SRIRAM'S IAS

GENERAL STUDIES

CONSTITUTION, POLITY AND GOVERNANCE

BOOK-II

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Disaster relief

In India, the financing of disaster relief is an important aspect of federal fiscal relations. There are significant variations in the disaster proneness profiles of different states and wide regional disparities in terms of levels of economic development. This implies that the coping capacity of a majority of the states to deal with disasters on their own is inadequate. This is compounded by the fact that the poorer states are often the most disaster prone. The financing of disaster relief has, as a result, come to be firmly accepted as a joint endeavour of the Central and State Governments. Finance Commissions been asked bythe President under the ToR to give recommendations.

The pre-FC XIII system of financing relief expenditure, thus, mainly revolved around the CRFs maintained at the state level and the NCCF at the Central level. Both these funds target immediate relief measures and exclude measures for mitigation or post-calamity reconstruction. The CRF is a resource available to the states to meet the expenses of relief operations for a range of specified calamities. The NCCF is a national fund to provide assistance to states for calamities of rare severity, beyond the coping capacities of the states' CRFs. While the total amount of assistance for the CRFs is decided byFinance Commissions based on the needs of individual states, the NCCF has a dedicated source of funding through a special duty on selected items.

Calamity Relief Fund

They are used to meet the expenditure for providing immediate relief to victims of cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst and pest attack. The essential features of the CRFs are as follows:

i) The fund is maintained in the public account of the state.

ii) Seventy-five per cent of the fund is financed by the Centre and 25 per cent by the respective states.

It is renamed State Disaster Response fund by the FC XIII.

The National Calamity Contingency Fund has a core corpus of Rs. 500 crore and is replenished through the National Calamity Contingent Duty imposed on cigarettes, pan masala, beedis, other tobacco products and cellular phones. It is maintained in the public account. It is renamed National Disaster Response Fund by the FC XIII.

Additional Central Assistance : In order to finance post-disaster reconstruction which is not covered under the NCCF, Additional Central Assistance (ACA) has been given to states in recent years, particularly for the Gujarat earthquake of 2001, the Indian Ocean tsunami of 2004, the Kashmir earthquake of 2005 and the Kosi floods of 2008 in Bihar.The 2013 Uttarakhand floods may also be given a similar package due to their magnitude and severity.

The Governor

The pattern of Government provided for the states is similar to that of the Central Government. The reason for the similarity is that at both the levels of government, there is parliamentary system of government in which a ceremonial head and a real head constitute the executive. For the Union Government, Presidency is ceremonial and the effective head of the government being the Prime Minister heading the Council of Ministers. For the State Government, Governor is the counterpart of the President of India and the Chief Minister heading the Council of Ministers is the mirror image of the Prime Minister.

Historical background

The Government of India Act 1858 transferred the responsibility of administration of India from the East India Company to the British Crown. It made the Governor of the province an agent of the Crown working through the Governor General. The Montagu-Chelmsford reforms (1919) made small changes in the provincial government with insignificant level of responsible government being introduced. The Government of India Act 1935 gave provincial autonomy with the Governor being required to act on the advice of the Council of Ministers. However, the Governor continued to exercise substantial discretion for which he was accountable only to the Governor General.

After India achieved Independence, The GOI Act 1935 was adapted and enforced till the new Constitution was drafted and adopted. The Adaptation Order 1947 dropped all references to the discretionary powers and made the Governor function completely according to the advice of the Council of Ministers.

Constituent Assembly(1947-49) debated various aspects related to the institution of Governor which essentially can be grouped under two heads

- Whether the Governor should be elected or nominated and
- Discretionary powers of the Governor.

The idea of elected Governor is discarded for the following reasons

- It defeats the very purpose of the institution of Governor as it should be an independent Constitutional office which is not possible if the Governor is a political office
- Political deadlock between the offices of the Governor and that of the Chief Minister which can paralyse the Government
- In case the Governor and the Chief Minister belong to the same political party, Governor can not perform his discretionary powers honestly and impartially
- Governor can develop his own populist vested interest which can compromise his duties involving security of the state from internal and external threats
- Jawaharlal Nehru explained to the Constituent Assembly that two more reasons can be cited to ignore the idea of a elected Governor: it may lead to provincial separatist tendencies ;and there will be far fewer common links with the centre.

Art.153 to 167 of Part VI deal with the State Executive of which Governor is the titular head and the Chief Minister heading the Council of Ministers is the political and real head.

Article 153 of the Constitution requires that there shall be a Governor for each State. It means that there shall not be a vacancy in the office of the Governor. Thus, the incumbent Governor of the State continues even after the five year tenure is over till a new Governor is appointed by the President as the Art.156 mandates. The Constitution (Seventh Amendment) Act, 1956 made a change in the Art.153 to the effect that one person can be appointed as Governor for two or more States. The need for it was felt in the wake of the reorganization of states in 1956 which in turn made many amendments to the Constitution necessary in the areas relating to the High Courts and High Court Judges, the executive power of the Union and the States etc.

Article 154 vests the executive power of the State in the Governor..

Article 155 says that "The Governor of a State shall be appointed by the President by warrant under his hand and seal".

Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. There is a controversy about whether the five year term is more important that the reference to the pleasure of the President of India. In order to understand the debate clearly, the contents of Art.156 are to be followed as they are available in the Constitution:

156. Term of office of Governor

1) The Governor shall hold office during the pleasure of the President.
2) The Governor may, by writing under his hand addressed to the President, resign his office.
3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

As can be seen from above contents of Art.156, the meaning of the sequence of the above provisions is that President's pleasure is more important that the five year term.

Art. 157 lays down two qualifications for the office of the Governor:

- he should be a citizen of India and
- must have completed the age of thirty-five years.

Art.158 stipulates the conditions of Governor's office as the following:

- Governor shall not be a member of either House of Parliament or State Legislature, and if such a member is appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- The Governor shall not hold any other office of profit.
- The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in

that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

- Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- The emoluments and allowances of the Governor shall not be diminished during his term of office.

In 2010, the salary of Governor was raised to Rs.1,10,000 a month . It has also been decided to award pensions, for the first time, to former Governors.

Art.159 prescribes the oath/affirmation which a Governor has to take before entering upon his office, in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available to faithfully discharge the functions of the Governor of .....*(name of the State)* and will to the best of his ability preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of .....*(name of the State)* "

Executive Powers: The executive power of the state is vested in the Governor. He exercises it either directly or through officers subordinate to him. It has been held that ministers are officers subordinate to him. The executive power of the state extends to all matters with respect to which the State Legislature has power to make laws. All executive action is expressed to be taken in the name of the Governor. All orders, instruments, etc. are authenticated in the manner specified in the rules made by the Governor.

The Governor appoints the Council of Ministers, Advocate General, Chairman and the members of the State Public Service Commission. The Governor appoints the Chief Minister and other ministers are appointed by him on the advice of the Chief Minister. The Governor has the power to nominate one member from the Anglo-Indian Community, if he is of the opinion that the community needs representation in the Assembly. The Governor has the power to nominate one-sixth of the members of the Legislative Council of State. The persons to be nominated are require to have special knowledge and practical experience in respect of Literature, Science and Arts etc.

Legislative Powers: The Governor is the part of the legislature (Art.168). According to this Article, the Legislature of a State shall consist of the Governor and the Legislative Assembly. Where, however, the Legislature consists of two Houses, the upper House too is a part of the Legislature.The Governor has the right to address the legislature and to send messages to it. The Governor may from time to time summon, prorogue or dissolve the Legislative Assembly. The Governor has the power of causing to be laid before the legislature, the Annual Financial Statement(Budget). Without his recommendation no demand for grant can be made by the legislature. The Governor reserve Bills for the assent of the President made by the Legislature. In this regard, Art. 200 and 201 are very important and they are as follows:

Art. "200:Assent to Bills -- When a Bill has been passed by the Legislature of a State , it shall be presented to the Governor who may accept or reject the Bill.In the case of Bills other than

Money Bills, he may return to the Legislature for reconsideration. He may also reserve the Bill for the consideration of the President.

When a Bill is returned to state legislature by the Governor, the Bill must be repassed to be accepted by the Governor.

Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, derogate the powers of the High Court. In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options, namely, (a) he assents to the Bill; (b) he withholds assent; (c) he reserves the Bill for the consideration of the President; or (d) he returns the Bill to the Legislature for reconsideration.

Art.201. Bills reserved for consideration

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill. In other Bills, he may return the Bill for repassage. Once it is returned, the state legislature should consider it within 6 months and sent for Presidential consideration.It need not be assented to by the President and he may return it again and again. Thus, it is an absolute veto. Also, there is no time limit within which the President should take a decision.

There have been instances where Bills have been pending with the President for periods up to six years or more. It may be mentioned here that a careful reading of Article 201 shows that even a Money Bill can be reserved for the assent of the President.

Governor's suspensive veto

The Gujarat Local Authorities Laws (Amendment) Bill, 2009, which offers 50 percent reservation for women along with making voting in local bodies compulsory was repassed by the assembly in 2011 after the Governor returned it for reconsideration and repassage.The bill was first introduced in the Assembly in December 2009 and passed by majority vote.It was however, returned by the governor in April 2010 with remarks that "forcing voter to vote is against the principles of individual liberty".

Governor Kamla had returned the bill to the government for reconsideration with her comments."The present bill violates the freedom which a citizen is entitled to enjoy under Article 21 (personal liberty) of the Constitution.She had also asked the government to separate the issue of women's reservation in local body polls from it.The options for the Governor now are to sign or keep it for Presidential consideration.

President's absolute veto

President Pratibha Patil withheld her assent to the controversial Gujarat Control of Terrorism and Organised Crime Bill, 2003 (GUJCOC) following state government's refusal to make amendments to it."The President has withheld her assent from the Bill on January 22, 2012 as the state government had not made any amendments in the said Bill as per the directives contained in Presidential message to the earlier Bill."

Gujarat Control of Terrorism and Organised Crime Bill, 2003, as passed by the State Legislature was reserved by the Gujarat Governor for consideration of the President.The proposed law was earlier rejected by the Centre on the ground that it was not in line with its new legislation dealing with terrorism like Unlawful Activities (Prevention) Amendment Act- it allows or disallows bail by the judge only if Public Prosecutor agrees to it.

Clemency Powers:

Article 161 confers on the Governor the power to grant pardon, reprieve, respite or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends. It is largely equal and parallel to the powers of the President. The latter's powers relate to laws made by the Parliament. The difference however is that the President can pardon a death sentence while the Governor can only commute it to life term. Governor can not entertain cases of court martial. The clemency granted or not granted by Governor can not be appealed against to the President. But courts can intervene- High Court and Supreme Court.In case of violation of state law that attracts death penalty, President can be approached.

Governor's Discretionary Powers

Following are the provisions of Art.163 which contains the discretionary powers.

Art.163. Council of Ministers to aid and advise Governor.-

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Art.163 explicitly recognizes Governor's discretionary powers- that there are situations in which the Governor has to act without the aid and advice of the Council of Ministers. There are two types of such situations:

1. circumstances thrown up in the functioning and process of legislative democracy
2. where the Constitution confers such powers.

In the first class are the following situations as mentioned in the Sarkaria Commission report

a. choosing the Chief Minister
b. testing majority
c. dismissal of the Chief Minister
d. dissolving the Assembly
e. recommendation of the President's Rule(Art.356)
f. reserving the Bill for Presidential consideration (Art.200)
g. returning a Bill for re-passage to the Legislature

In the second class are the Constitutional powers where Governor's discretion is required in the exercise of the powers.. The Constitution of India contains certain provisions expressly providing for the Governor to act--

- in his discretion; or
- in his individual judgement
- special responsibility or
- independently of the State Council of Ministers

a. Discretionary powers

- Governors of all states- Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill (Art. 200).
- The Governors of Arunchal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim,and Tripura have been entrusted with some specific functions to be exercised by them in their discretion(Articles 371A, 371F and 371H and in Sixth Schedule).

b. Individual judgement:

- The Governors of Arunachal Pradesh and Nagaland have been entrusted with a responsibility with respect to law and order in their respective states. In the discharge of this responsibility, they are required to exercise "individual judgement" after consulting their Council of Ministers.

c. Independently of the Council of Ministers

- Governors as Administrators of Union Territories(U.T) — Any Governor, on being appointed by the President as the administrator of an adjoining UT, has to exercise his functions as administrator, independently of the State Council of Ministers.

d. Special responsibility

- Similarly, the Special Responsibility Powers of Governor are as follow:Articles 371(2) And 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. The presidential Orders so far issued under these Articles have provided that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors. Thus, these presidential Orders are instances of a Governor being required to act in his discretion "under" the Constitution.

Development Boards

There are three Development Boards constituted in Maharashtra State:

1. The Vidarbha Development Board
2. The Marathwada Development Board
3. The Rest of Maharashtra Development Board.

The special responsibility entrusted with the Governor of Maharashtra under the Constitution is for ensuring :-

- equitable allocation of funds for development in the three regions and
- equitable arrangements for providing adequate facilities for technical education and vocational training and adequate opportunities for employment in the services under the control of the State Government in the three regions

The responsibility of the Governor under Article 371(2) has been stated in the Development Boards Order 1994.

CAB 118 Passed: Responsibility for Governor

The Constitution 118th Amendment Bill, 2012 was passed by the Parliament.A resolution to make special provisions for the Hyderabad-Karnataka Region was passed by the Legislative Assembly and Legislative Council of Karnataka in March 2012. The resolution aims to establish an institutional mechanism to develop the region and promote inclusive growth. It aims to reduce inter-region and inter-district disparity in the State of Karnataka. This Bill was introduced in Parliament to give effect to this resolution.

The Act seeks to insert Article 371J in the Constitution to empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region. As per the Statements of Objects and Reasons of the Bill, this Region includes the districts of Gulbarga, Bidar, Raichur, Koppal, Yadgir and Bellary.

The President may allow the Governor to take the following steps for development of the region: (i) setting up a development board for the Region; (ii) ensure equitable allocation of funds for development of the Region; and (iii) provide for reservation in educational and vocational training institutions, and state government positions in the Region for persons from the Region.

Art.371(2)

The Constitution of India was amended in 1956 enabling the President of India under Article 371(2) to provide for the special responsibility of the Governor of Maharashtra for the establishment of Development Boards for Vidarbha, Marathwada and rest of Maharashtra regions. in 1994 President issued an Order assigning to the Governor of Maharashtra the special responsibility under Article 371(2) of the Constitution.The Presidential Order entrusted the Governor of Maharashtra with the special responsibility for the establishment of separate Development Boards for Vidarbha, Marathwada and the rest of Maharashtra. The order also specified the composition of Boards, the term of office and allowances payable to the Chairmen and members, functions of the .Development Boards and responsibility and powers of the Governor.The Development Boards are set up for 5 years at a time and their term is being extended by 5 years each time.

There are three Development Boards constituted in Maharashtra State.

1. The Vidarbha Development Board
2. The Marathwada Development Board
3. The Rest of Maharashtra Development Board.

The special responsibility entrusted with the Governor of Maharashtra under the Constitution is for ensuring :-

- equitable allocation of funds for development expenditure over the three regions subject to the requirements of the State as a whole; and

- equitable arrangements for providing adequate facilities for technical education and vocational training and adequate opportunities for employment in the services under the control of the State Government in the three regions subject to the requirements of the State as a whole.

Governor and the CM

Article 164(1) says "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and shall hold office during the pleasure of the Governor".

Art.164 says the following:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minster, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Role of Governor

Governor's role is largely similar to that of the President of India, Constitutionally. Politically, historically, so long as one party formed the Government at the centre and also in the states, the functions of the Governors remained ceremonial. When different parties headed the Government at the Centre and in States, some Governors acted in partisan manner and as agents of the Union Government. It all started in 1952 when in Madras C . Rajagopalachari was asked by Governor Sri Prakash to form the Government though the Congress lacked a clear majority. In 1959 the communist government of Kerala led by E.M.S. Namboodripad was dismissed on the report of the Governor, though the ministry commanded majority in the legislature, on the flimsy ground that it had lost the confidence of the people.

In 1967, new political era started with the formation of SVD Governments which were Coalition Governments in most northern States. Central Government used the governor to dismiss the state governments though there were no reasons other than political ones: Ajoy Mukharji's Government in Bengal(1967), Charan Singh's Government in UP(1969), Mahamaya Prasad Sinha's Government in Bihar , Govind Narayan Singh Government in MP; RN Singh Dev Government in Orissa . West Bengal Governor Dharm Vira dismissed the Ajoy Mukherjee Government on the belief that the United Front ministry of Ajoy Mukherjee lost its majority as some of legislators defected. He proposed to the Chief Minister to call a session of

the Assembly to test majority which the Chief Minster refused and so the ministry was dismissed.
In 1969, Charan Singh ministry was dismissed by Governor Gopal Reddy without offering the CM a chance to prove his majority even as the Assembly was in session.
Governor of UP Romesh Bhandari did not invite the largest single party in 1997 and imposed the President's rule which the Allahabad High Court found objectionable.
In 1998, Kalyan Singh Ministry in UP was dismissed and Jadadambika Pal ministry was sworn in . Justice was done when the SC ordered that a special session of the Assembly be held and majority ascertained.
In Andhra Pradesh, in 1984 Governor Ramlal dismissed the Ministry of N.T. Rama Rao which later won the confidence of the Assembly. In Goa the Governor dismissed the D'Souza ministry and installed Ravi Naik as the Chief Minister in 1994 with hardly any justification for his act.

Today the situation is different as coalitions at the centre are the norm and regional parties make up a huge part of the coalition. National parties need them. Therefore, Governor can not work against the state government under regional parties.

Governor: Some perspectives
Sri M.C. Setalvad, the first Attorney General of India, pointed out when he was consulted by Dr. Rajendra Prasad (in connection with the Hindu Code Bill controversy): "Governor's discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor... For a centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly – these are unconstitutional acts and run counter to parliamentary system. In all his constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammeled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions".

Recommendations of Sarkaria Commission
The Commission headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court, was constituted to "examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate". Commission first examined the historical background to the institution of Governor, the constitutional provisions concerning the Governor and the scope of these provisions and then pointed out the three main facets of Governor's role. The three facets so pointed out are: (a) as the constitutional head of the State operating normally under a system of Parliamentary democracy; (b) as a vital link between the Union Government and the State Government; and (c) as a representative of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)]. Sarkaria Commission took note of the criticism with respect to the role of the Governor and also set out the matters in which the Governor has to act in his discretion- as mentioned above .
The Commission says that the role of Governor is of vital importance having multi-faceted role, that Governor is linchpin of constitutional apparatus, that Governor's office assures continuity of

Government and that it should not be dispensed with. Recommendations of the Sarkaria Commission in regard to the institution of Governor are briefly the following:-The person to be appointed as a Governor –

1 should be an eminent person;
2 must be a person from outside the State;
3 must not have participated in active politics at least for some time before his appointment;
4 he should be a detached person and not too intimately connected with the local politics of the State;
5 he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
6 His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a statement explaining the circumstances leading to such removal or resignation, as the case may be;
7 After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be; and
8 At the end of his tenure, reasonable post-retirement benefits should be provided.

Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

1 The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
2 The Governor's task is to see that a government is formed and not to try to form a government which pursue policies which he approves.
3 If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minster.
4 If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

(i) an alliance of parties that was formed prior to the Elections.
(ii) the largest single party staking a claim to form the government with the support of others, including 'independents'.
(iii)a post-electoral coalition of parties, with all the partners in the coalition joining the government.
(iv)a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government from outside.
(v) The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and nowhere else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice of Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House. The Report also recommended certain measures in the matter of dissolution of the Assembly. The Report recommended that while sending *ad hoc* or fortnightly reports to the President, the Governor should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

The discretionary power of the Governor as provided in Article 163, it was recommended, should be left untouched.

In 1979, a Constitution Bench of the Supreme Court categorically ruled in *Hargovind vs Raghukul Tilak* that the governor cannot be "regarded as an employee of the Government of India...He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India".

All the above principles are being followed at the Union level too where coalitions have been recurring for about two decades and there are no Constitutional rules to follow in this regard.

Removing the Governor: Constituent Assembly debates

Krishnamachari unequivocally stated in the Constituent Assembly that "we do not want ... to make the governor of a province an agent of the Centre at all".

Professor K.T. Shah, in the course of the debates, stressed that "we must not leave the governor to be entirely at the mercy or pleasure of the president and so long as he acts in accordance with the advice of the constitutional advisers of the province he should, I think, be irremovable during his term of office".

Shibbanlal Saksena apprehended that in the absence of safeguards "he (the governor) will be purely a creature of the president, that is to say, the prime minister and the party in power at the Centre. When once a governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the president at his whim...Such a governor will have no independence..."

B.R. Ambedkar's answer to these criticisms is highly significant. He emphasised that it was "quite unnecessary to burden the Constitution with all these limitations stated in express terms...I therefore think that it is unnecessary to categorise the conditions under which the president may undertake the removal of the governor". Thus Dr Ambedkar clearly visualised that the power of removal of a governor was conditional, not absolute.

The power of removal, although apparently absolute, is subject to an implied limitation, namely, that it can be exercised only in cases of violation of the Constitution or for the commission or

omission of acts by the governor which render him or her unfit to occupy the gubernatorial office. The doctrine of implied limitation has been recognised by our Supreme Court.

Dr. B.R. Ambedkar, the chairman of the drafting committee, said: "Under the parliamentary system of government, there are only two prerogatives which the King or the Head of the State may exercise. One of them is the appointment of the Prime Minister and the other is the dissolution of the House." To a query about the position of the Governor in a State, Ambedkar said: "The position of the Governor is exactly the same as the position of the President."

However, the norms of appointment and the credibility of the office of Governor deteriorated fast to become a major cause of disharmony in Centre-State relations. The Study Team (October 1967) of the Administrative Reforms Commission on Centre-State Relationship stated: "The post came to be treated as a consolation prize for what are sometimes referred to as 'burnt out' politicians. Instead of these being treated as sinecures, they should be given due recognition as vital offices in the federal fabric of Indian Administration".

The Committee of Governors appointed by President V.V. Giri affirmed in its report (1971): "Moreover, under the Constitution, just as a State is a unit of the Federation and exercises its executive powers and functions through a Council of Ministers responsible to the Legislature and none else, the Governor, as the Head of the State, has his functions laid down in the Constitution itself, and is in no sense an agent of the President" (page 8).

The Rajamannar Committee Report (1971) recommended: "He (the Governor) should not be liable to be removed except under proved misbehaviour or incapacity after inquiry by the Supreme Court."

The Sarkaria Commission Report on Centre-State Relations (1988) noted: "Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Criticism has been levelled that the Union government utilises the Governors for its own political ends. Many Governors looking forward to further office under the Union or active role in politics after their tenure came to regard themselves as agents of the Union" .

In Hargovind Pant v Dr. Raghukul Tilak (AIR 1979, SC), a Constitution Bench comprising five Judges of the Supreme Court observed: "Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office, which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State".

In his monumental work, Constitutional Law of India, eminent jurist H.M. Seervai said: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. The removal of the Governor

under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution".

Supreme Court on Governor term 2010: B P Singhal case

A five-judge constitution bench of the Supreme Court objected to the removal of four NDA-appointed governors in 2004 by the UPA immediately after coming to power.

The reason given for removal was that they were not in sync with the policies and ideologies of the UPA government. The court held that if the reasons for removal were irrelevant, malafide or whimsical, they could invite judicial intervention.

Justice Raveendran, writing the unanimous 56-page judgment, said: "Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union government or the party in power at the Centre. Nor can he be removed on the ground that the Union government has lost confidence in him."

The Bench felt that no reasons need to be ascribed for the summary dismissal of governors as they continue in their post as long as they enjoyed the pleasure of the President.But, it sounded a caution. "Having regard to the nature of functions of the governor in maintaining Centre-state relations, and the flexibility available to the government in such matters, it is needless to say that there will be no interference unless a very strong case is made out," it said and ruled that where the apex court feels the power to dismiss a governor had been exercised arbitrarily, it would intervene.

Punchi Commission on governor

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age.

The Sarkaria Commission recommendations in this regard are endorsed.

The Punchi Commission is of the view that the Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office should become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

Punchi Commission further says the following: Governors should be given a fixed tenure of five years and their removal should not be at the will of the Government at the Centre. The phrase "during the pleasure of the President" in Article 156(i) should be substituted by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism

and fairness. Given the politics of the day, it can lead to unsavory situations and arbitrariness in the exercise of power. The procedure laid down for impeachment of President can be made applicable for impeachment of Governors as well.

Sanction of the Governor for Prosecution of Ministers

In terms of Section 197 of the Criminal Procedure Code, only with the accord and consent of the Governor can criminal prosecution be commenced against a Minister of a State. The question which arises is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code. The recent controversy surrounding the Lavlin case in Kerala where the Governor accorded sanction to proceed with prosecution despite advice to the contrary by the council of ministers is a case in question.

Article 163 of the Constitution of India binds the Governor to the advice of the CM heading the Council but gives hi discretionary powers.

In the case of Samsher Singh v. State of Punjab, [1975] Supreme Court held that "We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. These situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House, (b) the dismissal of a Government which has lost its majority in the House; but refuses to quit office; (c) the dissolution of the House, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister).

Thus, a seven Judges' Bench of the Supreme Court has held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. However, in the case of Madhya Pradesh Special

Police Establishment v. State of Madhya Pradesh & Ors., (2004) SC held that there may be situations where to safeguard democracy, Governor may have to act independently of the Council of Ministers. For example, if he apprehends the bias of the Council. If Governor does not use his discretion in such areas like sanctioning prosecution, there will be break down of rule of law;democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

Governor: Does he have more powers than the President?
Discussed in the Class

Doctrines

The doctrine of colourable legislation says that what a legislature can not do directly , it can not do indirectly either. That is, it can not exceed its competence in the garb of extraordinary purpose etc.

Doctrine of pith and substance allows the law to be considered valid even if some parts are beyond competence, if the essence of it is within the Constitutional purview of the legislature.

The doctrine of territorial nexus says that the object to which the law applies need not be physically located within the territorial boundaries of the state,but must have a sufficient territorial connection with the state.A state may levy a tax on a person, property ,object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it.

Doctrine of ancillary powers says that when the legislature can make laws on a particular subject, it also acquires ancillary powers. For example, the power to search and seize along with the power to tax.

Doctrine of Separation of powers says that the government's powers are separated between the three organs and they check and balance one another so as to protect the freedoms of the people of the country.

Doctrine of Eminent domain says that the Government can acquire any private property for a public purpose.

Doctrine of Occupied field says that the federal government can occupy a particular area of legislation without leaving any scope for the provincial government. For example, in the concurrent list of Indian Constitution.

Doctrine of Basic features lays down the immutability of certain features that the judiciary considers basic-Keshavananda Bhari case 1973.

Doctrine of Harmonious construction says that where there is seeming conflict between two aspects of the Constitution, the courts should try to reconcile the two initially, before pronouncing upon the precedence of one over the other. For example, in October 2010, Apex Court said about the hawkers' rights: " The hawkers and squatters or vendors' right to carry on hawking has been recognised as a fundamental right under Article 19 (1) (g) of the Constitution. At the same time, the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19 (1) (d)." The two have to be harmonized by regulation.Similarly, DPSPs and FRs could be armoniously constructed in case of a collision. Also, the privileges and immunities of Parliament members and the FRs of people.

Doctrine of reading down says that the judiciary should divest the vagueness that a law may have to see if it is within the Constitutional competence of the legislature.

Doctrine of federal supremacy says that in case of a conflict between the federal and the state laws, the former prevails.

Doctrine of "adverse possession" is as follows: If a person moves into possession of property, improves it and possesses it in a public manner, then after a certain amount of time he will acquire title to the property even though it is actually owned by someone else. The idea for adverse possession has at its root that land should not lie idle. If it does, it is wasted to the community. Therefore, if someone moves onto the land and makes it productive, that person may earn the right to claim it as his or her own.

Doctrine of substance over form

Doctrine of look at and look through

Doctrine of subsidiarity

All the above are done in the class with examples.

Fifth and Sixth Schedules

The Fifth and Sixth Schedules of the Indian Constitution provide protection to tribal populations on account of their cultural distinctness and economic disadvantages. The Fifth Schedule designates 'Scheduled Areas' in large parts of India in which the interests of the 'Scheduled Tribes' are to be protected. The " scheduled" or "agency" areas have more than 50 percent tribal population. The Sixth Schedule applies to the administration of the states of Assam, Meghalaya, Tripura and Mizoram in the North-east. This schedule provides for the creation of autonomous districts, and autonomous regions within districts as there are different Scheduled Tribes within the districts.

Fifth Schedule of Indian Constitution

It has provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes . The major features of the Fifth Schedule are

- Provides for Tribes Advisory Council
- Governor's powers to adapt laws passed by Parliament and State Legislatures to suit these areas
- making regulations for Scheduled Areas, and
- extension of the executive power of the Union Government to the giving of directions to a State for administration of Scheduled Areas.

Under the Fifth Schedule, the important part is the institution of Tribes Advisory Council . The TAC consists of three-fourths members who are Scheduled Tribe MLAs in the State. TAC is a constitutional body, being a part of the Fifth Schedule.

The State Governor can make special provisions for the administration of Scheduled Areas besides waiving or amending any existing law considered detrimental to tribal interests or in conflict with their traditional values and culture.

The Schedule also makes the states responsible for promoting the educational and economic interests of the tribals and to protect them from social injustice and exploitation.

The Central Government provides special financial assistance to the states under Article 275 for implementing schemes for the development of scheduled tribes.

Fifth Schedule and the powers of the Governor

The Fifth Schedule empowers the Governor of the concerned State to modify, annul or limit the application of any law made by Parliament or the State legislature to these Tribal areas. The Governor is empowered to make regulations for the good governance of these areas. He may also make regulations

- Prohibiting or restricting transfer of land by or among members of STs;
- Regulate allotment of land to members of the STs and
- Regulate business such as money lending in such areas.

To do this he can repeal or amend Central or State laws and make regulations along the guidelines mentioned above.

The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas

Tribes Advisory Council

There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State : Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

The duty of the Tribes Advisory Council is to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor

The Governor may make rules prescribing or regulating, as the case may be the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council etc.

Laws applicable to Scheduled Areas

The Governor may direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Such regulations may, as mentioned above, prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; regulate the allotment of land to members of the Scheduled Tribes in such area; regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

In making any such regulation as said above, the Governor may repeal or amend any Union or State law.

Governor can make such regulations only after consulting the Tribes Advisory Council for the State.

All such regulations will have effect only after being submitted to and accepted by the President of India.

President of India and Scheduled Areas

"Scheduled Areas" means such areas as the President may declare to be Scheduled Areas. The President may at any time direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area. He may increase the area of any Scheduled Area in a State after consultation with the Governor of that State. He may alter boundaries of any Scheduled Area.

The regulations made by the Governor come into effect only when they are accepted by the President.

Governor, annually or earlier has to submit reports to the President of India as to the administration of the Areas.

Amendment of the Schedule

Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule. No such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Similarly, the Sixth Schedule deals with constitution of autonomous district councils and autonomous regions specifying for them legislative, judicial, executive, developmental and financial powers and functions.

Under Art. 275, grants in-aid is provided to o specified States covered under Fifth and Sixth Schedules of the Constitution.

List of States with Schedule V Areas in India

1. Andhra Pradesh
2. Jharkhand
3. Gujarat
4. Himachal Pradesh
5. Madhya Pradesh
6. Chhatisgarh
7. Maharashtra
8. Orissa
9. Rajasthan

List of States with Scheduled Tribes but not Fifth Schedule Areas (Excluding Sixth Schedule States)

1. Bihar
2. Goa
3. Jammu and Kashmir
4. Karnataka
5. Kerala
6. Sikkim
7. Tamil Nadu
8. Uttar Pradesh
9. West Bengal
10. Andaman and Nicobar Islands
11. Dadra and Nagar Haweli
12. Daman and Diu
13. Lakshdweep

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Note: The North Eastern states such as Assam, Meghalaya, Tripura and Mizoram are covered by the Sixth Schedule and not included in the Fifth schedule.

Sixth Schedule

The Sixth Schedule lays down details of the mechanism and institutions necessary for governing the autonomous districts' in Assam, Meghalaya, Tripura and Mizoram. They are directly under the control of the Governor who is responsible for their administration. The Schedule provides for constitution, powers and functions of District Councils and Regional Councils in these autonomous districts.

The Councils are vested with legislative powers on specified subjects and are allotted certain sources of taxation. They have also been given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc. Autonomous District Councils (ADCs) are now in existence in the states of Assam, Mizoram, Tripura and Meghalaya. For example, the three sister Councils of Meghalaya viz. Khasi Hills Autonomous District Council, Jaiñtia Hills Autonomous District Council and Garo Hills Autonomous District Council.

For the purpose of promoting the welfare of schedule tribes or raising the level of administration of scheduled areas, Indian constitution provides funds under Article 275 (1).

The autonomous districts are the mechanism to safeguard their traditional heritage, customs, practices usages and economic security while conferring on them Executive, Legislative and Judicial powers along with development and financial powers and functions.

Sixth schedule envisage the powers of the ADCs within the autonomous areas, to make laws of land, management of forests, except reserved forests, regulation on trade by persons not being local schedule tribes, appointment of traditional chiefs and headmen, inheritance of property, marriage, divorce, social customs, establishments and maintenance of primary schools, markets, taxation, issue of lease for extraction of minerals etc.The District Councils in Khasi and Jaiñtia Hills have their own rules for the administration of justice under which certain classes of courts have been provided .

Mendha Lekha, in Gadchiroli district in Maharashtra

In 2011 became the first village in the country to secure community forest rights (CFR) - following the passing of the historic Forest Rights Act (FRA) in December 2006. Until then, forests were governed by the Indian Forest Act, 1927, a colonial law that gave the government the right to unilaterally declare any area a 'reserved forest' or 'protected forest', after which no one except the state had rights to the forest's produce. Thus the residents of Mendha Lekha, living in a reserved forest, had no right to pluck even a leaf from the thick clusters of bamboo that surrounded their village.

The passing of this law by the British - mainly to provide themselves unhindered access to Indian timber - was a blow for the hundreds of thousands of forest dwelling tribals who depended largely on the forests around them for livelihood. The FRA recognises the individual forest dweller's right to live in and cultivate forest land he had been occupying. It also allows the government to grant community forest rights to village gram sabhas, thereby permitting them to manage the forest around them and utilise its 'minor produce'. (Cutting trees and selling the timber is not allowed.).Mendha Lekha secured CFR over 1,800 hectares of forest surrounding it, special. The villagers also prepared a biodiversity register listing the flora and fauna of the forest

they had been given control over. Once it was ready, the village was given a 'transit passbook' that allowed the gram sabha to transport bamboo out of the village.

Community Forest Rights

Community forest rights recognized under the Forest Rights Act are important for securing livelihoods of the forest communities and for strengthening local self governance of forests and natural resources. Since implementation of the Forest Rights Act recognition of Community Forest Rights has remained a major challenge.

In 2013, 18 gram sabhas in Maharashtra have been allowed to sell tendupatta (tendu leaves) under CFR. Earlier they were given Rs 3 lakh as revenue by the forest dept. But when they auctioned on their own, they got Rs 2 crore.

Pesa

Panchayats(Extension to Scheduled Areas) Act, 1996 or PESA is a law enacted by Government of India to cover the "Scheduled areas", which are not covered in the 73rd amendment or Panchayati Raj Act of Indian Constitution. It was enacted to enable Gram Sabhas to self govern their natural resources. It is an Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas."Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas.(see the List elsewhere in the material)

The Indian Constitution protects tribal interests through the Fifth and Sixth Schedules.

While the Sixth Schedule, applicable in Assam, Meghalaya, Tripura and Mizoram, gives tribal people freedom to exercise legislative and executive powers through an autonomous regional council and an autonomous district council, the Fifth Schedule, applicable in all the other identified tribal regions, guarantees tribal rights over land through a Tribal Advisory Council in each State.

PESA devolves power to the village-level gram sabhas, paving the way for participatory democracy.

The Bhuria Committee in 1995 formulated a three-tier structure to extend the panchayati raj functions in the scheduled areas. The lowest but most important constituent of the structure is the village-level gram sabha, which will exercise command over natural resources, resolve disputes and manage institutions such as schools and cooperatives under it. Above it will be a gram panchayat, an elected body of representatives of each gram sabha, also to function as an appellate authority for unresolved disputes at the lower level. At the top of it will be a block- or taluk-level body.

When it was enacted, PESA was seen as a legislative revolution as it empowered gram sabhas to take decisions on important and contested tribal matters such as enforcing a ban on the sale and consumption of intoxicants, ownership of minor forest produce, power to prevent alienation of

land and to restore unlawfully alienated land, management of village markets, control over moneylending, an land acquisition. Along with this, it m. le it mandatory for all legislation in the scheduled areas to be in conformity with the customary law, social and religious practices and traditional management practices of the community.

PESA comes under the Fifth Schedule, which mandates tribal advisory councils to oversee tribal affairs and also gives extensive powers to the Governors of each State to intervene in matters where they see tribal autonomy being compromised. TAC has Chief Minister as the chairperson.

Pesa has not functioned to the level envisaged . There are many reasons but one is that two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have overlapping influence on the implementation of PESA and coordinationhas been a problem.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.Its advocates say that it will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent. (elaborate discussion elsewhere)

Bastar tribals and the demand for Sixth Schedule type of elected bodies

India's population consists of 100 million tribal people who have constitutionally been addressed via two distinct avenues. The Fifth Schedule applies to an overwhelming majority of India's tribes in nine States, while the Sixth Schedule covers areas that are settled in the northeastern States bordering China and Myanmar. Bastar district in Chhattisgarh is governed by the Fifth Schedule, but it wants to move into the Sixth Schedule.

The Sixth Schedule gives tribal communities considerable autonomy; The States of Assam, Tripura, Meghalaya, and Mizoram are autonomous regions under the Sixth Schedule. The role of the Governor and the State are subject to significant limitations, with greater powers devolved locally. The District Council and the Regional Council under the Sixth Schedule have real power to make laws on the various legislative subjects, receiving grants-in-aids from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control. The mandate towards Devolution determines the protection of their customs, better economic development and most importantly ethnic security.

The Fifth Schedule does not have such local councils that are elected. The 1996 PESA orPanchayats (Extension to the Scheduled Areas) Act should have been a landmark for the tribal communities. It mandates the state to devolve certain political, administrative and fiscal powers to local governments elected by the communities. This became exclusive to the Fifth Schedule areas, to promote tribal self-government. PESA was meant to benefit not only the majority of tribals but also extended to cover minority non-tribal communities. It guarantees tribes half of the seats in the elected local governments and the seat of the chairperson at all hierarchical levels of the Panchayat system.

Constitutional Safeguards for STs

Educational & Cultural Safeguards

Art. 15(4)

Art. 29:- Protection of Interests of Minorities (which includes STs as they may be considered cultural/linguistic minorities);

Art. 46:- The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art. 350:- Right to conserve distinct Language, Script or Culture;

Art. 350:- Instruction in Mother Tongue.

Economic Safeguards

Art.244:- Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

Art. 275:- Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.

Political Safeguards

Art.164(1):- Provides for Tribal Affairs Ministers in Jharkhand, , MP, Chattisgarh and Orissa;

Art. 330:- Reservation of seats for STs in Lok Sabha;

Art. 337- Reservation of seats for STs in State Legislatures;

Art. 334:- 10 years period for reservation (Amended several times to extend the period.);

Art. 243:- Reservation of seats in Panchayats.

Art. 371:- Special provisions in respect of NE States and Sikkim

Service Safeguards

(Under Art.16(4) etc)

Anti-defection law

Defections are a source of political instability; breach or representative faith and indicate power-hunger among legislators. Therefore, they need to be prevented and punished.

The Anti-defection Law made by the Constitution (Fifty-Second Amendment) Act, 1985 aims to do that. It amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and State legislatures respectively and inserted a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions regarding disqualification from membership of Parliament and the State Legislatures on the ground of defection, from the political party to which the Member belongs.

Anti-Defection Law details the grounds of defection and also prescribes disqualification for the defectors for being Members of the House. The grounds of defection are as under:

- If a member of the House belonging to a political party voluntarily gives up his/her membership of that political party.
- If he/she abstains from the voting or votes contrary to the direction issued by the political party to which he/she belongs in the House.
- If he/she defects from his/her party to any party after elections.
- If the nominated member joins any political party after six months after taking his seat.
- An independent Member who joins a political party after his/her election.
- Member who acts in defiance of party direction (Party Whip) and if such defiant action is not condoned by the Chief Whip within 15 days. The Chief Whip may condone the same and recommend to the Speaker/Chairman that the member should not be disqualified
- Originally, the law protected ` bulk defections' in the nature of split (one-third of legislature party).However, Constitution (Ninety-first Amendment) Act, 2003 made splits illegal too..

Exemptions

Disqualification on ground of defection does not apply in case of merger of political parties. A party may merge with another or the two may form a new party. If 2/3rds of the members of the legislature party decide to merge with another party, neither the 2/3rds nor the remaining 1/3rd lose membership. The 1/3rd exist as a separate group. ("Legislature party" means members of the party in the legislature)

- The provisions of disqualification, under the Tenth Schedule, do not apply to a member who on his election as the Speaker or the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha, or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly voluntarily gives up his membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office.

The Chairman/Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

There is a category of members that has no place in the law. The law does not talk of consequences of expulsion of a member from the party. The ruling of the Speaker is that he should be considered 'unattached' member. He however, can not join a political party.

There is another grey area in the law. It talks of members. One becomes a member only after he is sworn in. The moot point is whether the law applies to him from the time of the declaration of the result till he is sworn in.

With the addition of Tenth Schedule to the Constitution by the Anti-Defection Law, political parties received Constitutional recognition which they did not have earlier. They had no Constitutional identity before. Chief Whip also receives Constitutional recognition.

Over the years, it was observed that these provisions have been circumvented by the legislators to avert disqualification. The provision of split has been grossly misused to engineer multiple divisions in the party, as a result of which the evil of defection has not been checked in the right earnest. Further it is also observed that the lure of office of profit plays dominant part in the political horse-trading resulting in spate of defections and counter defections. Therefore it was outlawed in 2003 as mentioned above.

91st Amendment Act

The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India, in its 170 Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have recommended outlawing split. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a Minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed. In the light of the above, the 93rd Amendment Act was made with the following changes

- Split is not valid
- Article 361A was amended to the following effect: A member disqualified for defection is disallowed to hold any remunerative political post for rest of the life of the House or till he is reelected which ever is earlier.The expression "remunerative political post" means any office that is wholly or partly owned by Government and the salary for such office is paid out of the public revenue
- Size of the Council of Ministers should not be more than 15% of the strength Lower House. Art.75 and 164 have been amended to this effect. However, in case of smaller States like Sikkim,Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of 12 Ministers is proposed.

Kihoto Hollohan

In 1992, the Supreme Court, in its majority judgment in Kihoto Hollohan vs Zachillha and others, upheld the validity of the Tenth Schedule but declared as invalid paragraph 7, which excluded judicial review . The basis for nullification of Para 7 is that the Bill was not ratified by half the state legislatures which was necessary to restrict judicial review under Art.368. Doctrine of severability was applied and rest of the Act was declared valid.

In the same verdict, the apex court ruled that the Speaker/Chairman acted as a 'tribunal' while adjudicating on the issue of disqualification for defection.

The Supreme Court observed that the anti defection law strengthened democracy and the representative functions. It did not stifle the freedom of the legislators. However, the orders of the Chief Whip that are binding on the legislator pertain only to the following

- Confidence or no-confidence motion and
- On a policy matter that is a core of the party manifesto.

The limitation is necessary for balancing the conscience of the legislator with the need to be true to the electorate.

