEARNING OBJECTIVES

In this Chapter, you will learn about:

- Basics of Indian Democracy
- Parliamentary Form of Government
- Representative Democracy
- Federal Form and its Dynamics
- Basic Structure of the Constitution
- Independent Constitutional Bodies for Effective Governance
- Three-tier System of Governance and Two-tier System of Federalism

2.1 BASICS OF INDIAN DEMOCRACY

2.1.1 Approach to Liberty, Equality and Justice

Preamble to the constitution is expected to imbibe the fundamental values and the philosophy based on which the Constitution is written. The fundamental rights, the Directive principles and even the fundamental duties arise and flow from the Preamble, and hence the Preamble declares the fundamental values and establishes the foundational principles of the Constitution. The Preamble is considered to be the most precious part of the Constitution; it is the soul and also the key to the Constitution. It is the quintessence of the Indian democracy as it exemplifies its basic philosophy and paves the way for growth of basic structure.

2.1.1.1 Source of the Constitution

The opening and the closing words of the preamble are 'We, the people of India...adopt, enact and give ourselves this Constitution'. This clearly conveys that the people are the source of origin of the Constitution. Thus, Constitution originated from the people, and the sovereignty under the Constitution lies with the people. The Constitution was an instrument of the popular will of the people of the country, and no one was opposed to the enactment of the Constitution. Dr. Ambedkar on the floor of the assembly in 1949 stated that, 'I say that this Preamble embodies what is the desire of every member of the House, that this constitution should have its root, its authority, its sovereignty from the people, and that it has.'

2.1.1.2 Sovereignty

This signifies that the country is externally sovereign. It ceased to be part of the British Empire after passing of the Indian Independence Act, 1947. From 15 August 1947 to 26 January 1950, India was a British Commonwealth Dominion. And on 26th January, it became a 'Sovereign Republic' like other countries such as the United States of America, etc. But India is still a voluntary member of the British Commonwealth; though it does not recognise the sovereignty of the Queen of England.

Moreover, sovereignty comes with the power to cede or accede the territory. Only a sovereign state can acquire territory or give away its territory to some other state.

Constitution, as seen, derives its power from the people. And hence the legal sovereignty is vested with the people of the country. The political sovereignty is distributed between the Union and the States, a characteristic which inclines in favour of a Union. But the states do not have absolute sovereignty, there is no concept of dual-citizenship, and the people are only citizens of India and not of any states.

2.1.1.3 Socialist

This term was added to the Preamble by the 42nd Amendment. Its intention was to show that the country was a socialist state whose aim was to secure people with 'Justice-social, economic and political'. The Constitution does not define this term, but it is generally understood to be a state which ensures freedom from all forms of exploitation – social, economic and political.

2.1.1.4 Secular

This term was also added in the Constitution by the 42nd Amendment. It declares that the state shall have no religion of its own, and all the people in the country are free to profess, propagate and practice any religion and they are also equally entitled to freedom of conscience. The framers of the Constitution deliberately avoided mentioning it in the Preamble as they believed that the fundamental rights had clearly and effectively enshrined the principles of freedom of religion. Secularism is undefined in the Constitution. It can be generally accepted that all religions are equally treated with respect.

2.1.1.5 Democratic

This word has a comprehensive meaning. In a narrow sense it means the type of government. A responsible and representative system in which the people choose those who administer them, and such legislators are accountable and responsible to the electorate, that is, the people of the country. In a broad sense, it means in addition to the political democracy, it also includes the economic and social democracy. And this wider meaning is what used and meant in the Preamble of the Constitution.

2.1.1.6 Republic

This term implies to an elected head of the state. There is no hereditary head of the state. In a Republic the head is either directly or indirectly chosen. In India we follow indirect election system, as the role of President is merely ceremonial and symbolic. In a Republic, one among citizen is chosen as the head of the State.

2.1.1.7 Justice

It implies harmonious reconciliation of individual conduct with that the welfare of the society. The basic essence of justice is the achievement of common good. It embraces all the spheres, that is, social, economic and political.

The following elaborates on the wider aspects of concept of Justice:

- The concept of justice is very wide and is not confined to the justice administered by the courts.
- Social justice means that, all citizens are to be equally treated irrespective of their status, caste, creed, religion, sex, etc.
- Political justice implies that every citizen should have equal share and rights to participate in the political process without any form of discrimination or distinction made on basis of caste, creed, race, religion, etc.
- Economic justice ensures that the rich and poor are treated equally and alike. And efforts should be taken to bridge the gap between them.

2.1.1.8 Liberty and Equality

It is not just absence of arbitrary restraint on actions of the individual, but it also means creation of condition which enables full development of the personality of the individual. Liberty cannot be achieved without equality. Equality does not mean physical or mental equality; it means equality of status and opportunity. There has to be no restrictions based on caste, creed, religion, sex and region, etc. The concept of equality is supplemented by the prohibition of the practice of untouchability and also by the abolition of the titles. Rule of law, guarantees equality in opportunity, equality before the law and non-discrimination in relation to public employment.

- Liberty enshrined in the Constitution does not mean absence of restraint or domination.
- It is a positive concept, which means liberty of thought, expression, faith, belief and worship.
- The concept of equality embodies social, political and economic aspects. The equality is of status and opportunity.
- All citizens are equal before law and are to be treated equally, and enjoy equal protection of law.
- All citizens are entitled to enjoy political rights, such as right to vote and participate in the process of governance without any distinction.
- There can be no distinction based on caste, creed, religion, region and sex, etc. in matter of access to public employment and places.

2.1.1.9 Fraternity

The concept of fraternity is emphasised to ensure both the dignity of the individual and the unity of the Nation. It is a spirit of brotherhood, and its promotion will help in bringing together people from various religions and races etc. It places a moral obligation on the State to recognise individual personality of the citizens and help achieve human dignity and self-respect. Unity of the nation stands on the basis of dignity of the individual, and hence the role of state is to keep up the dignity of the individuals in the society. Unity and integrity tends to prevent the tendencies of provincialism, regionalism, communalism, linguism and secessionist and separatist activities.

2.1.2 Secularism – The Soul of the Constitution

The Preamble calls the State to be a sovereign, socialist, secular and democratic Republic. The term secularism has a special and significant meaning in the Indian context. As our Former Prime Minister late Smt. Indira Gandhi stated, ‘Secularism and democracy are the twin pillars of our state, it is the very foundation of our society’.

The common understanding of secularism recognises that every citizen is equal, and there should be no stratification based on religion between them. Secularism also means tolerance of all religions and special emphasis on protection of the minorities and keeping up the communal harmony in the society. Thus, the essence of secularism is based on the following two basic principles:

- Acceptance of religion to be the private affair of the individuals and state has no concern over it.
- Religion is to be separated from politics.

2.1.2.1 Meaning and Nature

It has its origin in the West, meaning to separate the Church from the State. Secularism is not opposed to religion, rather it supports all religions and expects that all religions to be treated equally by the State.

To quote former President Dr. Radhakrishnan, who elaborately dealt with matters such as religion and secularism etc., that,

Secularism does not mean irreligion or atheism or even stress on material comforts. It proclaims that it lays stress on the universality of spiritual values which may be attained in variety of ways. We hold that no religion is to be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life, or international relations, for that would be violation of the basic principles of democracy and contrary to the interest of religion and the government. ... No group of citizens shall arrogate itself to rights and privileges which it denies to others. No person shall suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of church and state.

Conception of a secular state, involves three separate and inter-related sets of relationship concerning the religion, individual and the state. The following are the three distinct aspects:

1. The State and the Religion – its separation from one another.
2. The State and the Individual – the relation between them, existence as a citizen.
3. Religion and the Individual – freedom to practice any religion.

The Western concept of secularism calls for an anti-religious ideology, and this is completely distinct from the practices carried out in the country. Our former Prime Minister, Late Smt. Indira Gandhi, had stated that, ‘Secularism is neither a religion nor indifference to a religion, but it is equal treatment of all religions, not just mere tolerance, but positive respect – without this there is no future for the nation’.

2.1.2.2 Nehru's Approach to Secularism

Pandit Nehru was a true champion of the concept of a secular State. The conception of India as a secular country is his major achievement. He was averse to intrusion of religion into politics. He wanted to transform the ‘caste-ridden Indian society’ to a modern state. According to him, people from all religion have to be included in the governing process, only then the country can become a truly secular state. To quote, ‘Religion is all right when it is applied to ethics and morals, but it is not good when mixed up with politics’.

Nehru being an agnostic himself believed that, ‘I have no desire to interfere with any person's belief’. And thus, religion is ought to be a private affair of the individual where the state has no role to play, and likewise the sphere of religion too has no role to play in the activities of the state.

He desired a State that, 'protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the religion of the State'.

Nehru wanted that the free, independent India should be a non-communal and secular state. He declared that, '*The Government of a country like India, with many religions that have secured great and develop followings for generation, can never function satisfactorily in the modern age, except on a secular basis*'. He also added that, '*our Constitution is based on secular conception and gives freedom to all religions*'.

2.1.2.3 Secularism in the Constitution

1. The Preamble reflects the basic essence of the constitution, that the country is a sovereign, socialist, secular and democratic republic.
2. No State religion: There is 'no state religion' in India, the state does not follow any religion or confer upon its citizens any faith.

Article 27 – Freedom as to payment of taxes for promotion of any particular religion

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

Article 28 – Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- (1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds.
 - (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
 - (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.
3. Freedom of Conscience: The Constitution enshrines the freedom of conscience, whereby the people can propagate, practice any religion of their choice, and no one can stop an individual from doing so.

Article 25 – Freedom of conscience and free profession, practice and propagation of religion

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law.
 - a. Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - b. Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

4. Freedom to manage religious affairs: The freedom is granted to various institutions and religious endowments to manage their own affairs, the state has no role in such activities, but all these activities have to be within the law of the land.

Article 26 – Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- a. to establish and maintain institutions for religious and charitable purposes;
 - b. to manage its own affairs in matters of religion;
 - c. to own and acquire movable and immovable property; and
 - d. to administer such property in accordance with law.
5. Equality before law: No individual shall be discriminated on the basis of religion, and all people in the society are treated equally.

Article 14 – Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- (1) The State shall not discriminate against any citizen on grounds only of **religion**, race, caste, sex, place of birth or any of them
 - (2) No citizen shall, on grounds only of **religion**, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - a. access to shops, public restaurants, hotels and palaces of public entertainment; or
 - b. the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
6. Cultural and educational rights: The interests of the minorities are protected, as they are given rights to manage their own affairs and also impart education on their own terms without any interference by the State.

Article 29 – Protection of interests of minorities

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of **religion**, race, caste, language or any of them.

Article 30 – Right of minorities to establish and administer educational institutions

- (1) All minorities, whether based on **religion** or language, shall have the right to establish and administer educational institutions of their choice.
- (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on **religion** or language.

In the leading case of *Ismail Faruqui v Union of India* (The Ayodhya Case), the Supreme Court interpreted the true concept of secularism as follows:

It is clear from the Constitutional scheme that it guarantees equality in the matter of all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicated that it is in this manner the concept of secular is embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.

2.1.3 Fundamental Rights

Indian Constitution is considered to be a social document. At core of the constitution are the fundamental rights and the directive principles. These act as the conscience of the constitution. The Part III of the Constitution guarantees each of its citizen's certain fundamental, basic substantive and procedural protections against the state.

The significance of including the chapter on fundamental rights in the Constitution is the recognition of the rights of humans. Every human is thought to have a set of inviolable rights which cannot be breached by anyone. And unless these rights are enumerated and explicitly mentioned, there is a chance that it might get violated, and people will have no remedy in such cases, and since significant sections of the population are illiterate, they would have no idea that they have these essential rights. And for centuries, a section of population has always been exploited, the practice of evil untouchability was practiced throughout, the women were not treated equal, and all these factors cannot coexist in a democratic setup.

Democracy calls for treating every citizen in the country with equality and respect. Rights of everyone, even a child, are important and such fundamental and basic rights have to be protected and guarded. Hence, the framers of the Constitution included this chapter right at the beginning in order to suggest its importance and fundamental nature. These rights are essential for a democracy to function effectively.

2.1.3.1 Meaning of Fundamental Rights

Without provision of rights no man can seek himself to be at his best, these rights are essential conditions of social life.