The Kihoto verdict resulted when the anti defection was challenged as invalid for restricting the freedom of the legislators by making the directions of the Chief Whip of the party binding

Karnataka HC upholds MLAs disqualification

The Karnataka High Court upheld the Legislative Assembly Speaker's order disqualifying five independent MLAs.The five independent MLAs were ministers in the Karnataka government before they submitted their memorandum along with 11 other BJP MLAs to the Governor expressing lack of confidence in the chief ministership of BS Yeddyurappa.11 BJP MLAs and 5 independents were disqualified on eve of a trust vote in October 2010.

The High Courts said that when an independent member of a legislative assembly becomes a part of the ministry in a government dominated by a single party, he loses his independent character and becomes liable to disqualification on the ground of defection.

Five independent members of the Karnataka Legislative Assembly who had declared their support to the BJP government, and were inducted into the Council of Ministers, were disqualified by the Speaker of the Assembly under Paragraph 2(2) of the Tenth Schedule to the constitution.

The question was whether the five petitioners in this case had "joined" the BJP. If they did, they would be liable to be disqualified. The court held that they had joined , for the following reasons:

(1) Becoming Ministers:
(2) Attending Party Meetings Otherwise than as Independent Members:
(3) Receiving the Whip sent by the Chief Whip of a Party:
(4) Participating in Rallies:

The High court held that voters can file complaints against defection despite Rule 6(2) of the Rules, since: "The voters of [a] constituency should not be placed in a helpless situation if none of the members of the House complains about the illegal defection. Therefore, every voter of the

constituency should have an opportunity to oppose the illegal defection by bringing it to the notice of the Speaker. "

Supreme Court interim verdict

Independent MLAs joining the Cabinet does not mean that they have merged with the ruling party and thus cannot be held guilty under the anti-defection law if they subsequently withdraw support to the Government, the Supreme Court has ruled.

The apex court passed the significant interim ruling while dealing with the appeal filed by five Independent legislators challenging their disqualification by the Karnataka Speaker for withdrawing support to the B.S. Yeddyuruppa government.

The apex court had quashed their disqualification on the ground that they were not given sufficient opportunity by the Speaker to present their case before the action was taken against them.

The apex court rejected the Speaker's contention that by joining the Cabinet the Independent MLAs have sacrificed their individual identities.

Prajarajyam Party merger 2012

The party of film actor Chiranjeevi merged with the Congress in 2012.

Odisha 2012

NCP(Nationalist Congress Party) Legislature Party comprising four MLAs merged with the ruling BJD in 2012.

Andhra Pradesh 2013

Fifteen rebel MLAs belonging to Andhra Pradesh's ruling Congress and main opposition Telugu Desam Party were disqualified in June 2013 for voting in favour of a no-confidence motion moved by TRS against the Kiran Kumar Reddy government in March 2013.

These MLAs had defied party whips. The legislators were disqualified by state Assembly Speaker under Rule 2 (1) (b) of the Tenth Schedule for voting on the against the party whip on the no-trust motion on March 15.

This is the second instance during the current assembly when a group of MLAs was disqualified en masse. In March , 2012, Speaker had disqualified 16 rebel MLAs belonging to Congress for voting against the Reddy government on a TDP-sponsored no-confidence motion.

PARLIAMENT OF INDIA

Indian democracy based on the Westminster model (British model of democracy is referred as the Westminster model).Where the importance of Parliament in the political system is central. Preamble to the Indian Constitution begins with "We, the people .." which confers sovereignty on the Parliament as 'people' in an indirect democracy means the representative body.

Art.79. says that there shall be Parliament for the Union which shall consist of the President and two Houses to be known as the Rajya Sabha or the federal chamber or Council of States or Upper House and the Lok Sabha or the popular chamber or Lower House or House of the People. Even though the President of India is not a member of the parliament, he is a part of the Parliament for the following reasons.

- In a parliamentary system, the Executive is a part of the Legislature unlike the Presidential form of democracy where there is a strict separation between the two institutions.
- Bills passed by the Parliament need Presidential assent before they become laws.
- President performs certain other legislative duties like summoning and proroguing the Parliament; recommending the introduction of certain Bills in the Parliament etc.,.

In Constitutional Law, President -in- Parliament, is a term used to refer to the President in his legislative role, acting with the advice and consent of the two Houses of the Parliament. It is similar to Crown-in-Parliament which means the Crown acting with the advice and consent of the British Parliament.

Role of the President of India vis a vis Parliament

The President is the constitutional head of Republic of India. He is elected by an electoral college that includes elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the states. The President performs the following constitutional functions vis a vis Parliament.

- He invites the leader of the majority party to form the Government after a new Lok Sabha is duly elected.
- He summons the House of Parliament to meet from time to time.
- He has the power to prorogue a session of either of the two Houses and dissolve the Lok Sabha.
- The President has to assent to a Bill before it can be a law.
- If the either or two Houses are not in session, the President can promulgate Ordinances having the same validity as a law passed in Parliament.
- The President has the right to address either or both Houses of Parliament.
- The President has the power to call both Houses for a joint sitting/session in case a dispute arises over passing a Bill.
- He nominates 12 members of the Rajya Sabha and has the right to nominate upto two members from the Anglo Indian community to the Lok Sabha if they are under – represented, in his opinion.

Thus, President is a constituent part of the Parliament.

Rajya Sabha

It is the federal house representing the states.

Maximum strength (sanctioned strength) of Rajya Sabha is two hundred and fifty (250), of which 238 are to be elected and 12 are nominated by the President of India. The actual strength of Rajya Sabha is two hundred and forty five (245), of which 233 are elected and 12 are nominated by the President. The actual strength also known as total membership. All state and the two Union Territories of Delhi and Puducheri (UTs with Assembly) are represented in the Rajya Sabha. The allocation of the seats in Rajya Sabha is contained in the Fourth Schedule to the constitution.

Article 80 provides that the Rajya Sabha shall consist of:

- Twelve members nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service: and
- Not more than two hundred and thirty – eight representatives of the states and of the Union Territories.

The elected members of the (233 Members) Rajya Sabha are elected by the elected members of the Assemblies of States and two Union Territories of Delhi and Puducheri in accordance with the system of proportional representation by means of the single transferable vote. Of the UT's, only NCT of Delhi and Puducheri are represented in Rajya Sabha. No other UT has an assembly and so has no representation in the Rajya Sabha.

While the nominated members of Rajya Sabha have right to vote in the election of the Vice-President of India, they are not entitled to vote in the election of the President of India.Conventionally, nominated members do not become ministers.

The Council of States was set up under the Constitution in 1952. Dr.Radhakrishnan was the first Chairman of Rajya Sabha. He was the longest serving Chairman (1952 – 62). Currently (2013) there are 26 women members in Rajya Sabha.

The allocation of sets to be filled by the representatives of the State/ Union Territories as laid down in the Fourth Schedule to the Constitution is as follows:

1	Andhra Pradesh	18
2	Arunachal Pradesh	1
3	Assam	7
4	Bihar	16
5	Chhattisgarh	5
6	Goa	1
7	Gujarat	11
8	Haryana	5
9	Himachal Pradesh	3

10	Jammu and Kashmir	4
11	Jharkhand	6
12	Karnataka	12
13	Kerala	9
14	Madhya Pradesh	11
15	Maharashtra	19
16	Manipur	1
17	Meghalaya	1
18	Mizoram	1
19	Nagaland	1
20	Orissa	10
21	Punjab	7
22	Rajasthan	10
23	Sikkim	1
24	Tamil Nadu	18
25	Tripura	1
26	Uttaranchal	3
27	Uttar Pradesh	31
28	West Bengal	16
29	The National Capital Territory of Delhi	3
30	Puducheri	1
	Total	233

Eligibility

A candidate for election in Rajya Sabha

- Should be a citizen of India
- Above 30 years of age and
- Possessing such other qualifications as may be prescribed by law of Parliament.

Rajya Sabha is not subject to dissolution; one – third of its members retire every two years. Thus, it is a permanent body. Normally a member is elected for six years; but a member elected against a mid-term vacancy (casual vacancy), serves only for the remaining period.

Rajya Sabha when it was constituted in 1952 had 216 members – 12 nominated by the President and the remaining 204 elected to represent states. President, after consultation with the Election Commission made an order in 1952 for curtailing the term of office of some of the members so that as nearly as one – third of the members retire after every two years. Election Commission by drawing of lots decided who should retire and when. That is how the initial order was established.

Rajya Sabha Reforms

In 2003, Parliament made an amendment to the Representation of People's Act, 1951 to make two crucial changes

- To do away with the domicile/ residency condition
- To replace secret ballot with open ballot.

Section 3 of Representation of the People Act said that a candidate seeking election to Rajya Sabha should be "ordinarily resident" in the State that he wants to represent. By amending this Section of RPA, the Government opens the contest for a resident "anywhere in the Country"

Government explained that the purpose of the first change was to remove the anomaly in the eligibility criteria for both the Houses of Parliament – a candidate for Lok Sabha can contest from anywhere in the country but it is not so for Rajya Sabha.

The residency rule for Rajya Sabha became controversial when the Election Commission questioned the genuineness of the domiciliary credentials of some members of Rajya Sabha. In a large number of cases, representatives from various states in Rajya Sabha were those who traditionally were not resident in that state, but for the purpose of election to the Rajya Sabha, got enrolled as voters in that particular state by acquiring property otherwise. The residency clause was flouted frequently by many.

Regarding adoption of open ballot, the reason is , in the context of the growing money power in Rajya Sabha elections, secrecy was thought to conceal corruption and so open ballot was introduced.

The amendments were challenged in the Supreme Court on the ground that 'basic structure' of the constitution is violated as federalism is a basic feature. It is argued that only those belonging to a State can represent it well.

In 2006, a five – judge Constitution bench of the apex court in the Kuldip Nayyar Vs Union of India (2006) case gave the following verdict

- Residence is not a constitutional requirement but a matter of qualification prescribed by Parliament in exercise of its power under Article 84 and so the question of violation of basic structure does not arise.
- As long as the State has a right to be represented in the council of states by its chosen representative, who is a citizen of the country, it cannot be said that federalism is affected.
- Constitution does not provide that voting for an election to the council of states shall be by secret ballot. The manner of voting in the election to the Council of States can be regulated by the statute.

The court said that since the amendments have been brought into avoid cross voting, to wipe out the evil of corruption and to maintain the integrity of the democratic set-up, they can be justified by the State as a reasonable restriction under Article -19(2) of the Constitution on the assumption

that voting in such an election amounts to freedom of expression under Article 19 (1)-A.Chairman

The Vice – President is the ex officio Chairman of Rajya Sabha (Art.64). In fact, the Vice President draws his salary as the Chairman of the Rajya Sabha which in his ex – officio role that is, by virtue of being the Vice President of India, he functions as the Chairman of Rajya Sabha. The Vice – President is elected by the members of an electoral college consisting of all the members of both Houses of Parliament, both elected and nominated – in accordance with the system of proportional representation by means of the single transferable vote. The Vice – President holds office for a term of five years from the date on which he enters upon his office.

As the Presiding officer, the Chairman of the Rajya Sabha is the guardian of the prestige and dignity of the House. He safeguards the privileges and immunities of the members individually and the House collectively. He issues warrants to execute the orders of the House, where necessary. For example, to punish anyone who commits contempt of House.

Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes (Art.100.1).However, during proceedings for his removal, he does not preside at that sitting. He cannot also vote on such resolution.

The Constitution also lays down certain powers and duties of the Chairman

- He is empowered to adjourn the House or to suspend its sitting in the event of absence of the quorum.
- In case of resignation of a member from the House, the Chairman is required not to accept the resignation; if he is satisfied that such resignation is not voluntary or genuine.
- Under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha on ground of defection. He also makes rules for giving effect to the provisions of that Schedule.
- Enforce respect for privileges and
- The Chairman may permit a member who is unable to express himself in Hindi or English, to address the House in his mother tongue.

Various powers are conferred on the Chairman under Rules of Procedure of the Rajya Sabha in connection with admissibility of motions etc. The Chairman's consent is required to raise a question of breach of privilege in the House.

Parliament Committees where members are drawn from Rajya Sabha, whether set up by the Chairman or by the House, work under his guidance. He appoints Chairman and nominates members to 8 Departmentally related Standing Committees and they are under his administrative control. He himself is the Chairman of the Business Advisory Committee, Rules Committee and the General Purposes Committee.

The Chairman's rulings cannot be questioned or criticised and to protest against the ruling of the Chairman is a contempt of the House and the Chairman.

The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer. However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations.

Maintenance of order in the House is a fundamental duty of the Chairman and he has disciplinary powers like suspension of member and may also adjourn the sitting of the House in case of grave disorder.

Some statutes also confer duties on the Chairman

- Rules made under the Salary, Allowances and Pension of Members of Parliament Act, 1954, do not take effect until they are approved and confirmed by the Chairman and the Speaker.
- Under the judges (inquiry) Act, 1968, the Chairman has to constitute a Committee, upon receipt a motion for the removal of a judge of the Supreme Court or of a High Court, for investigation into the grounds on which the removal of a judge is prayed for.

The Rajya Sabha Secretariat functions under the control and direction of the Chairman.

Deputy Chairman

The Deputy Chairman is elected by the members of Rajya Sabha from among themselves. While the office of Chairman is vacant, or during any period when the Vice - President is acting as, or discharging the functions of the President, the duties of the office of the Chairman are performed by the Deputy Chairman, He /She has the same powers as the Chairman when presiding over a sitting of the House.

The Deputy Chairman can speak in the House, take part in its deliberations and vote as a member on any question before the House, but He / She can do so only when the Chairman is presiding. When the Deputy Chairman himself / herself is presiding, he /she cannot vote except in the event of equality of votes – casting vote to break the tie.

The Deputy Chairman holds office from the date of his / her election and vacates the office if he /she ceases to be a member of the House. He /She may resign his /her addressing the letter to the Chairman. The Deputy Chairman may also be removed from his/ her office by a resolution of the House passed by a majority of all the members of the House. Fourteen day's notice is required of the intention to move such a resolution.

The salary of the Deputy Chairman is charged on the Consolidated Fund of India and is not subjected to the vote of the Houses.

Chairman pro tem

When the offices of the both Chairman and the Deputy Chairman are vacant, the duties of the office of the Chairman are performed by such member of the Rajya Sabha as the President may appoint for the purpose (Art.91). The member so appointed is known as the Chairman pro tem. For the first time in the Rajya Sabha when the Vice – President (Shri B.D.Jatti) was acting as the

President and the post of Deputy Chairman held by Shri Godey Murahari having fallen vacant in 1977 as the latter was elected to the Lok Sabha, the Vice – President acting as President appointed Shri Bansari Das, a member of Rajya Sabha, as Chairman pro tem until the Deputy Chairman was chosen. The election of the Deputy Chairman took place soon after and the pro tem Chairman vacated the office.

Leader of the opposition is the Leader in the Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and recognised as such by the chairman of the Rajya Sabha.

Panel of Vice – Chairmen

The Chairman, from time to time nominates from amongst the members of the House, a panel of not more than six Vice – Chairmen. In the absence of the Chairman and the Deputy Chairman, one of them presides over the House.

The Vice – Chairman, when presiding over a sitting of the House, has the same powers as the Chairman when so presiding. He is; however, free to participate fully in all discussions in the House. A Vice – Chairman while presiding cannot vote in the first instance, and has to exercise a casting vote in the case of an equality of votes.

Non – panel member presiding

When neither the Chairman nor the Deputy Chairman nor a Vice – Chairman is present to preside, such other member as may be determined by the House acts as the Chairman. The practice is that the outgoing presiding officer requests a member to take the Chair with the approval of the House.

Leader of the House

The leader of the House is an important parliamentary functionary who assists the Presiding Officer in the conduct of the business. Leader of Rajya Sabha is the Prime Minister, if he is a member of the House, or a Minister who is the member of the House and nominated by the Prime Minister to function as the Leader of the House.

The Prime Minister, Manmohan Singh, who is a Rajya Sabha member, is the leader of Rajya Sabha, while Arun Jaitley former Union Minister, is the leader of Opposition.

Each House of the Parliament of India has a Leader of the Opposition. It got statutory recognition through the *Salary and Allowances of Leaders of Opposition in Parliament Act, 1977* which defines the term 'Leader of the Opposition' as that member of the Lok Sabha or the Rajya Sabha who, for the time being, is the Leader of that House of the Party in Opposition to the Government having the greatest numerical strength and recognized, as such, by the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha.The post carries status of cabinet minister

Casting Vote

Casting vote is the vote cast to break tie – when there is equality of votes. Under the constitution, the Chairman exercises only a casting vote in the case of equality of votes. However, if any sitting of the House a resolution for the removal of the Chairman from his office is under

consideration, he is not to preside at that sitting. He cannot also vote at all on such resolution or on any other matter during such proceedings. While the former (casting vote being given) helps in the conduct of business and legislation, the latter (casting vote being denied) is because the Chairman is not a member of the House.

Utility of Rajya Sabha

- It represents states and thus has federal purpose
- It is the permanent House and so has benefits for the country like it can ratify proclamation of Emergency when the Lok Sabha is not in session or dissolved. It means the proclamation can continue.
- At the same time, it can ensure that emergency provisions are not misused . Unless Rajya Sabha ratifies the proclamation of emergency and President's rule independently , it does not come into force. Thus, the interests of States can be protected.
- Constitution cannot be amended unless Rajya Sabha, sitting independently of the Lok Sabha passes the Bill. That is, there is no joint session in case of deadlock. Thus, the national and states" interests are protected.
- It has 12 nominated members who add to the quality of parliamentary proceedings and policy making.
- It enables law making to become more sober when the representatives of the people are carried away by emotional issues, an advantage all second chambers in a bicameral legislatures have.

Thus, Rajya Sabha has enormous utility in the parliamentary democracy of ours.

Non – federal features of Rajya Sabha

The non – federal features of the Rajya Sabha are

- All states do not have same number of representative's n the Rajya Sabha like in the US Senate.
- Rajya Sabha has no special powers with regard to certain of states (Art.3) and thus cannot defend the principal 'indestructibility' of the state concerned.
- Art.249 is also unfederal as the big 10 states can over run the rest while passing the resolution thus denying equality to states.

Vote in the House

In Rajya Sabha, as in Lok Sabha generally four methods of voting are adopted

- Voice vote
- Counting
- Division by going into Lobbies.
- Division by automatic vote recorder.

Voice vote

On the conclusion of a debate, the Chairman puts the question before the House and invites those who are in favour of the motion to say "Aye" and those against the motion to say "No". Then the Chairman says: "I think the Ayes or the Noes, (as the case may be) have it".

Count

If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are far "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declared the determination of the House. In this case, also, the names of the voters are not recorded.

Division

A division is one of the forms in which the decision of the House is ascertained. As mentioned above, normally, when a motion is put to the House members for and against it indicate their opinion by saying "Aye" or "No" from their seats. The Chair goes by the voices and declares that the motion is either accepted or negatived by the House. If member challenges the decision, the Chair orders that the lobbies be cleared- all non-members are told to leave the House. Then the division bell is rung. After the bell stops, all the doors to the Chamber are closed and nobody can enter or leave the Chamber till the division is over. Then the Chair puts the question for second time and declares whether in its opinion the "Ayes" or the "Noes", have it.

When a division is about to be taken, only members of the House have the right to be present. In other words, the lobby has to be cleared for a division.

If the opinion so declared is against challenged, the Chair asks the votes to be recorded by operating the Automatic Vote Recording Equipment.

The following is special to Rajya Sabha

Special Mention

Under the rules of Procedures and Conduct of Business in the Council of States, members are allowed to make special Mentions in Rajya Sabha. If a Minister so desires, he may make a statement on the subject with the permission of the Presiding Officer. The main advantage of this device is to bring to the notice of the House and the Government the matters and happenings of urgent public importance which take place in or outside the country.

Motion of Papers

There is no provision for adjournment in Raya Sabha as the Council of Ministers is responsible only to the Lok Sabha (Art.75.3). But there is a "Motion for Paper", like in the House of Lords in Britain. Adjournment motion sets aside the announced business of the House in preference for discussion on a matter of urgent public importance which in the end is voted upon.

Under a "Motion for Papers", the Council could discuss any matter of real public importance and the right of the reply is given to the member moving the motion.

LOKSABHA

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of universal adult suffrage. The maximum strength of the House envisaged by the Constitution is 552: 530 members to represent the States, 20 members to represent the Union Territories and not more than two members of the Anglo – Indian community to be nominated by President, if, in his opinion, the community is not adequately represented in the House. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

The actual strength of the Lok Sabha at present is 545 members including the Speaker and two nominated members – referred to as the total membership.

Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting. However, while a Proclamation of Emergency is in operation, this period may be extended by Parliament for a period not exceeding one year at a time and not extending beyond a period of six months after the proclamation has ceased to operate.

The Constitution of India came into force on January 26, 1950. The first general elections under the new Constitution were held during the year 1951 – 1952 and the first elected Parliament came into being in April, 1952, the Second Lok Sabha in April, 1957, the third Lok Sabha in April, 1962, the Fourth Lok Sabha in March, 1967, the fifth Lok Sabha in March, 1971, the sixth Lok Sabha in March, 1977, the Seventh Lok Sabha in January, 1980, the Eight Lok Sabha in December, 1984, the Ninth Lok Sabha in December, 1989, the Tenth Lok Sabha in, June, 1991, the Eleventh Lok Sabha in May, 1996, the Twelfth Lok Sabha in March, 1998, the Thirteenth Lok Sabha in late 1999, 14th Lok Sabha election were held in 2004, 15th LS in 2009 and the 16th LS elections are due by 2014 March.

Presiding Officer

Lok Sabha elects one of its members as its Presiding Officer and he is called the Speaker. He is assisted by the Deputy Speaker who is also elected by Lok Sabha. The conduct of Business in Lok Sabha is the responsibility of the Speaker.

The Speaker

In the Lok Sabha, both Presiding Officers – the Speaker and the Deputy Speaker are elected from among its members by a simple majority of members present and voting in the House. No specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that he should be a member of the House. One of the first acts of a newly constituted House is to elect the Speaker. Usually, a member belonging to the ruling party is elected the Speaker. But in times of coalition governments, as in India since 1996, a member of a party other than the ruling coalition can be elected the Speaker. For example, Somnath Chatterjee CPI (M), who belongs to a party that only, gives 'outside' support to the coalition.

The Speaker pro tem (sworn in by the President to swear in the newly elected members of House) presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha the Deputy Speaker presides.

Term of Office

The Speaker holds office from the date of his election till immediately before the first meeting of the Lok Sabha which is newly constituted after the dissolution of the one to which he was elected. He is eligible for re – election. On the dissolution of the Lok Sabha, although the Speaker ceases to be a member of the House, he does not vacate his office. The Speaker may, at any time, resign from office by writing under his hand to the Deputy Speaker. The Speaker can

be removed from office only on a resolution of the House passed by a majority of all the then members of the House. It is mandatory to give a minimum of 14 day's notice of the intention to move the resolution.

At the commencement of the House or from time to time, the Speaker shall nominate from amongst the members a panel of not more than ten Chairmen, anyone of whom may preside over the House in the absence of the Speaker and the Deputy Speaker.

The Speaker has extensive functions to perform in matters administrative, judicial and regulatory. His decisions are final and binding.

Under the Constitution, the Speaker enjoys a special position,

- He certifies Money Bill and it is final (Art.110)
- Presides over joint sittings which are summoned to resolve a disagreement between the two Houses
- Decides on granting recognition to the Leader of the Opposition in the Lok Sabha
- Following the 52nd Constitution amendment 1985, the Speaker is vested with the power relating to the disqualification of a member of the Lok Sabha on grounds of defection.

Though he himself a member of the House, the Speaker does not vote in the House except on those rare occasions when there is a tie – equality of votes. Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote. When proceedings are taking place for his removal, he does have a vote except when there is a tie.

Speaker and Committees

The Committees, constituted by him or by the House, function under the overall direction of the Speaker. The Chairman of most Parliamentary Committees are nominated by him. Committees like the Business Advisory Committee, the General Purpose Committee and the Rules Committee work directly under his Chairmanship.

He is the ex officio President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter – Parliamentary Union (IPU) and the main branch of the commonwealth Parliamentary Association (CPA).

It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He symbolises the dignity and power of the House. His unique position is illustrated by the fact that he is placed very high in the warrant of Precedence in our Country, standing next only to the President, the Vice – President and the Prime Minister. Speaker's salary and allowances are charged on the Consolidated Fund of India.

Pro tem Speaker

Speaker pro Tempore or temporary Speaker, the senior most member of the Lok Sabha is appointed and sworn in as the Pro tem Speaker by the President so that the newly elected members are administered oath by him. They in turn elect the Speaker. Pro tem Speaker continues till the new Speaker is elected. The Constitution does not specify any functions for the Pro tem Speaker.

Somnath Chatterjee who was the senior most MP of the 14th Lok Sabha was administered oath as pro tem Speaker by President APJ Abdul Kalam in June 2004, enabling him to preside over the proceedings of the first two days of the House when new members took oath. He was later elected Speaker of the House when he ceased to be the pro tem Speaker.
Manikrao Hodlya Gavit representing the Nandurbar constituency in Maharashtra was elected for the consecutive 9th time and was appointed as Protem Speaker of 15th Lok Sabha by President Pratibha Patil in 2009.

Procedures in House

The Rules of Procedures and Conduct of Business in Lok Sabha and Directions issued by the Speaker from time to time regulate the procedure in Lok Sabha. For various items of business to be taken up in the House the time is allotted on the recommendations of the Business Advisory Committee.

Time of Sitting

When in session, Lok Sabha holds its sittings usually from 11 A.M. to 1.P.M and from 2 P.M. to 6 P.M.

Question Hour

Generally, the first hour of a sitting of Lok Sabha is devoted to Questions and that hour is called the Question Hour. It has a special significance in the proceedings of Parliament.
Asking of questions is an inherent and unfettered parliamentary right of members. It is during the Question Hour that the members can ask questions on every aspect of administration and Governmental activity. Government policies in national as well as international spheres come into sharp focus as the members try to elicit pertinent information during the Question Hour.
The Government is, as it were, put on its trial during the Question Hour and every Minister whose turn it is to answer questions has to stand up and answer for his or his administration's acts of omission and commission. Through the Question Hour the Government is able to quickly feel the pulse of the nation and adapt its policies and actions accordingly. It is through questions in Parliament that the Government remains in touch with the people in as much as members are enabled thereby to ventilate the grievances of the public in matters concerning the administration. Questions enable Ministries to gauge the popular reaction to their policy and administration. Questions bring to the notice of the Ministers many an abuse which otherwise would have gone unnoticed. Sometimes questions may lead to the appointment of a commission, a court of enquiry or even legislation when matters raised are grave enough to agitate the public mind and are of wide public importance.(More ahead)
Zero Hour

Zero hour has no basis in the Parliament rules. It developed by convention to enable members to raise matters of public importance on the floor of the House. Zero hour immediately follows question hour. It begins at 12 'o' clock after Question Hour which is from 11.00 AM to 12 noon.

Though called although euphemistically called Zero Hour, it may last for more or less than an hour.

Zero hour is observed in both the House s of the Parliament.

Motions and Resolutions

'Motion': Process of passage and Different types of Motions.

A motion is a proposal for eliciting decision or expressing the opinion of the House on a matter of public importance. Every question to be decided by the House must be proposed as 'Motion'. The consent of the Presiding Officer is essential to initiate a motion. A motion is so called as it sets the House in motion the business of the House essentially takes place on the basis of motions.

Government motions involve seeking approval of the House for a policy of the government. Private members motions focus on eliciting of the House on a particular matter.

Motions fall into three principal categories:

- Substantive Motions
- Substitute Motions
- Subsidiary Motions.

A substantive motion is a self – contained independent proposal. It is drafted in such a way as to be capable of expressing the decision of the House. Some examples of a substantive motion are: the motion of thanks on the President's Address, motion of no – confidence, motion of elections, motion for impeachment of persons in high authority.

A substitute motion is moved in the place of the original motion. It proposes an alternative to the original motion.

Resolutions

A Resolution is a procedural means to initiate a discussion on any matter of general public interest. A Resolution is actually a Substantive Motion.

Resolution may be classified as private members resolutions, Government resolutions and statutory resolutions (provision in the Constitution or an Act of Parliament). Government resolutions are initiated by ministers. Statutory resolutions may be moved either by a minister or by a private member. For example , Information Technology Act Rules 2011 were sought to be amended by Rajya Sabha but the move failed. Similarly, the statutory resolution related to FDI in multi brand retail.

Difference between a motion and a resolution

All Resolutions fall in the category of Substantive Motions, mostly. But all motions are, as seen above, not substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon, for example, the resolution to impeach the President of India. All substantive motions need not be voted upon.

Relative position of the two Houses

The Constitution envisages that both Lok Sabha and Rajya Sabha have equal status and position. The two Houses at the same time enjoy special powers as given below.

The Lok Sabha has the following special or exclusive powers

- Union Council of Ministers is collectively responsible to Lok Sabha (Art.75.3)
- Budget is presented in Lok Sabha (Art.112)
- Demands for grants can be introduced only in the Lok Sabha
- Money Bill (Art.110) or a Financial Bill (Art.117.1) can be introduced only in the Lok Sabha.
- Speaker's decision about whether a Bill is a Money Bill or not is final
- Prime Minister generally comes from the Lok Sabha
- Estimates Committee has its entire 30 members drawn from the Lok Sabha.
- Lok Sabha has 545 members which is substantially more than that of Rajya Sabha. Its numerical superiority helps in the joint session of the Parliament which is presided over by the Speaker.
- A joint session is presided over by the Speaker and in his absence the Deputy Speaker of Lok Sabha
- Lok Sabha has the power of moving a resolution for the discontinuation of national emergency as provided by the 44th Amendment Act (Art.352)

The Rajya Sabha has special or exclusive powers which are contained in Articles 249, 312, 352, 356 and 360.

- Under Article 249, the Rajya Sabha can enable the Parliament, by passing a resolution supported by two – thirds of the members present and voting, that Parliament should make Laws with respect to any matter enumerated in the State List specified in the resolution, in national interest.
- Resolutions can be passed by the Rajya Sabha by a majority of 2/3 rds of the members present and voting, under article 312, for the creation of one or more All – India services by the Parliament, if it is deemed to serve the national interest. The services such as the Indian Administrative Services, Indian Police Service, Indian Forest Service and All – India Judicial Service are All Indian Services.
- Under articles 352, 356 and 360, the Rajya Sabha can approve the Proclamations of emergency – national, state and financial respectively – initially or extended them subsequently while Lok Sabha is not in session or under dissolution.

Except the above, there is equality between the two Houses:

- The Constitution requires the laying of a number of papers on the Table in both the Houses, notably amongst them are the Budget, supplementary demands for grants, Ordinances and Proclamations issued by the President, reports of Constitutional and statutory functionaries such as the Comptroller a Auditor – General, the Finance

Commission, the Commissioners for the Scheduled Castes and Schedule Tribes, the Backward Class Commission, the Commissioner for Linguistic Minorities and the Union Finance Commission.

- Both Houses also participate in matter of elections of the President and the Vice – President
- Both participate in impeachment of the President, a Judge of the Supreme Court or of a High Court and CAG.

Differences between Lok Sabha and Rajya Sabha

The following are the differences

- Members of Lok Sabha are directly elected on the basis of universal adult franchise. Members of Rajya Sabha are elected by the elected members of Sate Assemblies in accordance with the system of proportional representation by means of the single transferable vote.
- The normal life of every Lok Sabha is 5 years while Rajya Sabha is a permanent body and the member has a term of 6 years
- Rajya Sabha has a nominated component – 12 members of intelligentia which Lok Sabha does not have. LS has nominated anglo-indians if they are not sufficiently represented in the opinion of the President.

Vacation of seats

If a member of one House becomes a member of the other House, his seat in the first House becomes vacant from the date on which he is elected to the other House. If he is elected a member of the State Legislature, he ceases to remain a Member of Parliament, unless he resigns his membership from the State Legislature within a period of 14 days from the date of publication of the result in the State Gazette. If a person is chosen a member of the both the Houses but has not taken his seat in either of them, then he has to intimate in writing to the Election Commission, within 10 days of the publication of the result as to in which House he wishes to serve and there upon his seat in the other House becomes vacant. If he fails to give such intimation, his seat in the Rajya Sabha become vacant after the expiration of that period. If a person is elected to more than one seat in the House, then all the seats becomes vacant, unless he resigns within 14 days all but one of the seats.

If a member does not attend the House for 60 days consecutively without the permission of the Presiding Officer, his seat may be declared as vacant. Following reasons also can cause Vacancy

- He holds any office of profit
- Declared to be of unsound mind or un discharged insolvent
- Voluntarily acquires citizenship of another country
- His election is declared invalid by the court
- He is expelled by the House
- He becomes President, Vice – President etc.,
- Disqualified for defection by the Presiding Officer

Anti-defection law : 52nd Amendment act 10th schedule
A member who belongs to a party if he voluntarily gives his membership he is disqualified unless if the party is split (endorsed later). It was changed in 91st Amendment act.

Sessions of Parliament

The Rajya Sabha is not subject to dissolution unlike the Lok Sabha which, unless sooner dissolved, continues for five years from the date appointed for its first meeting.

The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting the next session.

The President may from time to time prorogue the Parliament or either House – prorogation means the termination of a session and normally follows the adjournment sine die of the House by the Presiding Officer.

A session is the period of time between the meeting of a Parliament and its prorogation. During the course of session, either House may be adjourned for a few hours, days or weeks by the Presiding Officer for any reason. The period between the prorogation of the Parliament and its reassembly in a new sessions in a year, namely Budget session in the months of February – March, April and May; Monsoon session in the months of July – August and winter session in the months of November – December.

Since 1994, the Budget session runs like this: after the general discussion on the Budget in the House is over and vote on account is passes (Art.116) by the third week of March, the Houses are to be adjourned for a fixed period (about a month) and the committees have no consider the Demands of Grants of the assigned Ministries during one month period.

Prorogation and its effects

"Prorogation means the end of a session". "A prorogation terminates a session; an adjournment is an interruption in the course of session". Usually prorogation follows the adjournment of the House sine die. The time – lag between the adjournment of the House sine die and its prorogation varies between 2 and 10 days. It is not necessary that both Houses should be prorogued simultaneously. Prorogation is done by the President.

The prorogation affects different categories of business pending before the House as follows:

Bills:

Article 107(3) of the Constitution expressly provides that a Bill pending in Parliament shall not lapse by reason of the prorogation of the House. This saving also covers Bills pending before a Select or Joint Committee of the House(s). Notices of intention to move for leave to introduce Bills also do not lapse on prorogation and no fresh notice is necessary in the next session for that purpose.

Motions and Resolutions:

On the prorogation, all pending notices except those relating to introduction of Bills as mentioned above, lapse and fresh notices must be given for the next session. This covers notices of motions, calling attention, resolutions, amendments etc,.

Effects of dissolution of Lok Sabha

All the business pending before Lok Sabha lapses on its dissolution. However, the dissolution of LS also affects the business pending before the Rajya Sabha to a certain extent, as indicated below:

- Bills pending in the Rajya Sabha which has not been passed by the Lok Sabha shall no lapse
- Bill which is pending in the Lok Sabha lapses
- Bill passed by the Lok Sabha and is pending in the Rajya Sabha lapses

- Under Article 108 (5), a joint sitting of both Houses to resolve a deadlock on a Bill will be held notwithstanding the fact that a dissolution of the Lok Sabha has intervened since the President has notified his intention to summon the Houses to meet in a Joint Sitting.
- Bills originating in the Rajya Sabha which are still pending in that House do not lapse.
- Bills originating in the Rajya Sabha which having been passed by the House and transmitted to the Lok Sabha and pending there lapse
- Bills originating in Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending there on the date of its dissolution, lapse.
- A Bill passed by two Houses of Parliament and sent to the President for assent does not lapse.
- A Bill returned by the President to the Rajya Sabha for reconsideration of the Houses does not lapse if the dissolution of the Lok Sabha takes place without the Houses having reconsidered the Bill. The Indian Post Office (Amendment) Bill, 1986, as passed by the Houses of the Parliament was submitted to the President for his assent. The Bill remained pending before him till the dissolution of the Eight Lok Sabha in 1989. The President returned the Bill to the Rajya Sabha later for reconsideration of the Houses and its survived Lok Sabha dissolutions till it was withdrawn in 2002.
- On the dissolution of the Lok Sabha, Joint Committees become defunct except the Statutory Joint Committees. Members of the Rajya Sabha elected to serve on the committee on Official Language which consist of members of both Houses continue to remain on that Committee notwithstanding the dissolution of the Lok Sabha. Only the members of the Lok Sabha on that Committee cease to be members of the Committee on the dissolution of that House. The reason for this position is that the Official Language Committee derives its authority from an Act of Parliament and the term of the members on that Committee is co – terminus with their term as members of the House.

Parliament Control over Finance

Ours is a Parliamentary System of Government based on Westminster model. The Constitution represents the principle 'no taxation without representation'.

Principles of the system of Parliamentary control over finance

- Legislative prerogative over taxation
- Legislative control over expenditure and
- Executive initiative in financial matters

There are specific provisions in the Constitution of India containing these principles:

- Article 265 provides that 'no tax shall be levied or collected except by authority of law'
- No expenditure can be incurred except with the authorisation of the Legislature (article 266).
- President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement (article 112).

These provisions of our Constitution make the Government accountable to Parliament.
With the emergence of Welfare State, role of Government expanded to provide social service to citizens like education, health, employment and housing. Government requires adequate financial resources to do so. Given the huge welfare role that the Government takes on and the security functions it has to perform, resources are necessarily scare, the need for budgeting arises to allocate scare resources to various Governmental activities.

The Budget
The 'Annual Financial Statement', laid before both the Houses of Parliament constitutes the Budget of the Union Government. President is responsible for having the Budget presented to the Lok Sabha (Art.112). But, according to Article 77 (3), the Finance Minister has been responsible by the President of India to prepare the Annual Financial Statement and pilot it through the Parliament. This statement takes into account a period of one financial year. The Financial year commences on the 1st April each year. The statement embodies the estimated receipts and expenditure of the Government of India for the financial year.

There is no single Budget for the entire country as the states have their own budgets. Even the budget of Government of India is divided into the Railway and the General Budget.

Railway Budget
The Budget of the Indian Railways is presented separately to Parliament and dealt with separately, although the receipts and expenditure of the Railway from part of the Consolidated Fund of India and the figures relating to them are included in the 'Annual Financial Statement'.

Stages Budget in the Parliament
In the Parliament, the budget goes through five stages

- Presentation of budget with Finance Minister's speech
- General discussion, after which there is adjournment of the Houses so that the Standing Committees can scrutinize the demands for grants for a month
- Voting on demand for grants in Lok Sabha
- Passing of appropriation bills
- Passing of finance bill.

The powers of Parliament in respect of enactment of budget are enshrined in the Constitution under Article 112 to 117. As per these, no demand for a grant or proposal for expenditure can be made except on the recommendation of the President. Parliament cannot increase tax though it can either reduce or abolish it. Charged expenditure is not to be subjected to Parliaments voting. Powers of Rajya Sabha are quite restricted in financial matters.

Along with the Annual Financial Statement, the Finance Minister submits the following 5 documents to the Parliament

- Key to the Budget document (various definitions and the Constitutional provisions)
- Budget at a glance (receipts and expenditure shown with various deficits and break ups)
- Receipt Budget
- Expenditure Budget

- Memorandum explaining the process in the financial bill (impact of tax proposals on government finance)

There is a proposal that the Government take a look at the recommendation of Administrative Reforms Commission of 1967 which suggested changing of the financial year from April 1 to 31st March to October 1 to 30th September. The reason is that the Government can have a more realistic estimate based on the impact of Monsoon. Moreover, the financial year for the business class starts from the time of Diwali.

Presentation

In India, the Budget is presented to Parliament on such date as is fixed by the President. The Budget speech of the Finance Minister is in two parts. Part A deals with general economic conditions of the country while Part B relates to taxation proposals. The General Budget is usually presented on the last working day of February i.e. about a month before the commencement of the financial year except in the year when General Elections to Lok Sabha are held. In an election year, Budget may be presented twice – first to secure vote on account for four months conventionally and later in full. The election year budget is called interim budget. It has the projected receipts and expenditure like any budget but has no new taxes proposed and approved.It is presented only if the elections are held in the first half of the calendar year. Since the incumbent Government does not have the moral authority to present a full budget, it presents interim budget which is nothing but the vote on account with the difference that period for which money is sanctioned by the Parliament in the interim budget is 4 months while normally the vote on account sanctions the amount for 2 months.

The General Budget is presented in Lok Sabha by the Minister of Finance. He makes a speech introducing the Budget and it is in the concluding part of his speech that the taxation proposals are made. The 'Annual Financial Statement' is laid on the Table of Rajya Sabha at the conclusion of the speech of the Finance Minister in Lok Sabha.

The Finance Bill which deals with the taxation proposals made by Government is introduced immediately after the Presentation of Budget. It is accompanied by a memorandum explaining the provisions of the Bill and their effect on the finances of the country.

Vote on Account

The general discussion on the Budget begins a few days after its presentation. Since Parliament will pass the Budget only by mid – May, there is a need to sanction an amount to the Government to maintain itself after the new financial year sets in on 1 of April. A special provision is, therefore, made for "Vote on Account" by which Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year (Art.116). It is generally 2 months worth of expenditure. But during election year, the Vote on Account may be for a period exceeding two months – normally four months.

Discussion

The Budget is discussed in two stages in Lok Sabha. First, there is the General Discussion on the Budget as a whole. This lasts for about 10-15 days. Only the broad outlines of the Budget and the principles and policies underlying it are discussed at this stage.

Consideration of the Demands by Standing Committees of Parliament

After the first stage of General Discussion on both Railway as well as General Budget is over, the House is adjourned, for a fixed period – usually a month. During this period, the Demands for Grants of various Ministries/Departments including Railways are considered by concerned Standing Committees. These Committees submit reports to the House. The Report of the Standing Committees are of persuasive nature. The report shall not suggest anything of the nature of cut motions. There are 24 such committees since 2004.

After the reports of the Standing Committees are presented to the House, the House proceeds to the discussion and Voting on Demands for Grants, Ministry wise. The time for discussion and Voting of Demands for Grants is allocated by the Business advisory committee headed by the Speaker in consultation with the Leader of the House. On the last day of the allotted period, the Speaker puts all the outstanding Demands to the Vote of the House. This device is popularly known as 'guillotine'. Guillotine, in other words, is passing the Demands for grants without discussion. It is done for want of time.

Lok Sabha has the power to assent to or refuse to give assent to any Demand or even to reduce the amount of Grant sought by Government. Introducing and voting on demands is confined only to Lok Sabha. In Rajya Sabha there is only a General Discussion on the Budget. It does not vote on the Demands for Grants.

Expenditure of two types:

- Charged expenditure. It includes the emoluments of the President and the salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha and the Speaker and the Deputy Speaker of Lok Sabha, Judges of Supreme Court, Controller and Auditor General of India and certain other items specified in the Constitution of India. Discussion in Parliament on 'changed' expenditure is permissible but such expenditure is not voted.
- Non – charged expenditure. It is the votable expenditure. Only so much of the amount is subjected to the vote of Lok Sabha as is not a "charged" expenditure on the Consolidated Fund of India. The votable part is the demands for grants.

Cut Motions

Motions for reduction to various Demands for Grants are made in the form of Cut Motions seeking to reduce the sums sought by Government on grounds of

- Economy or
- Difference of opinion on matters of policy or
- To voice a grievance.

Cut Motions are divided into following three categories:

- Disapproval of Policy cut i.e., a motion "that the amount of the demand be reduced to Re.1" representing disapproval of policy underlying the Demand. A member giving notice of such a Cut Motion should indicate in precise terms, the particulars of the policy which he proposes to discuss. It is open to the member to advocate an alternative Policy.