These are fundamental in the sense that these have been incorporated in the fundamental law of the land, that is, the Constitution. These are fundamental in the sense that they are justiciable rights, that is, they are strictly enforceable by the court of law and are available to all the citizens. They are also fundamental in the sense that they are binding on the public authorities in the country, that is, on central, state and even the local governments. Some of the rights, such as abolition of untouchability, are also available against the private individuals as well.

2.1.3.2 Salient Features of the Fundamental Rights

1. **Integral part of the Constitution:** These rights form the integral part of the Constitution and hence they cannot be altered or modified by ordinary legislation. These are fundamental in the sense that any law passed by any legislature in country should not violate these provisions, if they do, they are liable to be declared null and void, and get struck down by the courts as unconstitutional.
2. **All rights are Justiciable:** This is another important feature of this right. This means that if any of these rights are violated, the individuals have right to approach the courts, for protection and enforcement of their rights. The Supreme courts and the High Courts have the power to declare any law passed by legislature or executive to

be null and void, if they are inconsistent with these fundamental rights. Approaching the Courts for enforcement of these rights is itself made a fundamental right. The judiciary thus acts as the guardian of the fundamental rights.

3. **Citizen's alone enjoy fundamental rights:** This means that, the citizens of the country alone have the right to enjoy these rights. But some of the rights such as, Right of life, freedom of religion, right against exploitation are guaranteed to every person within the territory of the country, be it citizen or an alien. Hence, the Constitution distinguishes between citizens and aliens in matter regarding enjoyment of the fundamental rights.
4. **Negative and positive rights:** These rights can be divided into two distinct heads, those with negative character which impose restriction on the state without conferring special privileges on the people, and on the other hand there are positive rights which confer special privileges on the people, such as Article 18 which restricts conferring special titles to the citizens by the state. Similarly Article 17 abolishes untouchability. Right to equality, freedom of expression etc. fall under the second category.
5. **No natural or unenumerated rights:** This concept of fundamental rights is not based on the 'theory of natural rights', which says that 'Natural' rights belong to man by 'nature'. These are the rights which are possessed by man even before the state came into existence. Hence, the significant difference between the American Constitution and the India Constitution lies in the fact that, the American Constitution provides for enumerated rights which exist outside the constitution, while there is no such provision in India Constitution, as the Courts cannot enquire into any rights which are not enumerated in the Constitution.
6. **Suspension of the rights:** During the period of emergency the president may suspend all or any of the fundamental rights. He may also suspend the right to approach any court for infringement of fundamental right during such period.
7. **Most comprehensive and detailed:** This chapter is comprehensive and detailed, it treats each provision and Article in detail and every Article is elaborated with a set of limitations and reservations.
8. **Fundamental rights are amendable:** They can be amended without affecting or changing the basic structure of the Constitution.
9. **Restrictive nature of rights:** These rights are not absolute in nature. They are provided with limitations and reasonable restrictions. And these can be imposed in the larger interests of the community concerned. For example, Article 19 gives freedom of speech and expression, but this does not mean that anyone can utter anything, these have restrictions and limitations, and these rights are allowed within such limitations. Article 16 calls for equality of opportunity, but the State has been given the power to make reservations in favour of the scheduled castes and tribes.

2.1.3.3 Importance of Fundamental Rights

The chapter on the fundamental rights is essential in upholding the rights of the people. These protect the basic rights of an individual. They are not only a guide to the citizens, but also to the government, administrators in order to understand the limitations, and the areas to be covered to provide benefits to the people in the society. The following are the reasons why the fundamental rights are important.

- They act as a guide and inspiration to the policy makers to effectively make such policies which enhance the human life.
- They are used as checks against the arbitrary action of the government by the judiciary. The judiciary is the guardian of the fundamental rights of the people and whenever such rights are violated, the judiciary intervenes and provides relief to the people. And thus when policies of the government violate any of the essential rights, it can declare such act to be unconstitutional.
- The importance of the fundamental rights lies in the fact that they have been made as a 'basic feature' in the structure of the constitution. The fundamental rights consist of principles and values which are the basic essence of the Constitution. And hence these rights cannot be abrogated at all by the legislature, though the legislature has the power to amend the fundamental rights.
- The following are the six essential fundamental rights which are guaranteed by the Constitution of India.
 - **Right to Equality:** This right is provided in Articles 14-18. This are the essential right of equality among all people. It also includes the equality before the law, prohibition of discrimination on the grounds of religion, caste, race, gender etc., provision of equality of opportunity in relation to employment. It also abolishes the evil practice of untouchability. It also has exceptions whereby the state can make positive discrimination for the backward section of the society such as the tribal, scheduled castes and women etc. Right of equality is over looked in such cases.
 - **Right to Freedom:** There are the following six freedoms under Article 19:
 - Freedom of speech and expression
 - Freedom of assembly
 - Freedom of association
 - Freedom of movement
 - Freedom of residence and settlement
 - Freedom of profession, occupation, trade or business.The personal liberty is the most important fundamental right. All these articles under this section form the backbone of the fundamental rights. Other essential right is the right related to conviction of offences and protection against arbitrary arrest and detention in certain cases. Article 21 confers the most important right to life. It has been expanded by the judiciary to include plethora of rights which are essential to live a dignified human life. Right to receive Education has also been made a fundamental right under Article 21A. All these rights protect and uphold the freedom of the individual.
 - **Right against Exploitation:** Articles 23 and 24 of the Constitution call for this right. It prohibits all form of forced labour, child labour and bans trafficking of human beings. It was meant to abolish economic and physical exploitation of the weaker sections of the society.
 - **Right to Freedom of Religion:** Articles 25 to 28 elaborates about the provisions regarding to right to freedom of religion. These articles talk about the freedom of conscience and freedom to propagate and profess any religion. It also protects the religious institutions from certain taxes and gives freedom to manage them. This establishes the secular character of the state.

- **Cultural and Educational Rights:** Articles 29 and 30 talks about the cultural and education rights provided to the citizens. It gives freedom to every citizen to preserve his culture, tradition, language, script, etc. It also gives the rights to the minorities to establish and run educational institutions of their choice. The state shall not discriminate between various sections in the society.
- **Right to Constitutional Remedies:** It is given under Article 32. It gives the individual right to move to Supreme Court to enforce any fundamental right when it is violated. It is considered to be the heart and soul of the Constitution and holds paramount importance. The court thus is the guarantor and protector of the fundamental rights of the people.
- Thus the Part III of the Constitution contains elaborate provisions on the essential rights of the people. Most important aspect is that, within the fundamental right itself, is the provision/right of individual to move to court when such right gets violated. Thus, approaching court for enforcement of fundamental right is made a fundamental right. Nowhere in the world can we see such provision.
- The fundamental rights are based on the Universal Declaration of Human Rights. Hence, the provisions contained in these articles are of universal importance and have to be protected and upheld by the states concerned. Without these rights, the citizens can be treated less than humans. Hence, the fundamental rights fulfil the universal obligation of treating people with respect and dignity they deserve.
- The fundamental act as guidance force for the legislators and the executives. All the laws and rules, regulations, and policies should be for the development of the people and no act by the government should be in violation of these rights. It gives fundamental responsibility on part of the state to uphold and protect these indispensable rights.

Thus, fundamental rights have been made as the crucial 'basic structure' of the Constitution, which cannot be abrogated by the Parliament. These rights contain the provisions which are fundamental for the people to live in the society as a dignified human being.

2.1.4 Universal Adult Franchise – Principle that made India the Largest Democracy of the World

Franchise means, the right of the people to vote and elect their own representative. This word evolved from the French word 'franc' which means free, hence it means the freedom to exercise their right to choose their representatives. And Adult franchise means that the right to vote should be provided to all the adult citizens in the country without any discrimination on the basis of caste, creed, class, religion, colour or sex.

It is based on the concept of equality, which is the basic democratic principle. It means that the right to vote should be available equally to all the people. To Denial of this right means violation of the right of equality. The spirit of democracy can only be maintained if the people are given the right to vote without any discrimination. This exercise of right to vote, adds to the individual's dignity, self-respect and the sense of responsibility. The universal adult franchise in other words, can be called as the foundation of democratic system of governance. Because of the power and right to vote-in and vote-out a government, the people are called as political sovereign.

As provided in the Constitution, the citizens cast their votes in the periodic election process to elect their representatives to the parliaments, assemblies and other such democratic

institutions. These institutions are called the representative institutions as they represent the will of the people.

2.1.4.1 Evolution of Concept of Universal Adult Suffrage in India

Before Independence, only 13% of the population had the right to vote. Hence, there was a growing demand for the provision of universal adult suffrage before independence. The report submitted by Motilal Nehru in 1928 was the first one to call for 'unlimited adult franchise with equal rights for women'.

Dr. Ambedkar made a representation before the Simon commission to incorporate the provision of universal adult suffrage in the Constitution of the country. According to Dr. Ambedkar, these rights give the people politico-religious equality, and it is a 'most potent weapon in the hands of the most oppressed sections of the society'. Nehru was also keen in providing universal adult suffrage to the people after independence.

It was declared in the 1931 Congress session in Karachi that this concept will make the electoral process participatory and more inclusive. There were many numbers of debates during the framing of the Constitution and finally all agreed and enacted to provide for universal adult franchise.

2.1.4.2 Age of Voting

Initially the age was 21 years and 61st Constitutional Amendment reduced that to 18 years. There are certain qualifications prescribed to be a voter in India, they are as follows:

- He/She must be a citizen of India.
- He/She must have attained 18 years of age.
- He/She must not be of unsound mind.
- He/She must not have been declared bankrupt by a competent court.

2.1.4.3 Constitutional Provision Ensuring Universal Adult Suffrage

Article 326. Elections to the House of the People and to the Legislative Assemblies of States must be on the basis of adult suffrage.

The elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage; but is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Thus, the Constitution of India itself grants the right of universal adult suffrage, this is a constitutional right and not a fundamental right, that is, one cannot approach the courts for its violation. But this concept does form the basic feature of the Constitution, and hence the Courts do intervene in case this right is infringed.

2.1.4.4 Importance of Universal Adult Franchise

- It made India the largest Democracy of the world.
- It legitimised the government, as it was elected by the will of majority of the people,
- It achieved gender equality as women were given right to vote and hence were considered equal to men in the political sphere.

It also granted equality to the backward class people and the tribals who were considered as equal citizens.

Universal adult suffrage with free and fair election, was considered to be the 'guarantor of minority rights.'

It helped the representation of the unseen population, whereby such discriminated sections could elect those who can or willing to change their condition, thereby bringing prosperity and development needed to alleviate their condition.

This provides diversity in representation, whereby people from various section of the society get represented.

It denotes the popular will of the people, and this will get reflected in the Parliament or in the Assembly or in any other local bodies.

2.2 PARLIAMENTARY FORM OF GOVERNMENT

The Constitution of India provides for a parliamentary system of government both at the centre and the states.

The Government is classified as parliamentary or presidential based on the relationship between executive and legislature. In the Parliamentary system the executives are responsible to the legislature for its actions. While in the Presidential form, the executives remain independent and separate and are not made responsible for the legislature.

The other names by which this parliamentary system is known are: the Cabinet System, Responsible government, Westminster model of government. Britain, Canada, Japan are examples of few countries which follow parliamentary form of government.

This is called a Cabinet system because the cabinet acts as the nucleus of the power in a Parliamentary system. This is called Responsible government as for every act and function it is made responsible to the legislature, who keep a check on them. This is also called Prime Ministerial form of government, as the Prime Minister plays a very important and vital role, and in present days, the Prime Minister is the face of the government, and his powers have risen significantly compared with his colleagues in the cabinet.

2.2.1 Features of Parliamentary Form of Government

The following are the features of the Parliamentary form of government.

2.2.1.1 Majority Party Rule

The political party which secures the majority in the Lok Sabha forms the government. Either the leader of the party is appointed as the Prime Minister, or some other member as chosen by the elected members is appointed by the President. The other ministers of the cabinet are appointed by the President on the advice of the Prime Minister. And, when no party secures a majority, the President can call upon the coalition of parties to establish the government.

2.2.1.2 Homogeneous Nature of Politics

The members of the cabinet belong to the same political party. And therefore they all share same political ideology. In case of coalition they are bound by the consent.

2.2.1.3 Prime Minister – The Leader

The Prime Minister is the leading figure in the government. He is the leader of the council of ministers, leader of the Parliament and leader of the political party which has the majority in

the Parliament. He thus plays a very significant and crucial role both in the government and outside it.

2.2.1.4 Maintaining Secrecy

There is code of secrecy and hence the ministers cannot divulge any information outside in the discussions on policies, programs, proceedings, etc. They undertake the oath of secrecy before entering their office.