- Economy cut i.e., a motion "that the amount of the Demand be reduced by a specific amount" representing the economy that can be effected. And
- Token cut i.e., a motion "that the amount of the Demand be reduced by Rs.100" in order to express a specific grievance.

It is generally the opposition party member who may seek to move a cut motion. Admissibly of the cut motion is entirely the discretion of the Speaker. There is speculation as to what will happen if the cut motion is passed. It is the consensus opinion that in such a situation, the Government needs to show that it has majority by bringing forward a 'confidence motion' under Rule 184 of the Lok Sabha. The government may have to redesign the budgetary demands for grants and re-present.

Appropriation Bill

After the Voting on Demands for Grants have been completed by late April or early May, Government introduces the Appropriation Bill. The Appropriation Bill is intended to give authority to Government to incur expenditure from the Consolidated Fund of India. The Appropriation Bill will appropriate the sums that the Lok Sabha granted by voting demands for grants. It also includes the charged expenditure. The procedure for passing this Bill is the same as in the case of other money Bills.

Finance Bill

The Finance Bill (one that contains taxation proposals and is presented as a part of the Budget) is introduced in Lok Sabha immediately after the presentation of the General Budget. Certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day on which the Bill is introduced by virtue of a declaration under the Provisional Collection of the Taxes Act. Parliament shall pass the Finance Bill within 75 days of its introduction.

Budget is an important tool of legislative control over the executive. It is also an instrument of economic and social policies in line with the five year plan.

Financial Bills

They are contained in Art.117. There are two types: Financial Bill I which is a Bill in which there are provisions related to a Money Bill but also those of an ordinary Bill. It has two features in common with the Money Bill:

- President's prior recommendations is necessary and
- It can be introduced only in the Lok Sabha

Other provisions are similar to the ordinary Bill.

Financial Bill B is an ordinary Bill with the different that, when it is passed, it entails expenditure from the CFI. As far as procedure is concerned, it is passed like a Money Bill but before the commencement of the second reading (Consideration, stage 2) in Both the Houses the recommendation of the President is necessary. For example, Food Security Bill (2013)

Supplementary, additional, token, excess and exceptional grants

Art.115 contains provisions related to Supplementary, additional and excess grants

- Supplementary grants may be made by the Parliament if the amount authorised in the budget passed originally for a particular service for the current financial is found to be sufficient.
- Additional grants may be made by Parliament for expenditure on some new service not contemplated in the annual financial statement for that year.
- Excess grants is made by Parliament if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year. In other words, it is a grant to retrospectively authorise excess of expenditure committed by the executive. CAG detects it while auditing the appropriation accounts and is satisfied that it

is justified and the PAC, on the basis of the CAG report, recommends such retrospective regularization.

- Token grant is one where the Department/Ministry has the money to spend on a new service. The availability of money is by way of representation – spending money sanctioned for one head within the same ministry with the permission of the Finance Ministry. But it seeks a token sum of Rs.1 from Lok Sabha.
- Exceptional grant is seeking money for a service that is not part of the current service of any financial year.
- Vote of credit means:to make a grant for meeting an unexpected demand upon there sources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stand with the details ordinarily given in an annual financial statement.

Budget of a State under President's Rule

Budget of a State under President's Rule is presented to Lok Sabha. The procedure followed in regard to the Budget of the Union Government is followed in the case of State Budget also with such variations or modifications, as the Speaker may make.

Money Bill (Art.110)

Bills which exclusively contain provisions for

- The imposition, abolition, remission, alteration or regulation of any tax
- The regulation of the borrowing of money or the giving of any guarantee by the Government of India
- The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund.
- The appropriation of moneys out of the Consolidated Fund of India.
- The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increase of the amount of any such expenditure.
- The receipt of money on the account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State or
- Any matter incidental to any of the matters specified above.

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Money Bill can be introduced only in Lok Sabha and on President's recommendation. Rajya Sabha can't make amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommended amendments in a Money Bill, but must return all Money Bills to Lok

Sabha within 14 days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha is not returned to Lok Sabha within the said period of 14 days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

President can assent to or reject a Money Bill but cannot return it for repassage.

Consolidated Fund of India

The fund constituted under Article 266 (1) of the Constitution of India into which all receipts, revenues and loans flow. All expenditure from the CFI is by appropriation Bill.

Public Account of India

It includes those moneys where the Government acts as a banker, for example, PF, small savings etc Article 266 (2) of the Constitution of India. These funds do not belong to the Government. They have to be paid back at some time to their rightful owners. Therefore, expenditure from it is not required to be approved by Parliament. Some dedicated funds are also part of PAI, for example: Reserve Funds bearing interest (railway funds, telecommunication funds) and Reserve Funds not bearing an interest (the Central Road Fund, Sugar Development Fund). National Clean Energy Fund, National Investment Fund(since 2013) and NDRF are some topical examples.

Contingency Fund of India

Parliament has by law established a Contingency Fund placed at the disposal of the President to enable advances to be made by him out of it for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law (Art.267). Earlier Contingency Fund was of Rs 50 Crore but was recently raised to Rs 500 Crore by Parliament.

Parliamentary control over public finance

The instruments of control that the Parliament has over the public finance are the following

- Art.265 says that no tax cane be levied and collected except by the authority of law
- Art.266 says that money can be drawn from the Contingency Fund of India only by an Appropriation Bill passed by Parliament
- Parliament, under Art.292, can regulate the barrowing power of the Executive on the security of the Contingency Fund of India.
- Based on Art.292 partly, FRBM Act was made in 2003 to bring public finance under parliamentary accountability – setting limits to borrowing and the FM having to explain to the Parliament on a quarterly basis the budgetary trends.
- Cut motions available to the Lok Sabha members during the passage of demands for grants can lead to compelling the Government to take up or drop any policy. However, cut motions have never been passed so far
- Budget under Art.112 is a socio – economic statement. Parliament can alter the priorities as it has to be approved by it to take effect other than the Constitutional provisions,

mentioned above, the following are the statutory and other developments that make the Parliamentary control over Government finance effect

- Outcome budget is being presented from 2004 – 05 onwards where for a given outlay the expected impact is socio – economic terms is qualified and declared. Parliament can hold the Government answerable for the achievement of the outcomes.
- Similarly, about 54 gender budget cells are set up by the ministries in the Union Government (2012). Parliament can seek explanation from the government as to how far it has progressed in adopting a gender perspective in public policy.
- Parliament financial committees – PAC, Estimates Committee and CPU exercise control on the executive by ensuring that the moneys spent are not wasted and are well targeted.
- Under parliamentary pressure, government is presenting the Tax Expenditure Statement since 2006 showing revenue foregone through tax breaks. In course of time, there will be greater parliamentary control on such losses of revenue through exemptions.

Thus, the control that the Parliament can exercise on public finance is enormous. Some controls are provided in the Constitution (Art.112, 265, 266, 292 etc) others are derived from statute and rules as shown above.

Parliamentary Control over the executive

Art.75.3 says that the Council of Ministers enjoys power till it has support in the Lok Sabha. Parliament controls the executive through a variety of means and instruments in order to enable people to have responsible and accountable Government. It takes place through the following instruments:

- Motions like confidence motion, adjournment motion , Rule 184 and Rule 193 in LS etc
- Questions of various types.

Adjournment motion

An Adjournment motion is moved to discuss a matter of urgent public importance and is available only in Lok Sabha and not in Rajya Sabha as it means severe criticism of the Government and is used to express dissatisfaction with the Government policies. Speaker's consent is necessary for moving the motion. After the motion is moved, it can be proceeded with only if 50 members endorse it. Speaker may not admit the motion in case there are other means of raising the matter for discussion. The motion shall not deal with any matter which is under adjudication by a court of law. BJP leader LK Advani moved an adjournment motion on black money in the Lok Sabha in 2011but it was defeated by a voice vote.

Non – confidence Motion

Art.75 (3) says that the Council of Ministers is collectively responsible to the Lok Sabha. The Council of Ministers is in power only as long as it enjoys the numerical majority of the Lok Sabha. The opposition parties have an instrument in the form of 'no confidence motion' to remove the Government. The procedure for the NCM is not a part of the Constitution but is given in Rules of Procedure and Conduct of Business of Lok Sabha. Rule 198 says that an NCM may be moved subject to the following conditions: leave to make the motion shall be asked for by the member when called by the Speaker; Speaker reads the motion to the House and if 50

members support it, it should be taken up on such day, not being more than ten days from the date on which the leave is asked for as he may appoint.

If leave is granted, the Speaker may allot time for the discussion of the motion. After members speak for and against the motion, Prime Minister replies before vote is taken. If the motion carries majority vote, the Government has to resign.

Following needs to be noted regarding the NCM

- No grounds need be mentioned to move the motion
- No conditions of admissibility are mentioned.

'Motion of Confidence' in the Council of Ministers

An essential tenet of the Westminster system is that the Government must be collectively responsible to the representative House. In India, the doctrine of collective responsibility of the Union Executive to the House of the people is specifically enshrined in the Constitution (Art.75.3). Loss of confidence of the popular House requires the Government to resign and facilitate installation of an alternative Government, if possible or the President dissolves the LS and general election to LS is held. The usual procedure to express want of confidence in the Council of Ministers is through a motion of no confidence under Rule 198 of the Rule of Procedure and Conduct of Business I Lok Sabha (as detailed above).

The device of confidence motion is of recent origin. There is no rule in the Rules of Procedure relating to Motion of Confidence in the Council of Ministers. The need of raising debate through such a motion arose in the late seventies with the advent of minority Governments and later, by mid – 90's, formation of coalition Governments as a result of hung Parliaments. In the absence of any specific rule in this regards, such Motions of Confidence have been entertained under the category of motions stipulated in Rule 184 which are meant for raising discussions on matters of public interest in Lok Sabha.

In the case of a Confidence Motion, there is no requirement for seeking leave of the House. The one line notice of motion under Rule 184 that "The House expresses its confidence in the Council of Ministers" is given by the Prime Minister. When admitted by the Speaker, it is bulletined. The date and time for discussion is fixed in consultation with the Business Advisory Committee.

Confidence Motion and No – Confidence Motion have the same purpose, the Government has to determine its majority in Lok Sabha. The former is a Government is a Government initiative when called upon to do so by the President and the latter is moved by the opposition party member.

The notice of the first ever Motion of Confidence was given by the Prime Minister Ch.Charan Singh in 1979. This motion could not be moved as Ch.Charan Singh tendered the resignation. The first Motion of Confidence was moved by Shri V.P.Singh, the then Prime Minister in December, 1989 in the Lok Sabha which was adopted by the House by the voice on the same day. Since the ten Motions of Confidence have been moved (2013). The last such motion was in

the previous Lok Sabha in July 2008, after the Left parties pulled out support to UPA I. The government won the motion.

Censure motion

Censure motion can be moved only in Lok Sabha under Rule 184. Speaker can disallow a censure motion. Grounds need to be mentioned unlike the NCM. It can be moved against an individual minister/s who need not resign if the motion is passed, unlike the NCM. Under the Rule 184, voting takes place at the end of the debate. Rule 184 is a way of Parliament enforcing accountability of the executive. In August 2011, opposition parties had demanded a debate with voting on the issue of rising prices. The motion that was moved did not require any specific action and only called upon the government "to take immediate effective steps to check inflation that will give relief to the common man." The motion was adopted after a seven-hour debate

Rule 184 and Rule 193 in Lok Sabha

Rule 184 is a censure motion as the debate ends with vote. It is classified as No Day yet named Motion in the Rules. It relates to any matter of general public interest. Speaker decides the admissibility of the motion. If the Government loses for any reason, it has to come forward with a confidence motion to establish its numerical majority. In 2002, in relation to the developments of Gujarat, opposition moved a censure motion under Rule 184 and the Deputy Speaker allowed the same. The Government won the motion. In 2012, November, on foreign direct investment in multi-brand retail, Lok Sabha Speaker Meira Kumar allowed a debate on FDI under Rule 184 that was followed by voting where the government had shown its majority.

Rule 193 allows a short duration discussion and is not followed by vote. The matter should be one of urgent public importance and the notice of the member to raise the issue should be supported by at least two other members. In the Lok Sabha in the winter session Nov – Dec 2007, four short duration discussions under Rule 193 were held on following issues:

- Proposal to setup Special Economic Zone in Nandigram, West Bengal and consequent large scale violence
- Indo – US nuclear agreement
- Need for harmonious functioning of three organs of the State i.e. legislature, judiciary and executive.
- Internal Security

In the budget session of 2013, Parliament took up five such discussions which included labour regulations, civil aviation policy, pollution of the River Ganga, foodgrains storage and Centre-state relations. Parliament spent about 9 per cent of the total productive time of that session on these debates. It is important to note that discussions under Rule 193 have no direct consequence and only require the minister to respond to the various issues raised.

Rajya Sabha Rules 167 etc

In the Rajya Sabha, debate under Rules 167 and 170 ends in voting while Rule 191 does not need voting.

However, censure motion of the Lok Sabha type does not exist in Rajya Sabha.

Question Hour

The first hour of every sitting of Lok Sabha is called the Question hour. Questions are of three types

- Starred
- Unstarred and
- Short Notice.

A Starred Question is one to which a member wants an oral answer in the House and which is distinguished by an asterisk mark. To a starred question, members can put supplementaries because the Minister is orally answering the question.

An unstarred Question is one which is answered in writing and no supplementary questions can be asked.

Minimum period of notice for starred / unstarred question is 10 clear days (that is excluding holidays).

Short Notice Questions

They do not require the normal period of notice of 10 days. They relate to matters of urgent public importance. A Short Notice Question may only be admitted if permitted by the Speaker. A short Notice Question is taken up for answer immediately after the Question Hour. A question may also be addressed to a Private Member provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the Business of the House for which that Member is responsible.

Half – an – Hour Discussion

A Half - an - Hour Discussion can be raised on a matter of sufficient public importance which has been the subject of a recent question.

During the discussion, the member makes short statement and not more than four members are permitted to ask a question each for further clarity. Thereafter, the Minister concerned replies. There is no formal motion before the House nor voting.

Rule 377

Under Rule 377 of the Rule of Procedure and Conduct of Business in the Lok Sabha, members are allowed to raise matters which are not points of order or which cannot be raised under any other Rule. Special Mentions in the Rajya Sabha are its counterpart.

Legislation or How a Bill becomes an Act

A Bill is the draft of a legislative proposal. It has to pass through three stages and receive the assent of the President before it becomes an Act of Parliament. It will come into effect after it has been notified by the Government Bills and those introduced by Members who are not Ministers, are known as Private Members Bills. Depending on their contents, Bills may further be classified broadly into

- Ordinary Bills
- Constitution Amendment Bills
- Money Bills

- Financial Bills A and B
- Other Bills where the procedure for passing of the Bill may be marginally different – for example, requiring the prior assent of the President (Art.3)

Process of passage of a Bill each House is as follows.

First Reading
The legislative process starts with the introduction of a Bill in either House of Parliament – Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the later case it is known as a Private Member Bill.

It is necessary for a member – in- charge of the Bill to ask for leave to introduce the Bill. A Minister has to give notice of 7 days and a Private member 30 days for seeking leave of the House for introduction. If leave is granted by the House, the Bill is introduced, this stage if known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker/Chairman may, in his discretion, allow brief explanatory statements to be made by the member who oppose the motion and the member – in – charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker/Chairman may permit a full discussion. Thereafter the question is put to the vote of the House. However, the motion for leave to introduce a Financial Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette
After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill may, with the permission of the Presiding Officer, be published in the Gazette. In such cases, lave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee
After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to concerned Standing Committee for examination and make report. If a Bill is referred to Committee, the Committee shall consider the principles and clauses of the Bill referred to them and make report. The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee has persuasive value.

Very rarely, a Bill may not be refered to the DRSC. For example, the Criminal Law Amendment Bill 2013 for want of time- if it was sent to the DRSC, time would have run out as the Ordinance was in need of conversion to legislation within 6 weeks of Parliament's reassembly

Second Reading or Consideration
The Second Reading consists of consideration of the Bill which in two stages.

First Stage: The First Stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to

- Refer Bill to a Select Committee of the House or a Joint Committee o the two Houses or
- To circulate it for the purpose of eliciting opinion or
- To straightaway take it into consideration.

If a Bill is referred to a Select /Joint Committee, the Committee considers the Bill clause – by – clause just as the House does. Amendments can be moved to the various clauses by members of the committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee.

If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Government of the States and Union Territories. Opinions so received are laid on the table of the House and the next motion in regard to the Bill must be for its reference to a Select /Joint Committee. It is not ordinarily permissible at this stage to move motion for consideration of the Bill.

Second Stage: The Second Stage of the Second Reading consists of clause – by – clause consideration of the Bill as introduced or as reported by Select /Joint Committee. Discussion take place on each clause of the Bill and amendments to clause can be moved at this stage.

Third Reading or Voting

Thereafter, the member – in – charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill or Voting. At this stage debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage.

In passing an ordinary Bill, a simple majority of members present is necessary. But in the case of Bill to amend the Constitution, special majority is necessary.

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Consideration of the Bill at a Joint Sitting (Art.108)

If a Bill passed by one House is

- Rejected by the other House, or
- The House have finally disagreed as to the amendments to be made in the Bill, or
- More than six months elapse from the date of the receipt of the Bill by the other House without Bill being passed by it

The President may call a joint sitting of the two Houses to resolve the deadlock. If, at the joint sitting of the Houses, the Bill is passed by a majority of the total number of members of both the

Houses present and voting, with amendments, if any, accepted by them, the Bill is deemed to have been passed by both the Houses.

Assent of the President

When a Bill is passed by both Houses, the Bill is sent for the assent of the President.

The President may give his assent or withhold his assent to a Bill. The President may also return the Bill (except a Money Bill) with his recommendations to the House for reconsideration, and if the House pass the Bill again with or without amendments by a simple majority, the President cannot withhold his assent to the Bill (suspensive veto). For example, 'Office of Profit Bill' was returned for re passage by the President in 2006 after it was passed by the Parliament. When re passed and sent again, the President gave his assent.

The President however, is bound to give his assent to a Constitution Amendment Bill passed by the Houses of Parliament by the requisite special majority and, where necessary, ratified by the States (24th Amendment Act 1971).

Presidential veto powers are discussed in detail in the Chapter on President.

Joint sitting of the Houses

The Constitution of India envisages a mechanism for resolving disagreement between the two Houses in respect of a Bill, other than a Money Bill or a Constitution Amendment Bill. In case of a Money Bill, the powers of the Rajya Sabha are limited to retaining or delaying the Bill passed by the Lok Sabha for a period of 14 days only and recommending an amendment or amendments in the Bill which may or may not be accepted by the Lok Sabha. In case of a Constitution Amendments Bill, if the both Houses do not pass such a Bill in identical terms, in accordance with Article 368, there is an end of that Bill. It will have to be reintroduced.

When any other Bill deadlocked, the President may, unless the Bill has lapsed by reason of dissolution of the Lok Sabha, notify to the House by message, if they sitting, or by public notification, if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill.

The Speaker and in his absence the Deputy Speaker of the Lok Sabha or if he is also absent, the Deputy Chairman of the Rajya Sabha or if he / she too absent, such other person as may be determined by the member present at the sitting, presides over the joint sitting. Chairman cannot preside as he is not a member of Rajya Sabha.

The procedure of the Lok Sabha applies at a joint sitting. The quorum to constitute a joint sitting is one -- tenth of the total number of members of the two Houses.

If at a joint sitting, the Bill referred to it, with such amendments, if any, as are agreed to in the joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it is deemed to have been passed by both Houses.

At joint no amendment can be proposed to the Bill, other than such amendments, if any, as become necessary by the delay in its passage and such other amendments as relate to matters

with respect to which the House have not agreed in their individual capacity. The decision of the presiding officer as to the admissibility of amendments is final. At a joint sitting, the Speaker or the person presiding as such shall not vote in the final instance, but shall have and exercise a casting vote in the case of equality of votes.

Joint sitting held so far

So far joint sittings have been held thrice in 1961, 1978 and 2002.

- The first joint sitting was held in 1961 to consider amendments to the Dowry Prohibition Bill 1959. Members of both Houses were united in their support for the Bill, but differed over specific nuances.
- The second joint sitting was held in 1978, after the Rajya Sabha rejected the Banking Service Commission (Repeal) Ordinance, 1977. The Bill was passed.
- The third joint sitting was held to make POTO into an Act in 2002 – Prevention Of Terrorism Bill. It became necessary as the Bill was rejected by the Rajya Sabha.

The joint sitting, sanctioned under Article 108 of the Constitution, was intended by the Constitution – makers as a way to resolve disagreements between the two Houses in matter of legislation. It gives another chance for the two Houses to reconcile their differences in national interest.

Parliamentary Committees

The Parliament work is increasingly becoming more technical and voluminous. It cannot, therefore, give close consideration to all the legislative and other matters before it, one of the reasons to setting up Parliamentary committees that do some of the parliamentary work. Committees also provide greater focus and expertise to the parliamentary work. Parliamentary Committees are of two kinds:

- Ad hoc Committees and
- Standing Committees.

Ad hoc Committees

Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit report. Ad hoc Committees are of two types

- Committees which are constituted from time to time to inquire into and report on specific subjects, (for example, Committees on Members of Parliament Local Area Development Scheme, Joint Committee on Bofors Contracts, Joint Committee to enquire into irregularities in securities and banking transactions, Joint Committee on Stock market Scam etc)
- Select or Joint Committees on Bills which are appointed to consider and report on a particular Bill. These Committees are distinguishable from the other Ad hoc Committees in as much as they are concerned with Bills and the procedure to be followed by them as laid down in the Rules of Procedure and Directions by the Speaker / Chairman.

Standing Committees

Apart from the Standing Committees, each House of Parliament has Standing Committees like the Business Advisory Committee, the Committee on Petitions the Committee of Privileges and the Rules Committee etc. They are elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis.

Among the Standing Committees, the three Financial Committees – Committees on Estimates, Public Accounts and Public Undertakings – constitute a distinct group as they keep vigil over Government expenditure and performance. While members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn entirely from the Lok Sabha.

Other Standing Committees in each House, divided in terms of their functions, are

(i) Committees to Inquire

- Committees on Petition examines petition on Bills and on matters of general public interest and also entertains representations on matters concerning subjects in the Union List and
- Committee of Privileges examines any question of privilege referred to it by the House or Speaker / Chairman.

(ii) Committees to Scrutinise

- Committees on Government Assurances keep track of all the assurances, promises, undertakings, etc., given by Ministers in the House and pursue them till they are implemented.
- Committees on Subordinate Legislation scrutinises and reports to the House whether the power to make regulations, rules, sub – rules, by laws, etc., conferred by the Constitution or Statutes is being properly exercise by the delegated authorities.

(iii) Committees relating to the day – today Business of the House

- Business Advisory Committee recommends allocation of time for items of Government and other business to be brought before the Houses.
- Committee on Private Member's Bills and Resolutions of the Lok Sabha classifies and allocates time to Bills introduced by private members, recommends allocation of time for discussion on private members resolutions and examines Constitution amendment Bill before their introduction by private members in the Lok Sabha. The Rajya Sabha does not have such a committee.
- Rules Committee considers matters of procedure and conduct of Business in the House and recommends amendments or additions to the Rules
- Committee on Absence of Members from the Sittings of the House of the Lok Sabha considers all applications from members for leave or absence from sittings of the House. There is no such Committee in the Rajya Sabha.

- Committee on the Welfare of the Scheduled Castes and Scheduled Tribes, on which members from both Houses serve, considers all matters relating to the Welfare of the Scheduled Castes and Scheduled Tribes which come within the purview of the Union Government and keeps a watch whether constitutional safeguards in respect of these classes are properly implemented.

(iv) Committees concerned with the provision of facilities to members

- General Purpose Committee considers and advices Speaker / Chairman on matters concerning affairs of the House, which do not appropriately fall within the purview of any other Parliamentary Committee.
- House Committee deals with residential accommodation and other amenities for members.

(v) Joint Committee on Salaries and Allowances of Members of Parliament, constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954, apart from framing rules for regulating payment of Salary, allowances and Pension to Members of Parliament, also frame rules in respect of amenities like medical, housing, telephone, postal, constituency and secretarial facility.

(vi) Joint Committee on Offices of Profit examines the composition and character of committees and other bodies appointed by the Central and State Governments and Union Territories Administrations and recommends what offices ought to or ought not to disqualify a person from being chosen as a member of either House of Parliament

(vii)The Library Committee consisting of members from both Houses considers matters concerning the Library of Parliament.

(viii) In 1997, a Committee on Empowerment of Women with members from both the Houses was constituted with a view to securing, among other things, status, dignity and equality for women in all fields.

(ix) In 1997, the Ethics Committee of the Rajya Sabha was constituted. The Ethics Committee of the Lok Sabha was constituted in 2000.

Watchdog Committees

Of special importance is a class of Committees which act as Parliament's 'Watchdogs' over the executive. These are the

- Committees on Subordinate Legislation
- Committees on Government Assurances
- Committee on Estimates
- Committee on Public Accounts

- Committee on Public Undertakings and
- Departmentally Related Standing Committees.

The Committee on Estimates and Committee on Public Accounts and the Committee on Public Undertakings and DRSC's play an important-role in exercising a check over governmental expenditure and Policy formulation. For Subordinate Legislation, see ahead

Select and Joint Committees

After a Bill is introduced in the House, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the Houses. A motion has to be moved and adopted to this effect in the House. The decision is conveyed to the other House requesting them no nominate members of the House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause. Amendments can be made by the Committee after the Bill has thus been considered the Committee submits its report to the House. The report of the committee is not binding but only guides the legislative process.

Departmentally Related Standing Committees

To make the parliamentary control more effective and focused, particularly in financial matters and public policy, and to make the Executive more accountable to the Parliament, Departmentally Related Standing Committees were set up first in 1993. They cover under their jurisdiction all the Ministries / Departments of the Union Government – each committee being given one or more ministries.

Similar system of Departmentally Related Select Committees was in existence in the United Kingdom unlike the Consultative Committees attached to various ministries which are informal in nature and are presided over by the Ministers concerned, the meetings of the Standing Committees under consideration are presided over by private members.

There are 24 DESC's with 31 members each – 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker and Chairman respectively. The term of the Members of these Committees shall not exceed one year.

The functions of these Committees would broadly include:

- Consideration of Demands for Grants
- Examination n of Bills referred to them Presiding Officers
- Consideration of Annual Reports
- Consideration of national basic long term policy documents tabled in the Parliament and referred to the Committee by the Chairman or the Speaker

It is agreed that there should be a separate Committee for the Ministry of Labour and Welfare and two separate Committees for the Ministry of Commerce and Industry.

It may be noted that a Minister is barred from being nominated as a member of a Standing Committee and if a member after his nomination to the Committee becomes a Minister, he ceases to be a member of the Committee from the date of his appointment.

The Reports of the Committees have persuasive value. In respect of reports on Demands for Grants and other subjects, the Ministry or the Department concerned is required take action on the recommendations and observations contained in the report and Action Taken Reports are presented to House.

The biggest achievement of the Standing Committees would be that the Demands for Grants of most of all Ministries / Departments of the Government would be scrutinised by members of Parliament. It will ensure greater participation of Members. Previously, because of paucity of time, the Parliament was able to discuss of Demands for Grants of only a few Ministries every year and the rest were guillotined.

Now after the general discussion on the Budget is over, the Parliament shall adjourn for a fixed period about a month and the Committees shall consider the Demands for Grants during this recess. The Demands for Grants shall thereafter be considered by the Lok Sabha in the light of the Reports for these Committees.

The Standing Committees system is the latest innovation in the ever evolving process of Parliamentary surveillance over the Executive to ensure its accountability to the common man.

Criticism is that the reports of the committees are not being paid due attention. Guillotine process still continues.

Public Accounts Committee oldest financial committee

The Committee on Public Accounts is constituted by Parliament each year for examination of accounts showing the appropriation of sums granted by Parliament for expenditure of Government of India.

It is the oldest Committee being in existence from 1921. The Committee consists of not more than 22 members comprising 15 members elected by Lok Sabha every year from amongst its members according to the principle of proportional representation by means of single transferrable vote and not more than 7 members of Rajya Sabha elected by the House in like manner are associated with the Committee. The Chairman is appointed by the Speaker from amongst its members. The Speaker, for the first time, appointed a member of the opposition as the Chairman of the Committee for 1967 – 68. This practice has been continued since then. A Minister is not eligible to be elected as a member of the Committee. If a member after his election to the Committee is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment. CAG helps PAC in everything.

Functions

The Appropriation Accounts relating to the Railways, Defence Services, P & T Department and other Civil Ministries of the Government of India and Reports of the Controller and Auditor General of India mainly from the basis of the deliberation of the Committee. In scrutinising the Appropriation Accounts and the Reports of the Controller and Auditor General, it is the duty of the Committee to satisfy itself:

- That the money shown accounts as having been disbursed were legally available for and, applicable to the service or purpose to which they have been granted.
- That the expenditure confirms to the authority which governs it, and
- That every re – appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

One of the duties of the Committees is to ascertain that money granted by Parliament has been spent by Government within the scope of the demand. If any money has been spent on a service in excess of the amount granted by the House for the purpose, the Committee examines with reference to the facts and circumstances leading to such an excess and makes such recommendations as it may deem fit. If it recommends retrospective authorization by Parliament of such grants, they are called 'excess grants' (Art.115)

The functions of the Committee extended however, "beyond, the formality of expenditure to its wisdom, faithfulness and economy". The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities.

While scrutinising the reports of the Controller and Auditor General on Revenue Receipts, the Committee examines various aspects of Governments tax administration. The Committee thus examines cases involving under-assessments, tax evasion, misclassifications etc., identifies the loopholes in the taxation laws and procedures and makes recommendations in order to check leakage of revenue.

The Controller and Auditor General is the "friend, philosopher and guide" of the Committee. He attends the sittings of the Committee and assists it in its labours.

Since the Committee became a Parliamentary Committee under the control of the Speaker 1950, it has presented more than 1250 reports till today. PAC is one of the watchdog Committees of the Parliament.

Government takes action on the recommendations of the Committee. The Committee watches the implementation of its recommendations. In case where the Government has reasons to disagree with a recommendation of the Committee, the latter may, if it thinks fit, present a further report after considering the view of the Government.

Heading

Committees on Estimates

The Estimates Committee constituted for the first time in 1950, is a Parliamentary Committee consisting of 30 Members, elected every year by the Lok Sabha from amongst its members. The Chairman of the Committee is appointed by the Speaker from amongst its members. A Minister cannot be elected as a member of the Committee and if a member after his election to the Committee, is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment. The term of office of the Committee is one year.

Functions

The functions of the Estimate Committee are

- To report what economies, improvements in organisation, efficiency or administrative reforms, consistent with the policy underlying the estimates may be effected.
- To suggest alternative policies in order to bring about efficiency and economy in administration
- To examine whether the money is well laid out within the limits of the policy implied in the estimates, and
- To suggest the form in which the estimates shall be presented to Parliament.

The Committee does not exercise its functions in relation to such public Undertakings as are allotted to the Committee on Public Undertakings. It is called the continuous economic committee as it reports throughout the year on what savings can be made with what administrative reforms.

Committee on Public Undertakings
Constitution

The Committee on Public Undertakings is a Parliamentary Committee consisting of 22 members, fifteen elected by the Lok Sabha and seven by the Rajya Sabha from amongst their members according to the principle of proportional representation by means of a single transferable vote. The Chairman is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible to become a Member of the Committee. If a Member after his election to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year.

Functions

The functions of the Committee on Public Undertakings are :-

- To examine the reports and accounts of Public Undertakings specified in the Forth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha
- To examine the reports, if any, of the Controller and Auditor General of India on the Public Undertakings
- To examine, in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.

The Committee selects from time to time for examination such Public Undertakings or such subjects as they may deem fit and as fall within their terms of reference.

JPCs to investigate corruption and other issues

Joint Parliamentary Committee (JPC) is a type of ad hoc Parliamentary committee constituted by Parliament.Joint Parliamentary Committee is formed when motion is adopted by one house and it is supported or agreed by the other house.Another way to form a Joint Parliamentary committee is that two presiding chiefs of both houses can write to each other, communicate with each other and form the joint parliamentary committee.The Lok Sabha members are double compared to Rajya Sabha.The strength of a JPC may be different each time.Members are elected by the respective Houses according to proportional system of representation as in the case of JPC on 2G issue.

JPC can obtain evidence of experts, public bodies, associations, individuals or interested parties suo motu or on requests made by them. If a witness fails to appear before a JPC in response to summons, his conduct constitutes a contempt of the House.

The JPC can take oral and written evidence or call for documents in connection with a matter under its consideration. Ministers are not generally called by the committees to give evidence. However, in case of the Irregularities in Securities and Banking Transactions probe again, an exception was made, with the JPC, with the permission of the Speaker, seeking information on certain points from ministers and calling Ministers of Finance and others

So far, the following JPCs were set up

- Bofors scandal (1987)

- Harshad Mehta Stock market scam (1992)
- Ketan Parekh share market scam (2001)
- Soft drink pesticide issue (2003)
- 2G spectrum scam (2011)
- Chopper scam 2013

The fifth JPC has been constituted in February 2011 to probe 2G scam. It has 30 members. Speaker Meira Kumar nominated one among the members as chairman of the JPC- P.C. Chacko. Members were elected by the two Houses by PR system where parties were represented in the JPC according to their strength.

VVIP Chopper scam (2013)

The Government has moved a motion in the Rajya Sabha in February ,2013, which was adopted by voice vote-for formation of a JPC "to inquire into the allegations of payment of bribes in the acquisition of VVIP helicopters by the Ministry of Defence from M/s Agusta Westland and the role of alleged middlemen in the transaction." The JPC will have 10 members from the Rajya Sabha and 20 from the Lok Sabha.

Parliamentary Privileges

Privilege is an exemption from the general law. It is a special right. Parliamentary Privilege consists of the rights and immunities which the two House of Parliament and their members posses to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of parliament would be correspondingly diminished. Members enjoy some of the privileges and immunities while the session is on and other all the time while they remain as members Privileges are contained in Articles 105 and 194 for Parliament and state legislatures respectively.

There are two related expressions in this context – 'Breach of Privilege' and 'Contempt of the House'. The differences between these two are the following:

When any of the privileges either of the Members individually or of the House in its collective capacity are disregarded or attacked by any individual or authority, the offence is called a breach of privilege. Any obstruction or impediment put before House or its members in due discharge of their duties, or which have a tendency of producing such result, may amount to contempt of the House. Thus, breach refers to specific privilege being breached. Contempt is a general expression both are by and large synonyms

Constitutional provisions

The Constitution specifies some of the privileges in Art.105. They are

- Freedom of speech in Parliament where the restrictions under Art.19.2 do not apply but the parliament may prescribe its own rules (Art.105.2). However, members cannot discuss the personal conduct of a judge of Supreme Court or High Court unless proceedings for impeachment are being held (Art.121).
- Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof
- Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure (Art.122)

Statutory Provisions

Apart from the privileges specified in the Constitution (Art.105), the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion. However, the protection does not apply in criminal and preventive detention cases.

Privileges based on Rules of Procedures and Precedents

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of Law, relating to the proceedings of the House without the permission of the House.

Consequential powers of the House

Each House enjoys powers necessary for the protection of its privileges and immunities. The powers are

- To commit persons or, whether they are members or not, for breach of privileges or contempt of the House.
- To regulate its procedure and conduct of its business
- To prohibit the publication of its debates and proceedings and
- To exclude strangers

Penal powers of the House

The House has the power to determine as to what constitutes breach of privilege and contempt. A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment, or by admonition (warning) or reprimand. Two other punishments may also be awarded to the members for contempt, namely, 'suspension' and 'expulsion' from the House.

In 2005, Parliament expelled 11 members – 10 from Lok Sabha and one from the Rajya Sabha – whose conduct was found to be 'unethical and unbecoming' of Members of Parliament. For the first time in the annals of Parliament, the membership of the 11 MP's was terminated by voice

Vote, following the sting operation on the cash – for – questions scandal. The Rajya Sabha agreed with the recommendations of its Ethics Committee while the Lok Sabha endorsed the report of the Pawan Kumar Bansal Committee set up go into the allegations.

Keshav Singh Case 1964

Keshav Singh had published a pamphlet maligning a member of the State Legislative Assembly. The House found him guilty of contempt and sentenced him to prison for 7 days. He challenged this order before High Court, which granted him interim bail. The House declared that the judges who issued interim orders were themselves guilty of contempt of the House and liable to be punished. The judges moved the petition before the High Court, which sat in a full bench and stayed the orders of the House. As this confrontation seemed to be spiralling out of control, the Union Government requested the President to refer the matter to the Supreme Court under Art.143. The key argument before the Supreme Court was about the scope and nature of the power of legislative privileges. While the State Legislative Assembly contended that this power was independent of the other provisions, the petitioner argued that the power, like all others in the constitution, was subject to the fundamental rights of citizens. The court concluded that it had the power to review warrants issued by the Legislature for compliance with the due process requirements under Article 21, among others, thereby asserting the supremacy of the Constitution in general, and Art.21 in particular, over the exercise of the privileges powers.

The Supreme Court verdict in Presidential Reference under Art.143 essentially held that the powers and privileges conferred on State Legislatures by Art 194 (3) were subject to the fundamental rights. The Supreme Court in another case held that Art. 19(1)(a) would not apply and Art.21 would. The Court further held: In dealing with the effect of Art 194 and the conflict pertaining to the fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction that is to reconcile the two.

JMM Case

The case relates to certain MP's belonging to the Jharkand Mukti Morcha and others allegedly taking bribes to vote for the Rao Government to save it from defeat in no confidence motion in 1993.

Supreme Court upheld Art.105 which says that MP's cannot be questioned for what they or the manner of their vote in the Parliament by the judiciary. In the same judgement, Supreme Court had also ruled that MP's were public servants under the Prevention of Corruption Act.

The Hindu Case 2003

The Tamil Nadu Assembly passed resolution in 2003 sentencing the publisher and four journalists of The Hindu to 15 days simple imprisonment for breach of privilege of the House after Privileges Committee of the House pronounced them guilty.

2011

Key members of Anna Hazare's core team — Arvind Kejriwal, Prashant Bhushan and Kiran Bedi —received breach of privilege notices from the Rajya Sabha for their alleged remarks

against Parliamentarians during their anti-corruption campaign on the Ramlila grounds in 2011.They received the notices for "breach of privilege/contempt of the House."They were accused of using derogatory words against MPs during the agitation.

Codification of Privileges

Constitution says (Art.105) that powers, privileges and immunities of each House of Parliament and of the members and Committees thereof shall be such as may from time to time be defined by Parliament. Constitution (44th Amendment) Act, 1978 dropped the reference to the House of the Commons that was originally there. The original reference was that where the privileges are not defined, they are similar to those of the House of Commons. However, no law defining the privileges has been made by Parliament so far.

The Lok Sabha Privileges Committee headed by Kishoore Chandra Deo (2008)in the report on 'Parliamentary Privileges – Codification and related matters,' said that there is no need to codify the privileges as the existing frame work did well: there had been only one case of admonition, two cases of reprimand and one case of expulsion for commission of breach of privileges and contempt of the House.

Miscellany Whip

The Concise Oxford Dictionary describes a 'Whip' as an 'official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party.' He is central to the working of Parliament is the Whip. Though not officially recognised in the Rules of Procedures of the House, the efficient and smooth running of the parliamentary system depends largely upon the Whips.

Each party has a Whip or a number of whips depending on its numerical strength in the House. Government Chief Whip has the main function to ensure that the Government business is transacted in accordance with the planned program. In managing the smooth passage of Government business, the Government Chief Whip has to ensure majority in every vote. He also has to ensure that there is always sufficient attendance of members to form a quorum and more particularly to give support to their own chosen speakers.

In Indian Parliament the Minister of Parliamentary Affairs is the Chief Whip of Government. He is assisted by a few ministers of State drawn from both the Houses. In the Rajya Sabha the Minister(s) of State in the Ministry of parliamentary Affairs holds (hold) the position of the Government Whip. Under the Constitution (52nd Amendment) Act, a member who votes or abstains from voting contrary to the whip (called 'Direction' in the Act), runs the risk of losing his seat in the House. Thus, the written notice which a whip sends to members has assumed a constitutional status.

Secretary – General

Next to the Chairman and Deputy Chairman, the third important officer in the Lok Sabha / Rajya Sabha is the Secretary – General. He discharges all the administrative and executive functions on behalf of an in the name of the Presiding Officer. The Secretary – General is a permanent officer of the House and is appointed by the Presiding Officer.

Parliament sits on an average 80 -90 days in a year.

Private Member's Bill

Private Members are those members of the Parliament who are not minister. They may also move a legislative proposal or Bill.

In Lok Sabha, the last two and a half hours of a sitting on every Friday are generally allotted for transaction of "Private Members Business", i.e., Private Members Bill, Private Members Resolution.

If there is no sitting of the House on a Friday, the Speaker may direct that two and half hours on any other day in the week may be allotted for the transaction of Private Members Business.

A Member who wants to introduce a Bill has to give prior notice thereof. The period of notice/ for introduction of Bill is one month unless the Speaker allows introduction at a short notice. President's recommendation, if necessary, for introduction and/or consideration of the Bill should also be applied for by the member. Where a Bill, if enacted, is likely to involve in expenditure from the Consolidated Fund of India, a financial memorandum given an estimate of the expenditure involved has to be appended to the Bill by the Member. In case the Bill contains proposal for delegated legislation, a memorandum regarding delegated legislation is also required to be appended to the Bill.

The Primary responsibility for drafting of Private Members Bill is that of the members concerned. The Lok Sabha Secretariat nevertheless renders necessary assistance in putting the Bill in proper form so that it is not rejected on technical grounds.

A member cannot introduce more than four Bills during a session
When a Bill originating in the Lok Sabha is transmitted to the Rajya Sabha, in case of a Private Members Bill, a member of Rajya Sabha authorised by the Lok Sabha Member in Charge of the Bill introduces the Bill.

Bills seeking to amend the Constitution, apart from being subject to the normal rules applicable to Private Members Bills, have also to be examined by the Committee on Private Members Bills and Resolutions and only those Bills which have been recommended by the Committee are put down in the list of Business for introduction.

Parliament data shows that no Bill piloted by a Lok Sabha private member has been passed in over 43 years, since 1970.

278 pending Private Member's Bills are there in the Lok Sabha by 2013.

The last Private Member's Bill that was passed and went on to become a law was the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, moved by independent MP from Lucknow Anand Narain Mulla.

Manish Tiwari,, when he was not a minister , moved a Private member's Bill to bring the intelligence agencies under parliamentary oversight.

Panchayatraj Institutions

The institution of village Panchayat was developed earliest and preserved perhaps longest in India. The word Panchayat is derived from the word "pancha" literally means assembly (*yat*) of five(*panch*) elders of the village who enjoy a respectable position in the village. They are chosen to be members of assemblies to settle village problems , disputes and so on according to village customs

India's federal democratic structure has three levels of governance - national or federal, state or regional and the grassroots level called the Panchayati Raj and Nagar Palika systems. Panchayati Raj system covers the village, the tehsil and the district,;and the Nagar Palika system serves towns and cities.

Panchayati Raj is a three-tier structure of democratic institutions at district, block and village levels namely, Zila Prishad, Panchayat Samiti and Village Panchayats respectively; is a system of local self government aimed at securing gramswaraj; is based on the philosophy of decentralization ; enables participative governance;is a suitable institutional arrangement for achieving rural development through people's initiative.

Panchayats as local self government institutions and vehicles of development have been part of the Indian system of governance since ancient times.In ancient India, Panchayati Raj system was in vogue during the Chola period. During the British rule, local self-government was given a statutory base.

In the modern period, Lord Mayo's Resolution of 1870 initiated a the political and administrative process of decentralization by attempting to enlarge the powers and responsibilities of local self government institutions.

Lord Ripon's Resolution on local self-government laid the foundation of local self-government in rural India. The 1882 Resolution was important for two reasons

- it set out general principles for development of local institutions in the future and
- provided the rationale behind functions of local bodies.

The Ripon Resolution was passed in 1885 as the Bengal Local Self-Government .C.E.H. Hobhouse, Chairman of the Royal Commission on Decentralization(1907) , viewed that the local governance should begin at the village level and not district. Montague-Chelmsford Reforms 1919 made local self-governance a part of the 'transferred subject' via the newly enacted scheme of Dyarchy. Various provinces passed the village Panchayat Acts particularly in 1919 and thereafter.

But, the Panchayats formed under these Acts were not democratic institutions as the government nominated most of their members.

Gandhiji and Dr.Ambedkar

Mahatma Gandhi and Dr.BR Ambedkar differed on the issue of panchayats. Dr.Ambedkar argued in the Constituent Assembly that caste oppression through the hierarchical order would not be weakened by Panchayats. Gandhian members in the Assembly differed with him, predictably.Dr. B.R. Ambedkar however accepted the ideal of Gram Swaraj through Panchayati Raj institutions to be placed in the Constitution of India in Part IV through Directive Principles of State Policy.

Reflecting the long history of Panchayats in India, the framers of the Constitution provided for Village Panchayats under the Directive Principles of the Constitution in Article 40 requiring that "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".

After Independence (1947), Prime Minister Nehru introduced the Community Development Programme (CDP) on the birth anniversary of Mahatma Gandhi (October 2) in 1952. The CDP was followed by the National Extension Service in 1953. NES blocks represented the lowest rung of administration- closest to the people. The two programmes did not succeed as they were controlled by bureaucracy and participative development was not possible. Union Government set up Balwant Rai Mehta Committee in 1957 to review the functioning of the CD and NES Programmes.

CD Programme and Balwant Rai Mehta Committee

Community development programme was introduced in 1952 in India. Under community development, people of a community organize themselves for planning and action; define their individual needs and solve their problems; execute their plans with a maximum reliance upon community resources; and supplement these resources, when necessary with services and material from Governmental and non-Governmental agencies outside the community. CD programmes are the essence of decentralization which refers to ensuring the participation of people at the lowest level in self-governance and socio-economic development. It is an example of all around and multi- level democratization of governance.

Balwantrai Mehta Committee (1957) was set up to review the working of the CD programme. It observed that lack of people's participation stands at the root of the failure of the CD programme.

The Committee suggested that a 'set of institutional arrangements' was required not only to secure people's participation but also to make it effective and meaningful. It suggested 'democratic decentralization' and village reconstruction through the introduction of a three tier system of panchayats. The committee felt that democratic government composed of, controlled and directed by popular representation of the local areas is necessary at the local level.The Report strongly recommended that training requirements of Panchayat personnel should be given high priority.

As per the Balwant Rai Mehta Committee recommendations, Panchayati Raj was launched on 2nd October 1959 in Nagaur district of Rajasthan.Andhra Pradesh and many state governments followed Rajasthan.

Due to the interest generated by the panchayati raj institutions several states set up committees to assess their working and to recommend measures for improvement. The states and committees were:

- Andhra Pradesh

Purushottam Pai Committee, 1964
Raachandra Reddy Committee, 1965
Narasimhan Committee, 1972

- Karnataka

Basappa Committee, 1963

- Maharashtra

Naik Committee 1961
Bongiwar Committee, 1963

- Rajasthan

Mathur Committee 1963
Sadiq Ali Committee 1964
G.L.Vyas Committee 1973

- Uttar Pradesh

Govind Sahai Committee 1959
Murti Committee, 1965.

However, by the mid-sixties , Panchayati Raj Institutions (PRIs) lost steam as they fell victim to a growing tendency of centralization. One reason for the weakness of the local self government institutions was that state governments saw them as rivals, rather than complements. Hence, Panchayats were not empowered with adequate functions and finances. .These bodies were frequently superseded for long periods by state governments. But the need for the PRIs as a mechanism for democratic self-government and provider of services to local communities and as is undeniable and universally accepted. As the developmental interventions of the Government increased, the urgency to reform the PRIs and strengthen them was felt equally.

Therefore, in 1977, the Janata Government set up Ashok Mehta Committee to review and report on the PRIs. It suggested change in the Balwant Rai Mehta pattern of PRIs. The three- tier system of PRIs was to be replaced by a two- tier i.e. Zilla Parishad at the district level and Mandal Panchayat (consisting of a number of villages) below it; five year term should not be cut short; district should be the first point of decentralization; political parties should be allowed to participate as they are ubiquitous; social audit should be provided for; compulsory powers of taxation for the panchayats so that they become truly autonomous creation of Nyaya Panchayats; reservation for SC/STs;state minister for panchayats; significant role for the NGOs; training for the elected representatives;

The panchayti raj institutions, which came into being in certain states after the Ashok Mehta Committee's recommendations, could be considered the second generation Panchayats.The second generation Panchayats raj institutions can be said to have started when the west Bengal Govt. took the imitative in 1978 to give a new life to it's Panchayats on the lines of the Ashok Mehta Committee's recommendations, west Bengal, Karnataka, Andhra Pradesh and Jammu & Kashmir either revised their existing panchayat raj acts or passed new acts based on Ashok Mehta Committee report. These states adopted the recommendations to suit their conditions

Dantwala Committee

The Working Group on Block level Planning headed by Prof. M.L.Dantwala submitted a report in 1978. It identified the remoteness of planning agencies at the District Level from the grassroots as the major weakness of local area planning.. Dantwala committee made the recommendation that Block level planning, (the same area which was covered by Community Development Blocks) should be the appropriate sub- state planning level for proper appreciation of the felt needs of the people.

- The Hanumantha Rao Committee (1984) on District Planning has enumerated the following factors for peoples participation at local level:
- To take note of the felt needs of population;
- To mobilise local resources for plan implementation;
- To decrease the level of conflict during the planning the implementation stages;
- To increase the speed of implementation by securing the co-operation of the people;

Committee to Review the Existing Administration Arrangments for Rural Development and Poverty Alleviation Programmes -G.V.K. Rao Committee- was set up by the Planning Commission in 1985. It recommended for the revival of Panchayati Raj institutitons and highlighted the need to transfer powers to democratic bodies at the local level . The two important suggestions that this committee made were:

- That the 'district' should be the basic unit of planning and programme implementation and
- Zilla Parishad could, therefore, become the principal body for the management of all development programmes which can be handled at that level.

The Government of India set up in 1986 L.M. Singhvi Committee to prepare a concept paper on the revitalisation of the Panchayati Raj institutions. It recommended that the Panchayati Raj should be constitutionally recognised, protected and preserved by the inclusion of a new chapter in the Constitution.It also suggested a constitutional provision to ensure regular, free and fair elections for Panchayati Raj institutions.Accepting these recommendations, the Union Government headed by late Rajiv Gandhi brought in the Constitution 64th amendment Bill which was passed by the Lok Sabha in 1989. It could not be enacted as it was not approved by the Rajya Sabha.

Panchayati Raj under the 73rd Constitution Amendment Act

P.V. Narasimha Rao government enacted the 73rd Constitution Amendment Act , which was passed by Parliament in 1992 and became effective on 24th April 1993 after the required number of State Legislatures ratified the same. The need for ratification was felt as local self Government is a State List item and the legislation of the Union parliament was vulnerable to judicial challenge even though the item is a Directive principle of State Policy.

The need for model national legislation is as follows:Legislations were passed by different States setting up PRIs. There was considerable variation from State to

State in the constitution and composition of Panchayats at various levels starting from the village upto the district in different states, as also the manner of election of the office-bearers. Even in terms of functions entrusted to the PRIs at different levels, the position varied considerably. One important feature to be noted was the association or MPs and MLAs with these institutions and whether they had or did not have voting rights etc. Therefore, a national model legislation was needed

It lays down a broad national pattern with sufficient regional flexibility; and there was federal consensus on such an initiative. This Act added Part - IX to the Constitution of India. It is entitled as 'The Panchayats' and consists of provisions from articles 243 to 243-o. The Act gave Constitutional shape and teeth to Article 40 of the Constitution .

Giving the PRIs Constitutional status meant that in case the States did not comply with the provisions, judicial enforcement would be an option.

Since local self government is a State List item, states had to enact the PRI legislation for the 73rd Amendment Act to come into force. Local variation was permitted. In the 73rd Act . States were given one year in which to conform to the Act- one year from the date when the 73rd Amendment act was made. All states either introduced new legislation or amended existing legislation, to bring the state laws into line-with the provisions of the 73rd Act.

Mandatory and discretionary powers

The Act mandatory(compulsory) and discretionary(voluntary) provisions. The distinction between the two is that mandatory provisions contain the word "shall. In the discretionary provisions, on the other hand, the word "may" is used.

Important mandatory provisions are

- the establishment in every state (except those with populations below 2 million) of panchayats at the village, intermediate and district levels (Article 243B)
- direct elections to all seats in the panchayats(lowest elective tier) at all levels (Article 243C)
- compulsory elections to panchayats every five years
- If a panchayat is dissolved prematurely, elections must be held within six months, with the newly elected members serving the remainder of the five year term (Article 243E)
- reservation of seats in all panchayats at all levels for SC/ST (Article 243D)

- reservation of one-third of all seats in all panchayats at all levels for women, with the reservation for women applying to the seats reserved for SC/STs (Article 243D)
- indirect elections to the position of panchayat chairperson at the intermediate and district levels (Article 243C)
- reservation of the position of panchayat chairperson at all levels for SC/STs in proportion to their share in the state population (Article 243D)
- reservation of one-third of the positions of chairperson at all three levels for women (Article 243D)

Following are the discretionary provisions

- Transfer of powers and functions to Gram Sabha.
- Mode of election of chairperson of a panchayat at village level.
- Reservation of OBCs.
- To decide the taxes, duties, tolls and fees for which a panchayat shall be authorised.
- To make provision for maintenance of accounts and auditing of panchayats.

Details of the 73rd Act

Art.243 gives certain definitions

- Gram Sabha means a body consisting of the electorate of the village
- Intermediate level means a level between the village and district levels specified by the Governor of a State by public notification
- Population means the population as ascertained at the last preceding census of which the relevant figures have been published;
- Village means a village specified by the Governor by public notification

243A. says that the powers exercised by and the functions performed by Gram Sabha are devolved to them by State Legislature. Gram Sabha has the responsibility to take decisions in common public interest, and to monitor the performance of elected representatives and government officials.

243C which talks of the Composition of Panchayats gives State Legislature power to make laws on the association of the following in the Panchayat bodies:

- members of the House of the People and the members of the Legislative Assembly of the State in the area
- members of the Council of States and the members of the Legislative Council of the State

It leaves it to the Legislature of the State as to how the Chairperson of a Panchayat at the village level shall be elected - direct or indirect election by the members of the Panchayat. However, the Chairperson of a Panchayat at the intermediate level or district level shall be elected by, and from among, the elected members the Panchayats- indirect election.

243D makes reservation compulsory for the Scheduled Castes and the Scheduled Tribes in every Panchayat in proportion to their population in the Panchayat. Such seats may be allotted by rotation to different constituencies in a Panchayat.

There should be reservation within reservation- that is, not less than one-third of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of seats in every Panchayat shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.

There is similar reservation for the posts of Chairpersons of Panchayats also.

Legislature of a State is free to provide for reservation in Panchayat or offices of Chairpersons in the Panchayats in favour of other backward classes. It is a discretionary power of the Legislature while reservation for women, AC and ST is mandatory.

243E relates to the duration of Panchayats, etc. It says that every Panchayat has a term of five years from the date appointed for its first meeting. It may be dissolved before the expiry of five years but a new Panchayat should be constituted before the expiration of a period of six months from the date of its dissolution on one condition: if the prematurely dissolved Panchayat has a remainder of life that is less than six months it is not necessary to hold any election for the dissolved panchayat to complete its original life term.

A Panchayat that is prematurely dissolved and reconstituted will last for the remainder of the term and not for the full five year term.

243F contains disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified for the purposes the State Legislature . However, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.If any question arises as to whether a member of a Panchayat has become subject to any of the disqualification,, the question

shall be referred for the decision settled in such manner as the Legislature of a State may, provide.

243G says that the Legislature of a State may confer the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level- Zilla, Taluk or Gram , subject to such conditions as may be specified therein, with respect to-

- the preparation of plans for economic development and social justice;
- the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H and 243-I. deal with the financial provisions. 243H says that the Legislature of a State may:

- Authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

243-I. deals with Constitution of Finance Commission to review financial position of the Panchayats. The Governor of a State shall, within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

(a) the principles which should govern-

- the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;
- the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

State Finance Commission - its composition, qualifications of its members and the manner in which they shall be selected ; and functions of the Commission are laid down by law by the State Legislature.

The Commission presents the report to the Governor who shall cause the recommendation together with an explanatory memorandum as to the action taken thereon ,to be laid before the Legislature of the State.

243J says that audit of accounts of Panchayats are done according to the law made by the Legislature of a State .

243K relates to elections to the Panchayats

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine.

The State Election Commissioner is removed like and on the like grounds as a Judge of a High Court . The conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission .

The provisions of this Part shall apply to the Union territories . President may, however, direct that it be applied with exceptions and modifications as he may specify.

243M says that the Act does not apply to Schedule VI Areas of Assam, Tripura, Meghalaya and Mizoram, State of Nagaland, hill areas of the State of Manipur for which District Councils exist and the District of Darjeeling in the State of West Bengal.

The amendment Act has not yet been extended to J&K

It further says that parliament may extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified, and no such law shall be `deemed ' to be an amendment of this Constitution for the purposes of article 368.

243-O bars interference by courts in electoral matters. It says that

- the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court
- no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

DPCs

DPCs should be constituted as per Article 243 ZD in all states except Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and the NCT of Delhi. All states must accordingly enact legislations for constitution of the DPCs and issue notifications bringing them into effect.

Composition

The DPC is generally composed of elected members of the local bodies within the district, both rural and urban, as well as some nominated members. The number of members varies with the population size of the districts- larger the population, more the members.. The ratio of members from Panchayats and ULBs is based on the ratio in which the population of the district is divided between rural and urban areas

The DPCs are to have at least four-fifths elected members as per Article 243 ZD. Members should be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The actual pattern, however, varies across states. Nominated members usually represent the State & Central Government agencies

Chairpersons.

Three different patterns are observed among states:

- In some states the Chairperson / President / CEO of Zila Parishad or District Panchayat is the Chairperson of the DPC as well, for example, Kerala, Bihar, Karnataka, Andhra Pradesh, Rajasthan, Tamil Nadu and West Bengal.
- In some states the Minister-in-charge of the district or any other State Minister is the Chairperson, for example in Orissa, Gujarat, Madhya Pradesh, Chhattisgarh and Maharashtra. In Himachal Pradesh Cabinet Ministers of the State Government have been nominated as members and Chairpersons of DPCs.
- In Haryana the Deputy Commissioner (DC) of the District is the Chairperson of the DPC.

Functions, Role and Responsibilities of DPCs

The DPC is envisaged to play a nodal role in the district planning process by consolidating rural and urban plans prepared by the villages and towns in the district and then preparing a draft development plan for the district on the basis of the plans so received from within the district. DPC is thus crucial to the function of 'planning for economic and social justice'. DPC provides the vital link between rural and urban plans as well as sectoral plans.

As per Article 243 ZD, DPCs should also pay special regard to issues of common interest between Panchayats and municipalities, such as spatial planning, sharing of physical and natural resources, infrastructure development and environmental conservation.

Consolidation of rural and urban plans

Consolidation of rural and urban plans is one of the key tasks of the DPC and is also of great significance in the light of urban expansion into rural areas. The sequence to be followed in consolidation of rural and urban plans is broadly as follows:

- Gram Panchayats prepare Participatory Plans and communicate them to Intermediate Panchayat(Taluk, Mandal etc)
- Intermediate Panchayat compiles information sent by the GPs in the block and

along with its own information, prepares a Block Plan and sends to ZP

- ZP compiles information from Block Panchayats and along with its own information, sends to the DPC
- Urban Local Bodies send their plans to DPC

- DPC compiles information from ZP and ULBs to form Draft Development plan (DDP)

DPCs play an integrative role between Panchayats and ULBs. They help provide the common platform for integrating rural and urban plans. They help identify planning projects of common interest and spread across both rural and urban areas, which can be jointly planned and funded. This may include extending link roads from rural areas to urban markets, or extending water supply and sewerage infrastructure to urban areas.

Thus, DPCs have a crucial role in district planning. In fact, the role is becoming more important. For example, in the Backward Region Grants Fund (BRGF) scheme. BRGF was approved by the Union Cabinet in 2006. It is a fund available to 250 selected backward districts with the purpose of catalysing development by providing infrastructure, promoting good governance and agrarian reforms, and capacity building for participatory district planning. In order to avail BRGF funds, states are required to establish DPCs as per article 243ZD, which will consolidate plans prepared by PRIs and ULBs in the district.

PESA

The Parliament passed Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. The Fifth Schedule covers Tribal areas(scheduled areas) in 9 states of India namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan.(Bihar had Scheduled Areas before the formation of Jharkhand but after the bifurcation, the tribal population in Bihar is insignificant)

PESA came into force in 1996. Under the Act, the Gram Sabha has been vested with powers for :-

a. Ownership of minor forest produce
b. Development plans approval
c. Selection of beneficiaries under various programmes
d. Consultation on land acquisition
e. Manage minor water bodies
f. Control mineral leases
g. Regulate/prohibit sale of intoxicants
h. Prevent alienation of land and restore unlawfully alienated land of STs
i. Manage village markets

j. Control money lending to STs
k. Control institutions and functionaries in all social sector.

PESA recognizes the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources – land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas and ushers them in a new phase of self governance.

Panchayatraj and Rural Development

PRIs which are local self government institutions enable rural development planning in an effective way. The momentum to empowers PRIs and give them Constitutional status began after the JRY programme was started. Greater involvement of Panchayats was institutionalized with the launching of the Jawahar Rozgar Yojana (JRY) in 1989-90, under which there was a substantial flow of funds to village Panchayats. In addition, Village Panchayats were required to prepare an inventory of assets and give details of the projects taken up under JRY. The works to be taken up were decided in the meetings of the Gram Sabha.

NREGA is being implemented by the Panchayats. Panchayats have a critical role in the operationalization of the NRHM. PRI participation can be achieved through the following stages.

- Participation in decision making
- Participation in implementation of development programmes and projects;
- Participation in monitoring and evaluation of development programmes;
- Participation in sharing the benefits of development
- Participation in the popularization of the programme

Devolution index

The progress in effective decentralisation of governance under the Panchayati Raj Act is not uniform across the states. The Union Ministry of Panchayati raj (MoPR) asked the National Council for Applied Economic Research (NCAER) to develop a working Devolution Index to measure how states are performing in devolution of governance. The index ranks the performance of individual states on identified basic action points.

NCAER submitted an interim index in 2006 which has since been subject to further refinement.
The Devolution Index essentially assesses three dimensions

- Functions (types of work under Schedule XI of the constitution)

- Finances (funds devolved)
- Functionaries (manpower available)

(*Three Fs*)

The index is a first attempt at quantifying the environment for effective decentralization.Each of the three dimensions is equally important in achieving effective decentralization of governance in rural India. It identifies the 'mandatory' elements of devolution and assigns a score of zero when they are not complied with. Based on the values of various indicators for any given state, it is possible to calculate a score for each sub-index as well as for an overall Devolution Index. The value of each state will indicate how far away the state is from an ideal performance.

TFC

TFC recommendations of local body grants and inter-state distribution

The Twelfth Finance Commission (TFC) was required to make recommendations on the measures needed to augment the Consolidated Funds of the States to supplement the resources of the Panchayats and Municipalities on the basis of the recommendations of the State Finance Commissions (SFCs). TFC has given recommendations on this term of reference, which have been accepted by the Union Government.

The Twelfth Finance Commission (TFC) has recommended grants amounting to Rs.25,000 crores payable during the period 2005-10 (Rs. 20,000 crores for Panchayats and Rs.5,000 crores for Municipalities) to States for Rural and Urban Local Bodies. The **inter-State allocation** recommended by TFC for Panchayati Raj Institutions (PRIs) and for Urban Local Bodies (ULBs) is based on factors and weights assigned by the TFC as under:

Criterion	Weight (per cent)
i) Population	40
ii) Geographical area	10
iii) Distance from highest per capita income	20
iv) Index of deprivation	10
v) Revenue effort	20
of which (a) with respect to own revenue of states	10
(b) with respect to GSDP	10

TFC felt that grants for PRIs should be used to improve the service delivery by the Panchayats in respect of water supply and sanitation..

Comptroller and Auditor General of India audits the release and use of the local bodies grants. Government of India may take appropriate decision about withholding grants of a State if the Comptroller and Auditor General of India reports that the State has

- either not transferred the grants to the local bodies or has
- diverted the funds or
- that local bodies have not been able to give priority to water supply and sanitation for the rural areas and on schemes of solid waste management in the urban areas.

Critical analysis

Panchayati Raj in India, in terms of the size of the electorate, the number of grassroots institutions (about 2.4 lakh), the number of persons elected – 36 lakh in the Panchayats and Nagarpalikas, higher than the entire population of Norway – and in terms of the empowerment at the grassroots of women, is the greatest experiment in democracy ever undertaken anywhere in the world.No less than 10 lakh women have been elected to our Panchayati Raj Institutions, constituting some 37 per cent of all those elected and rising to as high as 54 per cent in Bihar which has 50 per cent reservations for women.

While many women have benefited because of the caste and other reservations, 'as many as 50,000 women have been elected without any reservation or quota provisions. They have contested elections against menfolk and won . SC/ST/OBC groups have been given reservation. Elections gave been held in all the states; State Finance Commissions have been constituted. However, there are problems

- Powers have not been devolved adequately as the Devolution Index shows
- lack of adequate financial resources to carry out the administration. Grant-in-aids is the major component of the PRIs revenue. This need to be supplemented with the adequate collection of taxes by the PRIs and a compulsory transfer of some of the state government's revenue on the recommendation of the state finance commission

- lack of training programmes for the participants of the PRIs
- domination of the bureaucracy over the PRIs. Bureaucracy continues to be the vehicle for implementation of various development schemes..
- Various parallel bodies such as the DRDA have undermined the importance of the PRIs. Either they have to be disbanded or made accountable to the PRIs
- professionalization of audit functions is another area where the PRIs lack.

- Representation of members of parliament and state legislatures in the PRIs is a contentious issue . The is clash of interest between the legislatures and PR representatives.
- The elite control over the system is a fact even today
- state level leaders still see PRI leadership as a challenge to their power , to a great extent.

Some Basic Facts about Panchayati Raj in India

TIME LINE

Milestones in the Evolution of Local Government since Independence

First generation panchayats

1950	The Constitution of India comes into force on 26 January; Directive Principles of State Policy mention village panchayats as 'units of self-government' (Art.40)
1952	Community Development Programme starts on 2 October
1957	Balwantrai Mehta Committee, appointed in January, submits its report in November
1958-60	Several state governments enact new Panchayat Acts
1959	Jawaharlal Nehru inaugurates the first generation panchayat at Nagaur in Rajasthan on 2 October
1964-77	Decline of first generation Panchayati Raj Institutions

Second generation panchayats

1978	Asoka Mehta Committee on working of panchayats, appointed on December 1977, submits its report August 1978
1983	Karnataka government enacts new PR Act
1984	Hanumantha Rao Committee on district level planning, appointed by Planning Commission in 1982 submitted its report
1985	Karnataka PR Act receives President's assent; comes into force G.V.K. Rao Committee on administrative aspects of rural development, appointed by Planning Commission in March, submits its report in

	December
1986	Andhra Pradesh follows West Bengal and Karnataka Panchayati Raj model
1987	The Sarkaria Commission on Centre-State relations highlighted the need for participation of people's representatives in the planning and administrative machinery at the local level. A notable recommendation was the creation of a body like Finance Commission at the State level for devolution or transfer of resources to the districts .
1990-92	Panchayats are dissolved and brought under administrators in Karnataka

Panchayati Raj with Constitutional Status

1986	L.M. Singhvi Committee submits its report; recommends constitutional status for panchayats
1988	Parliament Consultative Committee appoints a sub-committee under chairpersonship of P.K. Thungan to consider Constitution Amendment
1989	64th Constitution Amendment Bill is introduced in Parliament; is defeated in Rajya Sabha
1991	73rd (Panchayats) and 74th (Municipalities) Amendment Bills are introduced in Parliament; referred to the Parliamentary Committee September
1992	Parliament passes both the Bills in December;
1993	73rd Amendment Act, 1992 comes into force
1993-94	All state governments pass conformity Acts
1994	Madhya Pradesh holds panchayat elections under the 73rd Amendment dispensation on 30 May
1996	Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, extending 73rd Amendment Act to Scheduled Areas, comes into force on 24 December
	Kerala launches People's Plan Campaign on 16 August
2001	Bihar holds panchayat elections after 23 years (11-30 April)
2001	83rd Constitution Amendment Act, 2000 amends Art. 243-M to dispense with reservations for Scheduled Castes in Arunachal Pradesh (the state has no caste system)— paving way for panchayat elections in the only state yet to hold them under the new dispensation

Union Ministry of Panchayatraj set up

2004 Ramachandran Committee

2006 Devolution index constructed by NCAER

Ramachandran Committee

An Expert Group on Grassroots Level Planning was set up by the Union Ministry of Panchayatraj under the chairmanship of Shri V. Ramachandran to study and set out the steps by which grassroots planning can be made a reality in time for the Eleventh Five-Year Plan (2007-12)..It submitted the report in 2006.

The Group gave its recommendations in the context of Article 243G of the Constitution, which envisage Panchayats as local self-governments planning for economic development and social justice.Participatory planning is central to inclusive growth strategy.

It suggested a practical action programme for local level planning in the Eleventh Plan. It suggested in-detail the manner in which national programmes of importance in education, health, employment, poverty alleviation, housing and rural infrastructure could achieve their objectives better if centrality is given to Panchayats in working out details and in implementation.

Nyaya Panchayats

Nyaya Panchayats are village courts, where disputes are settled between villagers. The Nyaya Panchayats help in settlement of disputes at the local level thus sppeding up justice and decongesting mainstream courts.

After the 73rd Constitutional Amendment Act (CAA), few states in India provided for Nyaya Panchayats in their new Panchayati Raj Acts or in confirmatory amendments to old Acts, including Bihar, Himachal Pradesh, Punjab, U.P. and West Bengal. West Bengal Act provides for election of a five member separate Nyaya Panchayat elected by the gram panchayat.

To reduce pendancy and speed up justice in rural India, the Union Cabinet approved the Gram Nyayalayas Bill, 2007. The legislation involves appointment of about 6,000 trained first-class judicial magistrates all over the country. It provides for the establishment of Gram Nyayalayas for the purpose of providing access to justice — both civil and criminal — to citizens at the grassroots level and to operationalise Art.39A -opportunities to secure justice are not denied to any citizen for reasons of vulnerability.

Gram Nyayalayas will be set up in every panchayat throughout the country except in J&K, Nagaland, Arunachal Pradesh, Sikkim.

Decentralization

Decentralization is the transfer of political, administrative and fiscal responsibilities to locally elected bodies in urban and rural areas, and the empowerment of communities to exert control over these bodies. Decentralisation of socioeconomic planning process and plan implementation to the grass root levels has been a matter of continuing concern. Decentralization has two important uses

- decentralised institutions have the capacity to understand the needs of the areas, interact with the governmental agencies in order to draw need based local plans and to implement those plans in close cooperation with the administration
- being accountable to the community. these institutions are better placed to improve the delivery systems in administering schemes , responding to the felt needs of the people, to optimise the benefits reaching those and to whom they are meant.

Therefore, Administrative Reforms Commission(1966-1970) highlighted the need for District Planning and to relate it to local variations- geographic, cultural, social and so on.

The issues relating to the question of decentralisation of planning and implementation of schemes could be broadly classified under three heads namely:

- Institutional aspects;
- Allocations of sectoral and sub-sectoral functions falling exclusively in the mandate of PRIs; and
- Planning and implementation aspects.

There is a consensus that strengthening of the PRIs and Nagarapalikas is the solution for giving decentralized planning a strong and vibrant base.

Microlevel planning

In recent decades, the emphasis has shifted in development planning, from top-down to a bottom-up approach. Bottom- up approach is a crucial shift from earlier approaches based on central planning . Bottom- up planning is also

referred as *micro* Planning as the unit of planning is a localized administrative unit. It also is called grass roots planning as it covers an area that includes a cluster of villages and is closer to people unlike State level and national level planning which is understood as macro planning or central planning. The objectives is economic efficiency and administrative feasibility.

The need for micro planning also arises from the following: Functions of government have grown enormously as the welfare State assumes more responsibilities. Unless the administrative arrangements and the political process is suitably designed and operated, most activities prove economically unviable. Expected results are difficult to achieve and the gap between outlays and outcomes widens . Inclusive growth becomes unattainable.

Poor implementation largely explains unbalanced regional development and general sub- optimal plan performance with respect to rural development.

Micro planning is needed to make plan implementation efficient at the local level which would result in better plan performance, better resource use; improvement in human development, involving poverty alleviation and health care, child care and nutrition status etc. Top- down planning is costly; wasteful; causes corruption; and erodes accountability.

Moreover, political instability has made synergetic functioning between the Planning Commission, the Finance Commission and the government difficult. Given the constraints of coalition politics, an alternate arrangement by way of continuity and stability in local administration is being considered, which explains the emphasis on institutionalisation of local level development planning proposes to provide an alternate stability mechanism.

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district

Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Essentially, the Fifth Schedule is a historic guarantee to indigenous people on the right over the land that hthey live in .

ELEVENTH SCHEDULE
(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.

19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Nagarapalikas

The 73rd and 74th Constitution Amendment Acts are sister legislations passed by the Parliament in 1992. They contain similar provisions .The 73rd Constitution Amendment Act provided directions for the creation of Panchayats in the rural areas and the 74th Constitution Amendment Act provided for the creation of Municipalities in urban areas. The two legislations laid a broad framework for the setting up of Panchayats and Municipalities by the states. The legislations also stipulated a time limit within which the state governments were to enact conforming legislations to enable setting up of Panchayats and Municipalities, that is by the 1st of July 1994.

Prior to the enactment of these Constitutional amendments, , the functioning of the local bodies was at the discretion of the state governments. There was no constitutional obligation to enable them to function well. The supersession of the local bodies was common . Entities like District Planning Committee, Metropolitan Planning Committee, Wards Committee, State Election Commission, State Finance Commission being absent, the Nagarapalikas suffered .

The 74th Amendment Act sought to remove these basic weaknesses and lay down a framework with broad guidelines for constitution, composition of Municipalities, elections/removal of Mayor or Chairpersons, qualification/disqualification of membership, setting up of State Election Commission etc.

Municipal bodies are the local self governing bodies consisting of political and administrative wings. The political wing is an elected body of councillors headed by a Mayor/President(Chairperson). The Commissioner from the IAS cadre heads the administrative wing. The Commissioner implements the decisions taken by the elective body.

Municipal structure

Municipality is a generic name for any organized local government, usually in an urban area- town, city etc.The structure and composition of the municipalities vary widely. The 74th CAA sought to bring some uniformity in the constitution of the municipal bodies by classifying them as follows:

- Nagar Panchayat, to be constituted in rural-urban transition areas. These have been conceived to properly channelize the growth impulses in such settlements and also to bring order in their growth and provision of

services;

- Municipal Councils for smaller urban areas;
- Municipal Corporations for larger urban areas.

Urban local government is not hierarchical. However, the Municipal Corporation, as an institution, enjoys a greater measure of autonomy than other forms of local government. It enjoys the power of dealing directly with the state government whereas the municipalities have no direct access to the state government and are answerable to the District Collector and Divisional Commissioner.

Municipalities and Corporations have deliberative and executive wings. In general, deliberative wings of Municipal Corporations comprise the Corporation Council, the Standing Committee and the Mayor, whereas the executive wings comprise the Municipal Commissioner, the Deputy/Assistant Municipal Commissioner, the Municipal Engineer and subordinate administrative staff.

Deliberative wing

This is the General Body of the Municipal Corporation, comprising of elected members (councilors). Councilors are elected for a term varying between three and five years. The new Constitutional Amendment Act provides that every Municipal Corporation and every Municipal Council shall have the following two categories of councilors:

- Directly elected councilors;
- Nominated councilors.

The number of elected councilors is to vary according to the size of the population of the territorial area of the Municipal Corporation or the Municipal Council concerned. Nominated councilors are to be nominated by the elected councilors of the Municipal Corporations/Councils concerned. The nominated councilors shall be persons having special knowledge or experience in municipal administration.

Mayor

The Mayor in the Municipal Corporation is either directly elected or is a representative elected by the councilors from amongst themselves for a term of one year, which is renewable. The Mayor exercises administrative control over the secretariat of the corporation. The Mayor in India has no executive authority. The

indirect election of the Mayor combined with his short term makes him more a figurehead than an active functionary.

Committees

Various Statutory and Non-Statutory Committees that are set up by the council do most of the work of the corporation. A Statutory Committee is set up by the statute which constitutes the Corporation, such as executive committee, standing committee, planning committee, health committee and education committee. Non-Statutory Committees include transport committee, women and child welfare committee etc. The number and composition of the committees vary from state to state. The most important committee, both regarding power and range of functions allotted is the Standing Committee of the Corporation. It acts as the steering committee exercizing executive, supervisory, financial and personnel power. The Standing Committee consists of elected members varying between seven and sixteen through a system of proportional representation of councilors.

Executive wing

The Municipal Commissioner is the chief Executive Officer and head of the executive wing of the Municipal Corporation. All executive powers are vested in the Municipal Commissioner. Although the Municipal Corporation is the legislative body laying down policies for civic governance of the city, it is the Commissioner who is responsible for execution of the policies. The Commissioner is appointed for a fixed term that is mentioned in the respective state's statutes. However, his tenure in a corporation may get either extended or reduced. The Commissioner's powers are classified into two broad categories: those listed in the statute creating the corporation and those delegated by the Corporation or the Standing Committee.

Municipal Councils

Normally, Municipal Councils cover smaller areas than the Municipal Corporations. The municipal acts of the states govern the Municipal Councils. The State Government can, by notification, propose an area, except a military cantonment to be a municipality, define its territorial limits and make alterations in them. The Municipal Council, President, the Committees and the Executive/Chief Officer constitute the main components of the structure of municipal government. The Municipal Council makes laws that are called by-laws within the framework of the municipal act for the civic governance of the city or town. The size of every Municipal Council varies from state to state; the municipal acts prescribe both the maximum and the minimum number of councilors.

The tenure of the Municipal Council varies from three to five years. The council elects, from among the councilors, a President whose term may be co-terminus with that of the council. In certain states Presidents are elected directly by the citizens. In a number of states the term of the President varies from one to three years and is not co-terminus with that of the council. The President occupies an important position in the municipal administration and enjoys considerable authority and power both in the deliberative and executive organs of the municipality. He convenes and presides over the meetings of the council and gives his rulings on all controversial matters. He also holds the power to take disciplinary action against offending councilors and can suspend or adjourn any meeting in case of pandemonium. The President not only guides the deliberation of the council but also executes its decision as its chief Executive Officer.

There is provision in the municipal act for setting up of committees to assist the parent body to perform its tasks. The Standing Committee is the most important of all committees. The powers and functions of the Municipal Council Committees are the same as those of the Municipal Corporation. The elected President being dependent on the council, the Chief Executive Officers face a lot of pressure and influences in exercizing their executive authority. In most states the state government appoints the Executive Officer. In some states the council makes the appointment, but his or her independence has been confirmed by making it difficult his removal from office - generally by a three-fourth-majority vote.

Nagar Panchayat

A Nagar Panchayat is one form of urban body in India.

An urban centre with more than 30,000 and less than 100,000 inhabitants is usually classified as a Nagar Panchayat. However, there are some exceptions. All the previous Town Area Committees (Urban centres with a total population of more than 5,000 and less than 20,000) are reclassified as Nagar Panchayat. Nagar Panchayat have a chairman with ward members. It consists of a minimum of 10 elected ward members and three nominated members.

74th Act in detail

243P gives definitions . Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor.

"Municipal area" means the territorial area of a Municipality as is notified by the Governor.

"Municipality" means an institution of self-government constituted under article 243Q

"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities

243R speaks of composition of Municipalities

It says that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

The Legislature of a State may, by law, provide for the representation in a Municipality of-

- persons having special knowledge or experience in Municipal administration;
- the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- the Chairpersons of the Ward Committees

Such persons shall not have the right to vote in the meetings of the Municipality.

The Legislature of a State may, by law, provide for the manner of election of the Chairperson of a Municipality.

243 has provisions related to constitution and composition of Wards Committees.

It says that there shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

The Legislature of a State may, by law, make provision with respect to-

- the composition and the territorial area of a Wards Committee;
- the manner in which the seats in a Wards Committee shall be filled.

A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

Where a Wards Committee consists of one ward, the member representing that ward in the Municipality;or where it consists of two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

Legislature of a State may also make provision for the constitution of Committees in addition to the Wards Committees.

243T has provisions related to reservation of seats.

Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

Not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to the Scheduled Castes/ Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

The officers of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

The reservation of seats mentioned above shall cease to have effect on the expiration of the period specified in article 334 as is the case for the state assemblies and Lok Sabha.

It is the discretion of the Legislature of a State to make any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U talks of the duration of Municipalities.

Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.A Municipality shall be given a reasonable opportunity of being heard before its dissolution.

An election to constitute a Municipality shall be completed before the expiration of a period of six months from the date of its dissolution. However, where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for constituting the Municipality for such period.

A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved.

243V relates to disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Municipality-

- if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
- if he is so disqualified by or under any law made by the Legislature of the State.

If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications ,the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243W deals with powers, authority and responsibilities of Municipalities.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

- the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

Powers etc may similarly be devolved to the Committees to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X deals with the financial provisions: power to impose taxes by, and Funds of, the Municipalities. The Legislature of a State may, by law-

- authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom.

243Y has provisions related to the State Finance Commission.

It says that the Finance Commission constituted under article 243-I(dealing with the Panchayats) shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

(a) the principles which should govern-

- the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
- the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

The Governor shall cause every recommendation made by the Commission under this Article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z speaks of audit of accounts of Municipalities.The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA relates to the State Election Commission. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K dealing with the Panchayats.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB says that the provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly.However, the President may,

by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify
in the notification.

243ZC says that this Part shall not apply to the Scheduled Areas (Fifth Schedule) and the tribal areas(Sixth Schedule) of article 244.

Further, nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

However, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD deals with the Committee for district planning which is discussed in the Chapter on Panchayats.

243ZE relates to Committee for Metropolitan planning

It says that there shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled.Not less than two-thirds of the members of such Committee shall be drawn from the elected members of the Municipalities and the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area.

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

Every Metropolitan Planning Committee shall, in preparing the draft development plan,

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF says that notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of Seventy-fourth Amendment Act, 1992.
which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

243ZG bars interference by courts in electoral matters. It says that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court.

Also, no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Amendment of article 280 is made to the following effect:

"the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State".

After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

Analysis of inter-state variation

Article 243Q of the Constitution states that a Municipal Corporation shall be constituted for a larger urban area, a Municipal Council for a smaller urban and a Nagar Panchayat for an area, which is in the process of transition from rural to urban. The Act does not define larger or smaller urban area or an area of transition from rural to urban. It has been left to the state governments to fix their own criteria. The Article says that size of population, density of population, percentage of male working population in non-agricultural employment, annual revenue generation etc., may be taken into account by the states.

Since 1994, many states have made the relevant Nagarapalika Acts. But apart from total population, very few states have taken into account the other criteria. Only Andhra Pradesh, Himachal Pradesh, Tamil Nadu and Karnataka have prescribed the criterion of annual revenue generation.

Article 243R of the Constitution states that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies or wards (similar to constituencies of the Lok Sabha or Vidhan Sabha). This means that a Municipal body would comprise mainly of directly elected representatives or that it is an elected body. It also states that certain members may be nominated by the state government (local MPs/MLAs and persons having special knowledge

or experience in municipal administration) with or without the right to vote in the proceedings of the Municipality.

The total number of members in a Municipality varies from state to state. Most states have tried to determine the number of members by keeping in mind the total population of the Municipality. The range in Uttar Pradesh is from 60 to 110 members, in Madhya Pradesh it is 40 to 70, it is 30 to 100 members in Karnataka, while it is 60 to 70 in Rajasthan. In Maharashtra, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Similarly, in West Bengal, it is 31,000 in Kolkata, 19,000 in Howrah and 8,000 in Siliguri. As far as nominated members are concerned, Andhra Pradesh is the only state which has a provision to nominate one person belonging to the minority community.

Election and Removal of Mayor / Chairpersons

The mode of election of Mayors / Chairpersons is left to the discretion of the State Governments by the Constitution -- Mayors in the case of Municipal Corporations and Chairpersons or Presidents in the case of Municipal Council or Nagar Panchayat. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/Chairpersons are elected from amongst the elected Councillors i.e., indirectly elected. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/Chairpersons are elected directly by the people. Their term of office also varies from state to state. Uttar Pradesh, West Bengal, Tamil Nadu, Rajasthan, Andhra Pradesh, Kerala and Madhya Pradesh have provided for a five-year term, while Assam, Delhi, Himachal Pradesh, Orissa and Karnataka have provided for a one-year term. Maharashtra and Gujarat have provided for a two and a half year term.

The provisions in State laws for removing a Mayor/Chairperson is through a no-confidence motion.

Right to Recall

A significant and revolutionary development in the last few years is with regard to people's awareness of their rights as citizens. This is best exemplified in the provision of the right to recall elected representatives, which has been granted to the people in Madhya Pradesh and Tamil Nadu. Under this law, the people of a ward have the right to recall their elected representative through a 'referendum'. In Madhya Pradesh, this power has already been exercised in a few Municipalities.

Qualifications and Disqualifications for Membership in Municipalities

Article 243V of the Constitution provides that the criteria for disqualification for being chosen or for being a member of a Municipality shall be the same as in the case of Vidhan Sabha election. A state government can stipulate other qualifications also. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age, name in the electoral rolls etc. Although, the rules in this regard, prescribed by some states, such as the two child norm (a person having more than two children cannot stand for elections) has evoked mixed reactions and their effect needs to be studied in detail before applying it to all the Municipalities. In Haryana and Himachal Pradesh, licensed architects, town planners, surveyors, etc., (basically those who are licensed to take up works contracts of the Municipality) cannot contest elections. Failure to submit accounts of election expenditure is a disqualification in some States. In Kerala, this resulted in the disqualification of more than 12,000 candidates in the Panchayat polls. The State Election Commissions have prescribed various norms in this regard.