2.2.1.5 Dissolution of Lower House

The lower house – Lok Sabha, is dissolved automatically every five years after the end of tenure of the government. And in other cases the Prime Minister can submit recommendation for dissolution to the President. Thus, Lok Sabha is dissolved on the advice of the Prime Minister before the end of its term and fresh elections can be conducted. Thus, the executive has the power to dissolve the legislature in the Parliamentary system.

2.2.1.6 Collective Responsibility

This is the bedrock of the principle based on which the Parliamentary system works. The ministers are collectively responsible to the Parliament in general and Lok Sabha in particular (Article 75). The council of ministers act as a team, they swim or sink together. This collective responsibility to Lok Sabha means that they can remove ministry government by passing the vote of no confidence motion against them.

2.2.1.7 De jure and De Facto Executive

The President is the nominal head, the de jure, or titular executive head, meanwhile the Prime Minister is the real, de facto head of the government. Therefore, the President is the head of the State, while Prime Minister is head of the government. The Article 74 provides for the council of ministers headed by the Prime Minister to aid and advice the President in exercise of his functions. Such an advice rendered is binding on the President.

2.2.1.8 Double Membership

The ministers appointed are members of both the Parliament and the Executive. This means that a person cannot become the member of the Executive without him being the member of the Parliament. Hence, membership of the Parliament is an essential requirement. Further the Constitution provides that a minister who does not become member of the Parliament within months of his appointment ceases to be a minister.

2.2.2 Merits of Parliamentary System

The Parliamentary form of government has the following merits:

- 1. Existence of alternative government:** In case the ruling political party loses its majority, the President can invite the opposition party to form the government. Time is given to the opposition to prove its majority on the floor of the house. Hence, In this system, there is a provision of ready alternative government, and there is no immediate need to conduct a fresh election. Hence, the leader of the opposition is called the 'alternative Prime Minister'.
- 2. Extended representation:** In a Parliamentary system, the executive is made up of a group of individuals, hence there is a wide representation. The government can accommodate representations from various quarters of the society or from different regions.

Hence, the Prime Minister while formulating the ministry can take these considerations into account.

3. **Responsible nature of the government:** By its very nature, the Parliamentary system establishes a responsible system of government. The ministers are made responsible for the legislature for all their acts of omission or commission. The parliament exerts control over the executives through a number of devices like the question hour, adjournment motion, no confidence motion, discussions, parliamentary committees, etc.
4. **Congruence between the legislature and the executive:** This is the greatest advantage of the Parliamentary system. It helps in keeping harmony and cooperation between the legislature and the executive branches of the democratic system. The executive are part of the legislature and both are interdependent on each other. Hence, there is less scope for dispute arising between these two main organs of state.
5. **Prevents authoritarianism:** In this system the power is vested with a group of Individuals – the council of ministers and not on any one individual. Though the Prime Minister may seem powerful, the President as per Constitution acts on the aid and advice of council of ministers and not just of the Prime Minister. Hence, there is no scope for an Individual to assume authoritarian powers. Moreover, the Parliament in the form of passing no-confidence motion can also remove the executives.

2.2.3 Demerits of the Parliamentary System

Despite of numerous advantages, the parliamentary system suffers from the following disadvantages:

1. **In contradiction of the separation of powers doctrine:** In this system, the executives and the legislatures are together and cannot be separated. Hence, it goes against the concept of separation of powers. The cabinet here acts as the leader of both the executives and the Parliament. And in this system there is fusion of powers between the executives and the legislature.
2. **The Government is not stable:** There is no guarantee to provide a stable government in this system. The power to remove is vested on the Parliament and whenever it feels, even without any proper reason can pass no-confidence motion to remove the government in power, this scenario is more possible in case of coalition government, whereby the government hinges on the support of number of parties who if dissatisfied can withdraw their support thereby causing collapse of the government. Hence, there is no guarantee that the government will complete its tenure. Even defections can cause such instability in the government. Hence, there is no provision of stability in this system.
3. **Government by non-professionals:** Administrative efficiency cannot be attained as the ministers are not trained personnel. They lack the knowledge and the experience to govern. Hence, they are mainly dependent on their permanent executives or the bureaucrats for aid, advice and guidance. The Prime Minister has limited choice in selection of his cabinet colleagues and his choice is restricted to the Parliament alone. Apart from this, the ministers also devote their time to party activities, parliamentary work, cabinet meetings, etc.

4. **Policies of previous government not continued:** This system is not effective in creating and implementing long-term projects. This is because of the unstable nature of the government. The change in ruling party changes everything, even the policy is changed, and hence decisions taken by the previous regime are all reversed or modified. The Janata government in 1977 reversed or modified several policies of the previous Congress government. And the same was repeated by the Congress when they came back to power in 1980.
5. **The cabinet turning into despot:** Though an individual cannot become a despot in a Parliamentary system, there is possibility of the Cabinet, as a whole, becoming all powerful. When a party secures absolute majority in the Parliament, there is virtually nothing to stop the government to carry out any change to any law or rule. This was seen happening during the period of internal emergency in India during the 1970s. Thus, there is chance that the executive can assume tyranny.

2.2.4 Comparison Between Parliamentary System and Presidential System

| Presidential System | Parliamentary System |
|---|--|
| The single executive is both the head of the State and head of the government. | There are dual executives, President being the head of the State and Prime Minister the head of the government |
| The Presidential election is separate and distinct from that to election to the legislature, both happens for a fixed tenure. | The head of the majority party which has won election in the Lok Sabha form the government. Hence, the elections are not separate for executives and the legislators. |
| The President and his office are not responsible to the legislature. | The entire executive are bound by collective responsibility to Lok Sabha. |
| There may not be the same party which has won the Presidential election be the majority party in the legislature. Hence, there is a lack of political homogeneity in this system. | It is the most politically homogeneous system. Only the party which has won majority in the legislature can form the government and hence be the executive. Hence, the executive and the majority in the Lok Sabha belong to the same political party. |
| This follows the doctrine of Separation of Powers. As seen the executives and the legislature are separate and distinct, and even the judiciary is kept separate. | There is fusion of powers between the two organs – executive and the legislature. They together create a responsible system of governance. |
| The lower house in this system does not get dissolved. The President has no power to do so, and even in case President demits his office before end of his term, the lower house completes its tenure separately. | The power to dissolve the house before the end of its term in in the hands of the executive. Recommendation to call for a fresh election can be put forth by the Executives to the President, which dissolves the house. |
| The President is the dominant head in this system, and every other body follows his leadership. | President in this system is just a nominal head. The authoritative leader is the Prime Minister on whose guidance the government functions. |

| | |
|--|---|
| In this system, the executives are members of executive alone, they are not members of the legislature. Hence, there is existence of only a single membership. | Here the executives are also the members of the legislature. The ministers come from the Parliament. Hence, there exists dual membership, that is, being members of both executive and the legislature. |
| There exists a tension between the legislature and the executives. Since both are separate, there is difficulty in coordinating between them, especially in cases where executive and the legislature belong to different parties. | There is proper and effective coordination and cooperation between the executive and the legislature. The executives arise from the legislature and hence there is no conflict between these two organs of the state. |
| This system has a very narrow representation. The President can appoint anyone to be in his cabinet, and the government thus operate according to his wish. | The Prime Minister can appoint only those who are members of the legislature, even if not, they should become members within 6 months. Hence, there is wide representation. |
| The President is not made responsible to the legislature. Hence, the legislature has no control over the policies of the President. | All the actions of the Council of Minister have to be approved by the legislature in order for them to be made as a law, hence legislature keeps effective check and the government is made responsible to the legislature. |
| This system has the chance of transforming into a dictatorship by the President. | There is no such possibility as the executives are kept in effective check by the legislature. |
| This system provides the most stable government. The President and his government cannot be removed by the legislature, and it continues to finish its term without any hurdles. | The stability is not seen in this type of system, as there is chance for the lower house to pass no-confidence motion against the government, and thus vote it out of power. Hence, the government is not stable. |
| This system of government is run by experts. There is flexibility and freedom to choose any person or expert in that field to manage the particular office. It is the discretion of the President. | There are no experts as only the members of the legislature can be a minister. Hence, this system is a government run by amateurs. |

2.2.5 Reasons for Adoption of Parliamentary System

There were a number of discussions in the Constituent Assembly, regarding the type of government to be adopted. There was the Presidential type of system followed in America under consideration, but that was overlooked to adopt the Parliamentary system. And the reasons behind the decision are as follows:

- 1. Indian Society and its nature:** India is one of the most diverse and heterogeneous nations in the world, it has a complex and a plural society. Hence, this present system was adopted as it gives better scope for providing representation to interests of wider sections and regions in the government. This could therefore help in promoting national spirit and help build a united country.
- 2. Being familiar with the system:** The system of Parliamentary form of government was much familiar to the makers of the Constitution. They had a first-hand experience in the functioning and operation of the Parliamentary system, as it was in action in India, being imposed by the colonial government. Hence, the Constitution makers felt that as the system was very well entrenched, the people were also familiar with the system, and hence there was no need to look for a new form of government.

3. **Preference to responsibility over stability:** When the choice had to be made between stability and responsibility, the Constitutional makers decided to choose the latter, as it would be beneficial for the people. During one of the debates, Dr. Ambedkar, stated that, 'a democratic executive has to satisfy two conditions: stability and responsibility. Unfortunately, it is not been possible to devise a system which can ensure both in equal degree. The American system gives more stability but less responsibility, while the British system offers more responsibility but less stability. The drafting committee on recommending the parliamentary system preferred more responsibility to more stability.
4. **In order to avoid legislative-executive conundrum:** The framers of the constitution wanted to avoid such conflict between the executive and the legislature. This was bound to occur in a Presidential system as seen in USA. It was thought that the newly emerged democratic country such as India cannot afford to have such conflicts between the two pillars of the State. It was desired to have a government which was free from such conflicts and could help in ensuring development of the people.

The Swaran Singh Committee was constituted to recommend whether the Presidential system could be adopted. It recommended that the present Parliamentary system itself was functioning effectively and hence there was no need to adopt another form of government.

2.2.6 Distinction Between the Indian and Westminster Model

This system of Parliamentary form is largely based on the British model. But it is not entirely similar, and there are crucial differences between the two, which are discussed as follows:

1. India is a Republic while Britain still follow monarchical system. This means that, the head of the State in India is elected, and it is not a hereditary office, and one among the citizen of the country is made the President, while in Britain, the Head is a hereditary post, and it continues to be so.
2. In Britain there is a system of 'legal' responsibility of the ministers where the ministers have to countersign any act or rule after being signed by the Head of the State. Such a kind of system is not followed in India.
3. The presence of 'Shadow cabinet' is unique to the British system. The Shadow cabinet is carried out by the opposition which mirrors the government, and formulates counter-legislations. It is the perfect training for the government in waiting. There is no such system in India and only the Head of the opposition party is accorded recognition.
4. The British system is established on the doctrine of sovereignty of the Parliament, where the Parliament is supreme. While in India, the Parliament is not absolute sovereign, it has restricted and limited powers because of a written Constitution, judicial review, fundamental rights and a federal system.
5. In Britain, the ministers can only be appointed from the Parliament. In India an outsider can be appointed, but for a period of 6 months, within which he should become member of either house of the Parliament.
6. The Prime Minister in Britain should be from the lower house, that is, from House of Commons. There is no such restriction in India, the Prime Minister can be from either house of the Parliament.

2.3 REPRESENTATIVE DEMOCRACY

The Indian Constitution not only provides political rights, being a social document it also protects the socio-economic fundamental right of the people. **Dr. Ambedkar in the concluding speech in the Constituent Assembly stated that**

Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy.

2.3.1 Concept of Representative Democracy

This is the type of democracy which is founded on the principle of people being represented by the elected officials. It is opposed to the Direct Democracy where the people are in total control of the system. Nearly all modern states, except a few, follow the ideal set by the representative democracy. For example, United Kingdom is a constitutional monarchy, India is a federal republic and United States is Presidential type.

In a society having a number of people, it is difficult for everyone to voice their view. The ideal of direct democracy where people directly represent themselves is possible when,

- The population is small
- The people are well educated
- System of democracy is well established.

Thus, in a mass-based society where the population is large, the most efficient form of democracy is the representative form. Even the developed and well-educated societies in West have not adopted the direct form of democracy, but rather have accepted to follow the representative form.