Regularity of Elections

The Constitution makes elections to the Municipalities mandatory every five years. All the states have held elections to the local bodies. There are no Municipalities in the Union Territories of Dadra & Nagar Haveli and Lakshadweep. Though elections have been held in most states, the problem arises with regard to holding them regularly. In Uttar Pradesh, since the state government claimed that the delimitation process had not been carried out, it promulgated an ordinance postponing elections. This ordinance was then challenged in the High Court arguing that if elections are not held every five years then it is a violation of the Constitution. The ordinance was quashed by the High Court and the Supreme Court upheld the judgement of the lower court. Similarly, in Haryana, elections due in 2000 were postponed due to the announcement of
Assembly polls. The Supreme Court had to intervene and direct the State Government to hold elections within a specific time. In Andhra Pradesh also elections have been postponed either due to delay in delimitation of wards or complications in the procedure of reservation of seats for elections. In
all cases the courts have had to intervene in response to writs or PILs to ensure timely elections.
Although the Constitution makes timely elections mandatory, issues relating to reservation and delimitation have often been cited as reasons for postponing elections. It is interesting to note here that the constitutional provision of holding timely elections has withstood judicial scrutiny also. The Supreme Court clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. It stated that postponement of elections is a violation of the Constitution unless there are 'supervening difficulties' such as natural calamities like floods, earthquakes etc., which prevent

the state from holding timely elections. It is therefore important that both the state government and the central government (in case of Panchayats and Municipalities located in Union Territories) ensure the completion of elections before the expiry of the five year term of the Municipality as desired by the Constitution. Also the State Election Commissioner in the event of a delay in elections should send a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfil the requirements of the Constitution.

Delimitation of Constituencies

Delimitation basically means drawing up of boundaries of wards or territorial constituencies. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of territorial constituencies rests with the State Government, while in Gujarat, Maharashtra, Kerala and West Bengal, the responsibility lies with the State Election Commission. Delimitation orders have been passed by most State Governments wherein the parameters for delimitation have been prescribed.

Electoral Rolls

Under articles. 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). In some states the electoral rolls of the Lok Sabha and the Vidhan Sabha elections are disaggregated and used in the local body polls. While in other states separate rolls are prepared.

Reservation

The responsibility of reservation of Wards for municipal election vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana, and Punjab, the State Election Commission has no role to play in it. In Maharashtra, Gujarat, Kerala & West Bengal the State Election Commission is responsible for reservation. In all the states rotation of reserved seats takes place during every election; therefore, it is seldom that a member elected on the reserved seat gets an opportunity of contesting the same seat for a second term.

State Election Commissions

Articles 243K and .243ZA stipulate that the "superintendence, direction and control for the preparation of electoral rolls and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner (SEC) to be appointed by the Governor." These articles further State that the SEC shall not be removed from his office except by

procedure similar to that for removal of a Judge of a High Court. The office of the State Election Commissioner is on the lines of the Chief Election Commissioner. Both are Constitutional Authorities. Articles 243K and 243ZA have kept the Election Commission of India as a model.

Since the elections to both Panchayats and Municipalities elects more than three million representatives, the elections to these bodies is a fairly large exercise. It is, therefore, essential that the office of the State Election is adequately strengthened. Regarding the appointment of the State Election Commissioner, the Governor of the concerned State has been made the appointing authority. To make the selection impartial, it is felt that a group consisting of the state Chief Minister, Speaker of the legislature and the leader of Opposition recommend a suitable person with adequate administrative experience to the Governor for appointment. The state legislature is to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner.

The responsibility of issuing notification of local body elections wrests with the State Election Commission in Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat. While in Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission.

Wards Committees and Proximity to Citizens

The provision to constitute Wards Committee came from the idea that there is a need for bridging the gap between the elected representative and his electorate so that activity in any area reflects the aspirations of the people and the elected representative is directly accountable to the people. The need for effective participation of the people themselves in the governance of their cities has become imperative.

In large municipal bodies,citizens do not have access to their elected representatives and therefore Wards Committees should be set up in Municipal Corporations with a population of more than three lakhs.. The structure and composition of the Wards Committee is left for the state governments to decide. In Kerala, there is a Ward Committee for every Ward. The elected councillor of the ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc., and these categories are mentioned in the Act. The Ward Committee will meet at least once in three months. The Committee will prepare and supervise the development schemes for the ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for

identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting in timely collection of taxes, fees and rents. The duration of the Wards Committee shall be for five years.
The Madhya Pradesh, Haryana & Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of not less than 3 lakh. In the Greater Mumbai Corporation, 16 Wards Committees have been formed out of 221 municipal wards. The wards have been grouped similarly in Pune, Navi Mumbai and Pimpri Chinchwad. It comprises all the councilors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation. In West Bengal and Kerala, Wards Committees have been set up for each municipal ward Since in Calcutta every municipal ward has a Ward Committee, another committee comprising of a group of municipal wards known as Borrough Committees have also been formed. Calcutta thus has a three tier set up. In Chennai, the 155 municipal wards are grouped into ten Wards Committees. Bangalore's Wards Committees cover an average population of about two lakhs. A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives.

Functional and financial domain

Functional Domain

The functional domain basically relates to the functions that have been assigned to the Municipalities to perform. During the pre-independence era, almost all the functions in the city such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets etc., were performed by the Municipality. In the period after independence, however, there has been a steady diversion of municipal functions to other bodies like development authorities such as Delhi Development Authority, Ghaziabad Development Authority etc., and para-statal organisations such as Jal Nigam in Uttar Pradesh. State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. The Municipalities were only left to performing functions like sanitation and garbage removal. Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities "with such powers and authority as may be necessary to enable them to function as Institutions of self-government". The 11th and the 12th Schedules listing 29 and 18 items respectively were added to the Constitution. They are broad headings signifying a whole variety of functions. It was left to the state governments to assign functions and also commensurate finance and human resource. In Kerala , a major function entrusted to the

Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.
Other states have also amended their acts to transfer functions to local bodies. However, changes in the laws alone do not ensure the transfer of functions and responsibilities. Although functions have been assigned to the Municipality, there could still be several restrictions in the exercise of that function.
It would interesting to note that in Kerala a function can be transferred to the local body in any form through an Act, notification or government order, but once a function is transferred it can be taken back only with the consent of the legislature. Even if functions are assigned to the local bodies through an act of the legislature, it is impossible for the Municipality to discharge the function satisfactorily since the state governments have not transferred the requisite manpower and finances required to perform the functions. Functions, functionaries and funds should go together. It has also been felt that just as the Constitution has a union list, state list and concurrent list, there is a need to have a municipal or local body list in which both the 11th and 12th Schedules of the Constitution find place.

Financial Domain

The dismal state of finances in Municipalities across the country is a very common feature. The Constitution, even after the 74th Amendment does not provide for an independent set of taxes that the Municipalities can raise. They continue to be determined and regulated by the State Governments.

Article 243X states that a state may by law authorise a Municipality to levy and collect property taxes, duties, tolls and fees. And also that the state may lay down the procedure and ceiling for the same.

The Constitution has made it mandatory for every state to constitute a State Finance Commission (SFC). The SFC is to review the financial position of the Municipalities and make recommendations regarding distribution of taxes between the States and the Municipalities. It is also expected to look into the criteria for grants-in-aid and suggest measures needed to improve the financial position of the Municipalities.

DPCs and MPCs

District Planning Committees (DPC)

The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated

planning for urban and rural areas in the district. The draft development plan to be prepared by District Planning Committees has to address critical matters of common interest such as sharing of water and natural resources etc.

Composition

The composition of the DPC has been left to the discretion of the States. Article 243ZD of the Constitution stipulates that four-fifths of the total number of members of DPC will be chosen by and from the elected members of the Panchayat and Nagarapalikas at the district level . Their numbers will be in proportion to the ratio between the population of the rural areas and of the urban areas in the district.. The rest are to be nominated.

While most States have made laws to constitute District Planning Committees, some have not actually constituted them. The provisions to constitute DPC are in the 74th rather than the 73rd Constitutional Amendment. Rural Development departments have traditionally been performing district level planning functions. But now they find that the provisions for the DPC are a part of the 74th Constitution Amendment.

Another issue has been the relationship between the Zilla Parishad and the DPC. In Assam, Karnataka, Kerala, Rajasthan and West Bengal the Chairperson of the Zilla Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC.

The designation of a Minister as the Chairman of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation.

Till recently most state governments had formed DPCs mainly because it is a constitutional requirement and this body has remained largely defunct. There is also a need to build capacities within the district for the DPC to be able to function as an independent planning body of the district. The representation of MPs and MLAs is a related issue. Both the 73rd and the 74th Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. The role of MPs and MLAs is crucial in district planning. For this purpose, either MPs and MLAs become honoured invitees of the DPC and contribute to its deliberations or are formally coopted in the DPC.

Metropolitan Planning Committee

According to the 2001 Census, there are 35 metropolitan areas or cities with a population of 10 lakhs or more. These cities are administered by several

Municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. The Calcutta Metropolitan area comprises three Corporations and thirty-four Municipalities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty Municipalities. In Delhi, there is the Cantonment Board, the New Delhi Municipal Council and the Delhi Municipal Corporation (MCD). The sheer size of the cities, the scale of economic activity together with its complexity of problems pose a herculean task to its managers. It is this complex nature of the metropolitan city needs a metropolitan wide perspective, planning, advocacy and action. Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one Municipal Corporation or the Municipality alone cannot achieve much in isolation. The Metropolitan Planning Committee is thus envisaged as an inter-institutional platform for similar purposes. Metropolitan areas are also the main engines of growth and economy in the country. Urban transport,water supply, waste management., police, public health, etc., require metropolitan level planning, implementation and co-ordination. Besides the scale of services needed in these metropolitan areas is huge.

In light of the above, article 243ZE in the Constitution provides for the setting up of Metropolitan Planning Committee. As far as the states are concerned, the Metropolitan Planning Committee is a constitutional requirement. The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat. In the composition for Metropolitan Planning Committee it is envisaged that two-third of its members are to be chosen from amongst the elected representatives of urban and rural local bodies in the metropolitan areas. The others are to be nominated from central government agencies and various state government agencies, other organizations and institutions responsible for various services in the metropolitan areas. In preparing the draft development plan the Metropolitan Planning Committee should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc.

Right to recall

In 2001, people in Madhya Pradesh exercised their democratic power in the Anuppur Nagar Panchayat where an elected woman president was compelled to step down in a democratic manner.

In 2008, recall of presidents of three nagar palikas- municipal-corporations ((Rajpur, Nawagarh and Gunderdehi in Chhattisgarh) , in Chhattisgarh through voting under the Chhattisgarh Nagar Palika Act took place.

This Act, adopted by Chhattisgarh from Madhya Pradesh, provides for recall of Mayor of a Corporation if a majority of the votes cast in a secret ballot are in favour of it. The proposal for recall has to be moved by not less than three-fourth of the total number of the elected Councillors. It cannot be initiated "within a period of two years from the date on which such Mayor is elected and enters office," and "if half of the period of tenure of the Mayor elected in a by-election has not expired." The Act further provides that the process for recall of a mayor can be initiated "once in his whole term".

The last wellknown instance was when then governor of California Gray Davis was recalled in 2003, to be replaced by Arnold Schwarzenegger.

Right to recall, a direct democracy devise, has been favoured as it keeps the elected representatives accountable to the voters. His/her performance will improve. Voters feel a continuous sense of participation. It will check corruption. Non-performing representatives can be recalled.

However, much as its availability at the lower levels of governance- local level- is welcome, there are objections to it being adopted at higher levels- state assemblies and the Lok Sabha. The reasons arfe

- judging the local representative's performance is relatively simple but at the higher level, it is complex.
- based on experience of other countries—that only 18 states of the US permit recall of state-level officials whereas 36 states permit recall of local-level officials; recall is applicable only to mayors in Germany and not to any state-level officials; and criteria for recall of state-level officials are very difficult to fulfil so that attempts to recall state governors in the US have succeeded very infrequently
- such a provision will make elections more frequent, making the process much more complicated, thus increasing the cost of democracy.
- According to Dr.MS Gill, " it will complicate the functioning of our electoral democracy as about 15-20 lakh parliamentary voters are spread over every 100-200 km."

Somnath Chatterjee, Lok Sabha Speaker advocated this political tool.

Some other types of municipal structures

Notified area committee

In urban planning, a notified area is any land area earmarked by legal provision for future development. It is set up by government notification and not a legislative Act and is so called a notified area committee. All its members and chairman are appointed by the State Government and not elected. It is constituted for an area which does not meet the requirements for setting up a municipality but has potential for fast development.

Hyderabad International Airport Limited (HIAL) was recently gazetted as a NAC(2008)

It usually, includes a settlement with a population between 10,000 and 20,000. A community of over 20,000 is considered a town under Indian law.

Town area committee

TAC is set up by an act of the state legislature for small towns. It can have either nominated or elected members or both. It is a quasi-municipality with limikted number of municipal functions like street lighting, sanitation etc. Maximum number of TACs are there in Uttar Pradesh.

Cantonment Board

The meaning of 'cantonment' given in the dictionary is 'the temporary quarters of the troops.' Later on those temporary quarters of the troops became permanent quarters. The first cantonment was created in 1758 in Barrackpore, in Bengal.

About 200 or 300 years ago, it was thought that certain civic amenities should be provided to the troops so that they are fit for fighting. Housing was provided initially. In due passage of time housing itself attracted the civil population to reside in the Cantonments and the economic spin-offs attracted more people .Thus, many people who were not connected with military, also started living there. Cantonment is basically meant for the location of the troops. Therefore, the predominance of the military interest was recognized and the bodies were under the command and control of the Station Officer.

With the dawn of Independence, aspirations for democratization and decentralization were recognized.56 cantonments were established before the

Independence during British days. 6 cantonments were established after Independence. Thus, there are 62 Cantonments in India . These are located in 16 States and the National Capital Territory of Delhi. The Cantonment Boards are autonomous bodies functioning under the overall control of the Central Government (Ministry of Defence) under the provisions of Cantonments Act. 1924. CBs comprise elected representatives besides ex-officio and nominated members with the Station Commander as the President of the Board. The resources of the Cantonment Boards are limited as the bulk of the property in the Cantonment is Government owned on which no tax can be levied. The Central Government provides financial assistance by way of grant-in-aid . CBs are responsible for discharging the mandatory civic duties like provision of public health, sanitation, primary education and street lighting etc.
The 2006 Act has kept 8 nominated members and 8 elected members in these Boards. Reservation for the Scheduled Castes, Scheduled Tribes and women has been provided in clause 31 of the Act. .

Certain Concepts and Definitions

Urban agglomerations . An urban agglomeration forms a continuous urban spread and consists of a city or town and its urban outgrowth outside the statutory limits. Or, an urban agglomerate may be two or more adjoining cities or towns and their outgrowths. A university campus or military base located on the outskirts of a city or town, which often increases the actual urban area of that city or town. is an example of an urban agglomeration. In India urban agglomerations with a population of 1 million or more--there were 35 in 2001--are referred to as metropolitan areas. Places with a population of 100,000 or more are termed "cities" as compared with "towns," which have a population of less than 100,000. These large urban agglomerations are designated as Class I urban units. There were five other classes of urban agglomerations, towns, and villages based on the size of their populations:

- Class II (50,000 to 99,999)
- Class III (20,000 to 49,999)
- Class IV (10,000 to 19,999)
- Class V (5,000 to 9,999) and
- Class VI (villages of less than 5,000)

Urban area

Definition of urban area

*a minimum population of 5000
*a density of at least 400 people per sq. km., and
*at least 75 per cent of their male labour force in non-agricultural occupation.

Megacity is one that has a population of one crore.There are three mega cities as can be seen in the Table. Urban population is 285m. Metropolitan areas are 35(Table)

- City (E): Large towns in common parlance. In the urban planning definition, towns with a population of one hundred thousand or more.
- Ganj (H): A market centre which has not grown into a fully-fledged town.
- Kasba (P): A subdivision town, next in hierarchy to a district headquarter.
- Lal Dora (H): Literally red thread; used in the past for demarcating the jurisdiction of a village. Presently implies the boundary of the territory of village within which norms and controls of a municipality or urban development authority are not applicable.

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.".

The number of metropolitan cities in India (Population in 2001) :

No.	City	Population (Lacs)
1	Greater Mumbai	163.7
2	Kolkata	132.2
3	Delhi	127.9
4	Chennai	64.2
5	Bangalore	56.9
6	Hyderabad	55.3
7	Ahmedabad	45.2
8	Pune	37.5
9	Surat	28.1
10	Kanpur	26.9
11	Jaipur	23.2
12	Lucknow	22.7
13	Nagpur	21.2
14	Patna	17.1
15	Indore	16.4
16	Vadodara	14.9
17	Bhopal	14.5
18	Coimbatore	14.5

19	Ludhiana	14.0
20	Kochi	13.5
21	Visakhapatnam	13.3
22	Agra	13.2
23	Varanasi	12.1
24	Madurai	11.9
25	Meerut	11.7
26	Nashik	11.5
27	Jabalpur	11.2
28	Jamshedpur	11.0
29	Asansol	10.9
30	Dhanbad	10.6
31	Faridabad	10.5
32	Allahabad	10.5
33	Amritsar	10.1
34	Vijaywada	10.1
35	Rajkot	10.0
	Total	1078.8

RPA, 1951

The Representation of People Act, 1951(RPA) is an act of Parliament of India to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. The Act was enacted by the provisional parliament before the first general election. The acts were amended several times, but one of the notable amendments is the Representation of the People (Amendment) Act, 1966, which abolished the election tribunals and transferred the election petitions to the high courts whose orders can be appealed to Supreme Court. However, election disputes regarding the election of President and Vice-President are directly heard by the Supreme Court.

After India became independent on 15 August 1947, an elected constituent assembly was set up to frame the constitution. Most of the articles of the constitution came into force on 26 January 1950, the Republic Day. Part XXI of the constitution contained the transitional provisions. Articles 379 and 394 of Part XXI which contained provisions for provisional parliament and other articles which contained provisions like citizenship, came into force on 26 November 1949, the date in which the constitution was drafted. The provisional parliament enacted laws for the first general election conducted on 25 October 1951.

RPA 1950 is made to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

The act defines political party as an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A.

QUALIFICATIONS AND DISQUALIFICATIONS

Qualification for membership of the Council of States/Legislative Council: should have his/her name in the electoral roll of a Parliamentary constituency/Assembly constituency at the time of election.For election by nomination to the Legislative council, one has to be ordinarily a resident in that state.

Qualifications for the membership to House of People/Legislative Assembly:
For an unreserved seat, the person should be listed on the electoral roll of **any** parliamentary constituency in India/Assembly constituency in that state, respectively.

For a seat reserved for SC/ST, s/he should be a member of SC/ST respectively of any state/of that state and is listed in the electoral roll in any Parliamentary constituency in India/Assembly constituency in that state, respectively.

Disqualifications:

A person is disqualified if s/he gets convicted for offence of bribery, spreading communal hatred, undue influence or personation at an election, offences relating to rape, cruelty towards a woman by husband or relative of a husband, "untouchability", importing or exporting prohibited goods, being a member or helping financially an unlawful organisation, the Foreign Exchange (Regulation) Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), terrorism, electoral offences, insulting the Indian National Flag or the Constitution of India, etc.

In any other offence, if the period of jail sentence exceeds 2 years, s/he shall be similarly disqualified.

The disqualification begins from the date of conviction and stays for a period of six years after that person's release.The person will have 3 months for appeal in the higher courts if the convicted person is a member of Parliament at the time of such conviction.(Read ahead for developments in 2013)

For corrupt practices, there is a separate section which is given below:

8A. Disqualification on ground of corrupt practices: The case of every person found guilty will be refered to the President for determination of the question as to whether such person shall be disqualified and if so, for what period, not exceeding 6 years. President decides in consultation with the Election Commission whose advice is conclusive.

A person who has been dismissed from government service due to corrupt practices, will be barred from election for five years by the President after taking the opinion of the Election Commission.

For failure to lodge account of election expenses, the EC can disqualify the person which will be for a period of three years.

The EC is the authority that can reduce the period of disqualification, except under Section 8A.

Disqualification from voting:

A person shall be disqualified for six years if convicted under section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) of IPC, 1860 etc.

If disqualified under Section 8A by President, then the disqualification will be for the period as decided by the President.The EC is authorised to reduce/remove this disqualification, except those disqualified under Section 8A.

Notification for election:

For Council of States/Legislative Council: The notification will be issued by the President/Governor/Administrator not more than three months before the expiry of the term of the 1/3rd members retiring that year.

For House of People/Legislative Assembly: In cases other than dissolution, the notification will be issued by President/Governor/Administrator not more than six months before the expiry of the term of the House/ Assembly.

The dates shall be as suggested by the EC.

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

There is the Chief Electoral Officer at the state level, District Election Officer at the district level for the supervision and conduct of the elections.

Observers: the EC nominated Observers can order the Returning Officer to stop counting of votes or to not declare the result if s/he believes there is significant booth capturing and electoral fraud. The Observer has to inform the EC immediately when issuing such orders.

Returning Officer: Will be appointed for each constituency/seat (Council of States) in consultation with the State government. She/he shall be an officer of the government or of a local body.

Assistant Returning Officer: Appointed by the EC. Can do all functions that RO may delegate, except scrutiny of nominations.

District Election Officer will provide, with prior permission of the EC, sufficient number of polling stations and will also publish the list of polling stations as approved by the EC.

Presiding Officer: Shall be appointed by the District Electoral Officer and shall have Polling Officers under him/her. The Presiding and Polling Officers shall not be any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election.

General duty of the Presiding Officer: It shall be the general duty of the Presiding Officer at a polling station to keep order thereat and to see that the poll is fairly taken.

Duties of a Polling Officer: It shall be the duty of the Polling Officers at a polling station to assist the Presiding Officer for such station in the performance of his function.

In case of elections to Council of States or Legislative Council, the Returning Officer will also be the Presiding officer.

Control of EC over the administration related to elections: The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other Officer and any Police Officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the Notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers

shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

REGITRATION OF POLITICAL PARTIES

Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Act shall make an application to the Election Commission for its registration as a political party for the purposes of this Act. It will have 30 days from its formation to file such an application.

The association's memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

Every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company and cannot accept money from foreign sources as banned under FERA.

The donations above Rs 20000 will have to be reported by the Party to the Election Commission every year to avail tax benefit under IT Act, 1960.

NOMINATION OF CANDIDATES

The last date for nominations will be the seventh day from the date the notification is issued in the official Gazette. The last date for scrutiny of nominations will be the day immediately next to the last day of filing nominations. The last date for withdrawal of nominations will be till two days after the scrutiny of nominations is complete.

The date of poll will be more than 14 days after the last day of withdrawal of nominations.

Valid nomination of a candidate of a registered political party needs at least one proposer who is an elector from the same constituency. For a person who does not belong any political party, there have to be at least ten proposers from the same constituency.

In the case of a local authorities' constituency, graduates' constituency or teachers' constituency, there must be at least ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers.

Maximum number of nomination papers in a constituency of a candidate are 4.

In one election, a person can be nominated from a maximum of two seats/constituencies.

The candidate will have to furnish information regarding the cases in which he is accused for which the punishment is 2 years or more and/or cases in which s/he has been convicted for more than one year apart from the offences under which s/he can be disqualified under this act. The RO has to put up this information in a conspicuous place for general public.

Deposits: Lok Sabh: Rs 25000- General candidate; Rs 12500-SC/ST
Legislative Assembly: Rs 10000 general candidate; Rs 5000 SC/ST
Scrutiny of nominations: On the date fixed for the scrutiny of nominations, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates. The Returning Officer (RO) may then either suo motu or on objections raised by anyone else scrutinising the nominations, may reject any of the nomination along with the reason recorded. The candidate may be allowed to rebut any objection till the next day only.

The RO will publish a list of contesting candidates, categorised under candidates belonging to recognised political parties, candidates belonging to registered parties, and other candidates.
The EC will provide for equitable distribution of time on cable TV network and radio to the recognised political parties based n their past performance.

Candidates and their agents
A candidate may appoint any other person who is not disqualified to be elected or to vote in the elections as his/her election agent. A candidate or his election agent may appoint one or many polling agents and relief agents for manning the polling stations. A candidate or his election agent may nominate as many counting agents as may be prescribed for being present as his counting agent at the counting of votes. The candidate has to inform the RO of any such appointment or change in the appointment immediately. The removal of any election/polling/counting agent is to be done by the candidate under his signature and sent to the RO. At every election where a poll is taken, each contesting candidate at such election and his election agent shall have a right to be present at any such polling station.

General procedure at the elections
If a candidate of a recognised political party dies after making nomination on the last day of nomination but before the commencement of the poll, the returning officer may adjourn the election to a date to be announced later.The EC will then ask the party to nominate another candidate within seven days. A candidate who has earlier withdrawn his nomination may also be nominated again. A poll will be conducted only if the number of candidates is more than the number of vacancies.

The Poll
Minimum 8 hours will be provided on the day of the poll for the poll. The timings are decided by the EC. The Presiding/Returning Officer may adjourn the poll in case of riot, open violence or a natural calamity that

might prevent the conduct of the poll. In case of destruction, etc. of ballot boxes or failure of machine, etc. the EC will decide whether the poll needs to be adjourned or continued.

In case of booth capturing, the EC may adjourn or countermand the poll at the booth.

Election for Council of States shall be through open ballot.

Postal/proxy ballot is available to the citizens serving in armed forces, forces to which the Army Act 1960 applies. Their wives are allowed either postal or in person ballot.

Postal ballot is available to those who serve outside India on government duty or are members of armed police of the state and serve outside the state. It is also available to people under preventive detention.

Indelible ink and ID cards are must for voting.

A Person who is not a citizen of India/ not listed in the electoral roll/ is of unsound mind and so declared by a competent court/ is disqualified due to corrupt practices shall not be eligible to vote.(Read ahead about the NRIs and RPA 1951).

If a person, except for those authorised to be proxy for others, votes more than once in a given election, all his/her votes will be cancelled.

Counting of votes

At every election where a poll is taken, votes shall be counted by, or under the supervision and direction of, the returning officer, and each contesting candidate, his election agent and his counting agents, shall have a right to be present at the time of counting.

If the ballots papers are destroyed, lost, etc at any time before the completion of counting, the RO will infirm the EC, which will decide whether the re-polling is needed or not.

In case of equality of votes, the RO shall decide by lot the winner.

The RO shall declare the result and also prepare a report and submit the same to the EC and the Secretary of the House to which the election was conducted. The date of election will be the date of declaration of the result by the RO.

Multiple elections

If within ten days a candidate elected to both houses of Parliament does not intimate the EC about his/her preference, his seat in the Council of States shall fall vacant.

If a member is already a member of one house of Parliament, his/her seat in that house will fall vacant the moment s/he is elected to the other house.

In case of election to more than one seat in a house, the person shall need to resign from all but one seat by writing to the Chairman/Speaker, otherwise all the seats shall fall vacant.

The EC publishes in the Official Gazette the names of the persons who are successfully elected in the election.

Declaration of assets

Every elected person will have to declare his/her assets within 90 days from the date of taking the oath to the Chairman/Speaker. Any wilful contravention of the above will be treated as breach of privilege of the house.

Election Expenses

Only those who contest for House of People or Legislative Assembly are required to maintain such accounts.

Election expenditure is calculated from the date one is nominated to the day the election ends. The expenditure of the leaders of political parties, whose names have been communicated by the party to the EC and Chief Electoral Officer, shall not be included in the expenditure of the candidate. The accounts have to be submitted to the District Election Officer within 30 days of the election by all contesting candidates.

Free supply of certain material to candidates of recognised political parties

The EC supplies copies of electoral roll to the recognised parties. It is also authorised to supply any other material as may be decided by the Central government in consultation with the EC. A suitable reduction in the maximum expenditure permissible will be reduced in consultation with the EC.

DISPUTES REGARDING ELECTIONS

All election disputes are to be tried by the respective High Court. Election Petition is the only way to challenge any election. Election can be challenged by a candidate or any voter listed in the electoral roll of that constituency within 45 days of declaration of the result. The petition has to contain the material facts on which the election is challenged.

Trial of the petition

The trial shall have to be completed within 6 months. No witness or person will be required to state which candidate that person has voted for. The Court can declare the election of any or all candidates as void and also declare any other candidate as duly elected.

The election can be declared null and void in case of the elected candidate not being qualified or being disqualified, or any other candidate's nomination being improperly rejected, or crrupt practices by any other candidate/agent which materially affects the results, improper rejection/acceptance of vote or by non-

compliance of the Constitution or this act. However, if the elected candidate and/or his agent did not indulge in any corrupt practices and tried their level best to stop them, then his election will not be void.
A copy of the decision will be sent by the court to the EC and Speaker/Chairman of the House concerned. The acts of the candidate, whose election is declared void, before such decision of the court, shall still be valid. Death of the sole petitioner or the sole respondent may lead to abatement of the trial.

An appeal against the High court order has to be made in the Supreme court within 30 days of the High Court's judgement.

CORRUPT PRACTICES AND ELECTORAL OFFENCES

Under this act, following are corrupt practices:

- **Bribery:** both giving and receiving, monetary or non-monetary, benefits.
- **Undue influences:** like threats, divine grace, etc
- Making race, religion, caste, sex, language, etc as basis to get votes or to dissuade voters from voting for some other candidate
- Promoting hatred amongst Indians
- Making statements on character or motives of other candidates which are false.
- Hiring of vehicle for free conveyance of electors
- Flouting the expenditure norms
- Taking help of government servants of the following categories, gazetted officers, stipendiary judges and magistrates, members of the armed forces of the Union, members of the police forces, excise officers, revenue officers, outside their official duties which shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.
- Booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

Electoral offences

Promoting enmity between classes in connection with election shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for filing false affidavit, etc. shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Violation of prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Any person who disturbs an election meeting shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

All election pamphlets, etc must have the names and addresses of the publisher and printer. A copy of each pamphlet and the document by the candidate authorising the printer to print it, shall be sent to the Chief Electoral Officer or District Magistrate immediately. Any contravention of these laws shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Violation of secrecy of secret ballot shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Violation of prohibition of canvassing 100 meters around the polling booth shall be punishable with fine which may extend to two hundred and fifty rupees.

Penalty for disorderly conduct in or near polling stations like use of megaphone, shall be imprisonment which may extend to three months or with fine or with both.

Any person who misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer. Re-entry to the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

Taking the ballot papers out of the polling station shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

Violation of prohibition of going armed to or near a polling station shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Violation of prohibition of sale/distribution of liquor on the polling day shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both.

Power of EC with regard to disqualifications

The EC shall have powers of a civil court if it considers an enquiry is necessary to provide an opinion under Article 103, 192 or under this Act. The statements of any person in front of EC will not be taken as evidence in any other court.

BYE-ELECTIONS

-The EC shall call bye-elections to fill causal vacancies in the Parliament or State legislatures within six months. If the remainder of the term is less than an year, the bye-election shall not be held.

MISCELLANOUS

It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election.

Every local authority, every university established or incorporated by or under a Central, Provincial or State Act, a Government company, any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government shall provide it's manpower for the conduct of elections as asked for by the Chief Electoral Officer/Regional Commissioner appointed by the EC.

The government can requisition any premises and/or vehicle for the use in conduct of election for which the government shall provide compensation.

The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. All such rules shall be placed before the Parliament for thirty days. In case there is no objection or modification, the rules shall come into force, otherwise with appropriate modification or will not come in force at all.

Recent developments- judicial, quasi-judicial and legislative

Lily Thomas vs Union of India

The Supreme Court in Juy 2013, held that chargesheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.

A Bench of Justices A.K. Patnaik and S.J. Mukhopadhaya struck down as unconstitutional Section 8 (4) of the Representation of the People Act that allows convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence. The Bench, however, made it clear that the ruling will be prospective and those who had already filed appeals in various High Courts or the Supreme Court against their convictions would be exempt from it.

Section 8 of the RP Act deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release. But Section 8 (4) of the RP Act gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.

The Bench found it unconstitutional that convicted persons could be disqualified from contesting elections but could continue to be Members of Parliament and State Legislatures once elected.

The Supreme Court has given two reasons for its verdict: First, it held Section 8(4) to be in violation of Article 102, and its corresponding provision for the States, Article 191, of the Constitution. Justice (Retd) Markandeya Katju says that a careful perusal of Article 102 shows there is nothing therein which renders it inconsistent with Section 8(4).

Article 102(1) of the Constitution states:

1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament
   a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
   b) if he is of unsound mind and stands so declared by a competent court;
   c) if he is an undischarged insolvent;
   d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
   e) if he is so disqualified by or under any law made by Parliament

Justice Katju says that none of the five clauses in Article 102(1) are attracted so as to invalidate Section 8(4). Clause (e) is not attracted because Section 8 (4), which is a law made by Parliament, specifically states that a legislator convicted is not disqualified during pendency of his appeal if it is made within three months.

Justice Katju further says that "... the Supreme Court has held that Parliament had no legislative competence to enact Section 8(4). This reasoning, too, is difficult to accept because Entry 72 to List 1 of the 7th Schedule in the Constitution specifically allows Parliament to legislate on elections to Parliament or the State legislatures. It is well-settled that legislative entries in the Constitution are to be widely construed, and in any case Parliament has residual power to legislate under Entry 97 to List 1."

However, it may be opined that the verdict of the honourable court is valid for the following reasons

a. There are no adequate grounds to create a hierarchy between ordinary persons and legislators
b. Such inequality violates Art.14
c. Parliament should set an example by equating its members with ordinary people in matters related to probity
d. Extra-merit factors like it may destabilise the government , particularly the coalition and minority governments may not be convincing from an ethical and democratic perspective

Masood

In the first conviction after the Supreme Court struck down a law that provided immunity to MPs and MLAs from immediate disqualification, a Special CBI court in September 2013 held Rajya Sabha member Rasheed Masood guilty in a case of corruption and other offences and he is set to lose his seat.Masood's conviction is the first case after the July 10 Supreme Court judgement that struck down sub-section 4 of Section 8 of Representation of the People Act, under which incumbent MPs and MLAs can avoid disqualification till pendency of the appeal against conviction in a higher court.

Representation of the People (Second Amendment and Validation) Bill, 2013

The Representation of the People (Second Amendment and Validation) Bill, 2013, introduced by Law Minister Kapil Sibal also seeks to negate the apex court verdict on immediate disqualification.In the bill, a proviso has been added to sub-section (4) of section 8 of the RP Act which makes it clear that convicted member shall continue to take part in proceedings of Parliament or Legislature of a state but he or she shall

neither be entitled to vote nor draw salary and allowances till the appeal or revision is finally decided by the court. The Bill could not be passed in the Parliament.

The government filed a review petition on the verdictand it was rejected.

Supreme Court ruling on jailed legislators

The judgment of the Supreme Court in Chief Election Commissioner v. Jan Chawkidari (July 2013) held that if a person is in jail or police custody, he cannot contest an election.The Supreme Court has relied on the definition of "elector," as found in Section 2 (e) of the RPA, and observed that in view of Sections 3, 4, and 5, to be qualified for membership of the legislature, one has to be an elector. Section 2(e) defines an elector as "a person whose name is entered in the electoral roll of that constituency [...] and who is not subject to any of the disqualifications mentioned in section 16 of the RP Act."

The ruling, however, does not apply to those on bail.

A Bench of Justices A.K. Patnaik and S.J. Mukhopadhaya dismissed appeals filed by the Chief Election Commissioner and others against a Patna High Court judgment that in 2004 had held that when a person in custody is disqualified from voting he or she must be disqualified from contesting in elections too.

Jan Chaukidar (Peoples Watch) and others filed petitions in the Patna High Court contending that a person, who was confined in prison, whether under a sentence of imprisonment, transportation or otherwise, or was in the lawful custody of the police was not entitled to vote by virtue of Section 62 (5) of the RP Act and accordingly was not an "elector" and was, therefore, not qualified to contest elections to the House of People or the Legislative Assembly of a State.

The apex court reasoned that if one can not vote, he can not contest either. The name may be there but he is disqualified from voting once he is in jail unless he is on bail. Thus, a candidate on bail can contest because he can vote as well.

While the reasoning is tenuous, the remedy lies in allowing those in legal custody to be able to vote and not extend the disqualification to vote to those who seek to contest too. Such a remedy is in line with global human rights trend. However, the intent to clean the political system of criminals is welcome.

The criticism is that it can be abused by ruling party members and others.

Lawmakers cutting across party lines passed the Representation of the People (Amendment and Validation) Bill, 2013, in the monsoon session of the Parliament and overcame the verdict.

By amending sub-clause 5 of section 62 of the RP Act, Parliament has cleared the way for those in jail as well as in custody to contest polls.

Excerpts from Anup Surendranath's Article in the Hindu on the Right to Vote etc

The Supreme Court's decision last month in Chief Election Commissioner v. Jan Chaukidar has attracted significant attention for its perceived potential to address the criminalisation of politics.

Justices A.K Patnaik and S.J. Mukhopadhaya ruled that since one of the conditions to be a candidate under The Representation of the People Act, 1951 was that the candidate should be eligible to vote, even those in lawful custody of the police could not contest elections. They reached this conclusion because it is established law in India that individuals in lawful custody of the police, undertrials and those serving a sentence of imprisonment after conviction cannot vote.

.There has been significant debate in our constitutional jurisprudence on the nature of the right to vote. The dominant position, established through judgments of the Supreme Court, is that the right to vote is not a fundamental right or a constitutional right but is only a statutory right. Being a statutory right, the legislature can determine the terms on which the right to vote is to be enjoyed by the people of India subject to 326 of the Constitution. One such condition is to be found in Section 62 (5) of the RP Act , which explicitly provides that "no person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police." And it is this provision that the judges in Jan Chaukidar relied on to come to the conclusion that those in police custody cannot contest elections because they are not eligible to vote. Indian law denies voting rights to not only individuals convicted of a crime and serving a sentence in prison, but also to undertrials and even those in police custody. The constitutionality of Section 62(5) of the RP Act was challenged before the Supreme Court in Anukul Chandra Pradhan v. Union of India (1997) as being violative of the right to equality and the right to life under Articles 14 and 21 of the Constitution. Through a unanimous opinion authored by the late Chief Justice J.S. Verma, the Supreme Court rejected this challenge. Undoubtedly, Article 14 permits the state to make classifications and accord differential treatment according to the same. However, the restriction on the state is that these classifications must be reasonable and must have a rational connection to the objective being sought to be achieved. The Supreme Court took the view that it was reasonable to deny voting rights to convicted prisoners, undertrials and those in police custody because it was being done to curb the criminalisation of politics. Further, it took account of practical considerations and ruled that the additional resources that would be required in terms of infrastructure, security and deployment of extra police forces were legitimate justifications in denying the right to vote to prisoners and those in custody. The court was of the view that a prisoner was "in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment [and] cannot claim equal freedom of movement, speech and expression with the others who are not in prison."

Clearly, one of the major concerns of the court was the criminalisation of politics but it is difficult to see how the denial of voting rights is important or relevant in this regard. Criminalisation of politics has to be addressed by ensuring that those with a criminal record do not contest elections and it has very little to do with who votes. ..it is rather puzzling that the court did not consider it necessary to distinguish between convicted prisoners, on the one hand, and undertrials and those in custody, on the other. ..Bringing undertrials and those in police custody within the umbrella of "criminalisation of politics" ignores the harsh reality that a vast majority of undertrials languishing in Indian jails are poor and belong to the marginalised sections of society.

Gopinath Munde

BJP leader and Deputy Leader of the Opposition in the Lok Sabha Gopinath Munde was served a show-cause notice by the Election Commission for allegedly claiming that he had spent Rs.8 crore in the 2009 Lok Sabha election (over and above the permissible limit of Rs.25 lakh).

Under Section 77 (1) of the Representation of the People Act, 1951, every candidate at an election is required to keep a separate and correct account of all expenditure in connection with an election incurred or authorized by the candidate or his election agent between the date of filing of nomination paper and the date of declaration of the result of election.

Under section 78 of the Representation of the People Act, 1951 the candidate is required to lodge with the District Election Officer a true copy of the account kept by him under Section 77 within 30 days of the declaration of result of the election.

In its notice, the EC had wanted to know, why Mr. Munde "should not be disqualified under Section 10A of the Representation of the People Act, 1951, for your failure to maintain a true and correct account of your election expenses as required by law, for not lodging the true account of your election expenditure by suppressing/undervaluing the said.

The total of the expenditure shall not exceed statutory liits set by the GOI in consultation with the EC. Conduct of Elections Rules, 1961 prescribes varying limits of election expenditure for Parliamentary and Assembly Constituencies in each of the States and Union Territories (Read ahead).

The incurring or authorizing of expenditure in excess of the limit prescribed under Section 77(3) of ROP Act, 1951 is a corrupt practice with reference to Section 123(6) of the R.P. Act, 1951.

Election expenditure can be broadly put in two categories. The first type is election expenditure, which is allowed under the law for electioneering, subject to it being within the permissible limit. This would include expenditure connected with campaigning like on public meetings, posters, banners, vehicles, advertisements in print or electronic media etc. The second category of expenditure is on items which are not permitted under law. For example, distribution of money, liquor, or any other item to the electors with intent to influence them comes under the definition of bribery and is an offence under the IPC. The expenditure on such items is illegal. Yet another form of expenditure which is coming to the fore in recent times is on Surrogate Advertisements, Paid News etc. The purpose of election expenditure monitoring is, therefore, twofold. For the first category of expenditure, it must be ensured that all election expenditure on permitted items is truthfully reported and considered while scrutinizing the expenditure account submitted by the candidates. As far as the second category of expenditure including surrogate advertisements, paid news etc., is concerned, it is obvious that it will never be reported by the political parties/ candidates. The systems should be robust enough to catch such expenditure as well, and not only include it in the account of election expenditure, but also take action against the wrongdoers under the relevant provisions of the law, including lodging of complaints before the police/ competent magistrate, if required.

The Expenditure Observers from the Indian Revenue Service and Indian Customs and Central Excise service are appointed by the Commission for specified constituencies to observe the election expenses by the candidates. There are at least one Expenditure Observer for each district, but each Expenditure Observer ordinarily shall not have more than five Assembly Constituencies under his observation. They are supported by assistants.

Poll expenditure limits

In an attempt to deal with the use of black money in elections, the maximum poll expenditure for parliamentary constituencies was increased to Rs 40 lakh and to Rs 16 lakh for assembly constituencies by the Government. Expenditure limit varies according to the size of states.

In 2011, Law ministry issued a notification amending the Conduct of Election Rules. Till then, in big states, the upper spending limit in parliamentary constituency is Rs 25 lakh and Rs 10 lakh in assembly constituency.

Electoral candidates in Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Chhattisgarh and Jharkhand would be able to spend Rs 40 lakh per constituency in parliamentary election and Rs 16 lakh in assembly election.

In case of Nagaland, Tripura, Uttarakhand and Himachal Pradesh, while the upper limit for expenditure in parliamentary election is Rs 40 lakh, for assembly election there is a variation. In HP and Uttarakhand, a candidate can spend only Rs 11 lakh for assembly constituency while in case of Nagaland and Tripura, it is Rs 8 lakh.

In Jammu & Kashmir, because of its special status, election expenditure for parliamentary election is Rs 40 lakh while for assembly election the maximum limit has been left to the state election commission. In Goa, the upper limit for expenditure in parliamentary constituency is Rs 22 lakh and Rs 8 lakh for assembly constituency.

North-eastern states also have varying structure of election expenditure. In Arunachal Pradesh, the upper limit for parliamentary constituency is Rs 27 lakh and Rs 10 lakh for assembly constituency. In Manipur and Meghalaya, the maximum limit for parliamentary constituency is Rs 35 lakh and Rs 8 lakh for assembly constituency.

In Mizoram, while the upper limit for assembly constituency is Rs 8 lakh, for parliamentary constituency, it is Rs 32 lakh. In Sikkim, the expenditure limit for parliamentary constituency is further less at Rs 27 lakh while for assembly it is Rs 8 lakh.

In case of Union Territories, there is a big variation again. In Delhi, maximum expenditure for parliamentary constituency is Rs 40 lakh, for assembly election it is Rs 14 lakh. In Puducherry, upper limit for parliamentary constituency is Rs 32 lakh and for assembly Rs 8 lakh.In UTs without assemblies — Dadra and Nagar Haveli and Daman and Diu — expenditure for parliamentary constituency is Rs 16 lakh. In Andaman & Nicobar Islands and Chandigarh — also without assembly — it is Rs 27 lakh and Rs 22 lakh respectively.