It allows for effective ruling by a small but well-established group on behalf of the other people in the society. This system is both time and cost effective. The decisions are taken quickly by a small group of people, and hence the view of entire population need not be ascertained, and as representatives they take the decisions knowing the pulse and need of the people.

This form of democracy originated from the idea of 'representative government' which arose after the French and American Revolution. Hence, it means that people elect their representatives – who make the law, and they are responsible and accountable to the people for their actions.

Generally the lower chamber in the democracies acts as the representatives of the people. For example, In India, it is called Lok Sabha – means the association of the people, in England it is called the House of Commons, in USA it is the Congress. Hence, in all democracies the lower house consists of the representatives directly chosen by the people themselves. Some of these countries may have an Upper house to keep a check on the lower house, these are democratic provisions in order to maintain the balance of the democratic system.

2.3.2 Powers of the Representative

They are elected directly by the people to the national legislature. They hold power for a specific period of term, at the end of which the process of election begins again. Hence, the representatives go back to the people, asking them to vote back to power, therefore the people in the democratic system have the power to change or make the same government continue to govern.

The powers of such representatives are not unlimited. They are checked by the following:

- They are bound by the Constitution, they have to abide by and follow the ideals of the Constitution. They cannot make any law which is in violation of the Constitution.
- The third Pillar of democracy, that is, Judiciary keeps an effective check on the legislature. They are the guardians of the Constitution, and when any law made by the legislature goes beyond the provisions of the Constitution, they are struck down as *ultra vires*.
- Other constitutional bodies such as the Election Commission, Union Public Service Commission, and the office of Comptroller and Auditor General are independent of the legislature. They keep an effective check on various aspects and hence make the representatives accountable to the people.
- The presence of Upper House is also meant to keep a check on the lower house. The Upper house understood to have people of wisdom and hence they act with prudence and try to curtail dictatorial tendencies of an absolute majoritarian lower house.

2.3.3 Representative Democracy in India

The Lok Sabha is directly elected by the people of the country, so the members of Parliament of Lok Sabha are the representatives of the people. The people elect their representatives from their own constituencies or locality. The whole country and each state is divided into different constituencies which are based on the territorial limit set by the Delimitation Commission. Hence, an individual stands for election in a particular locality/area from where the people living in that region vote to select the person who would give voice to them in the Parliament.

India have universal adult suffrage, hence any citizen who has completed the age of 18 years is eligible to vote. There is no discrimination in any manner to vote in the election process. This is the fundamental basis of representative democracy. The important aspects of representative democracy in India are as follows:

1. **President:** He is the head of the State. He is elected directly by Electoral College consisting of members of both house of the Parliament and the elected members of the state assemblies. He is an integral part of the Parliament though he does not take part in its sittings. Final approval to any bill has to be given by the President.
He can promulgate ordinances when either house is not in session. It has the same effect as a law passed by the Parliament. It has to be noted that in all aspects the President should act in accordance to the aid and advice rendered by the Council of Ministers headed by the Prime Minister.
2. **Rajya Sabha and Lok Sabha:** Rajya Sabha is the council of State, and it represents the will of the people indirectly. They are elected by the members of the State assemblies by a system of proportional representation. Each state has a different number of representatives as it is decided on basis of the population of each state. It is a permanent body consisting of not more than 250 members, and among them 12 persons are nominated by the President.

The lower house is directly elected by the people. It should not contain more than 530 members representing the states and not more than 20 representing the Union territories. The President has the power to nominate 2 members from the Anglo-Indian community if there are no other such representation.

The important aspect of the representative democracy is that the government should periodically obtain the mandate of the people through election in order to continue office legitimately.

Both the house share equal powers in all aspects, except a few, such as the Lok Sabha in the financial sphere, and the council of ministers are collectively responsible only to the lower house and not to the Rajya Sabha. Rajya Sabha too has some special powers assigned to by the Constitution, it has the power to dictate on matters related to items in the state list for the larger public interest concerned.

3. **Parliament and the executive:** The leader of the party which has secured majority in the election is called by the President and asked to form the government. The other ministers are appointed as per the recommendation of the Prime Minister. The Council of ministers are collectively responsible to the Lok Sabha and hold the office as long as it enjoys the confidence of the Lower House.

There is harmony between the legislature and the Executive. This is because the executive is taken from the legislature. Hence, the ministers are members of both legislature and the executive. Thus, Parliament in India is to legislate, criticize, advice and air public grievances, while the executive is to govern, on behalf of the Parliament. The executive thus remain accountable and responsible to the Parliament.

4. **Parliament and Judiciary:** The Judiciary in India is integrated, where the Supreme Court is at the Apex, the High Courts are in the States, and District courts govern in the allocated districts.

The court has a very important role to play in a representative democracy. They keep check on the acts, functions and laws made by the parliament. They are the guardians of the principles and ideals of the Constitution. If any law which is in violation of the constitutional values they are liable to be declared null or void by the Judiciary.

Any illegal executive action which violates the fundamental rights of the people can be questioned by the courts on the basis of writ petitions. The fundamental rights of the people which are guaranteed under the Constitution are protected by the Supreme Court and the High Courts. Thus, the judiciary act as an effective check against illegal and unconstitutional acts of both the legislature and the executive.

The fundamental aspect of the representative government in the party politics and its recent evolution into the coalition system is dealt in the following sections.

2.3.4 Party Politics

The party system is the fundamental basis for the representative democracy. There is no other alternative to the party system than a dictatorship, hence the party system is very essential. They are essential in a democratic system. They link the people to the legislature and the executive. The nature of the representative government is determined on basis of the kind of party which governs it.

Though they are an informal entity, the party play a very important role in democratic setup. The important function is to organise and mobilise the electorate. They form the government if they get elected by the people. In a parliamentary system, the majority party which secures the vote of the electorate forms the government. During every election, the party releases a manifesto, in which it outlines its policies and ideas which they would implement if elected to power. And once they form the government they strive to implement those promises.

The minority party which loses the election takes up the role of the opposition in the Parliament or in the Assembly. They help in the breakdown of traditional barrier and help bind the diversified community which are divided based on caste, religion and region, etc.

2.3.5 Classification of Political Parties in India

In terms of geography, the political parties can be classified as national, regional or local parties, on basis of their ideology, they are differentiated into left, right or centre. And among the left, there are communist and socialist parties, and among the right there are traditional caste-based parties, etc.

Nehru made an observation regarding the prevailing party scenario in the country in 1953,

The Parties, as they exist in India today, apart from the congress, may be divided into four groups. There are certain political parties with economic ideology. There is the communist party with allied organisation. There are various communal parties under different names but essentially following a narrow communal ideology, and there are a number of local parties and groups having only a provincial or even a narrower appeal.

Thus, further we may classify the political parties as follows:

1. **All India political parties:** As per the Election Symbols (reservation and allotment) Order, 1968, a party is recognised as a National Party only if it fulfils the following conditions:
 - (i) The candidates set up by the party, in any four or more States, in the last general election to the House of the People or to the Legislative Assembly of the State concerned, have secured not less than 6% of the total valid votes polled in each of those states in that general election; and, in addition, it has sent at least four members to the House of the People in the aforesaid last general election from any state or states; or
 - (ii) In the last general election to the House of the People, the party has won at least 2% of the total number of seats, any fraction exceeding half being counted as one; and the party's candidates have been elected to that House from not less than three states; or
 - (iii) The party is recognized as state party in at least four states.

These parties stand on the national platform and emphasise national issues for getting elected to the parliament. At the end of 16th Lok Sabha elections, six political parties were accorded National party recognition by the Election Commission.

2. **Regional parties:** They represent the regional-nationalism based on common language, history and culture of place which they are part of. Their strength is confined only to a particular area. According to the Election Symbols (reservation and allotment) Order, 1968, a party is recognised as a State Party only if it fulfils the following conditions:
 - (i) In the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than 6% of the total valid votes polled in the state; and, in addition, the party has sent at least two members to the Legislative Assembly of that State in such general election; or

- (ii) In the last general election to the House of the People from that State, the candidates set up by the party have secured not less than 6% of the total valid votes polled in the state; and, in addition, the party has returned at least one member to the House of the People from that state at such general election; or
- (iii) In the last general election to the Legislative Assembly of the State, the party has won at least 3% of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or
- (iv) In the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that State; or
- (v) In the last general election to the House of the People from the State, or in the last general election to the Legislative Assembly of the State, the candidates set up by the Party have secured not less than 8% of the total valid votes polled in the State.

The privilege of being accorded recognition by the Election Commission is that, they can have their own permanent symbol for all their contestants, and they are given air time on All India Radio, Doordarshan to address the voters.

3. **Communal parties:** These are exclusive organisations open only to those who practice that particular religion or belong to that ethnicity. They seek to protect and promote interests of a particular community alone, hence their support base in small and confined to that region alone. The examples are Muslim League (Kerala), Akali Dal (Punjab) etc.
4. **Ad hoc parties:** These are temporary parties organised on the basis of a powerful personality. They only appear for a short period and does not have a mass base. Examples are Bangala Congress, Kerala Congress and the BKD of Charan Singh which were all short-lived ventures.

2.3.6 Salient Features of the Party System in India

1. **One party dominance system:** The Congress party was the fore front in the freedom struggle. It had the distinction of being the party of numerous illustrious freedom fighters. It was led by Gandhi, Nehru, and so many others. Hence, it became the only party leading the independent nation of India.

And likewise it got elected with an overwhelming majority to the Parliament. And being a young country the people had first-hand experience of the British rule and they had seen the role played by the Congress during the struggle for Independence and hence the support to the party continued even after Independence.

For a long time, no other party was able to establish a stable government at the Centre without the support from the Congress party. Even today, any possible alternative government is said to rest on the shoulders of the Congress party. Hence, in India there is domination of a single party, and even today its support base has not eroded.

2. **A multi-party system:** Credit should be given to the Congress party for not to convert its goodwill and convert into an authoritarian, despotic system. Hence, the basic necessity of a representative democracy got entrenched into the Indian system.

Though we could say that the Congress party is the dominant party, there is scope for existence for numerous other parties in the country. Though their recognition is subjected to the conditions provided in the Election Commission rules.

A number of parties are needed to represent the interests of various section of the population. No single party can satisfy needs and requirements of the entire population.

Presence of multi-party system also helps protect the democratic system, as they keep the government in check, by posing questions on their actions in the legislature, help people understand presence of alternative schemes, offer alternative thinking and ideology to the people. This system also helps in articulation and representation of the needs of a minor section of the population.

3. **Weakness of the non-Congress parties:** The non-Congress parties are not that well organised and does not have the mass base throughout the country. Even before the Independence, the Congress established and spread its association even to a remote village. But after independence, such measures were difficult to carry out, and hence no other political party could come close to congress in mobilisation of people and the resources. And also presence of dynamic leaders such as Nehru, Indira Gandhi etc. helped in sustenance of the party.
4. **Reliance on powerful personalities:** Most of the regional parties got formulated around the cult of a mass-leader. Down-south the cine personalities extended their on-screen image to the real-world and wooed the masses. The people too worshipped these personalities and hence accepted them as their leader. The formation of Anna Dravida Munetra Kazhagam (ADMK) around the personality of M.G. Ramachandran and creation of Telugu Desam Party around N.T. Rama Rao are the glaring examples of a single man shaped up these parties. Even today many such parties are run on basis of the goodwill of these powerful personalities.
5. **Lack of ideological commitment:** Another important aspect of political parties in India is that, apart from the leftist parties no other party has a concrete ideology. The Communist Party of India (CPI) has a socialist agenda, meanwhile even the Congress adopted the socialistic policies, but it brought in the neo-liberal reforms, most of the regional parties have a narrow vision, that is, development and protection of their own section of population. Hence, there is not much difference in electing a different party to power, more or less all these parties have committed to follow the ideology of development politics.
6. **Factions within the parties:** Some of the parties are not united and there are factions within them. The factions are based on personalities of different leaders within the parties. Sometimes these factions are dangerous for the party and may even lead to eventual breakup of the party. The break-away faction may join some other political party which may provide them with plum postings. This is because of lack of ideology in the political parties, which has made possible existence of various factions.
7. **Use of extra-constitutional means to power:** The parties apart from electioneering and campaigning might indulge in other means of getting into power. The breakaway faction might join the party in power and hence the party system has no proper value or ideology. They might tend to use unconstitutional means such as civil disobedience, strikes, mass demonstration and protest rallies to pressurise the party in power to accept their dictates.

2.3.7 Coalition Politics

The upper middle class elite played a dominant role in running the country after its Independence, and such scenario continued for a long time both in Centre and the States. This coordination and consensus was possible between Centre and State because of the one party dominance of the system, which is ruled in both by the Congress party. The consensual elite accommodation was possible because of the dominance of the political class by the powerful upper caste political elites, and hence similar view and line of thought was possible.

2.3.7.1 Initial Phase of Coalition Era

The scenario started to change after 1960s. There were some noteworthy changes in the political system such as rearrangement of the political forces, increasing role of rural elites in the system, rise of a particolored and complex elite structure. The year 1967 marked the coming of change, the Congress party lost elections in several prominent states and first phase of coalition governments with support from regional parties started to arise in the system. This could not be sustained for a long time because of the lack of initial experience, differences and contradictions among the parties. Indira Gandhi too played a significant role in curtailing the rise of coalition politics by centralising political and economic powers. But some states did challenge such unilateral and centralising tendencies of the Union government, they also questioned the veracity of the planning by the Centre. Though the initial phase of coalition politics was temporary and short lived, it indeed created some strong regional movements and state-specific parties in states like Tamil Nadu, Kerala, Orissa, West Bengal, Punjab etc.

2.3.7.2 The First Phase of Coalition Era: The Late 1960

The Congress party underwent noteworthy changes during the 1960s. It had lost its dominant status after the 1967 elections. By the end of 1960s, the Congress had polarized into two camps and split – one led by Kamaraj called as the Syndicate-Congress (Organisation) and another under Indira called as the Congress (Ruling). Indira Gandhi faced stiff opposition within her own party, she increasingly started to reject principle of consensus and ignored long standing and established leaders of the party. She dismantled the party's decentralized structure and restricted its functioning without any concern for regional and local sentiments. She practically took over the party operations completely. All senior members of the party had to fall in line with her dictates. This had not only changed working of the Congress party but it inadvertently also had significant impact on the Indian political federal system.

- This had led to growth of strong regional sentiment in the states. Strong case was made demanding decentralisation by sharing power of sovereignty by the states, especially Punjab and Assam during the second term of Indira Gandhi.
- Several prominent state-level parties came to power during Indira's second term in early 1980s – such as Assom Gana Parishad (AGP) in Assam, AIADMK in Tamil Nadu, Akali Dal in Punjab, Telugu Desam Party (TDP) in Andhra Pradesh etc.
- The state governments of West Bengal and Kerala led by the United Front of the Left parties, Swatantra party in Orissa, DMK-led government in Tamil Nadu had emphasised the need to restrain the authority of the Centre.
- In 1980s Jyothi Basu, N.T. Rama Rao and other opposition Chief Ministers came together to build a coalition of 'Non-Congress CMs' challenging the hegemony of the dominant Congress party and the so called 'centralized state'. Several conferences and conclaves were held to discuss these issues.

2.3.7.3 The Second Phase of Coalition Era: Late 1980's

The other major period of coalition era – the second phase – started in 1989, two years before the Economic Reform program. There was a transition from the dominant party system to a multi-party system and from a majoritarian government to a coalition government. Several unstable governments were formed in quick succession. The coalition politics got boost from the implementation of the Mandal commission reforms for reservation to OBCs by the V.P. Singh government and communalisation of the polity by the demolition of the Babri Masjid in Ayodhya. BJP emerged as a major force in the Centre, while in the states, caste-based, class-based politics of the SCs and OBCs took centre stage. Hence, the so called National parties had to align themselves with these state-level forces in order to win the elections as their powers had waned.

2.3.7.4 Present Era of Coalition Politics

In successive years the coalition government had become the norm in the Centre with support from the regional-state parties. Some of the dominant parties emerged in 1990s, such as Samajwadi Party (SP), Janata Dal (United) (JDU), Biju Janata Dal (BJD), Trinamool Congress, Samata Party, Nationalist Congress Party (NCP), etc.

1. It was impossible now to form a government at the centre without the support of these regional parties.
2. This had significant impact on the Federal system as states now played a dominant and decisive role in the coalition governments.
3. Though in 2014 elections BJP had won majority on its own, it still chose to form government with coalition of other parties.
4. Thus, states are now becoming increasingly assertive in centre-state federal bargaining as their dominance has increased in the National-level politics.
5. The coalition government and its effect is not restricted to National politics alone, it has a significant impact on the neo-liberal economic policies of the Centre.
6. Due to the opposition of the state governments, the Centre could not carry forward many decisive economic reforms. The states now have say in directing and modifying the economic policies.
7. The National parties too are now exploiting the coalition politics and thus the system has become more corrupt.
8. During the pre-liberalisation phase, there was a vertical competition between the national states, now it has become horizontal that is competition is now between the regional state governments themselves.
9. Hence, the policies of the Centre are now diffused across the states and it works on political considerations. Thus, the disintegration of the party system and unstable coalition has adversely affected the governance of the country.
10. There is now increased prominence of the state and regional parties because of the stability of the coalition government at the Centre.
11. The states hence now enjoy a greater degree of autonomy and they are trying to establish their own influence at the centre which is adversely impacting the polity.
12. The state-level parties are also in talks to create a United Federal Front to resist any centralization move.
13. Such 'centralization' measures invite condemnation not just from the regional and state parties but also from the National Parties themselves in order to preserve the federal

spirit and structure. Even the BJP-led government elected in 2014 has given greater emphasis on improving the dynamics of Centre-State relations at least on paper.

According to scholars the participation of the regional state parties in the coalition governments has led to 'refederalisation' of Indian democracy. Present era is moving towards increased decentralisation, refederalisation and regionalization of politics, and hence the institutions should also keep up with such changes in the political scenario for effective sharing of powers.

2.4 FEDERAL FORM AND ITS DYNAMICS

Although the Indian Constitution nowhere mentions the term 'federal', it has provided for a governance model, which is essentially federal in spirit. Federalism in India should be studied in the context of its pluralities of culture and its socio-economic conditions on the eve of Independence.

With a large population spread across a large pluralistic framework in terms of ethnic, linguistic, religious and other diversities, it was necessary to implement a system of polity that would accommodate these pluralities. This was to be done without compromising on building a unified nation. In order to serve the objective, the constitution makers decided on a democratic structure based on federal system of government with a unitary bias. While democracy ensures freedom to the citizens, a federation would ensure the protection of pluralities. This when managed by a strong union government, ensures the principle of 'unity amidst diversity' in order to march ahead to progress.

The perils of colonial rule made India as a land of severe economic disparities and chronic under-development. As the immediate goal for the newly born nation was to turn around the economic conditions, it was necessary to bring in an administrative system that would combine regional management and centralised supervision. It was thus decided that a federal polity with an empowered union government will best fit these requirements to achieve the goal.

2.4.1 Features of Indian Federalism

There are certain unique features in Indian federalism. They are as follows:

1. **Supreme and single constitution:** Constitution is the most supreme law of the land in India. It contains several components that together act as a rule of thumb in framing policies of the government. It guarantees a set of fundamental rights to the citizens. Similarly, it demarcates the domains of power of executive, legislative and financial powers of both the government of India and the states.
2. **Dual government:** The Constitution has distributed powers between the Union and the States. Through this distribution, it seeks to accommodate the diversity of India. By providing certain powers to the state governments, the constitution allows the states to take decision with flexibility according to local needs.
3. **Authority of the courts:** Legal supremacy of the constitution is an essential feature in the federal system. It helps in maintaining the division of powers between the union and centre. Courts have the final power to interpret the constitution and nullify actions on the part of the federal and state governments or their different units, which violate the provisions of the constitution.

4. **The mode of formation:** Unlike the United States, which was formed as a result of coming together of a group of states, Indian federalism was born out of the need for administrative convenience.
5. **Position of the states in the federation:** In the United States, since the states had existed much before the formation of federation, they held their own sovereignty vis-a-vis the federal government. Therefore, their constitution had several safeguards for the protection of state's sovereignty. Whereas in India, there was no such history of states holding a higher sovereignty. Thus, our states do not enjoy a higher authority in comparison to the union government.

2.4.2 Criticism of Indian Federalism

Though the founding fathers of the Indian Constitution have done their best to imbibe a federal character into our polity, there are a number of criticisms against it.

1. **Not a truly rigid constitution:** The amendment process to the Constitution of India follows a blend of rigidity and flexibility. Some of its provisions can be easily amended by the Parliament and some require ratification from the states. While it is challenging to pass amendments that affect the federal provisions, it is not as difficult as the amendment process in the United States.
2. **Powerful Union government:** The union holds more power as against the states. This can be understood by the number and importance of subjects under the Union list under Schedule 7 of the constitution. Even regarding the concurrent list, the constitution empowers the Parliament to override any law made by the state legislature in case of a conflict with a union law on the same subject. Additionally, all residuary powers are also vested with the Parliament. Besides this, it empowers the Parliament to legislate in certain cases on subjects in the state list.
3. **Unequal representation of states in the Upper House:** In bicameral legislatures of federal countries it is a basic feature to have equal representation for states in the upper house. India has deviated from this principle and has opted for proportional representation based on the population of the respective states.
4. **Executive is a part of legislature:** Separation of powers is yet another essential part of a federal polity. In India though, the political executive is an integral part of the legislature.
5. **Lower house enjoys greater power than Upper house:** The role of the Upper House in a federation is quite significant as it features representatives from the states. In the Indian Parliament however, the lower house enjoys greater powers compared to the Upper House. For instance, money bills can only be introduced in a Lower House; a no confidence motion against the government can only be initiated in the Lower House. Interestingly, the Upper House as well enjoys the unique power such as to initiate a bill for the creation of an All-India service. Such unequal distribution of powers among the houses of Parliament is contrary to the principle of federalism.
6. **Appointment process of Governor:** The power of appointing a governor lies with the President, who executes this power based on the advice of the council of ministers. As a result, the governor acts as an agent of the Union government.

7. **Destructible states:** A state's name, territory, or its very existence can be changed by the Parliament by passing a law to that effect. All of this can be done following the procedure of an ordinary bill.

2.4.3 Co-Operative Federalism to Competitive Federalism

- **Cooperative federalism** implies that the Union and states share a **horizontal relationship**, where they '**cooperate**' in the **larger public interest**. It's visualised as an important tool to enable states' participation in the formulation and implementation of national policies.
- **Sharing of powers and responsibilities** between the three levels of government is a key element of the concept, which involves participative policymaking. This is particularly important in areas of concurrent responsibility, where the Centre has had a tendency to ride roughshod over the States by occupying the common legislative space.
- A reform of the seventh schedule lists in the direction of greater empowerment of States would be consistent with the logic of increased financial transfers and cooperative federalism. Locating the right level for making and implementing policy is a central feature of the cooperative responsibility matrix.
- A key element in fostering cooperative federalism is the **respect for the mandate of elected governments, even those run by opposition parties**. In an era where the party system is fragmented along federal lines, the need is still felt to include State parties in federal coalitions, even when technically not necessary.
- **Competitive federalism can refer to the relationship between the Central and state governments (vertical) or between state governments (horizontal)**. Post the 1990s economic reforms this idea of federalism gained prominence.
- The spirit of competition **in a free-market economy is established through the provision of benefactions to states, their resource base available and their other comparative advantages. States has to compete not just with the Centre, but also with other states for gaining these benefits. Increasing globalisation, however, has made the already existing inequalities and imbalances between states much wider.** Hence, there is concern about the states' freedom to formulate their own growth policies.
- With the onset of **globalisation**, there have been new economic roles for the government. There has been complex power sharing and multi-level relationship.
- Identity related issues (e.g, Telangana) and resource-based issues (like Cauvery and Narmada), so in multi-party system, need to forge federal coalitions is all the more important.
- **Fiscal constraints of the states have led to the proliferation of central schemes and national missions.**
- **Because of responsive and participative democracy, we get asymmetric federalism (the acceptance of inequality of states) leading to decline in inequality, tensions and dis-satisfactions.**

2.5 BASIC STRUCTURE OF THE CONSTITUTION

2.5.1 Basic Principles of the Constitution

The constitution is a set of laws and rules which sets up the machinery of the government, it also enshrines about the provisions regarding separation of various instruments of the state and about the role carried out by them. It also defines power of each organ of the state and establishes relations between them.