Political parties and the RTI

Central Information Commission, on June 3, 2013 ordered that six national political parties — the Congress, BJP, NCP, CPI (M), CPI and BSP — be brought under the RTI Act as they were public authorities. The CIC had ruled that the parties received "substantial financing" from the government in the form of subsidies, tax exemptions and benefits, and so it was binding on them to appoint Public Information Officers. The six political parties were given tax exemption to the tune of Rs. 510 crore from 2006 to 2009. The government spent about Rs. 28.56 lakh for free airtime on All India Radio in 2009. Apart from that, all the parties have

been given land at very low rates in prime areas. The CIC order on political parties required them to appoint public information officers and respond to RTI.

CIC has passed many orders earlier calling certain bodies public authorities — under the Act.
Public Health Foundation of India. In response to an RTI application, the PHFI had argued that as a public-private partnership initiative, it was a completely autonomous institution and not a public authority governed by the RTI Act. The CIC ruled that public servants were on the board of the PHFI and they were obviously representatives of the government. It also ruled that the organisation received substantial financing from the government, a major point the CIC raised in the order pertaining to political parties.

Similarly, the Indian Olympic Association, — though autonomous from the Central government in its affairs and management — was deemed a "public authority" by the Delhi High Court in 2010 as the IOA depended on government funding to assist travel and transportation of sportsmen and sports managers. In the same judgment, the Delhi High Court also held the Sanskriti School to be a public authority as it availed substantial financing from the government. In another decision of January 2011, the Central Information Commission held that the Chandigarh Club was a public authority because the rent on the 3.85 lakh square feet land leased to the Club was not at a par with the market rate.

Section 2(h)(ii) of the RTI Act states that "public authority" includes any non-governmental organisation substantially financed, directly or indirectly, by funds provided by the appropriate government.

In August 2013, the government tabled RTI Amendment Bill 2013 in Lok Sabha to keep political parties out of RTI ambit.

The Right to Information (Amendment) Bill, 2013 seeks to insert an explanation in Section 2 of the Act which states that any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951 will not be considered a public authority.

Referring to the CIC order of June, the bill also makes it clear that anything contained in any judgement, decree or order of any court or commission will not affect the status of political parties recognised under the RP Act.

Since the CIC order on six major political parties came on June 3, the amended Act will come into force with retrospective effect from June 3.

It points that there are already provisions in the RP Act as well as the Income Tax Act which deal with transparency in the financial aspects of political parties and their candidates.

"Declaring a political party as public authority under the RTI Act would hamper its smooth internal working...further, the political rivals may misuse the provisions of RTI Act, thereby adversely affecting the functioning of the political parties," the bill reads.

It was decided to refer the amendment Bill to parliamentary standing committee "for elaborate study."

Supporters of the verdict say that in an open democracy like ours, RTI will ensure that there is internal democracy within parties. Further, their adherence to constitutional goals will also be tested. Dynastic and arbitrary politics may give place to value –based decisions. The fact of parties being held accountable in multiple ways is seen to be ineffective and needs to be reinforced with inclusion within RTI. However, there may be graded accountability in which parties may not be as accountable as other public authorities for strategic reasons, if any, subject to judicial acceptance. An admission that they are public authorities will bring them under compulsion to respond to queries from citizens under the Act regarding their funding and process of decision-making, which so far have remained outside public scrutiny. Information about these aspects in the public domain could pose a serious challenge to these parties, particularly if it is proven that their functioning is characterised by lack of probity and commitment to democratic ideals.

Supreme Court and freebies

Freebies and other benefits routinely promised by political parties to woo voters destroy the level playing field in a democracy, the Supreme Court said, but its ruling did not label it as corrupt practice. The court directed the Election Commission to consult political parties and incorporate new clauses into its existing model code of conduct to bring election manifestos of political parties under its ambit. A Supreme Court bench comprising Chief Justice designate P Sathasivam and Justice Ranjan Gogoi said the law as it stands only covers enticements or allurements by individual candidates and not political parties, and refused to declare promises made in manifestos as corrupt.

"It will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of this court to legislate what kind of promises can or cannot be made in the election manifesto," the bench said as it refused to rule such practice as corrupt under Section 123 of the Representation of the People Act.

"It is the promise of a future government. Section 123 contemplates corrupt practice by individual candidate or his agent."

But the court said it was a fact that the distribution of freebies influenced voters. "It shakes the root of free and fair elections to a large degree," it said.

The bench directed the Election Commission to frame guidelines on the subject in consultation with political parties. But the court also said that freebies are part of what the Constitution's Directive Principles of State Policy enjoin the government to do: take care of weaker and vulnerable sections. .It further observed that these expenses incurred on freebies or on implementing schemes promised to voters as a quid pro quo if voted back to power are legitimate. These expenses would be construed as an expense for a public purpose, the bench said.

However, it is difficult to differentiate between freebies which are populist and those which are a part of welfare.

The essence is the following:

- Freebies are unfair as they destroy the level playing field
- The same fiscal resource can be better deployed for sustainable livelihoods

RPA, 1950

It is an Act to provide the allocation of seats in, and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, [the manner of filling seats in the Council of States to be filled by representatives of [Union territories]], and matters connected therewith.

Allocation of seats in the House of the People— The allocation of seats to the States in the House of the People and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of each State shall be as shown in the First Schedule.

Filling of seats in the House of the People and parliamentary constituencies.
All the seats in the House of the People allotted to the States shall be seats to be filled by persons chosen by direct election from parliamentary constituencies in the States.

Every parliamentary constituency shall be a single-member constituency.

Every State to which only one seat is allotted shall form one parliamentary constituency.

Seats in the Legislative Assembly of each State are to be filled by persons chosen by direct election from Assembly Constituencies. Every assembly constituency shall be a single-member constituency.

Electoral rolls for parliamentary constituencies.— (1) The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency:

Electoral roll for every constituency.—For every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission.

Disqualifications for registration in an electoral roll.—(1) A person shall be disqualified for registration in an electoral roll if he—
(a) is not a citizen of India; or
(b) is of unsound mind and stands so declared by a competent court; or
(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

No person to be registered in more than one constituency
No Person to be registered more than once in any constituency

Conditions of registration.--Subject to the foregoing provisions of this Part, every person who —

a) is not less than eighteen years of age on the qualifying date, and
b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency.

Meaning of "ordinarily resident" A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.

A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.]

Preparation and revision of electoral rolls. —The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

The said electoral roll—

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of the People or to the Legislative Assembly of a State; and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

Correction of entries in electoral rolls.—If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency-

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll, the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

Inclusion of names in electoral rolls.— (1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

Appeals

An appeal shall lie within such time and in such manner as may be prescribed— to the chief electoral officer, from any order of the electoral registration officer

Preparation of electoral roll for Council constituencies.–(1) In this section, "local authorities' constituency", "graduates' constituency" and "teachers' constituency" mean a constituency for the purpose of elections to a Legislative Council.

For the purpose of elections to the Legislative Council of a State in any local authorities' constituency—

- the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

- every member of each such local authority, within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency;

For the purpose of elections to the Legislative Council of a State in the graduates' constituencies and the teachers' constituencies, the State Government concerned may, with the concurrence of the Election Commission, by notification in the Official Gazette, specify—

- the qualifications which shall be deemed to be equivalent to that of a graduate of a university in the territory of India, and
- the educational institutions within the State not lower in standard than that of a secondary school.

Subject to the foregoing provisions of this section, —

- every person who is ordinarily resident in a graduates' constituency and has, for at least three years [before the qualifying date], been either a graduate of a University in the territory of India or in possession of any of the qualifications specified by the State Government concerned, shall be entitled to be registered in the electoral roll for that constituency; and
- every person who is ordinarily resident in a teachers' constituency, and has, within the six years immediately [before the qualifying date] for a total period of at least three years, been engaged in teaching in any of the educational institutions specified by the State Government concerned shall be entitled to be registered in the electoral roll for that constituency.

Qualifying date shall be the 1st day of November of the year in which the preparation or revision of the electoral roll is commenced.

Constitution of electoral colleges for the filling of seats in the Council of States allotted to Union Territories —For the purpose of filling any seat or seats in the Council of States allotted to any Union territory, there shall be an electoral college for each such territory

The electoral college for the Union territory of Delhi shall consist of the elected members of the Legislative Assembly constituted for that territory under the Government of National Capital Territory of Delhi Act, 1991

The electoral college for the Union territory of Puducheri shall consist of the elected members of the Legislative Assembly constituted for that territory under the Government of Union Territories Act, 1963

Termination of membership of electoral college for certain disqualifications.—If a person who is a member of an electoral college becomes subject to any disqualification for membership of Parliament under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections to Parliament, he shall thereupon cease to be such member of the electoral college.

Manner of filling of seats in the Council of States allotted to Union territories.— The seat or seats in the Council of States allotted to any Union territory in the Fourth Schedule to the Constitution shall be filled by a person or persons elected by the members of the electoral college for that territory in accordance with the system of proportional representation by means of the single transferable vote.

Powers of electoral colleges to elect notwithstanding vacancies therein. —No election by the members of an electoral college under this Act shall be called in question on the ground merely of the existence of any vacancy in the membership of such college.

Power to make rules.— The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- the determination of ordinary residence under
- the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred
- the final publication of electoral rolls;
- the revision and correction of electoral roll and inclusion of names therein
- any other matter required to be prescribed by this Act.

Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.

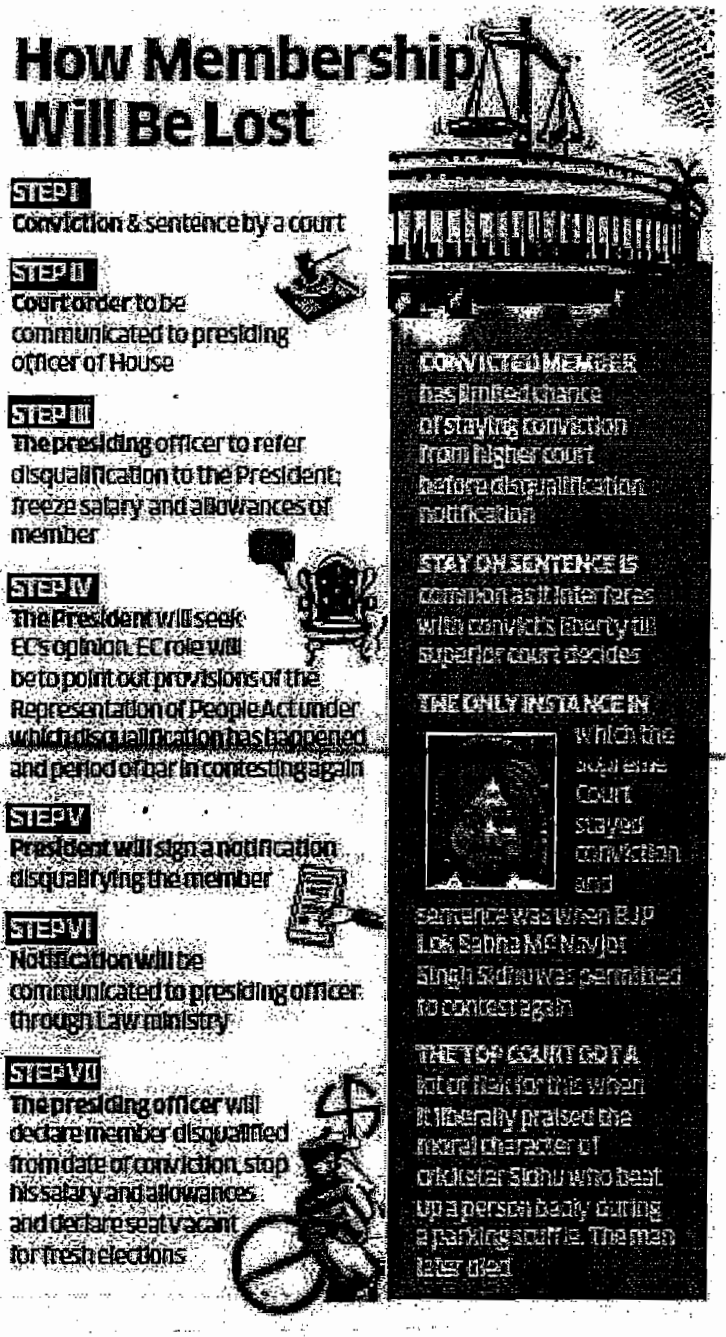
Jurisdiction of civil courts barred.—No civil court shall have jurisdiction—
(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or
(b) to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act for the revision of any such roll.

Breach of official duty in connection with the preparation, etc., of electoral rolls.—(1) If any electoral registration officer, assistant electoral registration officer or other person required by or under this Act to perform any official duty in connection with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from that roll, is without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

Lalu Yadav

Former Bihar chief minister and Rashtriya Janata Dal chief Lalu Prasad has been sentenced to five years in prison in the fodder scam case, a verdict that makes him the second parliamentarian to be disqualified under the recent Supreme Court ruling.

The special CBI court judge PK Singh on October 3, pronounced the sentence, which rendered the 65-year-old politician ineligible for contesting elections for 11 years.



NOTA

(S Y Quraishi in ET)

The recent Supreme Court judgment on the demand to provide for negative voting through a button on the electronic voting machines (EVMs) for None of the Above, or NOTA, option has evoked great public enthusiasm.

The proponents of the right to reject are in celebratory mode under the impression that their long-pending demand has at last been met. The fact is that the judgment has not created the right to reject.

The Supreme Court has, however, given four important pronouncements: (a) recognition of the right to a negative vote (even though it will not affect the result) as a part of freedom of expression, as envisaged in right to personal liberty in Article 21, (b) direction to Election Commission to introduce NOTA on the EVM (and ballot paper) to ensure voter secrecy, (c) comment on the dubious quality of candidates and emphasising the need for candidates with "ethical and moral values", and (d) comment on voter apathy.

It says that not turning up at the polling booth is "not an ideal option for a conscientious and responsible citizen".

In view of the increasing criminalisation of politics and rampant abuse of money power, there has been a growing demand from several citizens and activists seeking the right to reject the candidates with criminal and otherwise tainted background.

It means that the electors should have the right to reject all the candidates. This will happen if the number of electors exercising the rejection option is more than 50%, or, better still, more than the number of votes polled by any of the candidates in the panel.

Devil, as they say, is in the detail. If the right to reject is to be interpreted as the right to reject all the candidates and to force a re-election with a fresh list of candidates, it can give rise to the following problems:

The Age of Re-re-re-election

- If a panel of candidates is rejected in a constituency, will all candidates in that list be disqualified from contesting in the re-election?
- If they are not disqualified, the same set of candidates may contest again, defeating the purpose.
- If the candidates are to be disqualified, then for how long? Whether they would be free to contest from other constituencies in the event of re-election in other places? Or in a subsequent by-election?
- At a re-election, electors may find the new list of candidates worse than the first list. If the candidates in the re-election are also rejected, for how long can we go on conducting elections? Already, there are complaints of "election fatigue" with elections at local bodies, assembly and parliamentary levels.
- The Election Commission uses government officials, teachers, staff from public sector organisations and bank employees for conducting elections. Re-elections would mean holding these officials for very long periods, or calling them back again and again, which will affect their regular work. Since teachers constitute the largest section of the poll staff, and the polling stations are in schools, the students will suffer the most.
- >Central police forces — which are drawn from different parts of the country, including our borders and other sensitive areas — would remain locked up for longer periods in the case of re-election parties.
- The model code of conduct remains in force till the completion of election. Rejection of candidates and re-

election would result in the code being in force for very long periods. During this period, the government cannot make any announcement of a new policy or programme.

The district administration is fully engaged in election management. Almost 40% officers of the IAS and other services get appointed as election observers. This may have an adverse effect on governance, if not bringing governance to a standstill, as many people accuse Election Commission of.

- Frequent elections at short intervals may lead to disinterest in many sections of electors. In a re-election, the turnout may be less than that in the first election. So, in such a situation it may be possible that in the reelection, a candidate who secures lesser number of votes than a candidate in the rejected list may emerge as the winner. This would be an anomalous situation.
- Such a situation may also lead to political instability if the number of such cases is large, particularly in the event of hung assemblies.
- Finally, and most importantly, many innocent candidates with a clean record will suffer for no fault of theirs just because of the bad image of others. On what basis can they be disqualified? This will violate their right to contest.

The right to reject has not been created by the apex court judgment as no such relief was apparently sought by the writ petitioner or other impleaded parties. It probably will be the next logical demand, and now with a renewed vigour. If the demand has any chance of success, the questions posed above will need to be answered.

RGPSA

There is need to provide Panchayats with adequate technical and administrative support, strengthen their infrastructure and e-enablement, promote devolution, improve their functioning i.e. regular democratic meetings of the Panchayat, proper functioning of the standing committees, voluntary disclosure and accountability of the Gram Sabha, proper maintenance of accounts etc. It is against this background that the Centrally Sponsored Scheme of Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) has been launched to strengthen Panchayati Raj. This scheme was approved in March 2013

The goals of the RGPSA are to enhance capacities and effectiveness of Panchayats and the Gram Sabhas; Enable democratic decision-making and accountability in Panchayats and promote people's participation; Strengthen the institutional structure for knowledge creation and capacity building of Panchayats; Promote devolution of powers and responsibilities to Panchayats according to the spirit of the Constitution and PESA Act; Strengthen Gram Sabhas to function effectively as the basic forum of people's participation, transparency and accountability within the Panchayat system; Create and strengthen democratic local self-government in areas where Panchayats do not exist; and Strengthen the constitutionally mandated framework on which Panchayats are founded.

The scheme recognizes the fact that States have different needs and priorities and therefore allows for State specific planning, whereby States can choose from a menu of permissible activities. Moreover 20% scheme funds are linked to States' performance on devolution and accountability. States prepare perspective and annual plans to access funds under the scheme.

This scheme is applicable to all States/ UTs including those which presently are not covered by Part IX of the Constitution.

States are required to fulfill some essential conditions for accessing any RGPSA funds which include - Regular elections to Panchayats or local bodies; At least one third reservation for women in Panchayats or other local bodies; Constitution of SFC every five years, and placement of Action Taken Report on the recommendations of the SFC in the State legislature; and Constitution of District Planning Committees (DPCs) in all districts, and issuing of guidelines/rules to make these functional.States that do not fulfill the above essential conditions are not eligible for funds under RGPSA.

Twenty percent scheme funds are linked to action taken by the States for implementation of the provisions of the 73rd Amendment to the Constitution of India in the following areas - Articulating an appropriate policy framework for providing administrative and technical support to Panchayats; Strengthening the financial base of Panchayats by assigning appropriate taxes, fees, etc.; Provision of untied funds to Panchayats and timely release of SFC and Central Finance Commission (CFC) grants; Ensuring devolution of funds, functions and functionaries; Preparing and operationalizing a framework for bottom-up grassroots planning and convergence through the DPC; Ensuring free and fair elections, and making the SEC autonomous; Strengthening the institutional structure for capacity building of Panchayats, selecting suitable partners for capacity building, and improving outreach and quality of capacity building; Putting in place a system of performance assessment of Panchayats; Strengthening Gram Sabhas, promoting Mahila Sabhas/Ward Sabhas; Institutionalizing accountability processes such as voluntary disclosure of information and social audit; Strengthening the system of budgeting, accounts and audit, including use of e-enabled processes. Maintenance of Panchayat accounts on-line at least for District and Intermediate Panchayats. Issuing of guidelines/rules for voluntary disclosure of budget and accounts by Panchayat, and ensuring compliance of State laws and rules with PESA.

Activities that can be included in State plans under RGPSA are - Administrative and Technical Support at the Gram Panchayat level; GP Buildings; Capacity Building and Training of Elected Representatives & Functionaries; Institutional Structure for Training at State, District & Block level; e-enablement of Panchayats; Support to Panchayat Processes and Procedures in Panchayats with Inadequate Revenue Base; Special Support for Gram Sabhas in PESA and NE Areas; Programme Management; Information, Education, Communication (IEC); Strengthening of State Election Commission (SECs) and Innovative Activities in States. In addition, RGPSA will provide support to innovative projects to strengthen Panchayati Raj and incentivize Panchayats for their performance.

By strengthening Panchayati Raj, RGPSA will strengthen grassroots governance in the country, enhance accountability and increase the space for people's participation.

Mani Shankar Aiyar Committee

The committee takes up questions like: How relevant is panchayat raj in the everyday lives of the people? What is the role of panchayat raj institutions (PRIs) in poverty alleviation and human development? Is poverty alleviation possible through a peripheral role for panchayats as conceived in various Central sector schemes?

Expert Committee on "Leveraging Panchayat Raj Institutions for effective delivery of public goods and services," which submitted its report to the government recently, has suggested that the Gram Sabha should be empowered to monitor and make decisions on all the social sector schemes — Central and State. Citing MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) scheme as the model for other schemes and it will remove the lacunae in the 'last mile delivery' of the schemes.

A panchayat-driven social sector expenditure model empowers the community with a sense of ownership as against the bureaucracy-driven, top-down model currently inbuilt in the Central sector schemes. It calls for a rethink on the way central sector schemes (CSS) on poverty alleviation are designed and the need to retrieve PRIs from the fringes to their rightful place as drivers of rural welfare.

Outcomes are not in sync with the outlays, says the report. The multifold increase in social sector expenditure has barely translated into positive outcomes. There was no tangible rise in the Human Development Indices, despite the exponential increase in social sector expenditure.

The Committee prescribes Activity Mapping for each CSS. Activity Mapping envisions clear delineation of "functions, finances and functionaries,' shifting the ownership of Schemes from the line departments to elected Panchayats. The report illustrates model Activity Mapping for eight CSS to lead the way.

India experiment in 1993 was the first such experiment at grassroots devolution leading to tangible social engineering.

The Committee's recommendations include a Centre-drafted model Gram Sabha law to motivate State legislation; freezing of rotation of reserved seats to two or three terms to incentivise good work and facilitate capacity building of panchayat leadership; incentivise PRIs for transparency and accountability and the States to devolve; reorient the outlook of lower bureaucracy to panchayats. The report also prescribes collateral and institutional measures such electronic tagging of funds, setting up

of a National Commission for Panchayat Raj, and strengthening Gram Sabhas in PESA areas (tribal areas to which the Panchayat system has been extended by law).

The report recommends the MGNREGA scheme and BRGF (Backward Regions Grant Fund) model that locate PRIs as central to implementation.

According to the report, effective devolution leads to better outcomes, which in turn engenders political will.

Devolution and Activity Mapping

Devolution of 3Fs by the States are highly uneven across States. While across the key sectors, the State Panchayat laws mandate a role for the Panchayats, in most cases, the law is ambiguous enough to allow for both decentralized and centralized modes of programme- or service- delivery to co-exist. In some cases, where the states have clearly devolved such responsibilities to the Panchayats, these are either still largely being provided in a top-down manner through the state civil service machinery or the ability of Panchayats to deliver these is limited because of the deficient financial and administrative powers and, therefore, services continue to fail the citizen. Doubts are often expressed about the capacity and accountability of PRIs. This is a vicious circle since, unless 3 Fs are devolved, the PRIs would not be able to prove their comparative advantage. Empowering Panchayats, with clear roles and authority assigned to different levels through activity mapping, is a strong incentive to build capacity and also to get other prerequisites for effective performance into place.

Clarity on the role and responsibilities of the Panchayats of different tiers is provided by the Activity Mapping which, thus, becomes an important step in the devolution of functions to the Panchayats.

Further, the 2nd ARC in its Sixth Report relating to the Local Governance, has recommended that there should be a clear cut delineation of functions for each level of the local governance. This is not a onetime exercise and has to be done continuously while working out locally relevant socioeconomic programmes, restructuring organizations and framing subject matter laws. It may be noted that the Activity Mapping does not imply that the subjects are devolved totally and wholesale. The Subjects or Sectors need to be unbundled and assigned to the different levels of Government on the basis of clear principles of public finance and public accountability, and above all, the governance principles of Subsidiarity, Democratic Decentralization and Citizen Centricity.

The result of good Activity Mapping would be to clearly identify where competence, authority and accountability lie. Good Activity Mapping would permit higher levels of Government to concentrate more on policy making, legislation, system building, addressing issues of equity & regional imbalances and effectively discharging oversight responsibilities. There is generally a strong case for giving the Gram Panchayats the responsibilities of asset creation, operation, and maintenance, while involving it in the planning process through the Gram Sabha; giving the middle tiers responsibilities for human capital development; and giving higher levels of government the responsibility of policy, standards and monitoring of outcomes.

The first step towards activity mapping is the unbundling of each Sector into services, activities and sub-activities to a level of disaggregation that is consistent with the devolution. For example:

- Rural Education, Health, Drinking Water and Sanitation are Sectors. Education would include services such as Primary, Secondary and Tertiary Education and Vocational Training.

- Services can be further unbundled into activities. For example: Basic education could be unbundled into activities such as:
  - identifying and recruiting persons with appropriate teaching skills
  - monitoring teacher attendance
  - procuring & maintaining an inventory of educational materials & equipments
  - setting up school buildings with adequate drinking water & sanitation facilities
  - repairing & maintaining existing schools and
  - Ensuring an even spread of teachers, wherever necessary.

The detailed Activity Map prepared by Kerala State could be a good reference-point for the Activity Mapping. The States could consider adopting this with suitable modifications taking into account the wide diversity in their size (area & population), devolution of functions, relationship between the 3 Tiers, capacity of PRIs, terrain, climate, etc.

Along with the activities to be devolved, some Institutions would have to be transferred to the Panchayats for maintenance and upkeep. Finally, the Activity Map will need to be issued in the form of a detailed Government Order (GO).

Parallel Bodies and the functioning of PRIs

Policy prescriptions in consonance of economic efficacy led to development of alternative approaches to service delivery, natural resource management and poverty alleviation. These interventions led to development of parallel bodies to Panchayats In any given gram Panchayat there are nearly ten parallel bodies comprising stake holders committees, user groups , self help groups, missions, DRDA etc. Some of them have statutory backing Water Users Associations (WUA), School Educating Committees, (SEC) are examples of this variety. Other was creation of Government Orders like Vana Samrakshana Smiths or registered under society's act like Women Self Help Groups.

These bodies were supported as specialized agencies of various line departments for taking up specialized job; and due to the skepticism of policymakers and bureaucrats about the abilities of the local institutions. This skepticism appears to be a product of the rural reality of, illiteracy, poverty and caste ridden society. This was true of pre reform period. The situation has not become better with a greater awareness, literacy, e-governance etc.

Often, Parallel Bodies (PBs) are created for supposedly speedy implementation and greater accountability. However, there is little evidence to show that such PBs have avoided the evils including that of partisan politics, sharing of spoils, corruption and elite capture. 'Missions' (in particular) often bypassing mainstream programmes, create disconnect, duality, and alienation between the existing and the new structures and functions. PBs usurp the legitimate space of PRIs and demoralize the PRIs by virtue of their superior resource endowments, though such resources are available only during the lifetime of schemes. Arguments such as protection of funds from diversion have now weakened since advances in core banking systems, treasury computerization and connectivity can enable instantaneous, seamless and just-in-time transfer of funds directly to the implementing PRI.

Expenditures by PRIs can also be monitored on a real time basis thus doing away with the need for intermediate parallel bodies to manually transfer funds and collect, pool and analyse data on expenditures.

Ministries should, therefore, rapidly phase out such PBs from their schemes. If necessary, the technical & professional component of these PBs could be retained as Cells or Units within the PRIs, for carrying out their technical & professional functions.

DRDA

The government in mid-2013 announced disbanding of the three-decade-old District Rural Development Agency (DRDA), an organ responsible for overseeing implementation of anti-poverty programmes of rural development ministry.

The agency will now be rechristened and it will perform its role under zila parishads, the local elected bodies at the district level. DRDAs, which were set up as independent societies in 1980, would be attached and function as part of the zila parishads.

As of April 1, 2014, the DRDAs as constituted today under the Society's Act will not exist. The decision to disband the DRDA was taken on the recommendation of a committee constituted under the chairmanship of V Ramchandran with the objective of strengthening and professionalising DRDA to meet the challenge of rural development in the present context. Ramachandran panel had submitted its report in March 2012.

TELANGANA

Telangana is a region within the state of Andhra Pradesh in India. It was formerly part of Hyderabad State which was ruled by the Nizams. Telangana is bordered by the states of Maharashtra to the north and north-west, Karnataka to the west, Chhattisgarh to the north-east and Odisha to the east. Andhra Pradesh State has three main cultural regions: Telangana, Coastal Andhra and Rayalaseema.

The Telangana region comprise 10 districts: Hyderabad, Adilabad, Khammam, Karimnagar, Mahbubnagar, Medak, Nalgonda, Nizamabad, Rangareddy, and Warangal.

The Musi, Manjira, Krishna and Godavari rivers flow through the region from west to east. Since Telangana was merged with Andhra state to form Andhra Pradesh state in 1956, there have been several agitations in Telangana to de-merge and to form Telangana state.

On 30 July 2013, the ruling Congress party resolved to request the Central government to make steps in accordance with the Constitution to form a separate state of Telangana (the 29th independent state of Republic of India), within a definite time frame. The city of Hyderabad would serve as the joint capital of Telangana and Andhra Pradesh for ten years. The proposal is to be approved by the Parliament of India and The President of India before the formation of new state.

Telangana is the largest of the three regions of Andhra Pradesh state, covering 41.47% of its total area. It is inhabited by 40.54% of the state's population and contributes about 76% of the state's revenues, excluding the contribution of the central government. Proponents of a separate Telangana state cite injustices in the distribution of water, budget allocations, and jobs. Within the state of Andhra Pradesh, 68.5% of the catchment area of the Krishna River and 69% of the catchment area of the Godavari River are in the Telangana region. Telangana supporters state that the benefit of irrigation through the canal system under major irrigation projects is accruing substantially, 74.25%, to the Coastal Andhra region, while the share to Telangana is 18.20%. The remaining 7.55% goes to the Rayalaseema region.

There are allegations that in most years, funds allocated to Telangana were never spent. As per Srikrishna committee on Telangana, Telangana held the position of CM for 10.5 years while Seema-Andhra region held it for 42 years.

Challenges: Water

Telangana region accounts for huge chunk of natural resources of the current Andhra Pradesh. For instance, the 10 districts in this region account for 45 per cent of Andhra's forest cover. The region comprises 68 per cent of the catchment area of the Krishna river and 79 per cent catchment area of Godavari river. Utilising these resources for the development of the region will be a big challenge for the state. Most crucial among these will be making water available to the drought-prone districts of the region.

When Andhra Pradesh is divided, the existing disputes over the Krishna and Godavari waters between Telangana and other regions will become even more serious. The Krishna Waters Dispute Tribunal awarded share in the Krishna waters to three states—Maharashtra, Karnataka and Andhra Pardesh Within Andhra Pradesh, 68.5 percent of the Krishna's catchment area is lying within the Telangana region, but the water allocated to Telanagana was 34.73 per cent while coastal Andhra with 13 per cent of the catchment area got 48.5 per cent and Rayalaseema with 18.3 per cent catchment area received 16.7 per cent of the Krishna waters.

Those who wanted a separate state had persistently pointed out that this was against the international guidelines of sharing waters. Their argument was that had Telangana been a separate state, the claim of Telangana would have been far more. Presently, it has got just half of its rightful share. The advocates of Telangana had pointed out that the region was deprived of even the allotted quantity of water by the state government.

As for the Godavari waters, the Godavari Waters Disputes Tribunal in 1975 awarded 1,480 TMC to Andhra Pradesh. Within the state, 79 per cent of the river catchment area is in Telangana while 21 per cent is in coastal Andhra. According to the advocates of Telangana state, going by the catchment area, Telangana region should get 1,169 TMC of water, when it becomes a separate state.

However, there is a catch. Even if the new state gets the share of water as per its demands, lack of irrigation facilities will become a big constraint in reaping the benefits.

Irrigation is a highly sensitive and political issue in Andhra Pradesh. Except for Sriramsagar project and Sri Arthur Cotton Barrage, there are no other major constructions across the Godavari in Andhra Pradesh. Till 2004, the state utilised only 700 TMC of water. However, In 2005, to address the woes of farmers, mainly in the perennially-parched Telangana and Rayalaseema regions, the then chief minister Y S Rajasekhara Reddy initiated the "Jalayagnam"—a Rs 186,000 crore ambitious irrigation programme comprising 86 irrigation projects.

Among these projects, Indirasagar Polavaram Project is proposed in West Godavari district in coastal Andhra while many other mega projects such as Pranahita-Chevella, Dummugudem, Yellampally, Kanthalapally are in Telangana. But considering the huge cost and quantity of power required, completing these projects will be a huge challenge before the new state.

Since the Godavari is flowing three to four metre below the land level in Telangana, all projects under construction are lift irrigation schemes requiring huge quantity of power. The Pranahita project alone will require 3,466 MW power, almost one-third of the current total installed power generation capacity of Andhra Pradesh—16,300 MW.

The cost of Pranahita project cost is Rs 40,000 crore according to 2011-12 estimates. The project is to be completed in 2018. The Andhra Pradesh government has already spent Rs 3,000 croe on this project. Now the responsibility of completing the project will be the task of the new government.

Capital

While the issue of irrigation can well be a big challenge for the new state once it is formed, the immediate bone of contention between the Coastal Andhra, Rayalseena and Telangana is the division of Hyderabad. "Hyderabad accounts for 70-72 per cent of the state's revenue. The status of Hyderabad will decide how the revenue is shared between the two states. This is going to be crucial for the development and roadmap for both Andhra and Telangana.

Constitutional process to create UTs (In the class)

Hyderabad as UT

Seemandhra agitationists are not in a position to leave Hyderabad for Telangana. There is a proposal that Hyderabad be made a UT. If Hyderabad, designated the common capital of the bifurcated AP, is to be designated a Union Territory, the Centre will have to enact legislation for this purpose or combine it with the States Reorganisation Bill that will have to be passed for Telangana to become a recognised state.Areas to be brought under the UT will have to be identified and notified in the Bill.

An entry must be made to the first schedule in the Constitution about the new UT. An administrator will then be appointed by the Centre.

In the case of a joint capital, police, administration, municipal governance, assembly and judiciary are matters that need to be settled.

Telangana: Ashutosh Varshney in the Indian Express in August 2013

...To evaluate Telangana's case, we must begin with the original principles of Indian federalism. India's freedom movement had committed itself to language-based federalism in 1920. Gandhi could clearly see that India's linguistic communities were too deep-rooted to be erased into an undifferentiated Indian nation. Unlike Europe, which had a one-language-one-nation formula, India would be a multilingual nation. Indians would have hyphenated identities: Tamil Indians, Bengali Indians, Gujarati Indians etc. In Europe, each of these linguistic communities would have been a separate nation. Gandhi and the Congress party delinked nation from language.

Despite this larger understanding, Nehru was unsure about the idea of linguistic states after Independence. Partition violence had been horrific: Nehru became wary of social identities that might unleash mass passions. He wanted economic interests to form the bedrock of politics. Economically constructed politics would bring modernity; politics based on identities would set the nation back.
In 1952, when intense rioting followed the death of an Andhra leader fasting to separate the Telugu-speaking parts of Madras, a moment of truth arrived. Delhi created a new Andhra state. Nehru explained the rationale thus: "I am quite sure that it is not a good thing for the Telugu-speaking areas to be formed into a separate state. Their state will be backward and financially hard up... However, that is their lookout. If they want the state, they can have it on the conditions we have stated."

Nehru thus conceded the primacy of the democratic principle over personal belief. More importantly, he did not confine himself to an individual decision; recognising the larger implications of an Andhra state, he set up a State Reorganisation Commission (SRC) to advise the government on how to reorganise India's states. A linguistic reorganisation of Indian federalism followed.

Do the original principles of Indian federalism support a Telangana state. Telangana does not have a linguistic foundation distinct from Andhra. Both are Telugu-speaking. It is sometimes said that Telangana Telugu has a lot of Urdu words, whereas coastal Andhra's Telugu is "purer". But this can't be an argument for linguistic distinctiveness. Varanasi's Hindi is heavily Sanskritised, Lucknow's Hindi is Urduised. Both are simply two different varieties of Hindi. A linguistic community is often a large family. ...the linguistic principle has virtually, if not wholly, lost its relevance by now. All of India's major languages already have a territorial home.

The latest round of state-making — yielding Chhattisgarh, Jharkhand and Uttarakhand in 2000 — was not linguistic.

In the 1950s and '60s, along with religion, language was seen as India's greatest faultline. "Language riots" were endemic. In 1960, Selig Harrison predicted India's break-up along linguistic lines. As it turned out, once linguistic states were born, language riots virtually disappeared. Survey data show that national feeling is very strong in India today; instead of undermining faith in India, linguistic states pre-empted political alienation and facilitated greater mass participation in democratic politics. Political scientists are convinced that the linguistic reorganisation of India was a great success. David Laitin, a leading scholar of language politics, has written that if Europe ever turned into a more integrated political union, India's three-language formula would be a model to follow.

But if language has ceased to be the larger criterion for state-making in India and Telangana does not have a distinctive linguistic identity either, what could be the grounds for Telangana's separation? Three arguments are worthy of consideration: economic, political and cultural.

The economic argument is about Telangana's underdevelopment. Telangana, the heart of the Nizam's Hyderabad state, was part of princely India; coastal Andhra was in the directly administered British India. The Nizams showed no interest in industry or mass education, concentrating instead on aristocratic privileges and palaces. This was tragic, for unlike their Northern counterparts, Southern princely states — Mysore, Travancore, Cochin — were ahead of British India on literacy.

In 1951, Telangana (excluding Hyderabad city, always a special case) had a literacy rate of 5 per cent, when coastal Andhra's literacy rate was three times as high. In 1956-7, only 19 per cent of Telangana's cropped land was irrigated, as opposed to 43 per cent in coastal Andhra. Telangana was also less urbanised and industrialised.By now, Telangana has more or less caught up. Comprising roughly 37 per cent of the state's population, it has 38-39 per cent of the state's primary schools, 46 per cent of high schools, 36 per cent of hospitals, 45 per cent of panchayat roads, 36 per cent of state roads and 44 per cent of power consumption. Excluding Hyderabad, its per capita regional product is roughly 7 per cent lower than coastal Andhra's. Instead of the great historical backwardness, Telangana now has a small lag, and the gap is narrowing.

The political and cultural narratives are more compelling. Since the formation of Andhra Pradesh, chief ministers from Seemandhra — coastal Andhra and Rayalaseema — have ruled the state for 47 years; chief ministers from Telangana, only nine years. Especially since 1983, N.T. Rama Rao, Vijaya Bhaskara Reddy, N. Chandrababu Naidu and Y.S. Rajasekhara Reddy, all from the Seemandhra region, have dominated state politics. The current chief minister is from Rayalaseema.

The cultural narrative is also striking. Charles Taylor, an influential political philosopher, has famously argued that "contemptible images" of a cultural community, consistently projected by a dominant group, can be legitimate ground for the politics of cultural assertion by the subordinate group. Telangana fits this description. Andhra's popular culture is dominated by its cinema, which is, in turn, controlled by coastal Andhra. Telangana intellectuals argue that thieves, hoodlums and idiots are the only characters who speak Telangana Telugu in Andhra films. The heroes and heroines are always coastal. Condescension and humiliation are systemic in politics, too. The Telangana movement simply represents the politics of dignity.

In short, Telangana may have caught up economically, but the political and cultural marginalisation is acutely felt. It is a feeling likely to resonate in Gorkhaland and elsewhere.
To resolve these arguments on a systemic basis and to set up the contemporary grounds of state formation, India needed a second SRC.

Gandhi, Nehru and Ambedkar on linguistic states
Establishment of States based on language was in line with a long established policy of Nehru's party. By the end of the First World War, the Congress had committed itself to the creation of linguistic provinces. A separate Andhra circle was formed in the Congress in 1917, a separate Sindh circle the next year. After the Nagpur Congress of 1920, the principle was extended and formalised, with the creation of provincial Congress committees by linguistic zones: the Karnataka P.C.C., the Orissa P.C.C., the Maharashtra P.C.C., etc.

A consistent advocate of States based on language was Mahatma Gandhi. In 1918, when a proposal for the linguistic re-distribution of India was defeated in the Imperial Legislative, Gandhi wrote consolingly

to the man who moved the proposal: "Your idea is excellent but there is no possibility of its being carried out in the present atmosphere". Three years later he told the Home Rule League that "to ensure speedy attention to people's needs and development of every component part of the nation", they should "strive to bring about a linguistic division of India".

The creation of Congress committees based on the mother tongue was to give a tremendous fillip to the national movement. Writers and thinkers associated with the Congress began periodicals in their respective languages.

When independence finally came, in August 1947, Gandhi thought it time to redeem his party's old promise. On October 10, 1947, he wrote to Kala Kalelkar: "I do believe that we should hurry up with the reorganisation of linguistic provinces ... . There may be an illusion for the time being that different languages stand for different cultures, but there is also the possibility (that with the creation) of linguistic provinces it may disappear. I shall write something (about it) if I get the time ... . I am not unaware that a class of people have been saying that linguistic provinces are wrong. In my opinion, this class delights in creating obstacles .... "

Among the class of people who were saying that linguistic provinces were wrong was Jawaharlal Nehru. Nehru pointed out that the country had just been divided on the basis of religion: would not dividing it further on the basis of language merely encourage the break-up of the Union? Why not keep intact the existing administrative units, such as Madras, which had within it communities of Tamil, Malayalam, Telugu, and Konkani speakers, and Bombay, whose peoples spoke Marathi, Gujarati, Urdu, Sindhi, Gondi and other tongues? Would not such multi-lingual and multi-cultural states provide an exemplary training in harmonious living? And, in any case, should not the new nation unite on the secular ideals of peace, stability, and economic development, rather than revive primordial identities of caste and language?

Against the bloody background of Partition, the context had changed. Thus when Gandhi next spoke on the subject, in late November 1947, his previously strong support for linguistic provinces was now somewhat qualified. In an article in his own journal, Harijan, he conceded that "the reluctance to enforce linguistic redistribution is perhaps justifiable in the present depressing atmosphere. The exclusive spirit is ever uppermost. No one thinks of the whole of India".

Ambedkar consistently argued that the proposed linguistic states would become socially more homogeneous and politically democratic in due course of time. His proposals about the formation of linguistic states emanated from his democratic impulse to accord political and cultural recognition to the term region, otherwise defined predominantly in a geographical spatial sense. He gave importance to the size of the population of a state and had suggested the creation of present-day Uttaranchal, Jharkhand and Chhattisgarh in his writings. He wanted Bombay to be a separate city state, while Maharashtra would remain representative of Gujaratis and Marathis. The idea of one state, one language that he defended over one language, one state was predominantly guided by his quest for development, justice, equality and freedom for the untouchables and dalits who could perhaps learn the language of the new state and participate in its political and administrative affairs.

The observations of B.R. Ambedkar, the principal architect of our Constitution, on the desirability of smaller States are prophetic. He welcomed the recommendation of the States Reorganisation Commission in 1955 for the creation of Hyderabad State consisting of Telangana region and creation of Vidarbha as a separate State. Further, he envisaged the division of Uttar Pradesh into three States (Western, Central and Eastern); Bihar into two (North and South or present Jharkhand); Madhya Pradesh into two (Northern and Southern); and Maharashtra into three (Western,Central and Eastern). He was for linguistic homogeneity

of a State in the sense of 'one State-one language' and not 'one language-one State'. He thus envisaged two Telugu speaking States, three Marathi speaking States and a large number of Hindi speaking States. (Ambedkar, 1979)

While arguing for smaller States, Ambedkar was guided basically by two considerations. One, no single State should be large enough to exercise undue influence in the federation. Drawing from the American experience, he thought that smaller States were in the best interests of healthy federalism. On this issue, his views were similar to those of K.M. Panikkar, set out in his note of dissent to the Report of the States Reorganisation Commission. Second, he thought that socially disadvantaged sections are likely to be subjected to greater discrimination in bigger States because of the consolidation of socially privileged or dominant groups.