Every such structure of government is made up from some basic principles and these basic principles should be well established. Every such constitution around the world has such common features, apart from having their own exclusive feature. India is no exception, as it also has some of the basic principles in its foundation. These are not explicitly mentioned, rather the careful study of the Constitution would provide us with the following six essential features, which can said to be the foundation of democracy in the country. These are

- Fundamental rights
- Directive principles of state policy
- Federalism
- Cabinet form of government
- Judicial independence
- Popular sovereignty

The political freedom and the concept of civil liberty are said to lie at the base of our Constitution. The Constitution of India was created for the common man. The Constitution was meant not for those who rule, but was rather for the very people who are to be governed.

2.5.2 Emergence of Basic Structure of the Constitution

The emergence of the Basic structure doctrine can be traced from the judgements pronounced by the Courts, essentially the Supreme Court of the country.

1. **Amendment of fundamental right – Parliamentary supremacy in amendment-Shankari Prasad Case (1951):** The question whether the Parliament had the power to amend the fundamental right came up before the court within one year of the enactment of the Constitution. In the said case, the validity of First Amendment which curtailed the right to property was challenged.

The Supreme Court ruled that under Article 368, the Parliament had the power to amend even the fundamental right.

The court interpreted that the laws given under Article 13, did not include Constitutional amendments.

Hence, the Parliament had the power to take away, amend any of the fundamental rights by way of constitutional amendment under 368, as they did not constitute law.

2. **Amending of fundamental right – Curtailing of the Parliament – Golak Nath case (1967):** The above judgement given in Shankari Prasad case was reversed in this case.

In this case, the constitutional validity of the seventeenth amendment Act was challenged which inserted some state acts into the ninth schedule.

The Court asserted that the fundamental rights have been given 'immutable and transcendental' position and therefore the Parliament cannot take away any of these rights.

Court said that, under Article 13, even a constitutional amendment is a law, hence it can be struck down as void in case it is in violation of the fundamental rights.

3. **Reaction of the legislature for on Golak Nath case – 24th Amendment Act:** The legislature reacted to the judgement of the Supreme Court, by enacting the 24th amendment act, which amended the Articles 13 and 26.

It declared that, the power of the Parliament to amend the Constitution is supreme and it can take away any fundamental right under Article 368 and it will not constitute law as under Article 13.

4. **Doctrine of Basic Structure – Kesavananda Bharati Case (1973):** The 24th amendment act was challenged. The Court overruled its earlier judgement in the Golak Nath case. It held the 24th amendment to be valid, the Parliament had the power to amend the fundamental rights. But it established a new concept of 'Basic Structure' of the constitution.

It ruled that the power to amend under Article 368 does not enable the Parliament to alter the 'basic structure' of the Constitution.

This means that the Parliament cannot take away or modify any fundamental right which falls within the doctrine of basic structure of the Constitution.

5. **Reaffirmation of basic structure doctrine – Indira Gandhi case (1975):** The court invalidated the 39th amendment act of the Parliament, which had sought to keep the election dispute of the Prime Minister and the Speaker of the Lok Sabha out of purview of the courts.

The Court held that this was beyond the amending power of the Parliament as it affected the basic structure of the Constitution.

6. **Reaction of the Parliament – 42nd amendment act:** This was in reaction to the judicial concept of the 'basic structure', which had invalidated the election of the Prime Minister.

This act amended the Article 368, and declared that the power of Parliament is supreme regarding the question of amendment, there was no limitation to the power of the Parliament, and no such amendment can be questioned by any court for being contravention to the provisions of any of the fundamental rights.

7. **Finality of basic structure by the Judiciary – Minerva Mills case (1980):** The Supreme Court in this case struck down the provision which excluded the courts purview over the legislations.

This was abrogation of power of judicial review which was a 'basic feature' of the constitution.

Applying the concept of 'basic structure' to the Article 368, the court held that, 'Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of the Constitution and therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its

basic features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one’.

In *Waman Rao case* (1981), the Supreme Court adhered to the doctrine of basic structure and held that it would only apply to constitutional amendments enacted after the Judgement of *Kesavananda Bharati case* (24, April 1973).

2.5.3 Elements of Basic Structure

The present position is that the Parliament has the power to amend the fundamental rights under Article 368. But this has to be carried out without affecting the ‘basic structure’ of the Constitution. Even now there is no proper clarification regarding what constitutes these basic structures. It is a dynamic concept and from various judgements of the Supreme Court we can identify the ‘basic structure’ of the Constitution as follows:

1. Secular nature of the Constitution
2. Federal character
3. Unity and integrity of the nation
4. Powers of Supreme Court under Articles 32, 136, 141 and 142
5. Limited power of the Parliament to amend the constitution
6. Judicial review
7. Supremacy of the Constitution
8. Separation of powers between the executive, legislature and the judiciary
9. Principle of equality
10. Independence of judiciary
11. Powers of High Courts under Articles 226 and 227
12. Effective access to justice
13. Welfare state
14. Sovereign, socialist, democratic and republic nature of the state
15. Harmony and existence of balance between the fundamental rights and the directive principles
16. Free and fair elections
17. The basic nature of the fundamental rights
18. Parliamentary system
19. Freedom and dignity of the individual
20. Welfare state

2.6 INDEPENDENT CONSTITUTIONAL BODIES FOR EFFECTIVE GOVERNANCE

The following bodies have been included in the Constitution as independent bodies. They have been accorded constitutional status and given power to take action for effective governance.

1. **Election Commission:** The Election commission has been granted permanent and independent status to carry out free and fair elections in the country. **Article 324** of the Constitution provides the power of superintendence, direction and control of elections to the Parliament, state legislatures and to the office of the President and the vice-president. Thus, the body of election commission is common to both Centre and the States.

Independence: Article 324 of the Constitution has made the following provision regarding the independence of the Election commission.

1. Security of tenure is given to the Chief Election Commissioner. He cannot be removed by any other manner except on the manner and grounds similar to that of a judge of the Supreme Court. Thus, he can only be removed by the President on the basis of a resolution passed in a special majority by both houses of the parliament, either on the ground of proved misbehaviour or incapacity. He does not come under the 'doctrine of pleasure of the president' even though he is appointed by him.
2. The service conditions of the chief Election Commissioner cannot be changed to his disadvantage after his appointment to the office.
3. No other Election Commissioner or a regional Election Commissioner can be removed except on recommendation by the chief Election Commissioner.

Powers and Functions: The powers and functions of the Election Commission are categorised into the following classifications:

1. Administrative
2. Advisory
3. Quasi-judicial

In detail the functions are as follows:

1. It has the power to register the political parties and it grants them the status of national or state parties on the basis of their performance in the poll.
 2. It supervises the election machinery throughout the country to conduct free and fair elections.
 3. It determines the code of conduct to be followed by the political parties.
 4. It has the power to cancel polls and conduct by-polls in event of rigging, booth capturing, violence or any other such irregularities.
 5. To render advice to the governor on matters relating to the disqualification of the members of legislature of the states.
 6. To prepare the electoral rolls periodically and update them. It has the power to register all eligible voters.
 7. It grants recognition to the political parties and provides them symbols to choose.
 8. It also renders advice to the President in matters relating to the disqualification of the members of the Parliament.
 9. It has the power to determine the territorial areas of the constituencies where election is about to take place based on the Delimitation Commission Act of the Parliament.
 10. It notifies the date and schedules of elections and also scrutinises the nomination paper filed by the candidates.
2. **Union Public Service Commission:** The Union Public Service Commission is the agency for the central recruitment in the country. It is an independent constitutional body having powers under the Articles 315 to 323 in Part XIV of the Constitution. These Articles contain provisions regarding the composition, powers, independence regarding that of the UPSC.

Independence: The Constitution has made the following provisions concerning the independence of UPSC to ensure impartial and independent functioning of the body:

1. The chairman or a member enjoys security of tenure as they can only be removed on the grounds given in the Constitution by the President.
2. The conditions of service of the chairman or any other member cannot be varied to their disadvantage after their appointment.
3. The expenses of the salary, allowances, and pensions of both members and the chairman are charged on the consolidated fund of India. Thus, they are not voted upon in the Parliament.
4. The Chairman of UPSC after the end of his tenure is not eligible for any further employment in Centre or State.
5. The member of the UPSC after the end of their tenure is eligible to be appointed only as the Chairman of UPSC or any State Public Service Commission, but not for any other employment in either centre or state.
6. The Chairman or a member after the end of their tenure is not eligible for reappointment.

Functions: The following functions are performed by the UPSC:

1. Examinations for the all-India services, the central services and public services of centrally administered territories are conducted by the UPSC.
2. Assistance is provided to two or more states when such request is made by them, to frame, operate schemes for joint recruitment of eligible candidates in the required position.
3. When a request is made by the governor, the UPSC acts to fulfil them on approval by the President.
4. It is consulted on the following matters regarding the Personnel management:
 - a. All matters regarding the recruitment to civil service or any other civil post.
 - b. Regarding the principles to be followed while making appointments, in promotions and transfers from one service to other.
 - c. The concerned department may formulate rules regarding promotion, transfer, suitability of candidates to particular posts etc. and UPSC then ratifies such rules devised.
 - d. All such disciplinary issues which affects a person serving under the central government, such matters include
 - Withholding of promotion
 - Withholding of increment
 - Demotion
 - Removal from service
 - Dismissal from service
 - Compulsory retirement
 - Censure
 - Recovery of pecuniary loss
 - e. Matters regarding to provision of extension of service and cases of re-employment of some retired civil servants.
 - f. Any other issues regarding the personnel management.

Additional functions related to the centre can be conferred upon the UPSC by the Parliament by way of enactment. It can extend the jurisdiction of the UPSC by placing any public body, authority or any public institution. Thus, the jurisdiction of the UPSC can be expanded by an act of the Parliament. Annual report regarding its functioning is presented to the President who then submits it to the Parliament.

Role: The Constitution envisages a role of ‘watch-dog of the merit system’ in the country for the UPSC. It is concerned with recruitment to the top-most posts in the country, and it advises the government in such matters related to promotion, recruitment and transfers. But it is not concerned with other matters such as classification of services, cadre management, and training, pay and service conditions etc. These matters are handled by a separate department of Department of Personnel and Training. The role of UPSC is limited as the advice it renders is not binding on the government. It is the discretion of the government to accept or reject such recommendations.

3. **State Public Service Commission:** Parallel to the UPSC at the centre, there are State Public service commissions in the respective states. The Article 315 to 323 which govern the UPSC also governs the SPSC. These Articles contain provisions regarding the composition, powers, independence etc. regarding that of the SPSC.

Independence: The Constitution has made the following provisions concerning the independence of SPSC, it ensures impartial and independent functioning of the body.

1. The chairman or a member enjoys security of tenure as they can only be removed on the grounds given in the Constitution by the President.
2. The conditions of service of the chairman or any other member cannot be varied to their disadvantage after their appointment.
3. The expenses of the salary, allowances, and pensions of both members and the chairman are charged on the consolidated fund of the State. Thus they are not voted upon in the State assembly.
4. The Chairman of SPSC after the end of this tenure is eligible for further employment as a member or chairman of the UPSC, but not for any other employment in either centre or state.
5. The member of the SPSC after the end of their tenure is eligible to be appointed as the Chairman of SPSC or as a member or chairman of the UPSC, but not for any other employment in either centre or state.
6. The Chairman or a member after the end of their tenure is not eligible for reappointment.

Functions: The SPSC performs all such functions performed by the UPSC in the state concerned. These are as follows:

1. It conducts exam for recruitment for any post in the state.
2. Regarding the principles to be followed while making appointments, in promotions and transfers from one service to other.
3. The concerned department may formulate rules regarding promotion, transfer, suitability of candidates to particular posts etc. and SPSC then ratifies such rules devised.
4. All such disciplinary issues which affect a person serving under the state government, such matters include

- Withholding of promotion
 - Withholding of increment
 - Demotion
 - Removal from service
 - Dismissal from service
 - Compulsory retirement
 - Censure
 - Recovery of pecuniary loss
5. Any other issues regarding the personnel management.
- The additional functions can be given to the SPSC by the state legislature. It can extend the jurisdiction of the SPSC by placing personnel system of any local body, corporate body or any other public institution. Hence, the jurisdiction of the SPSC can be extended by the act the concerned state legislature. Annual report is submitted to the Governor who places this report before the state assembly for scrutiny.

Role: The Constitution envisages a role of ‘watch-dog of the merit system’ in the state for the SPSC. It is concerned with recruitment to the top-most posts in the state, and it advises the government in such matters related to promotion, recruitment and transfers. But it is not concerned with other matters such as classification of services, cadre management, and training, pay and service conditions etc. These matters are handled by a separate department of Department of Personnel and Training. The role of SPSC is limited as the advice it renders is not binding on the government. It is the discretion of the government to accept or reject such recommendations.

4. **Finance Commission:** The Article 280 of the Constitution provides for creation of Finance Commission which is a quasi-judicial body. Every five year or at the discretion of the President the commission is constituted.

Functions: The finance commission is required to make recommendations to the President on the following matters:

- a. The principles that should be basis for providing grant-in-aid to the states from the consolidated fund of India, by the Centre.
- b. Sharing of net-proceeds of taxes between the centre and the states and the allocation of shares between the different states concerned.
- c. Measures needed to be carried out to improve and enhance the consolidated fund of the state in order to supplement the needs of the panchayats and the municipalities as based on the recommendations from the State Finance Commission.
- d. Any other issues as referred to by the President in the interest of sound financial management.

The report is submitted to the President who then lays it on the Parliament along with the explanatory note on the actions taken based upon its recommendations.

Advisory Role: The recommendations of the commission are only of an advisory nature and hence government is not bound by it. It is up to the Centre to act upon the recommendations to share the resources with the states. As observed by the experts, that since the Finance Commission is a constitutional body, even though its

recommendations may not be binding, the government should have a compelling reason to reject the same.

The Constitution understands that the commission will act as a balancing wheel of fiscal federalism in India. But its role has been undermined by the emergence of extra-constitutional body of the Planning Commission. And hence, the role of Finance Commission has been over shadowed by the Planning Commission which had taken over most of the roles provided to the commission.

5. **The National Commission for Scheduled Castes:** This body is directly established under the Article 338 of the Constitution of India. Other bodies such as the National commission for Minorities, the National Commission for Backward Classes, National Commission for Women, National Human Rights Commission, National Commission for Protection of Child Rights are all statutory bodies in the sense that they are created by acts of the Parliament.

Functions of the Commission: The following are the functions of the commission,

- a. To investigate into and monitor all issues relating to the provisions made in the Constitution and other aspects for the SCs and to evaluate their functioning.
- b. To take part and give advice in all matters concerning the planning process of socio-economic development for the SCs and to evaluate the progression of the group in the states concerned.
- c. To inquire into specific complaints regarding the violation of the rights of the SCs.
- d. To make recommendation to the Union or the State government to take measures in order to effectively implement the safeguards relating to the protection of the rights, welfare measures, and socio-economic development of the SCs.
- e. To present annual report to the President and at any other time it seems necessary upon the working of safeguards provided to the SCs.
- f. To carry out any other such function in relation to the protection, safeguard, welfare and development of the SCs as the President may recommend.

Powers of the Commission: The commission is given power to regulate its own procedure.

The commission while investigating into any matter related to any complaint received, has the power of a civil court in matters related to the following:

- To receive the evidence in an affidavit
- To summon any person from anywhere in the country and to examine such person under oath
- Requisitioning of any public record
- Issuing summons to examine documents or any witness
- Requiring the discovery and production of the necessary documents
- Any other matter which the President may specify

The centre and the state governments are requested to consult the commission before taking any major policy decisions concerning the SCs.

This commission is also vested with powers to discharge duties regarding issues concerning the other backward classes (OBCs) and the Anglo Indians. Thus, the commission has to investigate all constitutional or other legal issues for the OBCs and the Anglo-Indians and report such matter to the President about their functioning.

6. **National Commission for Scheduled Tribes:** Article 338-A establishes a separate commission for the Scheduled Tribes. Initially both the commission of SCs and STs were together under the Article 338. But they were separated by passing of the Constitutional 89th amendment Act, 2003. This amendment added the new Article 338-A to the Constitution.

Functions of the Commission: The following are the functions of the commission,

- a. To investigate into and monitor all issues relating to the provisions made in the Constitution and other aspects for the STs and to evaluate their functioning.
- b. To take part and give advice in all matters concerning the planning process of socio-economic development for the STs and to evaluate the progression of the group in the states concerned.
- c. To inquire into specific complaints regarding the violation of the rights of the STs.
- d. To make recommendation to the Union or the State government to take measures in order to effectively implement the safeguards relating to the protection of the rights, welfare measures, and socio-economic development of the STs.
- e. To present annual report to the President and at any other time it seems necessary upon the working of safeguards provided to the STs.
- f. To carry out any other such function in relation to the protection, safeguard, welfare and development of the SCs as the President may recommend.

Other functions of the Commission: These functions were added by the President to the commission in addition to its other functions. These are as follows:

- a. Measures to be taken to safeguard the rights of the tribal communities over the mineral resource, water resource etc. as per the law;
- b. Measures to be taken to ensure full and effective implementation of the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996.
- c. Measures to be taken to prevent the alienation of the tribal group from their land and help them effectively rehabilitate to a good location.
- d. Measures to be taken to see to it that the tribal are accorded ownership rights in respect to the minor forest produce.
- e. Measures to be taken to decrease and finally end the practice of shifting cultivation, which displaces the community and cause environmental degradation.

Powers of the Commission: The commission is given power to regulate its own procedure.

The commission while investigating into any matter related to any complaint received, has the power of a civil court in matters related to the following:

- To receive the evidence in an affidavit
- To summon any person from anywhere in the country and to examine such person under oath
- Requisitioning of any public record
- Issuing summons to examine documents or any witness
- Requiring the discovery and production of the necessary documents
- Any other matter which the President may specify

The centre and the state governments are requested to consult the commission before taking any major policy decisions concerning the STs.

7. **Comptroller and Auditor General of India:** The Constitution under Article 148 provides for an independent office of the Comptroller and Auditor General. He is the head of the audit and accounts department. He is considered to be the guardian of the public purse, and controls the entire financial system both at the centre and the states. It upholds the constitution and laws of the parliament in matters related to the financial administration. Dr. Ambedkar considered this office of CAG to be the most important office under the Constitution of India.

Independence: The Constitution provides for the following provisions with respect to the independence of the CAG, they are as follows:

- a. He is provided with security of tenure, and can only be removed as per the provisions given under the Constitution. Hence, he does not hold the office as per the pleasure of the President even though he is appointed by him.
- b. He is not eligible to any other appointments after the end of this tenure, under the centre or the states.
- c. His salary and other emoluments are determined by the Parliament. He receives salary on par with the judge of the Supreme Court
- d. His salary or other aspects of his service cannot be varied to his disadvantage after he is appointed.
- e. The conditions of service of other officers serving in the office of audit and accounts department are prescribed by the President after the consultation with the CAG.
- f. All the administrative expenses of the office of the CAG is charged on the consolidated fund of India, hence it is not subject to vote by the Parliament.

Further no minister can represent the CAG in the Parliament and no minister can be called to take up the responsibility of the actions carried out by the CAG.

Duties and Powers: The Constitution under Article 149 authorises the Parliament to provide for duties and powers of the CAG in relation to accounts of the Union and the State or any other body. The Parliament has thus enacted the CAG's (Duties, powers and conditions of service) Act, 1971.

The following are the duties and functions of the CAG as given in the Act and in the Constitution:

- a. He is given the power to audit the accounts related to all expenditure from the consolidated fund of India, the consolidated fund of the States, and consolidated fund of Union Territories having a legislative assembly;
- b. He also audits all the accounts relating to the trading, profit, manufacturing, balance sheets, profit and loss accounts or any other subsidiary accounts kept by any department of the centre or the states.
- c. To satisfy himself that the rules and procedures are followed properly by the government concerned he audits the receipts and expenditures, to have an effective control over the assessment, collection and proper allocation of the revenue.
- d. Apart from this, he also audits the accounts of contingency fund of India and public account of India, he also audits the contingency fund of the states and also public account of each state.

- Government companies
 - All bodies or corporations which receive substantial funding from either centre or the state
 - Other entities concerned when required by the law
- f. He carries out audit of any other department or entity, when such request is made by either the President or the Governor, for example audit of the local bodies.
 - g. As per **Article 150**, he advises the President on the matter of manner in which accounts have to be maintained by the government.
 - h. As per **Article 151**, he places the audit report before the President and the governor of the respective state concerned, who in turn places it before the Parliament or the Assembly.
 - i. As per **Article 279**, he determines and certifies the net proceeds of tax or duty. This certificate provided by him is the final.
 - j. He is considered to be the guide, friend and philosopher of the Public Accounts Committee of the Parliament.
 - k. He compiles and maintains all the accounts of the government. In 1976, the CAG was relieved of this duty of maintaining the account of the Central government which was handed over to the accounting department.

Three audit reports are submitted by the CAG to the President. They are, audit report on finance accounts, audit report on public undertakings, and audit report on appropriation accounts. The president places all these reports before the Parliament. The Public Accounts Committee of the Parliament then analyses and scrutinises these reports and places its findings to the Parliament.

Role: The important role is to uphold the Constitution and the laws of the Parliament in the sphere of financial administration. The accountability of the executive in the matter of finance is secured with help of the audit reports of the CAG. The CAG carries out audit on behalf of the Parliament, hence he is called as the agent of the Parliament. Therefore, he is responsible only to the Parliament.

The legal and regulatory audit is obligatory on part by the CAG, meanwhile propriety audit falls under his discretion. Propriety audit looks into the 'wisdom, faithfulness and economy' of the expenditure of the government, it comments on the wastefulness and non-essentiality of such expenditure.

8. **Attorney General of India:** Provision for office of the Attorney General is given under Article 76 of the Constitution. He is the highest law officer in the country.

Duties and functions: As the chief law officer of the country he is provided with certain essential duties, which are as follows:

- a. Render opinion to the Government whenever President refers some legal issues
- b. Perform other duties of legal character when it is assigned to him by the President
- c. To carry out any other function as provided by the Constitution or any other law.

The President has devised the following duties for the AG:

- a. To appear on behalf of the government in the Supreme Court on all matters where the government is involved.
- b. To represent the government in instances where reference is made under Article 143 to the Supreme Court.

- c. To appear, when requested, in any High Courts where the interests of the Government of India is concerned.
- 9. **Advocate General of the State:** Provision for office of the Advocate General is given under Article 165 of the Constitution. He is the highest law officer in the State, and thus he corresponds to the Attorney General of India at the centre.

Duties and functions: As the chief law officer of the State he is provided with certain essential duties, which are as follows:

- d. Render opinion to the Government whenever Governor refers some legal issues
- e. Perform other duties of legal character when it is assigned to him by the Governor
- f. Carry out any other function as provided by the Constitution or any other law

In course of his function, the Advocate General is entitled to appear before any court in the State.

And further, he has the right to take part in any proceeding of both houses of the state legislature without the power to vote.

He enjoys all the power and privileges as enjoyed by the member of the State legislature.

2.7 THREE-TIER SYSTEM OF GOVERNANCE AND TWO-TIER SYSTEM OF FEDERALISM

It is presently widely accepted that the system of local governance is essential for effective participation of the citizen's in the governance process. This system is indispensable and integral for the democracy to function effectively. This system strengthens the 'grassroots' democracy, whereby the system of government is taken to the hands of the people, and they get involved, this makes them to feel to be a part in the democratic system and it creates a sense of responsibility. Thus, in a vast, diverse and complex country like India, the system of local government and involvement of people in the governance process is administrative and political imperative.

The local self-governing institutions in India are called the Panchayats in villages and Municipalities in cities and towns. This was to enable the process of democratic decentralisation, and it was considered to be an instrument of popular participation. This was thought to bring in the people who were not touched by the formal system of government. It took the government to the door steps of the people. It wanted the people to be the part of the development process which concerned them. The following is based on the Report of the Working group on the Panchayati Raj and Rural governance, by the Planning Commission and Ministry of Panchayati Raj, Government of India.

2.7.1 Evolution of Local Governance in India

2.7.1.1 Pre-British Local Governance

India's old sacred books and historical sources mention village communities (councils or assemblies) across the sub-continent that were self-governing over millennia, serving as the main interface between the predominantly agrarian village economies and the higher authorities. Custom and tradition elevated these earlier councils or assemblies, called sabha, to a position

of considerable authority. Slowly, they assumed the form of the Panchayat (an assembly of five respected elders). These panchayats became the pivot of administration, the focus of social solidarity and the principal forum for dispensation of justice and resolution of local disputes. During the medieval and Mughal periods these characteristics of the village panchayats remained unchanged.

2.7.1.2 Pre-Independence Panchayats

Several steps were taken during British rule in India towards setting-up formal local bodies. In urban areas, a municipal corporation came to be formed in Madras – on the British model of a town council – as early as 1687.