Hyderabad as a UT

A **Union Territory**, abbreviated to **UT**, is a type of administrative division in the Republic of India. Unlike states, which share federal powers with the Union government and have their own elected governments, union territories are ruled directly by the union government, hence the name 'union territory'. The President of India appoints an administrator or lieutenant-governor for each UT. There are seven union territories, including Delhi, the capital of India, and Chandigarh, the capital of both Haryana and Punjab.

Delhi and Puducherry (Pondicherry) operate somewhat differently from the other five. Delhi and Puducherry were given partial statehood and Delhi was redefined as the National Capital Territory of Delhi (NCT). Delhi and Puducherry have their own elected legislative assemblies and the executive councils of ministers.The seven current union territories are:

- Andaman and Nicobar Islands
- Chandigarh
- Dadra and Nagar Haveli
- Daman and Diu
- Delhi (National Capital Territory of Delhi)
- Lakshadweep
- Puducherry (Pondicherry)

The status of 'Union Territory' may be assigned to an Indian sub-jurisdiction for reasons such as safeguarding the rights of indigenous cultures, averting political turmoil related to matters of governance, and so on. The UTs may not be fiscally viable and may depend on the centre. There may be strategic considerations as well as in the case of capital of the country. These union territories could be changed to states in the future for more efficient administrative control.

UTs in general

Art.239. Administration of Union territories: Every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Art. 241. High Courts for Union territories—(1) Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution.

The Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013

Each state had reserved a number of constituencies for Scheduled Castes (SCs) and Scheduled Tribes (STs) based on their proportion of the population of the state. The constituency boundaries were redrawn in 2008 based on the 2001 Census. The constituencies where the SCs/STs have the highest share of the population were reserved for these groups. Between the Census of 2001 and May 31, 2012, several castes and tribes have been included and excluded from the list of SCs and STs, and consequently, the proportions have changed.

In Virendra Pratap vs. Union of India (2011), the Supreme Court directed the Election Commission to ensure the representation of certain STs in the Lok Sabha and state Legislative Assembly as they had been included in the SCs and STs List since 2002. In response the Election Commission suggested that a law be passed empowering the Commission to carry out the re-adjustment of seats for SCs and STs.
The government promulgated an Ordinance in January 2013, and this Bill was introduced in the Budget Session of Parliament to ratify the Ordinance. As the Bill was not passed within six weeks of the commencement of the Budget Session, the Ordinance has lapsed.

Delimitation Commission of India

Delimitation commission or Boundary commission of India is a Commission established by Government of India under the provisions of the Delimitation Commission Act. The main task of the commission is to redraw the boundaries of the various assembly and Lok Sabha constituencies based on a recent census. The representation from each state is not changed during this exercise. However, the numbers of SC and ST seats in a state are changed in accordance with the census.

The Commission's orders cannot be challenged in a court of law. The orders are laid before the Lok Sabha and the respective State Legislative Assemblies. However, modifications are not permitted. These orders come into force on a date to be specified by the President of India in this behalf.

Past Commissions

Delimitation commissions have been set up four times in the past - In 1952, 1963, 1973 and 2002 under Delimitation Commission acts of 1952, 1962, 1972 and 2002.

The government had suspended delimitation in 1976 until after the 2001 census so that states' family planning programs would affect their political representation in the Lok Sabha. This had led to wide discrepancies in the size of constituencies, with the largest having over three million electors, and the smallest less than 50,000.

Commission of 2002

The recent delimitation commission was set up in 2002 after the 2001 census with Justice Kuldip Singh, a retired Judge of the Supreme Court of India as its Chairperson. The Commission has submitted its recommendations. In 2007, the Supreme Court of India on a petition issued notice to the central government for non implementation. The recommendation of the delimitation commission was approved by the President, Pratibha Patil in 2008. The present delimitation of parliamentary constituencies has been done on the basis of 2001 census figures under the provisions of Delimitation Act, 2002. However, the Constitution of India was specifically amended in 2002 not to have delimitation of constituencies till the first census after 2026. Thus, the present Constituencies carved out on the basis of 2001 census shall continue to be in operation till the first census after 2026.

The assembly elections in Karnataka which were conducted in three phases in May 2008 is the first one to use the new boundaries as drawn by the 2002 delimitation commission.

The Constitution (Eighty-fourth Amendment) Act, 2001 and the Constitution (Eighty-seventh Amendment) Act, 2003 have, *inter alia*, amended the Constitution to the following effect

(i) the total number of existing seats as allocated to various States in the House of the People on the basis of 1971 census shall remain unaltered till the first census to be taken after the year 2026;

(ii) the total number of existing seats in the Legislative Assemblies of all States as fixed on the basis of 1971 census shall also remain unaltered till the first census to be taken after the year 2026;

(iii) the number of seats to be reserved for the Scheduled Castes (SCs) and Scheduled Tribes (STs) in the House of the People and State Legislative Assemblies shall be re-worked out on the basis of 2001 census;

(iv) each State shall be redelimited into territorial parliamentary and assembly constituencies on the basis of 2001 census and the extent of such constituencies as delimited now shall remain frozen till the first census to be taken after the year 2026; and
'State' here does not include the State of Jammu and Kashmir, but includes the National Capital Territory of Delhi and Union Territory of Pondicherry

(v) the constituencies shall be so re-delimited that population (on the basis of 2001 census) of each parliamentary and assembly constituency in a State shall, so far as practicable, be the same throughout the State.

In pursuance of the aforesaid amendments made to the Constitution by the Constitution (Eighty-fourth Amendment) Act 2001 and the Constitution (Eighty-seventh Amendment) Act, 2003, Parliament has enacted the Delimitation Act, 2002 to set up the Delimitation Commission under the chairmanship of Mr. Justice Kuldip Singh (former Judge of the Supreme Court of India) with Shri B.B. Tandon, Election Commissioner of India, and the State Election Commissioner of the State concerned as *ex-officio* members.

The Commission shall also associate in its work, in respect of each State, five members of Lok Sabha elected from that State (or all such members if their number is less than five) and five members of the State Legislative Assembly. These Associate Members shall be nominated by the Hon'ble Speakers of the Lok Sabha and State Legislative Assemblies concerned. But these Associate Members shall have no voting right.

All constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to the physical features, existing boundaries of administrative units, facilities of communication and public convenience.

All assembly and parliamentary constituencies are to be delimited on the basis of the 2001 Census. The census figures of 2001 as published by the Census Commissioner are thus alone to be taken into account for this purpose.

Each constituency in a State shall be so delimited that the population of all constituencies shall, so far as practicable, be the same throughout the State. (iii) For this purpose, the total population of the State (2001 Census) shall be divided by the total number of assembly constituencies in the State and the State average per assembly constituency shall thus be obtained. A deviation to the extent of 10 percent *plus* or

minus from the State/district average would be acceptable to the Commission, if the geographical features, means of communication, public convenience, contiguity of the areas and necessity to avoid breaking of administrative units so demand.

Though the population to be taken into account is the population of 2001 Census, the Commission has decided that constituencies shall be delimited having regard to the administrative units, *i.e.*, district/sub divisions/ tehsils/patwar circles, panchayat samitis/panchayats, *etc.*

The Delimitation Commission has taken decision that, so far as practicable, all assembly constituencies in a district shall be confined within the territorial limits of that district. In other words, an assembly constituency shall not ordinarily extend to more than one district.

In delimiting the assembly constituencies, efforts will be made to ensure that, as far as practicable, sub-divisions/tehsils are kept intact and not unnecessarily broken. Further, in each State, an administrative unit shall need to be identified having regard to the administrative set up of that State which will be adopted as the lowest administrative unit which should not be broken in any case. For example, in the State of Madhya Pradesh, the administrative units are districts, tehsils, revenue inspector circles (RICs) and patwari circles (PCs). If a PC (consisting of a few villages) is adopted as the lowest administrative unit for the purpose of delimitation, the whole of that PC will be kept intact and included in one assembly constituency and the villages contained in that PC will not be divided into different assembly constituencies.

While delimiting the assembly constituencies on the basis of the administrative units as mentioned above, the contiguity of such administrative units will be the basic requirement, so that no constituency has an enclave/island within it of certain areas belonging to another constituency and having no contiguity to the other areas of that latter constituency.

Further, apart from contiguity, geographical features, better connectivity, means of communication, public convenience will also be kept in view and areas divided by rivers or hilly ranges or forests or ravines and other such natural barriers will not be put in the same constituency.

Each parliamentary constituency in a State shall be an integral multiple of the assembly constituencies comprised therein. No assembly constituency shall extend to more than one parliamentary constituency.

Reservation of Seats for SCs and STs

Seats have to be reserved for the scheduled castes and scheduled tribes in proportion to their population to the total population of the State. (ii) This allocation of seats for the SCs and STs is to be worked out separately both for the assembly and parliamentary constituencies in each State, on the basis of 2001 Census.

Under section 9(1)(d) of the Delimitation Act 2002, seats for the STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest. Therefore, after all the assembly constituencies in the State have been delimited, the constituencies to be reserved for STs will be those where the percentage of the ST population to the total population of the constituencies is the largest, in descending order equal to the number of constituencies to be reserved for STs.

Under section 9(1)(c) of the said Act, the constituencies for SCs are to be distributed in different parts of the State and seats are to be reserved for SCs in those constituencies where the percentage of their population to the total population is comparatively large. Therefore, while working out the allocation of total number of seats for each district as mentioned above, the number of seats to be reserved for SCs in

those districts will also have to be worked out separately. Subsequently, SC seats will be reserved in those constituencies in the district in which, so far as practicable, the percentage of their population to the total population is the largest, in descending order equal to the number of SC seats in the district concerned.

1. For Scheduled Castes, 84 seats are reserved in Lok Sabha.
2. For Scheduled Tribes, 47 seats are reserved in Lok Sabha.

STATE LEGISLATURE

Vidhan Parishad

The **Vidhan Parishad** (or **Legislative Council**) is the upper house in those six states of India that have a bicameral legislature:six (out of twenty-eight) states have a Legislative Council: Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, and Uttar Pradesh. In 2010 the Parliament of India passed an Act to re-establish a Legislative Council for a seventh state, Tamil Nadu, but implementation of the Act has been put on hold pending legal action as the state government has expressed its opposition to the council's revival. In 2013 August a Bill was introduced in the Parliament to create a Council for the state of Rajasthan(read ahead)

In contrast with a state's Vidhan Sabha (Legislative Assembly), the Legislative Council is a permanent body and cannot be dissolved. Each Member of the Legislative Council (MLC) serves for a six-year term, with terms of one-third of a Council's members expiring every two years. This arrangement parallels that for the Rajya Sabha, the upper house of the Parliament of India.

MLCs must be citizens of India, at least 30 years' old, mentally sound, not undischarged insolvents and on the voters' list of the state for which he or she is contesting an election. He or she may not be a Member of Parliament at the same time. If he/she is an MP, a decision has to be taken within 14 days of the declaration of the result to resign from the Council or the membership of parliament will be lost.
The size of the Vidhan Parishad cannot be more than one-third the membership of the Vidhan Sabha. However, its size cannot be less than 40 members (except in Jammu and Kashmir, where there are 36 by an Act of Parliament.)

MLCs are chosen in the following manner:

- One-third are elected by members of local bodies such as corporations, municipalities, and Zila Parishads.
- One-third are elected by members of Legislative Assembly from among the persons who are not members of the Assembly.
- One-twelfth are elected by persons who are graduates of three years' standing residing in that state.
- One-twelfth are elected by persons engaged for at least three years in teaching in educational institutions within the state not lower than secondary schools, including colleges and universities.
- One-sixth are nominated by the governor from persons having knowledge or practical experience in fields such as literature, science, arts, the co-operative movement and social service.

Powers and procedures

The Legislative Council elects its Chairman and Deputy Chairman from amongst its members.
Theoretically the powers of the Legislative Council are coequal with the Assembly; in reality, the Council is the weaker partner. Ordinary bills can originate in any chamber of the legislature. A bill must be passed by both chambers, and receive the assent of the state's Governor, before it becomes law as an Act. The Governor may give his assent or return the bill to legislature with his observations. The legislature while reconsidering the bill may or may not take note of the views of the Governor on the bill. The Governor is bound to give his assent to the bill when it is presented to him for the second time. If the Legislative Council disagrees with a bill passed by the Legislative Assembly, then the bill must have a second journey, from the Assembly to the Council.

Ultimately the views of the Assembly prevail. The Council can only delay the passage of a bill for 3 months in the first instance and for one month in the second. In contrast with Parliament, there is no provision for the joint sitting of state legislatures.

As with the Rajya Sabha, a Legislative Council has almost no powers in relation to finance, being subordinate to the Assembly; the latter chamber is the only place where Money Bills can originate. After a Money Bill has been passed by the Assembly it is sent to the Council, which can keep it for a maximum of 14 days; if it does not pass it within that period, the bill is deemed to have been passed by it.

As with the Assembly, the Council can attempt to control the executive by putting questions to ministers, raising debates, and discussing adjournment motions to highlight alleged lapses by the state government. However, the Council cannot remove a government from office, lacking the Assembly's power to move a vote of no confidence.

The powers given to a Legislative Council by the Constitution of India have been framed to keep it in a subordinate position to the Assembly, with its membership of professionals seen as a guiding influence on the latter body, rather than as its rival.

Abolition and revival

The existence of a Legislative Council has proven politically controversial. A number of states that have had their Council abolished have subsequently requested its re-establishment; conversely, proposals for the re-establishment of the Council for a state have also met with opposition. Proposals for abolition or re-establishment of a state's Legislative Council require confirmation by the Parliament of India.
In April 2007, the State of Andhra Pradesh re-established its Legislative Council.
Legislative council in Rajasthan

Government introduced a bill in Parliament in August 2013 to create a 66-member legislative council in the state. The legislation seeks to provide a better opportunity for people's participation in governance and decision making.

The state assembly had passed a resolution for creation of a legislative council.
Currently, six states -- Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh -- have legislative councils.
The case for and against LCs

Proponents of the second chamber present several arguments. First, there are some under-represented sections of society, and the council would provide a mechanism to ensure wider representation. Second, the council could act as a "revising" chamber. Third, sending legislation to the other house would involve some delay in the passing of a bill, and would ensure that there will be adequate time to scrutinise legislation before it is passed. In addition, it was felt that the second chamber would ease the pressure of time on the state assembly.

Those opposed to the idea of creating legislative councils have vehemently argued on various grounds. If there was inadequate time available for the assembly to consider matters concerning public welfare, then the number of its sitting days should be increased. Instead, the past several years have seen a steady decline in the number of days that state assemblies meet.

Ironically, while there is a need for speed in the passage of certain Bills, LCs may end up delaying it. The cost of the additional chamber is another issue. Governance issues may not be real but it is a political issue to satisfy certain personalities.

There are several issues that need to be freshly examined as well.
For instance, legislative councils have a reservation for graduates and teachers. These categories might have had relevance at a time after independence when they were a small minority. But in today's India,

there appears to be no obvious justification for such reservation for graduates and teachers as much as there can be for other groups such as engineers and doctors.

In any decision of this nature, there is only one prism — that of public interest — that needs to be used to view the issue. This would mean considering if : how much of a difference have legislative councils made in the widening of representation in large states? Is there any evidence that having a legislative council positively impacts the quality of governance and law-making in any state? Unfortunately, there is little research or evidence that can answer any of these questions satisfactorily.

Vidhan Sabha

The **Vidhan Sabha** or the **'Legislative Assembly'** is the lower house (in states with bicameral) or the sole house (in unicameral states) of state legislature in the different states of India. The same name is also used for the lower house of the legislatures for two of the union territories, Delhi and Puducherry. The upper house in the six states with a bicameral legislature is called the Legislative Council, or Vidhan Parishad. Members of a Vidhan Sabha are direct representatives of the people of the particular state as they are directly elected by an electorate consisting of all adult citizens of that state. Its maximum size as outlined in the Constitution of India is not more than 500 members and not less than 60. However, the size of the Vidhan Sabha can be less than 60 members through an Act of Parliament, such is the case in the states of Goa, Sikkim and Mizoram. The Governor can appoint 1 member to represent the Anglo-Indian community, if he finds that they are not adequately represented in the House.

Each Vidhan Sabha is formed for a five-year term. During a State of Emergency, its term may be extended past five years , one year at a time and before six months of revocation of emergency, a new assembly needs to be constituted.The term of the Legislative Assembly is five years. But it may be dissolved even earlier than five years by the Governor on the request of Chief Minister. It can also be dissolved if a motion of no confidence is passed within it against the majority party or coalition. Governmenbt may also be dismissed under Art.356 and the assembly suspended or dissolved.

Qualifications required to become a member

To become a member of a Vidhan Sabha, a person must be a citizen of India, not less than 25 years of age. He should be mentally sound and should not be bankrupt.

Speaker of Vidhan Sabha is responsible for the conduct of business of the body, and also a Deputy Speaker to preside during the Speaker's absence. The Speaker acts as a neutral judge and manages all debates and discussions in the house. Usually he is a member of theruling political party.

A Vidhan Sabha holds equal legislative power with the upper house of state legislature, the Vidhan Parishad ('Legislative Council'), except in the area of money bills in which case the Vidhan Sabha has the ultimate authority.In case of conflict regarding ordinary bills, the will of Legislative Assembly prevails and there is no provision of joint sitting. In such cases, Legislative council can delay the legislation by maximum 4 months (3months in first visit and 1 month in the second visit of the bill).

Special powers of the Vidhan Sabha

A motion of no confidence against the government in the state can only be introduced in the Vidhan Sabha. If it is passed by a majority vote, then the Chief Minister and his Council of Ministers must collectively resign.

A money bill can only be introduced in Vidhan Sabha. In bicameral jurisdictions, after it is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad, where it can be kept for a maximum time of 14 days. Unless a by the Finance Minister of the state in the name of the Governor of that state.

In matters related to ordinary bills, the will of Legislative Assembly prevails and there is no provision of joint sitting. In such cases, Legislative council can delay the legislation by maximum 4 months(3 months in first visit and 1 month in the second visit of the bill).

Constitution 120th Amendment Bill 2013

Parliament is in the process of changing the process of appointment of judges to the Supreme Court and High Courts. A Constitutional Amendment Bill has been passed in Rajya Sabha that enables the formation of a Judicial Appointments Committee (JAC), and states that the composition and functions of the JAC will be detailed in a law enacted by Parliament. The appointments will be made according to the recommendations of the JAC. This body replaces the current process of "consultation" with the Chief Justice of India (CJI) and other senior judges.

An ordinary Bill has also been passed in Rajya Sabha which seeks to establish the JAC. The composition of the JAC will be the CJI, the next two judges of the Supreme Court in terms of seniority, the law minister and two eminent persons. These two eminent persons will be selected by a collegium consisting of the CJI, the prime minister and the leader of opposition in the Lok Sabha. In case of High Court Judges, the JAC will consult with the chief minister, the governor of the state and the Chief Justice of the High Court.

The new system is widening the selection committee. It includes representatives of the executive and senior judiciary, as well as two persons who are jointly selected by the executive (PM), judiciary (CJI), and the legislature (leader of opposition).

However, it may be diluting some of the safeguards in the Constitution. At a later date, the composition of the JAC can be amended by ordinary majority in Parliament. [For example, they can drop the judicial members.] This is a significantly lower bar than the current system which requires a change to the Constitution, i.e., have the support of two thirds of members of each House of Parliament, and half the state assemblies.

JAC bill specifies the composition of the JAC and its functions. Together, these two bills may have enabled the dilution of some of the safeguards in the current system of appointments.

Currently, Article 124(2) of the Constitution states that "Every judge of the Supreme Court shall be appointed by the president... after consultation with such of the judges of the Supreme Court and the high Courts in the states as the president may deem necessary. Provided that in case of appointment of a judge other that the chief justice, the chief justice of India shall always be consulted." Over time, the judiciary has interpreted this clause to mean that a collegium of judges shall select new judges, who will then be appointed by the president.

The process of judges selecting their new colleagues is sought to be modified so that the executive also has a role to play. The Constitution is being amended so that the process of "consultation" with judges is replaced by "the recommendation of the judicial appointments commission". The Constitution amendment bill also removes the proviso that requires consultation with the CJI. It adds a new Article 124A, which states that Parliament may, by law, determine the composition of the JAC, the appointment, qualification and terms of service of its chairperson and members, its functions and the manner of selection of judges.

Similar changes are proposed in Article 217, which deals with the appointment of judges to high courts. Instead of the "consultation with the chief justice of India, the governor of the state and, in case of a judge other than the chief justice, the chief justice of the high court", the new process will be based on the

recommendations of the JAC.

A bill has been passed that constitutes the JAC. It will consist of the CJI, the next two senior judges of the Supreme Court, the law minister, and two eminent persons. These two eminent persons will be selected by a collegium consisting of the prime minister, the CJI and the leader of the opposition in the Lok Sabha. The JAC will recommend appointments of judges and chief justices of the Supreme Court and high courts as well as transfers of chief justices and judges of high courts. In case of the appointment of high court judges, the views of the chief minister, governor and chief justice of the high court will be obtained in writing.

The current system requires that any change in the process of selection would require an amendment to the Constitution. Article 368(2), which details the process of amending the Constitution, has an added requirement. All constitutional amendments require the support of two-thirds of members voting, and at least half the total membership in each House of Parliament. Amendments related to the Supreme Court and high courts require the ratification by the legislatures of half the states. Indeed, the proposed Constitution amendment bill will have to go through these steps, including ratification by 14 state legislatures.

After the change, the composition of the JAC and its functions will be determined, by law, by Parliament. This means that Parliament can amend the law any time with a simple majority and change the composition of the JAC. Indeed, it would have the power to drop the judicial members from the JAC by passing an amendment with a simple majority.

To sum up, the composition of the JAC is not being specified in the Constitution. Instead, it is being specified in a proposed act of Parliament. It leaves scope for amending that act at a later date. This would remove the safeguard that any change in the selection process requires not just a two-thirds majority in each House of Parliament but also the approval of half the state legislatures. This is a point that parliamentarians and state legislators must consider while examining the 120th Constitution Amendment Bill.

CONFLICT RESOLUTION: WATER

Prime Minister Dr.Singh has said, "Rivers are a shared heritage of our country ... they should be the strings that unite us, not the strings that divide us." However, water conflicts now divide every segment of our society: political parties, states, regions, sub-regions within states, districts, castes, groups and individual farmers. The conflict resolution mechanism is as follows:

Inter-State Water Conflicts:constitutional Provisions and Important laws. The constitution lays down the legislative and functional jurisdiction of the union, State and local Governments in respect of water. Water is essentially a State subject and the union comes in only in the case of inter-State waters. list II of the Seventh Schedule, dealing with subjects in respect of which States have jurisdiction has entry 17 which reads:

Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I; Entry 56 of list I (union list), reads: Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union, is declared by Parliament by law to the expedient in the public interest.

The constitution contains a specific Article - Article 262 – which deals with adjudication of disputes relating to matters of inter-state rivers or river valleys, that reads:

Article 262(1): Parliament may by law provide for the adjudication on any dispute or complaint with respect to the use, distribution or control of water of, or in, any inter-state river or river valley. (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause(1).

The two laws enacted under Article 262 and entry 56 of list I are the River boards Act, 1956 and the Inter-State Water Disputes Act, 1956. The River boards Act was enacted with the objective of enabling the union Government to create, in consultation with the State Governments, boards to advise on the integrated development of inter-State basins.

The River boards were supposed to prevent conflicts by preparing developmental schemes and working out the costs to each State. No water board, however, has so far been created under the River boards Act, 1956.

The Inter-State Water Disputes Act provides for an aggrieved State to ask the union Government to refer a dispute to a tribunal. When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute. The Tribunal shall consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court. The Tribunal may appoint two or more persons as assessors to advise it in the proceeding before it.

The Inter-State Water Disputes Act was amended in 2002 and the following important changes were made:

- Government of India to establish a Tribunal within one year on a request by a State Government.
- The Tribunal to investigate the matters referred to it and give its Report within a period of three years (Government of India may extend the period by another two years).

• The decision of the Tribunal, after its publication in the Official Gazette by the central Government, shall have the same force as an order or decree of the Supreme Court.

Lessons Learnt from Inter-State River Disputes

Since the enactment of the Inter-State Water Disputes Act in 1956, six Inter-State Water Disputes Tribunals have been set up for adjudicating water disputes in respect of the Krishna, Godavari, Narmada, Cauvery, Ravi-beas and Mahadayi rivers.

In 2009 the Union Cabinet had approved setting up of the tribunal to resolve the long-pending inter-state dispute among the three states. The tribunal is requested by Goa. **Union Ministry of Water Resources issued notification to set up the tribunal to resolve the Mahadayi river water dispute among Karnataka, Goa and Maharashtra.** The Supreme Court's former judge Justice J M Panchal heads the tribunal while retired judge of the Andhra Pradesh High Court Justice P S Narayan and retired judge of Madhya Pradesh High Court Justice Vineet Mittal will be its members.The Ministry has fixed a three-year term to be extended to another two years for the tribunal to give its final award, says the notification issued recently.

The most significant lesson from the past is that the union Government has not been able to act decisively and has generally taken a 'minimalist' attitude. The other lesson is that the time lost in delays due to wrangling both before and during tribunal proceedings is very costly, in terms of loss of production, loss of farmers' income growth and the rising cost of constructing irrigation systems. Increasingly, States are becoming resistant to compliance with Awards of tribunals in spite of express provisions in the constitution regarding the finality of such awards. Another lesson is that a long time is taken to constitute tribunals and giving awards and in pronouncements of interim Awards that have led to further complications. After an Award is given, there are problems of interpretation and implementation and there is no mechanism to enforce the binding character of such Awards. Courts are barred from reviewing the Awards of the tribunals, but matters are still taken to the Supreme Court on related issues. The questions raised before the Supreme court are usually not so much on the subject of allocation of waters, but on questions of its sharing during years of poor rainfall and on those relating to environmental aspects, displacement and rehabilitation of people and human rights in the context of specific projects. Such references delay the settlement of disputes and implementation of projects for years.

The 2nd ARC suggested that resource planning should be done for a hydrological unit such as the drainage basin as a whole. In this respect, the National commission for Integrated Water Resources Development that gave its report in 1999 had recommended setting up of River basin Organisations (RbOs) as a body in which the concerned State Governments, local governments and water users would have representation and which would provide a f o r u m f o r m u t u a l discussions and agreement.
As the French, Australian and Chinese experience suggests, river-basin planning and implementation is the ideal system to follow. The system has worked well in those countries and the experience in Australia is relevant for us as it has a federal set-up. ARC II recommended the enactment of a legislation in place of the River boards Act, 1956 that could provide, in addition to the establishment of River basin Organisations for each inter State river, goals, responsibilities and management for the RbOs.

Need for a National Law on Water

India's total precipitation is of the order of approximately 400 million hectare (mhm) annually, falling in the form of rain (97 per cent) or snow (3 per cent) over a land mass of 329 million hectares. Approximately 17.5 per cent of this total immediately evaporates; another 41.25 per cent transpires through forests and vegetation, 12.5 per cent percolates below the ground and 28.75 per cent becomes surface flow. Surface water availability in India, most of it in lakes and rivers, is 185 mhm of which 57.29 flows to the sea or other countries, 4.87 per cent evaporates, 4.88 per cent becomes groundwater, and

only 37.83 per cent is available for consumption. India has a potential of approximately 45.2 mhm of groundwater of which 13.5 mhm are currently utilised.

While India has 16 per cent of the world's population, its share in the world's fresh water availability is only 4 per cent. Normatively, a per capita availability of 1700 cubic meters is required in order to be free of water stress, while availability below 1000 cm is termed as water scarcity. Per capita availability in India was 5200m in 1951.The per capita availability of water in the country is 1545 cubic meters in 2011. The per capita water availability in the country is reducing progressively due to increase in population. The average annual per capita availability of water in the country, taking into consideration the population of the country as per the 2001 census, was 1816 cubic meters which reduced to 1545 cubic meters as per the 2011 census.

Due to limited availability of water, but growing demand of water due to increasing population, urbanisation and industrialization. India is facing water stress.

Draft National water policy 2012

The NWP 2012 was adopted by the National Water Resource Council during the 6th meeting of the council held in New Delhi under the chairmanship of Prime Minister Dr Manmohan Singh.Highlights of the draft national water policy is given below

- Planning, development and management of water resources need to be governed by common integrated perspective considering local, regional, State and national context, and keeping in view the human, environmental, social and economic needs.
- Water needs to be managed as a common pool community resource through a National level legal framework, under public trust doctrine to achieve food security, livelihood, and equitable and sustainable development for all. Existing water Acts may have to be modified accordingly.(The **public trust doctrine** is the principle that certain resources are preserved for public use, and that the government is required to maintain them.)
- Water is essential for sustenance of eco-system, and therefore, minimum ecological needs should be given due consideration.
- River basins are to be considered as the basic unit of all hydrological planning. Inter-basin transfers of water to be considered on the basis of merits of each case after evaluating the environmental, economic and social impacts of such transfers.
- Climate change adaptation strategies like increasing the water storage various means, better water use efficiency, proper demand management, incorporate coping strategies for possible climate changes during formulation of mega water projects and enhancing the capabilities of community to adopt climate resilient technological options is advocated.
- Enhancing the water available for use through status assessment of water resources every five years, direct use of rainfall and avoidance of inadvertent evapo-transpiration , mapping of aquifers to know the quantum and quality of ground water, arresting exploitation of ground water and considering the river basins as basic hydrological units of all planning's is advocated in the policy.
- Integrated watershed development activities with MGNREGA to extent possible to reduce sedimentation yield and increase water productivity.
- Water footprints and water auditing should be developed to promote and incentivize efficient use of water.
- Recycle and reuse of water, including return flows, should be the general norm and incentives for the same to encourage practice.
- Water saving in irrigation use is of paramount importance and heavy underpricing of electricity which results in both wastage of water and electricity to be regulated

- The draft also says that "For the pre-emptive and high priority uses of water for sustaining life and ecosystem for ensuring food security and supporting livelihood for the poor, the principle of differential pricing may have to be retained. Over and above these uses, water should increasingly be subjected to allocation and pricing on economic principles"
- A Water Regulatory Authority (WRA) should be established in each State to fix and regulate the water tariff system and charges. Water Users Associations (WUAs) should be given statutory powers to collect and retain a portion of water charges, manage the volumetric quantum of water allotted to them and maintain the distribution system in their jurisdiction.
- In planning and implementation efficiency benchmarks to be prescribed, done in ecological, social and climate change perspective and they should be time bound to avoid economic losses. Local governing bodies like Panchayats, Municipalities, Corporations, etc., and Water Users Associations, wherever applicable, should be involved in planning of the projects.
- Proactive measure like flood forecasting, coping mechanisms in place and relevant control measures to prevent flood and drought are to be planned
- Removal of disparity in water supply urban and rural areas, tapping surface water for urban domestic water supply and integrating water supply and sewage treatment schemes will be given priority.
- A permanent Water Disputes Tribunal at the Centre should be established to resolve the disputes expeditiously in an equitable manner. Apart from using the "good offices" of the Union or the State Governments, as the case may be, the paths of Arbitration and Mediation may also to be tried in dispute resolution.
- Water resources projects and services should be managed with community participation. Wherever the State Governments or local governing bodies so decide, the private sector can be encouraged to become a service provider in public private partnershipmodel to meet agreed terms of service delivery, including penalties for failure.
- The draft facilitates international agreements with neighboring countries on bilateral basis for exchange of hydrological data of international rivers on near real time basis.
- All hydrological data, other than those classified on national security consideration, should be in public domain. A National Water Informatics Center should be established to collect, collate and process hydrologic data regularly from all over the country, conduct the preliminary processing, and maintain in open and transparent manner on a GIS platform.

Pros and cons of the policy

Pros

- The policy deserves accolade for its ecological, climate change and conservational perspective.
- Adaptation to climate change and the statement that special attention will be given towards mitigation at micro-level by enhancing the capabilities of community to adopt climate resilient technological options is welcome.
- The revision of the statement "water, over and above the preemptive need for safe drinking water and sanitation, should be treated as an economic good so as to promote its conservation and efficient use" in the initial draft to "Water, after meeting the preemptive needs for safe drinking water, sanitation and high priority allocation for other domestic needs (including needs of animals), achieving food security, supporting sustenance agriculture and minimum ecosystem needs, may be treated as economic good so as to promote its conservation and efficient use" can be welcomed in the perspective that agriculture was given importance.
- The statement that "inter-basin transfers of water should be considered on the basis of merits of each case after evaluating the environmental, economic and social impacts of such transfers" seems to understand the difficulty in interlinking rivers and its possible negative impacts.

- Growing water conflicts warrant a permanent " Water dispute tribunal", which is taken care off in the draft.
- Underpricing of electricity is no doubt a reason for wastage of both water and electricity. Importance to regulate this is given in the draft which can be appreciated.

Cons

- The policy sees water as a community resource, but also treats water as an economic good which is contradictory. Approaching water as an income generating resource by the government, must be executed very carefully. The policy allows for public private partnership model and also asks the states to exit the "service provider role" and play as a regulator, which will lead to distortion of access to water and the prices in long run. As usual with the other policies, the poor will be at the receiving end.
- Doing away with priorities mentioned in the earlier drafts (1987 and 1992 drafts lists the priorities as drinking water, irrigation, hydropower etc) will cause confusion in decision making process and facilitate vested interest (e.g.,providing flexibility for allocating water for industrial use even at the cost of agriculture).
- The water policies were there in paper since 1987, but nothing much has been done practically to ensure judicial use of water, to prevent encroachment of water bodies or growing exploitation of ground water resources.
- Giving incentives for recycle and reuse of water is in the favor of industries. Instead of incentives, strict enforcement of punitive laws to punish those industries that neglect water and pollute it should be the ideal option

Water, food and shelter are the basic amenities for every human being. Hence, drinking water and water for agriculture should be ensured as a right of every Indian. Though population growth is stated as the general reason for increased demand for water, there are many other basic reasons underneath like wastage of water, less importance to recycling, exploiting the natural resources and lack of attention to maintain water storage structures and other water harvesting technologies. Above all, the corruption that has rooted in the water management practices remains as a potential threat to the water security of the country. All living beings on the earth, live by using the existing resources. Man is the only animal, who lives by exploiting those resources. The result of continuous exploitation of these resources will result in a large social unrest in long run, leading to further conflicts and large scale wars. The growth of conflicts over water in the recent years across states and terrorism in north eastern states were just examples.

National water framework law

Planning Commission, as part of the preparations for the 12th Plan set up a sub-group on a national water framework law. It produced a draft of the law.GOIset up a new committee to draft the law under the chairmanship of Dr. Y. K. Alagh.

Need for a national law on water necessary:

1. Under the Indian Constitution water is primarily a State subject, but it is an increasingly important national concern in the context of:
   a. the judicial recognition of the right to water as a part of the fundamental right to life;
   b. the general perception of an imminent water crisis, and the dire and urgent need to conserve this scarce and precious resource;
   c. the severe and intractable inter-use and inter-State conflicts;
   d. the pollution of rivers and other water sources, turning rivers into sewers or poison and contaminating aquifers;
   e. the long-term environmental, ecological and social implications of projects to augment the availability of water for human use;
   f. the equity implications of the distribution, use and control of water;

g. the international dimensions of some of India's rivers; and
h. the emerging concerns about the impact of climate change on water and the need for appropriate responses at local, national, regional, and global levels.

It is clear that the above considerations cast several responsibilities on the Central government, apart from those of the State governments. Given these and other concerns, the need for an overarching national water law is self-evident.

2. Several States are enacting laws on water and related issues. These can be quite divergent in their perceptions of and approaches to water. Some divergences from State to State may be inevitable and acceptable, but extreme and fundamental divergences will create a very muddled situation. A broad national consensus on certain basics seems very desirable.
3. Different State governments tend to adopt different legal positions on their rights over the waters of a river basin that flows in more than one State. Such legal divergences tend to render the resolution of inter-State river-water conflicts extremely difficult. A national statement of the general legal position and principles that should govern such cases seems desirable.
4. Water is one of the most basic requirements for life. If national laws are considered necessary on subjects such as the environment, forests, wildlife, biological diversity, etc., a national law on water is even more necessary. Water is as basic as (if not more basic than) those subjects.
5. Finally, the idea of a national water law is not something unusual or unprecedented. Many counfries in the world have national water laws or codes, and some of them (for instance, the South African National Water Act of 1998) are widely regarded as very enlightened. The considerations behind those national codes or laws are relevant to India as well, although the form of a water law for India will clearly have to be guided by the nature of the Indian Constitution and the specific needs and circumstances of this country.

The proposed national water law is not intended to change the Centre-State relations in any way. It is not a Central water management law but a *framework law, i.e., an overarching statement of general principles* providing a framework within which the Centre, the States and the local governance institutions will exercise their respective legislative and/or executive (or devolved) powers, like the DPSPs of the Constitution. However, the framework law was intended to be justiciable in the sense that the laws passed and the executive actions taken by the Central and State governments and the devolved functions exercised by PRIs would have to conform to the general principles and priorities laid down in the framework law (on the basis of a national consensus), and that deviations can be challenged in a court of law. Federal trust i necessary for such a framework.

River basin planning

River basin includes the area drained by the main river and its tributaries. River basin planning is an ecologically sound and economically cost effective means of harmonising the conflicting objectives of development and conservation.

The idea involved in developing the entire river basin is to induce development on a region wise basis so that all natural resources are freely available to all the sub- units of the basin. This facilitates not only an optimal use of resources but also a fast and over all development of the region. Hence, the concept of river-basin planning is also visualized as a part of regional development approach.

In India the eminent scientist Meghnand Saha in 1938 put forth his views that river basins, because of their intrinsic ecological integrity, were ideally suited territorial units for undertaking comprehensive programmes of socio-economic development. He made a strong plea for a systematic study of all the river basins of the country so that a scientific foundation could be laid for future integrated programmes. These programmes could serve as instruments of revitalizing agriculture and initiating industrialization. As a result, the Damodar Valley Corporation (DVC) was constituted.

A river basin is a natural unit for water resource planning. It has a defined water boundary within which there is an inter-relationship between the surface and groundwater resources. Besides, there is cultural affinity among the people of the basin which provide ground basis for planning over all development. River basins differ in their size and potentialities. No two river basins are alike. Hence, separate basin plans are needed for different basins formulated on the basis of feasibility studies for individual projects. The plan should also be reviewed from time to time and necessary modifications should be incorporated. The river basin planning approach is based on water induced development where better water management is expected to stimulate development process in rest of the economy.

But the river basin planning is not an easy task to accomplish. Many Indian rivers have their sources or pass through foreign neighbouring countries. Seeking co-operation from such countries is a challenge. Within the country , there are inter-state conflicts for more water.

Many river basins are very large exhibiting great variations in climate, physiographic, social conditions. On the other hand, other basins are too small to become an ideal unit of planning.
GOI is increasingly accepting the fact that the river basin has to be the logical and rational unit for planning of water resources development.

Union Water Resources Ministry in mid-2013 sought public comments on its draft National Water Framework Bill, 2013, as well the draft River Basin Management Bill. Both seek to set up a river basin authority each for the management of 12 major river basins in the country.

The draft River Basin Management Bill, which seeks to amend the defunct Rivers Board Act of 1956, provides for integrated planning, and development and management of water resources.

The draft bill seeks to set up 12 river basin authorities in the country to settle discords and prevent deluge and pollution in inter-state rivers.

The draft legislation seeks to create a mechanism for integrated planning, development and management of water resources of a river basin. The River Boards Act lacked such a provision.

So far, not a single River Board has been constituted under the present Act as no state ever made a request under the provisions of the legislation.

The bill proposes a two-tier structure for each of the 12 river basin authorities.

Every river basin authority would consist of an "upper layer" called the governing council and a "lower layer" described as the executive board charged with the technical and implementation powers for the council decisions.

The governing council has extensive membership and representation including chief ministers of the co-basin states, ministers in charge of Water Resources, one Lok Sabha member, one MLA among others.

Likewise the executive board has also been given a broad base membership with civil servants under the bill.

The governing council will approve the river basin master plan to ensure sustainable river basin development, management and regulation. It will also take steps to enable the basin states to come to an agreement for implementation of river basin master plan.

The council will also settle inter-state water disputes.

The executive board on the other hand will prepare schemes for irrigation, water supply, hydropower, flood control, pollution control and soil erosion.

The draft bill has been prepared by the Justice Tejinder Singh Doabia Committee which was set up in 2012 to 'study the activities that are required for optimal development of a river basin and changes required in existing act'.

The draft River Basin Management Bill also provides that in case of a dispute or difference between two or more states regarding any recommendation of the river basin authority or the refusal or neglect of any state to undertake measures in pursuance of the river basin master plan, the governing council of the river concerned would use conciliation and mediation as means to resolve disputes.

If the matter could not be settled, the dispute will then be referred to the Inter State River Water Disputes Act, 1956 for adjudication.

Every river basin authority will have its own funds and budget and is required to prepare an annual report to be tabled in Parliament.

While the initiative to enshrine the basic principles of river basin management in a legal framework and make it a mandatory approach in water resource planning is welcome, there is a risk that it will end up further centralising decision-making in the sector and so some states are opposing it.

Criticshold that RBAs represent a very top-down approach to basin planning. One of the central principles of river basin planning is that planning and implementation of development of the basin must start with the smallest watershed and then build upwards towards the sub-basin and basin.

The Bill sees only governments as players in the preparation and implementation of the basin plans. The communities of the basin are at best to be 'consulted'.

However, the presence of some important elements such as environmental flows, the inclusion of food security, livelihoods, equitable and sustainable development as the key objectives of managing water, and indeed the very intent to enshrine river basin planning as the legally mandatory approach is welcome.

The bill proposes river basin authorities for 12 basins including Brahamani-Baitarini, Cauvery, Ganga, Godavari, Indus, Krishna, Mahanadi, Mahi, Narmada, Pennar, Subarnreakha and Tapi.

National Water Framework Bill

The draft National Water Framework Bill (2013) provides for a minimum quantity of 25 litres per capita per day potable water, preservations of water quality in all rivers and a mechanism for principles and mechanisms for fixation of water prices.

It seeks to provide "right to water", while stating that water allocation and pricing should be based on "economic principles"."Every individual has a right to a minimum quantity of potable water for essential health and hygiene and within easy reach of the household," states the draft. "The minimum quantity of potable water shall not be less than 25 litres per capita per day," it says, adding that the quantity must be fixed by the "appropriate government".

"The state's responsibility for ensuring people's right to water shall remain despite corporatisation or privatisation of water services, and the privatisation of the service, where considered necessary and appropriate, shall be subject to this provision," says the draft bill, which also mandates that governments should specify the "quality standards" of water supply for various uses like drinking, livestock, irrigation and industries among others.

While noting that the government remains the trustee of water resources, the draft bill gives it the flexibility of roping in a "private agency" for "some of the functions of the state". In this context, it stipulates that "allocation and pricing" should be based "on economic principles to ensure its development costs", and "so that water is not wasted in unnecessary uses and... utilised more gainfully and water infrastructure projects are made financially viable."

For this purpose, "an independent statutory water regulatory authority shall be established by every state for ensuring equitable access to water for all, and its fair pricing for drinking and other uses such as sanitation, agricultural and industrial," it says, adding that the decision of this authority will be subject to judicial review.

The regulatory authority will be entrusted with fixing the water price and its periodical review, and formulating a "principle of differential pricing for water for drinking and sanitation".