In 1870, Lord Mayo (Governor General-in-Council) secured the passage of a resolution for the decentralization of power aimed at bringing about greater administrative efficiency in meeting the demands of the people but primarily designed to augment imperial finances. At about the same time, a significant first step towards reviving the traditional village panchayat system in Bengal was taken through the Bengal Chowkidari Act, 1870, which empowered District Magistrates to set up Panchayats of nominated members in the villages.

- The Magna Carta of local democracy in British India was the Ripon Resolution of 1882 providing for rural local boards with two-thirds of membership to be composed of elected, non-official representatives and presided over by a non-official Chairperson.
- Actual progress in implementation was slow but the role of rural local administration was elevated; and the term, self-government gained currency.
- In 1906, the Indian National Congress, under the president-ship of Dadabhai Naoroji, affirmed self-government as the political goal for the country.
- In 1907, the government constituted a six-member Royal Commission on decentralisation with Shri R.C. Dutt as its only Indian member.
- The Report of this commission – released in 1909 – elaborated the principles enunciated in the Ripon Resolution and recognised the importance of Panchayats in the governance of India.
- In the same year (1909), the twenty-fourth session of the Congress at Lahore adopted a resolution urging the government to take early steps to make all local bodies from village Panchayats upwards elective with elected non-official chairmen and to support them with adequate financial aid.
- At its twenty-eighth session in December 1913 in Karachi, the Congress adopted a resolution regretting that decentralization had remained largely on paper.
- In her presidential address at the Congress session in Calcutta in 1917, Dr. Annie Besant blamed the inefficient bureaucracy for not doing even the little that was suggested in the Report of the Royal Commission on Decentralisation.

The Montagu-Chelmsford Reforms of 1919 made local self-government – under the proposed scheme of Dyarchy – a transferred subject bringing self-government under the domain of Indian Ministers in the provinces. To make local self-government both fully representative and responsible, the Montagu-Chelmsford reforms suggested that there should be (as far as possible) complete popular control in local bodies and the largest possible independence for them from outside control.

The Government of India Act, 1935 and the inauguration of provincial autonomy under it marked another crucial stage in the evolution of panchayats. With popularly elected governments in the Provinces, almost all provincial administrations enacted legislation for further democratization of local self-government institutions, including the village Panchayats.

2.7.1.3 Constitutional Provision in 1950

Following Independence, the first draft of India's Constitution did not include any provision for the Panchayats even though Gandhiji had sought to make village Panchayats the very foundation of democracy in independent India. President of the Constituent Assembly, Dr. Rajendra Prasad, drew attention of the Law Minister, Dr. B.R. Ambedkar, to this lacuna in a letter dated 10 May 1948, initiating discussion and debate both outside and within the Constituent Assembly. This eventually led to the passage of an amendment proposed by the well-known Gandhian, Shri K. Santhanam, on 25 November 1948 including village Panchayats in Part IV of the Constitution containing non-mandatory Directive Principles of State Policy. The amendment which was eventually numbered as Article 40 reads: **The state shall take steps to organise village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self government.**

2.7.1.4 Community Development Project, 1952 and the Panchayats

Community Development (CD) projects were inaugurated in 1952 and were modelled after the earlier experiments at Shantiniketan, Baroda (Vadodara), and Nilokheri. However, the dynamic driving force behind the CD movement, Minister S.K. Dey, was of the consistent view that CD projects could not achieve their full potential in the absence of effective institutions for people's participation.

Balwantrai Mehta Committee: In 1957, a historic breakthrough in establishing Panchayati Raj was effected through the Report of the Balwantrai Mehta Committee which recommended:

- Public participation in community works should be organized through statutory representative bodies.
- It was of the view that without an agency at the village level that could represent the entire community, assume responsibility and provide the necessary leadership for implementing development programmes, real progress in rural development could not come about at all.

Subsequently, National Development Council (NDC) endorsed the basic principles of democratic decentralization enunciated in the Balwantrai Mehta report and laid on the States the duty of working out the structures suitable to each state. It was during this period that the term Panchayati Raj gained currency as a process of governance organically linking the will of the people from the Gram Sabha to the Lok Sabha. Prime Minister Nehru inaugurated the three-tier Panchayati Raj in Nagaur, Rajasthan on 2 October, 1959.

Jayaprakash Narayan Committee: The Jayaprakash Narayan Committee spoke of the contradictory positions developing within the government in respect of Panchayati Raj, pointing out that: After having accepted Panchayati Raj as the agency responsible for planning and execution of plans...there is no longer any valid reason for continuing individual allocations subject-wise even to serve as a guide.

The Ministry of Community Development was brought under the Ministry of Food and Agriculture, and in 1971 the title 'Community Development' was dropped and replaced by 'Rural Development'.

Ashok Mehta Committee: By the early seventies, however, the Panchayats had gone from a phase of early ascendancy to one of decline and stagnation. The Asoka Mehta Committee (formed in 1978) made far reaching recommendations to amend the situation and recommended that Panchayati Raj be included in the Constitution. In keeping with the spirit of the Asoka Mehta Committee recommendations, some states – including West Bengal, Karnataka and Andhra Pradesh – revisited their respective Panchayati Raj systems and undertook several new initiatives to endow local bodies with more powers which served as a prime inspiration and example for subsequent reform.

The West Bengal Panchayat Act, 1973 (West Bengal Act XLI of 1973) brought some fresh air in the Panchayat system. Direct elections in all three tiers (through universal adult franchise) had to be held at regular intervals. They were made mandatory, without any discretionary power of any authority to postpone such elections indefinitely. Powers to collect tax and non-tax revenue were clearly defined. Functional domain of the Panchayats was more clearly delineated as compared to the earlier Panchayats. The new legislation empowered the Panchayats in various fields of activities encompassing rural life. Mandal Panchayats – as envisaged in the Asoka Mehta Committee – exist only in Andhra Pradesh, though, in addition to the Village Panchayats.

Constitution 73rd Amendment Act: The Congress government under Prime Minister P.V. Narasimha Rao introduced the 72nd (Panchayats) and 73rd (Nagarpalikas) Constitution Amendment Bills based substantially on the Bills moved in the Eighth Lok Sabha by Shri Rajiv Gandhi but also incorporating some of the changes wrought by the National Front Government. These two Bills were referred to a Joint Select Committee of the Parliament which effected some further changes but conforming considerably to the earlier 1989 initiative.

The Lok Sabha and the Rajya Sabha passed both Bills on the 22 and 23 December 1992, respectively. By the time the Parliament passed the two Bills, their sequence changed to 73rd and 74th, respectively. Following their ratification by more than half the State Assemblies, as required under the Constitution, the President of India gave his assent; the Acts came into force as the Constitution (Seventy-third Amendment) Act, 1992 on 24th April 1993 and the Constitution (Seventy-fourth Amendment) Act, 1992 on 1st June 1993. This added two new parts to the Constitution, namely, Part IX titled The Panchayats – and Part IXA titled The Municipalities.

Fifth Schedule Areas and PESA: The Fifth Schedule to the Constitution (Article 244) relates to administration and control of the scheduled areas and scheduled tribes other than those in North-East States. PESA was enacted in 1996 which extended Part IX of the Constitution to the Schedule V Areas. PESA promotes people-centric governance and provides a central role to the Gram Sabha. Chapter 10 of this document discusses in detail Sch. V and PESA.

Local self-governance in the NE states

The legal framework of LSG in North Eastern Region (NER) broadly comprises three typologies:

- (i) Sixth Schedule Frame (Meghalaya, parts of Assam, Mizoram and Tripura)
- (ii) State Legislation Frame (Nagaland and non-Council Areas in Mizoram)
- (iii) National Frame (Arunachal Pradesh, Sikkim, Manipur excluding hill areas and non-Council areas in Assam and Tripura).

Each tribal area mentioned in Para 20 of the Sixth Schedule is designated as an autonomous district. The area inhabited by each of the tribes in a district may be carved out as autonomous region. Each autonomous district is governed by a District Council and autonomous region by a Regional Council. This unique Council frame comprises the third tier of legislature for Tribal Areas about Sixth Schedule matters. These Councils endowed with legislative, judicial and executive powers virtually function as a state within state.

State of the Panchayats Reports (SoPRs): The SoPRs (published in 2006, 2008 and 2010 respectively) show that, overall, the mandatory provisions specified in the Constitution have been implemented in the last decade and a half. All Part IX States (elections in Jharkhand held up till recently due to a court case) held regular elections through the State Election Commissions. All the states have implemented reservation for women, SCs and STs (the most have reservation for OBCs as well), bringing almost 1.6 million representatives from these groups into elected positions making the Panchayats the nursery of future leadership. State Finance Commissions have been constituted and in many States, their recommendations have been acted upon. All the states (excluding Uttarakhand & Jharkhand) have constituted DPCs and the most have initiated decentralised planning processes.

However, implementation of the Constitutional provisions – which were left to the discretion of the States – varies greatly. The most important aspect in strengthening of the Panchayats is the devolution of 3Fs (i.e., functions, funds and functionaries) related to the matters listed in the Eleventh Schedule of the Constitution. Another is the enablement of their function of preparing and implementing bottom up participatory plans for economic development and social justice. The states vary a great deal in both these respects. While some states have forged new paths, others are still to catch up. Of course, many states are trying out new approaches and mechanisms, and making corrections along the way.

Why are the Panchayats functioning sub-optimally?

The root cause is that the Panchayats are not seen as local governments with clear roles. This leads to:

Grossly inadequate devolution: Many states have not taken effective steps to devolve 3Fs to the PRIs to enable them to discharge their constitutionally stipulated function. Further, it is imperative that the PRIs have financial resources and manpower to match the responsibilities entrusted to them. While SFCs have submitted their recommendations, not many states have implemented these or taken steps to ensure PRI's fiscal viability.

Parallel systems: Parallel systems and organizations set up under various Central/State developmental programmes have further sapped strength of the Panchayats, pared away their legitimate functional space and even encroached upon their political space.

Excessive control by bureaucracy: In some states, the Gram Panchayats have been placed in a position of subordination: Gram Panchayat Sarpanches have to spend extraordinary amount of time visiting Block Offices for funds and/or technical approval. These interactions with the Block staff/office distort the role of a Sarpanch as elected representative.

Tied nature of funds: Activities permitted under the schemes are not always appropriate for all parts of the district. This results in unsuitable activities being promoted or an under-spend of the funds.

Reluctance to use fiscal powers: An important power devolved to GP is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc. Very few Panchayats use their fiscal power to levy and collect taxes. The argument pushed by Panchayat-heads is that it is difficult to levy tax on your own constituency, especially when one lives in the community. But when Panchayats do not raise resources and instead receive funds from outside, people are less likely to request a social audit.

Status of the Gram Sabha: Empowering the Gram Sabhas could have been a powerful weapon for transparency, accountability and for involvement of the marginalized sections. However, a number of the State Acts have not spelt the powers of the Gram Sabhas nor have any procedures been laid down for the functioning of these bodies or penalties for the officials.

Strategies to improve the functioning of the Panchayats

1. Empowerment:

- Ensuring progressive devolution of functions, funds and functionaries (3Fs) upon the Panchayati Raj Institutions (PRIs).
- Institutionalising GP-level dispute resolution mechanism.
- Enhancing reservation for women PRIs and also their leadership quality.
- Implementing PESA effectively.
- Deepening decentralized governance in the 6th Schedule Areas.

2. Enablement:

- Building the organizational capacity of PRIs and the professional capacity of Elected Representatives and Official Functionaries so that they can perform their mandated roles efficiently.
- Institutionalising and using integrated decentralized participatory planning through the PRIs and DPCs for convergence of plethora of schemes and pooling of diverse resources for better outcomes.
- Restructuring the Backward Region Grant Fund (BRGF) Programme to position the Panchayats as effective platform for mitigating regional backwardness.
- Reviewing and upscaling the rural business hubs to promote the role of the Panchayats in economic development.

3. Accountability:

- Positioning the Gram Sabhas at the core of PRIs for true self-governance and ensuring transparency and accountability of the Gram Panchayats.
- Devising institutions, systems and processes for enhancing efficiency, transparency and accountability of the PRIs.
- Implementing e-Panchayat in a mission mode.

By introducing these reforms the Panchayati Raj Institutions can be made effective and functional. It can help to bring about development of the people at the grassroots. It can also make the people participate in the governing process and thereby making the administration accountable to them.