The draft bill, prepared on the basis of a report by a committee headed by Y K Alagh, also mandates protection of "ecological integrity necessary to sustain ecosystems dependent on water", that may include restrictions on water usage to maintain minimum natural flow in rivers to meet the ecological needs and regulated groundwater use.

It seeks to make river basins the mandatory basic hydrological unit for planning, development and management of water resources, while stipulating that governments should come up with "specific legislations" for developing, managing and regulating basins of intra-state rivers. Besides, it says, there should be a river basin master plan.

"All water resources projects shall conform to the river basin master plan under section 7(7)... and shall take into account all social and environmental aspects, in addition to techno-economic considerations of the project, in consultation with project affected and beneficiary families," it says. Local bodies, including panchayats, municipalities, corporations, and even water users associations will have a say in planning and management of the projects.

The National Water Framework Bill has drawn criticism from several states which have claimed that it amounts to infringing upon their rights as water is a state subject.

Work ethic

Work ethics pertain to a person's attitudes, feelings and beliefs about work. The state of a person's work ethic determines how that person relates to occupational responsibilities such as goal-setting, accountability, task completion, autonomy, reliability, cooperation, communication, honesty, effort, timeliness, determination, leadership, volunteerism and dedication. A strong work ethic - one that

encompasses a positive and productive approach to work - is favored in the work force. For that reason, it is not uncommon for employers to ask prospective employees questions regarding their work ethic.
Work ethic is a value based on hard work and diligence. It is also a belief in the moral benefit of work and its ability to enhance character. An example would be the Protestant work ethic. A work ethic may include being reliable, having initiative, or pursuing new skills.

Workers exhibiting a good work ethic in theory should be selected for better positions, more responsibility and ultimately promotion. Workers who fail to exhibit a good work ethic may be regarded as failing to provide fair value for the wage the employer is paying them and should not be promoted or placed in positions of greater responsibility.

Professional ethics

Professional ethics encompass the personal, organizational and corporate standards of behaviour expected of professionals.

Professionals, and those working in acknowledged professions, exercise specialist knowledge and skill. How the use of this knowledge should be governed when providing a service to the public can be considered a moral issue and is termed professional ethics.

Professionals are capable of making judgements, applying their skills and reaching informed decisions in situations that the general public cannot, because they have not received the relevant training. One of the earliest examples of professional ethics is probably the Hippocratic oath to which medical doctors still adhere to this day.

Some professional organisations define their ethical approach in terms of the following values:

- Honesty
- Integrity
- Transparency
- Accountability
- Confidentiality
- Objectivity
- Respectfulness
- Obedience to the law
- Loyalty

Most professions have internally enforced codes of practice that members of the profession must follow to prevent exploitation of the client and to preserve the integrity of the profession. This is not only for the benefit of the client but also for the benefit of those belonging to the profession. Disciplinary codes allow the profession to define a standard of conduct and ensure that individual practitioners meet this standard, by disciplining them from the professional body if they do not practice accordingly. This allows those professionals who act with conscience to practice in the knowledge that they will not be undermined commercially by those who have fewer ethical qualms. It also maintains the public's trust in the profession, encouraging the public to continue seeking their services.

In cases where professional bodies regulate their own ethics, there are possibilities for such bodies to become self-serving and to fail to follow their own ethical code when dealing with renegade members. In many countries there is some statutory regulation of professional ethical standards such as the statutory bodies that regulate Press (PCI) ; The Bar Council of India is a statutory body created by Parliament to

regulate and represent the Indian bar(lawyers). It performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar.
Professional and universal ethics

On a theoretical level, there is debate as to whether an ethical code for a profession should be consistent with the requirements of morality governing the public. For example, it could be argued that a doctor may lie to a patient about the severity of their condition, if there is reason to think that telling the patient could cause them so much distress that it would be detrimental to their health. This would be a disrespect of the patient's autonomy, as it denies them information on something that could have a great impact on their life. This would generally be seen as morally wrong. However, if the end of improving and maintaining health is given a moral priority in society, then it may be justifiable to contravene other moral demands in order to meet this goal. If moral universalism is ascribed to, then this would be inconsistent with the view that professions can have a different moral code, as the universalist holds that there is only one valid moral code for all.

Propriety

There are various definitions of propriety including:

- *conformity to established standards of good or proper behaviour or manners*
- *appropriateness to the purpose or circumstances; suitability*
- *rightness or justness*
- *the conventional standards of proper behaviour; manners: to observe the proprieties*

The essential points to note being proper behaviour, acting appropriately and observing conventional standards of behaviour. It is vital that government servants do their work objectively and without political bias. The Civil Service Code sets out the standards of behaviour expected of all civil servants.

If a convicted minister does not resign, it can be demanded of him/her for reasons of propriety. Similarly, to avoid conflict of interest, an interested party should recuse himself/herself.

Self Help Groups

Self-Help Group or in-short SHG is now a well-known concept. It is now almost two- decade old. SHGs have a role in hastening country's economic development- inclusive growth. SHGs have now evolved as a movement.

Generally a Self-Help Group consists of 10 to 20 women. The women save some amount that they can afford. It is small amount ranging from Rs. 10 to 200 per month. A monthly meeting is organised, where apart from disbursal & repayment of loan, formal and informal discussions are held. on many social issues also. Women share their experiences in these groups. The minutes of these meetings are documented and the accounts are written. The President, Secretary and Treasurer are three official posts in any SHG. If the SHGs are connected with some NGOs, they take part in other social activities of those NGOs.

Of late, the organisational structure of various micro-financial groups is undergoing significant changes. There are Thrift groups; Credit management groups, Income generating groups, Self-help groups and Mutual help groups.

Sometimes the NGO/bank that promotes the SHG, itself provides loan facilities. It is called as Micro-finance Institution.

Objectives of SHGs.

- Basically the SHGs are economic groups. Small funds are raised for day to- day needs. The saving groups when transformed to earning groups not only increase the productivity of women but the credibility also.
- Economic empowerment thus leads to women being able to understand and gain knowledge about Banking, Gram Panchayats, Zilla Parishad, Law and Judiciary etc.
- As economical solutions are available, the family incomes improve
- A common platform is available for a dialogue and sharing of views.

We can trace the origin of the concept of SHGs in Bangladesh.

Bangladesh has been acknowledged as a pioneer in the field of micro-finance. Dr. Mehmud Yunus, Professor of Economics in Chitgaon University of Bangladesh, was an initiator of an action research project 'Grameen Bank'.

The project started in 1976. The Grameen Bank provides loans to the landless poor, particularly women, to promote self-employment. SHG concept in India is now almost two- decade old. SHGs have now evolved as a movement.

The micro-finance practices revolve around five basic features. Firstly, these institutions primarily have women as their target group. Secondly, they adopt group approach for achieving their targets. The group approach focuses on organising the people into small groups and then introducing them to the facility of micro-financing. The MFIs of Bangladesh place a great deal of importance to group solidarity and cohesiveness. Thirdly, savings are an essential precondition in all these MFIs for availing credit from them. Fourthly, the officials of the Bangladesh MFIs remain present in the weekly meetings of the groups and collect the savings, update the pass books and even disburse the loans, and lastly, the systems and procedures of the MFIs are quite simple and in tune with the requirements and capabilities of their clients.

India has adopted the Bangladesh's model in a modified form. To alleviate the poverty and to empower the women, the micro-finance has emerged as a powerful instrument in the new economy. With availability of micro-finance, self-help groups (SHGs) and credit management groups have also started in India. And thus the movement of SHG has spread out in India.

In India, banks are the predominant agency for delivery of micro-credit. In 1970, Ilaben Bhat, founder member of 'SEWA' (Self Employed Women's Association) in Ahmadabad, had developed a concept of 'women and micro-finance'. The Annapurna Mahila Mandal' in Maharashtra and 'Working Women's Forum' in Tamilnadu and many National Bank for Agriculture and Rural Development (NABARD)-sponsored groups have followed the path laid down by 'SEWA'. 'SEWA' is a trade union of poor, self-employed women workers.

Since 1987 'Mysore Resettlement and Development Agency' (MYRADA) has promoted Credit Management Groups (CMGs). CMGs are similar to self-help groups. The basic features of this concept promoted by MYRADA are: 1] Affinity, 2] Voluntarism, 3] Homogeneity and 4] Membership should be limited to15-20 persons. Aim of the CMG is to bestow social empowerment to women.
(In the class)

The movement of SHG spread in the states of Gujarat, Maharashtra, Andhra Pradesh, Rajasthan, Tamilnadu and Kerala.

Now nearly 560 banks, the Government institutions like Maharashtra Arthik Vikas Mahamandal (MAVIM), District Rural Devlopment Agency (DRDA), Municipal corporations and more than 3,024 NGOs are collectively and actively involved in the promotion of SHG movement.
In India three different models of linkage of SHGs to the financial institutions have emerged. They are:

- Banks, themselves, form and finance the SHGs.
- SHGs are formed by NGOs and other agencies but financed by banks.
- Banks finance SHGs with NGOs and other agencies as financial intermediaries. The second model is the most popular model. Almost three-fourths of all the SHGs come under this model. Only 20% of the SHGs are covered under the first and 8% under the third model respectively.

SHG are popular in many states. Beginning with a tiny amount of only 25 paise, the women of Maharashtra from Amaravati District had established one SHG long back in 1947.

Further in 1988, 'Chaitanya' Gramin Mahila Bal Yuvak Sanstha started promoting SHGs in Pune District, informally.

In Southern part of India, 'SADHAN', 'DHAN' foundation and 'ASA' worked to promote SHGs. But their thrust was on economic aspects only. Whereas in Maharashtra, the NGOs not only have catered to the economic needs of the participants, but also involved in the process of social development. Aim of 'Chaitanya' is also the same to empower the women in both ways, economically and socially. Presently, numerous NGOs and governmental institutions promote SHGs on a large scale.

90 percent SHGs are comprised only of women members.

Enabling Joint Liability Groups (JLGs) within SHGs

A few members of an SHG may graduate faster to start or expand economic activities requiring much higher levels of loans than required by other SHG members. In such cases, the other members may not like to stand mutual guarantee for a few large sized loans. In such cases, a smaller "Joint Liability Group (JLG)" from members of an SHG may be created. The members of JLG will continue to remain members of the SHGs and continue to participate in the activities of SHGs are earlier.

Banks may encourage creation of such enterprise / livelihood based JLGs as a separate entity. Banks may use financial and other support extended by NABARD for this purpose. These JLGs may be created and financed by the bank on the lines of NABARD guidelines and such financing would be in addition to the loan / credit limit to the SHG.

Impact of SHG in the process of empowerment of women

The year 1975 was declared as a 'year for women'. Also, the decade from 1975 to 1985 was declared as a 'decade for women'. During this period, the movement for empowerment of women received a fillip. The importance of role of women, which consists 50% of the society, was highlighted in this span of period. It was emphasised that woman should get the same opportunities as that to men.

The year 2001 was declared as a 'year of women empowerment'. Efforts were being made in the direction that women should have a role in all walks of life; and special provisions should be made in the budget for activities related to the development of women. Many schemes were planned and started to be executed, at government level, in respect of women education, laws regarding prevention of atrocities on women, their participation in economic and political spheres etc. At this juncture, SHG movement also started and in a way journey towards women empowerment began.

Empowerment is a process of change by which individuals or groups gain power and ability to take control over their lives. It involves access to resources, resulting into increased participation in decision-making and bargaining power and increased control over benefits, resources and own life, increased self-confidence, self-esteem and self-respect, increased well being.

It means 'empowerment' is a multi-fold concept that includes economic, social & political empowerment.

For economic empowerment it is necessary for women to have access to and control over productive resources and to ensure some degree of financial autonomy.

According to the report by National Commission for Women (NCW) - (Status of women), in India, women work for longer hours than men do. The proportion of unpaid activities to the total activities is 51% for females as compared to only 33% for males. Over and above this unpaid work, they have the responsibilities of caring for household which involves cooking, cleaning, fetching water and fuel, collecting fodder for the cattle, protecting the environment and providing voluntary assistance to vulnerable and disadvantaged individuals in the family.

This shows that though there is still a long journey ahead towards women empowerment.

In rural region, where winds of change of development have yet to reach and basic economic needs are yet to be fulfilled,. The main source of employment for women is farm labour. But this does not fulfil all their needs. Indebtedness has become the hallmark of the rural life.

Participation in self-help groups helps in saving some money out of their daily household expenses. Also, they can avail loan with lower interest rates. This has led a sort of change in the society's view towards woman, in general.

Social empowerment

Constitutionally and legally, man and woman are equal. In real practice, however, woman still finds a secondary place. Examples of inequalities in respect of women- men birth rate, education, and participation in matters financial and political. Atrocities are perpetrated on woman. She is viewed as sub-human.

Efforts are being made to change this situation and bring about a stage where man and woman would be viewed equally. Many Schemes are being implemented for equal education and equal opportunities of employment, so that, women would have equal rights. Consequently, there is seen some progress in this respect. As the woman has now increased presence in banks, Gram Panchayats, various Government committees etc., her social status is seen somewhat elevated. However, this process is slow. To get a boost to this process, mindset of the society as a whole should change.

The social empowerment means that the woman should get an important place in her family and society, and should have a right to enable her to make use of available resources.

The members of SHGs are mostly women. They save money and invest in SHG. They can use it at the time of their needs. As they can have money in their hand, they get some status in their family. It has resulted in developing self-confidence, self esteem and self respect also.SHGs discuss women' centered issues and thus gain self-confidence and social security, to an extent.

Political empowerment

The political element entails that women are given power to represent the society; make public policy and implement the same. It aims at developing the capability to analyse, organise and mobilise the surrounding situation for social transformation; develop leadership qualities as they participate in the social activities, like trying to solve the problems of their 'basti'/ locality, village.

In 1992, PRI and Nagarapalika amendments were made for provision for 33 percent reserved seats. In the beginning, the process of participation of women was slow, but now the situation is fast changing. Due to advent of SHGs, were able to see the outside world. They understood the processes involved in solving the local problems through political participation. By and by, their participation in political process started increasing. In SHGs, they found an opportunity to become a leader of SHG. In some places, local SHGs acted as pressure groups for or against a particular political candidate in Panchayat elections. The SHGs played an important role to hone the leadership skills in women in the rural region.

Thus, Self-help Group has proved an important means in taking the process of women empowerment to rural region.

Thus the SHG programme has been successful in strengthening collective self-help capacities of the poor at the local level, meeting their peculiar needs leading to their empowerment. The rural poor, with the intermediation of voluntary organisations also join together for self-help to secure better economic growth. This has resulted in the formation of large number of SHGs in the country; and the SHGs have mobilised savings and recycled the resources generated among the members.

SHGs and social justice

SHGs seem uniquely placed to support their members on issues of social justice affecting women.

SHGs are seen to have taken up issues such as domestic and sexual violence, bigamy, and a few cases of dowry death, prevention of child marriage, support for separated women to remarry.

Some evidence-based appreciation of SHGs

The Government of India and state authorities alike have increasingly realized the importance of devoting attention to the economic betterment and development of rural women in India. The Indian Constitution guarantees that there shall be no discrimination on the grounds of gender. In reality, however, rural women have harder lives and are often discriminated against with regard to land and property rights, and in access to medical facilities and rural finance. Women undertake the more onerous tasks involved in the day-to-day running of households, including the collection of fuelwood for cooking and the fetching of drinking water, and their nutritional status and literacy rates are lower than those of men. They also command lower wages as labour: as rural non-agricultural labourers, women earn 44 rupees per day compared to 67 rupees for men Women's voice in key institutions concerned with decision making is also limited. In 2013, only about 10 per cent of all seats in the national parliament were occupied by women.

Key instruments for supporting women's empowerment are self-help groups, whereby 10-20 rural women from the same village, mostly poor women, come together to contribute two-weekly or monthly dues as savings and provide group loans to their members. Through promoting self-help group, Government -funded projects have contributed to improving the overall status of women in terms of income, empowerment, welfare, etc.Ajeevika is expected to result in similar benefits on a more massive scale.

In the Rural Women's Development and Empowerment Project, for example, 90 per cent of the beneficiaries reported increased access to and control over resources such as land, dwellings and livestock. Under the Livelihoods Improvement Project in Himalayas, women self-help group members in Uttarakhand were even elected as *gram pradhans* (heads of the local governments at the village or small town level) in 170 out of 669 *panchayats* in villages. In the Tamil Nadu Women's Development Project, 50 per cent of women self-help group members reported that, for the first time in their lives, they had visited new places and travelled longer distances, while 90 per cent had interacted with institutions such as banks, NGOs and project agencies. The impact study on the Jharkhand and Chhattisgarh Projects reveals that access to finance through group savings and lending to members had allowed women to become increasingly involved in economic activities such as the collection and sale on local markets of non-timber forest products. However, the study also noted that greater effectiveness would have been achieved if the project had stressed value-addition and promoted market linkages.

Another important feature of self-help groups has been the establishment of links between self-help groups and the formal microfinance institutions and commercial banks. To give one example, the Firsipur branch of the Bank of Maharashtra is financing more than 400 self-help groups in the district, lending on average about US$1,600 per group. The bank has set up its own in-house NGO to support these efforts. Loans are provided only to the groups, not individuals (although the groups normally on-lend to individual members). Recovery rates on the loans stand

at 99 per cent. In addition to lending to self-help group, which is profitable for the bank, ancillary business has been brought in through self-help group members opening deposit accounts and taking loans as individuals. The impact of the commercial banks' links to self-help groups is attested to by members. In Urali Devachi village, members' loans have provided the wherewithal to purchase a flour mill, and the working capital for a market stall selling refreshments and a shop selling saris. Members have used the loans to pay off moneylenders, and for education and health needs.

2013 Changes

In order to financially strengthen Women Self Help Groups (SHGs) across India, the Union Cabinet has approved key changes to the National Rural Livelihoods Mission (NRLM), aiming to eradicate poverty in villages by empowering women. Over 25 lakh Women SHGs will now be provided bank loans at an interest rate of seven per cent.

In accordance with the announcement made in the 2012-13 Budget, the Union Cabinet approved the provision of interest subvention for Women SHGs operating under the NRLM, ensuring that they shall avail loans up to Rs. three lakh at an interest rate of seven per cent per annum.
Initially, the scheme will be started as a pilot project in 150 districts, including the 82 Integrated Action Plan districts affected by naxal violence

Additionally, Women SHGs that repay loans in time will enjoy an additional three per cent subvention, thereby reducing the effective rate to four per cent. In the 150 districts, the Central government will bear the entire cost of the interest subvention from the market rate to seven per cent.

The total cost of the project is around Rs.1,650 crore for 2013-14, out of which, Rs.1,400 crore shall be borne by the Central government and Rs. 250 crore by the States.
Progressively, 0ver the next five years, we will move to a situation where the entire cost will be borne by the Centre.

In order to improve targeting, the Cabinet has decided to do away with the BPL (below poverty line) category in the NRLM, and instead identify target groups through the Participatory Identification of Poor (PIP) process, at the community-level.

Currently, there are nearly 25 lakh Women SHGs in the country, with nearly three crore members and over the next five years, the number is expected to increase to seven crore.
Mr. Jairam Ramesh has proposed a separate Nabard-like institution in order to promote Women SHGs to the Finance Minister.

The NRLM was launched in 2011 — a poverty reduction programme based on employment generation by adoption of a multi-pronged strategy. The program aims at creating efficient and effective institutional platforms of the rural poor, thereby enabling them to increase household income through sustainable livelihood enhancements and improved access to financial services.

CRPs

A group of sixty community resource persons (CRP), mostly women, from Bihar rural livelihood promotions society (BRLPS) will work in three districts -Ajmer, Chittorgarh and Jodhpur-for three years to replicate the successful Bihar model of women self help groups (SHGs).Under the National Rural Livelihood Mission (NRLM), the CRPs will help mobilize self help groups at the block level in these three districts. Rajasthan is the first state to involve CRPs from Bihar to rev up the self help groups in the districts.

Community resource persons strategy is a practical concept for eradication of poverty with the help of locals, who have fought poverty by embracing the SHG concept.

The model is being adopted in Rajasthan after its astounding success in Andhra Pradesh and Bihar. Under the initiative, each CRP team will consist of five members-- three women SHG members and two book-keepers. They will work in a phased manner for the next three years at three blocks, Kekari, Begu, and Balesar in Ajmer, Chittorgarh and Jodhpur districts respectively.

CRPs are not highly educated but as SHG members they have ensured effective mobilization of community and institutional building for the poor in the state. They have a rich experience of working at the grassroots and will extend the benefit of their knowledge to alleviate poverty in the blocks where they work.

Among the collective responsibilities of the CRP teams are to form the SHGs, imbibe strong group dynamics that will ultimately lead to women's empowerment and poverty alleviation.

The CRP teams will be facilitating SHG formation, identification of community mobilizers and book keepers, strengthening of the existing SHGs through training and capacity building, bank linkages, preparation of livelihood plans and credit linkages.

Social Capital

ARC's Ninth Report is on Social Capital and begins as follows:
"A government builds its prestige upon the apparently voluntary association of the governed." – Mahatma Gandhi

"Government control gives rise to fraud, suppression of truth, intensification of the black market and artificial scarcity. Above all, it unmans the people and deprives them of initiative; it undoes the teaching of self-help."– Mahatma Gandhi

Robert Putnam, one of the pioneers in the use of the term "social capital", has defined it thus: "Whereas physical capital refers to physical objects and human capital refers to the properties of individuals, social capital refers to connections among individuals – social networks and the norms of reciprocity and trustworthiness that arise from them. In that sense social capital is closely related to what some have called "civic virtue". The difference is that "social capital" calls attention to the fact that civic virtue is most powerful when embedded in a sense network of reciprocal social relations. A society of many virtuous but isolated individuals is not necessarily rich in social capital."– Putnam 2000

"Social capital is not just the sum of the institutions which underpin a society – it is the glue that holds them together." – (The World Bank 1999)

India has a rich history and tradition of both voluntary action and philanthropy as well as of Professional Bodies and cooperatives formed to promote the social and economic welfare of its members. While many of these traditional institutions declined under colonial rule, the Independence struggle saw a revival of interest in these Bodies under the strong influence of Gandhiji who was a lifelong advocate of voluntary action, much before this became a paradigm espoused by leading economists in the West.

In the Indian context, the key institutions that can be said to contribute to the development of social capital range from grass roots level community based initiatives like Residents Welfare Associations and Self-Help Groups, and Cooperatives of various types to Voluntary Organisations, Charitable Societies and Trusts. As far as the corporate sector is concerned, the alignment of business operations with social values, which is the essence of Corporate Social Responsibility (CSR), is at the heart of its ability to contribute to social development alongside economic development. It takes into account the interest of stakeholders in the company's business policies and actions. Corporate contribution to society, environment and business when guided by enlightened self-interest improves quality of life for all. CSR focuses on the social, environmental and financial success of a company – the triple bottom line – with the aim to achieve social development while achieving business success.

Given the millions of Indians living below the poverty line – the 'bottom of the pyramid'– , social capital can be leveraged as a complementary strategy.

In the corporate sector the concept of a shared destiny is increasingly used with the objective of bringing together all stakeholders and to move beyond the traditional management philosophy of

strategy-structure-systems to planet -process-people. In fact, the concept of a 'a shared destiny' must be infused in the society as a whole to generate a wave of social capital which can transform India not only into an economic powerhouse but also into an integrated, peaceful, caring and giving society.

There is also some evidence in academic research which indicates that– within India, a State's endowment of social capital does affect the ability of that State to reduce poverty and successfully implement development programmes.

Social capital and poverty reduction: In its simplest form, an individual acquires social capital through participating in informal networks, registered organizations, associations of different kinds and social movements, and it represents the sum of these experiences. It is believed that through membership in different organizations and networks individuals will develop joint interests and shared norms, which in turn will lead to trust and better understanding of differences in culture, background and life style. During this process democracy might emerge and individuals might have the opportunity to capture rights and benefits. Social capital created within a social structure, such as reciprocity or mutual aid, increases the opportunities for collective action.

In 1976, economist Mohammud Yunus set up Grameen Bank in response to a terrible famine in Bangladesh. In 2006 he won the Nobel Peace Prize for saving millions of people from poverty by using micro-credit and social capital to relieve poverty.

The social capital approach can contribute both towards poverty eradication and social stability, as well as to economic development.

Studies on SHG experience showed that increases in social capital increased household income by 20 to 30 percent. Social capital is often the only capital the poor have: if they are deprived of basic social services, at least they have each other. For the poor, the only resource they have is often each other. Social capital is, in part, manifest in a commitment to a cause that allows people to work together for a common goal, though this may not maximise their personal self-interest. Social capital exists in relations between and among actors, and is based on mutual trust. Poverty is a symptom, the causes of which are multiple and complex, whether they have their origins in economic or social field and needs social approach to complement the existing economic and political efforts.

'Social Capital' is based on mutual trust and accepted standards of social conduct. These elements work as networks that develop the work culture of the society that pave the way for combined social efforts for economic progress and prosperity. In other words, 'they create a social affinity that helps people work together and thereby increase production'.
Francis Fukuyama underlined the importance of 'Social Capital' in his book 'Trust and the Great depression'. He further emphasised its role in his pamphlet 'Social Capital and Civil society'. According to Fukuyama Social Capital is essential for modern economy to function efficiently.

The concept of Social Capital with its inherent implications is not entirely new for India as the ARC report quoted above shows.. Right from the ancient times people were instructed to work together. It has been the basis of joint family, caste-system, society and religion. Lord Buddha

preached, '*Sangham Sharanam Gachhami*'. Today it is said that 'strength lies in unity' ('*Sanghe Shakti Kalyuge*' in modern times).

Much social Capital is generated by NGOs in their advocacy and developmental efforts.

Let us examine the creation of social capital within self help groups that operate in many Indian villages. Self help groups are formed primarily as microfinance and poverty alleviation interventions. While the focus of most studies is on the economic result derived from microfinance interventions, it is necessary to see the wider benefits that result from the growth of social capital. This has social implications for self help group members, their families, and the wider communities in which they live. Social capital has a predominately positive influence on the actions of self help group members as they work for both collective and individual improvements in their community. Thus, t there are significant benefits and long term implications which flow into communities from collective actions resulting from the growth of social capital within self help groups.

It is seen that group formation has facilitated significant empowerment of women through access to credit, and through their interaction with each other in this process. While self help groups are formed primarily to provide a mechanism to access credit and provide a regime for savings for the poor, they invariably serve other useful purposes. These purposes include the potential development and expansion of social capital notions of trust, bonding and networks which possibly provide the foundation for positive collective action by the group on a range of other issues of interest to the community. Most of these issues are related to poverty.

Since women-headed households are known to be among the poorest of the poor and in need of access to credit, poverty alleviation interventions that focus on SHGs would seem to be of significant economic and social benefit. The transition to microfinance interventions has had the explicit goal of empowering women. By investing in and developing women's capabilities, they are empowered to make choices. Studies reveal that there are connections between the issue of female infanticide and the implementation of microfinance programs, as access to credit for women, especially those who are below the poverty line, enables them to make choices regarding education, health and other life issues. Self help group membership and the involvement of poor women in discussions that include the prevention of female infanticide is a means of expanding the role of social capital and its impact in communities.

More recent scholarship has reflected upon the popularity of social capital theory by examining the concepts of trust, bonding, linkage and integration under an umbrella of social inclusion. Each of these concepts in turn are defined as group loyalty or honesty, strength of association, extra-community networks, and intra-community ties which provide the basis for advances (development) in well-being within a community. The concept of social capital is central to a social inclusion agenda as it is understood as a way of building empowerment, well-being, and community development toward an improved civil society. Social capital has become the bankable collateral that has enabled increased access to financial services.

Trust creates social cohesion and gives meaning to and sustains a network of people. Social interactions that develop as a result of growing trust and hence growing social capital manifest as a relational dimension in personal relationships such as respect and trustworthiness

Self help groups are formed primarily to foster savings among the poor and provide access to credit for members. SHGs largely depend on non-government organisations (NGOs), banks and MFIs for loans. The funds saved by SHGs provide collateral and hence access to loans from the formal finance sector. These loans are used for individual needs such as health, education, water supply, sanitation blocks, house construction or small business creation . Self help groups have been successful in alleviating poverty by allowing poor people to protect, diversify and increase their sources of income, an essential path out of poverty. Loans, savings and insurance schemes help to smooth out income fluctuations and maintain consumption levels during lean seasonal periods.

Quote: Nobel laureate Kenneth Arrow had written in 1972 that "much of economic backwardness can be explained by the lack of mutual confidence.

Social capital and Internet

It is observed that the use of the Internet can relate to an individual's level of social capital. In one study, uses of the Internet correlated positively with an individual's production of social capital. Another perspective holds that the rapid growth of social networking sites such as Facebook and twitter suggests that individuals are creating a virtual-network consisting of both bonding and bridging social capital. Unlike face to face interaction, people can instantly connect with others in a targeted fashion by placing specific parameters with internet use. This means that individuals can selectively connect with others based on ascertained interests, and backgrounds. Facebook claims many advantages to its users including serving as a "social lubricant" for individuals who otherwise have difficulties forming and maintaining both strong and weak ties with others

This argument continues, although the preponderance of evidence shows a positive association between social capital and the internet. Critics of virtual communities believe that the Internet replaces our strong bonds with online "weak-ties" or with socially empty interactions others fear that the Internet can create a weaker social world where sociability is reduced to interactions between those that are similar in terms of ideology, race, or gender. A few articles suggest that technologically-based interactions has a negative relationship with social capital by displacing time spent engaging in geographical/ in-person social activities. However, the consensus of research shows that the more people spend online the more in-person contact they have, thus positively enhancing social capital.

NGOs

Non-governmental organizations (NGOs) is a term that originated from the United Nations, and normally refers to organizations that are not a part of a government and are not conventional for-profit businesses. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status by excluding government representatives from membership in the organization. The term is usually applied only to organizations that pursue wider social aims. India is estimated to have had around 3.3 million NGOs.

NGO types can be understood by their orientation and level of cooperation.

NGO type by level of orientation:

- Charitable Orientation It includes NGOs with activities directed toward meeting the needs of the poor.
- Service Orientation includes NGOs with activities such as the provision of health, family planning or education services in which the programme is designed by the NGO and people are expected to participate in its implementation and in receiving the service.
- Participatory Orientation is characterized by self-help projects where local people are involved particularly in the implementation of a project by contributing cash, tools, land, materials, labour etc. In the classical community development project, participation begins with the need definition and continues into the planning and implementation stages.
- Empowering Orientation aims to help poor people develop a clearer understanding of the social, political and economic factors affecting their lives, and to strengthen their awareness of their own potential power to control their lives.

NGO type by level of operation:

- National NGOs include national organizations such as, YMCAs/YWCAs
- International NGOs such as Save the Children organizations, OXFAM, CARE, Ford Foundation, and Rockefeller Foundation. They can be responsible for funding local NGOs, institutions and projects and implementing projects.

Apart from "NGO", there are many alternative or overlapping terms in use, including: third sector organization (TSO), non-profit organization (NPO), voluntary organization (VO), civil society organization (CSO), grassroots organization (GO), social movement organization (SMO),), self-help organization (SHO) and non-state actors (NSAs).

Non-governmental organizations are a heterogeneous group. As a result, a long list of additional acronyms has developed, including:

- **BINGO:** 'Business-friendly International NGO' or 'Big International NGO'
- **TANGO:** 'Technical Assistance NGO'
- **TSO:** 'Third Sector Organization'
- **GONGO:** 'Government-Operated NGOs' (set up by governments to look like NGOs in order to qualify for outside aid or promote the interests of government)

- **DONGO:** 'Donor Organized NGO
- **INGO:** 'International NGO
- **National NGO:** A non-governmental organization that exists only in one country. This term is rare due to the globalization of non-governmental organizations, which causes an NGO to exist in more than one country.
- **CSO:** 'Civil Society Organization'
- **ENGO:** 'Environmental NGO,' such as Greenpeace and WWF
- **PANGO:** 'Party NGO,' set up by parties and disguised as NGOs to serve their political matters.

NGOs exist for a variety of reasons, usually to further the political or social goals of their members or founders. Examples include improving the state of the natural environment, encouraging the observance of human rights, improving the welfare of the disadvantaged, or representing a corporate agenda.

Staffing

Some NGOs are highly professionalized and rely mainly on paid staff. Others are based around voluntary labour and are less formalized. Not all people working for non-governmental organizations are volunteers.

Many NGOs are associated with the use of international staff working in 'developing' countries, but there are many NGOs in both North and South who rely on local employees or volunteers.

Funding

Whether the NGOs are small or large, various NGOs need budgets to operate. The amount of budget that they need would differ from NGOs to NGOs. Unlike small NGOs, large NGOs may have annual budgets in the hundreds of millions of dollars. Funding such large budgets demands significant fundraising efforts on the part of most NGOs. Major sources of NGO funding are membership dues, the sale of goods and services, grants from international institutions or national governments, and private donations. Even though the term "non-governmental organization" implies independence from governments, many NGOs depend heavily on governments for their funding. Some NGOs, such as Greenpeace do not accept funding from governments or intergovernmental organizations.

Non government organizations (NGOs) play a vital role in the development of Indian society.

- The NGO sector's extensive grassroots connection and involvement in various social service provision make it a potentially for the government in reforming out dated public policies
- In India , according to some observers, the public policy making process essentially excludes the public and is carried out by politicians in power with the assistance of elite bureaucrats
- The NGO sector, representing various classes of people and interests, plays a surrogate role by engaging in public policy making

A great majority of the NGOs are small and about $3/4^{th}$ of all the NGOs are run entirely by volunteers or a few part time employees. About 13% of the NGOs have between 2-5

employees; about 5% have between 6-10 employees and only 8.5 %(one in every 12) NGOs employ more than 10 people. In spite of the limitation in their size and resources, NGOs in the area of environment, health , education , peace , human rights , consumer rights and women rights provide convincing examples of the power of the sector's action in social change .NGOs are registered as trusts, societies, or as private limited nonprofit companies under sec-25 of the Indian companies' act 1956. Section 2(15) of the income tax act gives tax exemption .Foreign contributions to non profits are governed by foreign contribution regulation act (FCRA , 1976) regulations and the home ministry (Read ahead)

Two theoretical explanations for the growth of the NGO sector:

1. The market failure theory:
NGOs emerged to provide services that the public sector cannot or will not provide, and services for which the businesses cannot get sufficient return on their investment

2. The contract Failure theory:
NGOs were created to provide services where the parties who want them offered were not in a position to provide these services themselves. These parties were donors or well wishers of the client's receiving the services

NGO Sector - Government Relations

- In the initial years after independence, there was some attention given toward the NGO sector by the central government mainly because most of the NGOs were Gandhian in nature.
- It was not until 1980(sixth five year plan 1980-1985), the government identified new areas in which NGOs as new actors could participate in social development.
- During the next six FYPs, the government has increasingly recognized the NGO sector vital role and has provided increasing levels of funding. In the past two decades, all levels of the government have increased their engagements with the sector.

Role of NGOs in the Public Policy Making
Since the late 1970s, he NGO sector has been playing a steadily increasing and active role in influencing government policies that affect the society.

Poverty Alleviation

- There are about 275 million poor people in the country(NSSO 2013)
- Many NGOs are involved in implementing poverty alleviation schemes- IRDP(in the 1980's and 1990's) and Ajeevika presently(2013)

Women's Movement

- Since 1970s women's movement began to take shape , gradually shifting emphasis from the critique of gender inequality to issue like gender discrimination at the work place, unequal wages and the domestic labor. NGOs such as SEWA have played dominant roles in women's economic independence.

- Among the most significant policy development that these NGOs were able to achieve was the introduction of 33% reservation for women in local , village-level elections.

Environmental conservation

- The major and most visible effort, till date, of the NGO sector in influencing environmental policy in the country has been "Narmada Bachao Andolan''
- Spearheaded by a few NGOs, this became a genuine people's movement and gained support from environmental NGOs from around the world.
- The success of the movement resulted in the creation of the new policies on environmental conservation, big dams, resettlement and rehabilitation.

AIDS prevention

Numerous dedicated NGOs have emerged to provide services in HIV/AIDS awareness education, prevention and research.

Realizing the critical need for these NGOs and their services, the government invited them to participate in developing health policies related to HIV/AIDs. Currently these NGOs play an active role by providing policy guidelines as well as delivering government funded services to HIV/AIDS patients. Uday Foundation is one of "India's largest volunteers based non-governmental organization, with programs based on children healthcare, health rights advocacy and carrying out activities for children in hospitals" It is taking active part in Uttarakhand relief.

Disaster management

- The NGO sector has always been in the forefront in providing recovery, relief and rehabilitation after natural calamities and disasters such as floods, droughts, earthquakes and epidemics.
- The government considered this role of NGOs as supplementary to the public sector's disaster management policies and procedures.
- The sector's enormous response in the aftermath of the 2004 Indian Ocean tsunami convinced the government to seek assistance from NGO groups in developing, coordinating and implementing new disaster management policies. Goonj, an NGO that has been working for the past 14 years on providing rehabilitation and relief in the face of several natural disasters, is now working in Uttarakhand and the larger Himachal Pradesh area to help the victims of 2013 June disaster.

NGO Sector Strengths

Indian NGO Sector's major strengths include

- Strong grassroots links;
- Field – based development expertise;
- The ability to innovate and adapt;
- Process – oriented approach to development;
- Participatory methodologies and tools;
- Long – term commitment and emphasis on sustainability;
- Cost – effectiveness.

NGO Sector Weakness

Indian NGO Sector's major weaknesses include

- Limited financial and management expertise;
- Limited institutional capacity;
- Low levels of self-sustainability;
- Isolation/lack of inter–organizational; communication and/or coordination;
- Small scale interventions;
- Lack of understanding of the broader social or economic context.

Reforms: Thus, there is a need to shift:

- ✓ From protest to pro-action
- ✓ Building citizen democracy
- ✓ Forming alliances across social movements
- ✓ Distinguishing between activist and services provider NGO's

Government and NGO Collaboration.

Social Development has emerged as fast growing sector in 21st century. Voluntary social work, voluntarism, individual donors, philanthropy, corporate social development organizations have tremendously grown in the 21st century.

Similarly International Development Organization viz World Bank , United Nations Development Programme (UNDP) , United Nations International Children Education Fund (UNICEF) ,United Nations Environment Programme (UNEP), United Nations Industrial Development Organization (UNIDO) , World Trade Organization (WTO), Food and Agricultural Organization (FAO), Asian Development Bank (ADB), ,Asian Development Bank (ADB) ,Japan International Cooperation Agency (JAICA) ,Department Fund International Development (DFID), Canadian International Development Agency (CIDA), Swedish International Development Agency (SIDA), United Nations Economic ,Social Commission for Asia and Pacific (UNESCAP) and many other organizations are relentlessly campaigning for the cause of social development .

Under United Nations Systems several International Conventions are being held, several laws are being promoted, several policies are being evolved and several projects are being implemented in various areas viz, Human Rights, Education, Health, Natural Resources Development and Environment.

Govt. of India enacted several laws, established various Govt. Departments, evolved policies, and created schemes for the cause of social development.

Though Social development has emerged as a very important sector in21st century there are no institutionalized mechanisms of collaboration of the Govt. and NGOs. The need of the Hour is to evolve long term, sustainable and institutionalized collaboration between the Govt. & NGOs.

In 2004, NAC was set up with NGO participation.

Planning Commission has many task forces and groups where the NGOs are consulted and also serve as members. Dr. Mihir Shah is Co-Founder, Samaj Pragati Sahayog (SPS), one of India's largest grass-roots initiatives for water and livelihood security, working with its 122 partners on a million acres of land across 72 districts in 12 states.

Govt. of India has prepared and released a draft National Policy on NGOs, incorporating the areas of collaboration between the Govt. and the NGOs. The Planning Commission of India and various Ministries of the Govt. of India are working on the modalities of collaboration between Govt. and the NGOs.

Similarly Govt. of Andhra Pradesh formed a state level coordination Committee of the Govt. officials and NGOs headed by the Chief Minister for promoting the coordination between the Govt. and the NGOs .On the same lines district level coordination cells have been formed headed by the district incharge Ministers with Collectors, Officials and NGOs as members.

Govt. of India is promoting the work, projects and involvement of NGOs in a big way. Govt. of India under Ministry of Rural Development has established Council for Advancement of Peoples Action and Rural Technology (CAPART) and promoting the NGO sector in a big way.

Rural Development Department in many schemes related to sanitation (Nirmal Bharat Abhiyan), Ajeevika and so on. Watershed Development and in many other schemes has elaborately issued guidelines, with specific reference to involvement of the NGOs in implementation of the various schemes.

Similarly, several Ministries viz Ministry of Human Resources Development, Ministry of Environment and Forest, Ministry of Social Justice and Empowerment, Ministry of Women and Child Welfare, Ministry of Tourism, Ministry of Labour, Ministry of Agriculture etc. have issued guidelines for implementation of the schemes, with focus on peoples participation of NGOs in implementation of thousands of schemes of the Govt. of India..

On the same lines, various state Govts. Have issued Govt. orders and guidelines and guidelines for people's participation and participation of NGOs in implementation of various schemes.

Govt. of India through various Ministries has been funding the NGOs to a tune of thousands of corers per annum for implementation of various schemes. CAPART and various Ministries have evolved schemes to be funded to the NGOs for implementation in various areas concerning Human and Social Development of people. For example, Akshay Patra is involved in the mid-day meal scheme. Pratham is involved in SSA.

NGOs and the Legitimacy challenge

The issue of the legitimacy of NGOs raises a series of important questions. NGOs are known as an "independent voice".

In recent decades NGOs have increased their numbers and range of activities to a level where they have become increasingly dependent on a limited number of donors. Consequently competition has increased for funding, as have the expectations of the donors themselves. This runs the risk of donors adding conditions which can threaten the independence of NGOs, an over-dependence on official aid has the potential to dilute "the willingness of NGOs to speak out

on issues critically.

NGOs have also been challenged on the grounds that they do not necessarily represent the needs of the developing world, through diminishing the so-called "Southern Voice". Some postulate that the North-South division exists in the arena of NGOs.
Another criticism of NGOs is that they are being designed and used as extensions of the normal foreign-policy instruments of certain Western countries and groups of countries.

NGO accountability
India is estimated to have 3.3 million registered NGOs. While the sector is regulated by multiple laws and authorities, its credibility is often questioned by most stakeholder groups due to lack of information (about existence, performance, finances, output and outcome), absence of performance benchmarks, government licenses and permissions not being sufficient indicators of performance or credibility, and the general lack of awareness of the common man about the voluntary sector.
Government is the largest source of funds for the voluntary sector in India. Government envisages a greater role for NGOs in implementing many of the public welfare programmes.
The voluntary sector in India is going through a period of transformation. In the backdrop of:

- a robust economy that opens new streams of private giving
- a telecom revolution penetrating deeply and widely allowing better connect between the donor and recipient
- the voluntary sector beginning to embrace technology and attract professional management,
- the birth of support organisations for social entrepreneurs and
- the emergence of web-based platforms

There is a strong impetus for NGOs to become more transparent and accountable.
India has multiple Acts (The Societies Registration Act, 1860, The Indian Trust Act, 1882, The Bombay Public Charitable Trust Act, 1950, section 25 of The Companies Act, 1961) under which organisations are registered as not for profits or NGOs in India. Gujarat and Maharashtra are two states where NGOs registered as Societies also need to be registered as Trusts. The accountability requirements of all these Acts differ, with some of them not requiring any form of annual filings. NGOs are required to register with the Income Tax Department under section 12 A. However, the annual returns of Income Tax filed by NGOs are not subject to public disclosure. NGOs need permission from the Ministry of Home Affairs under the Foreign Contribution regulation Act (FCRA) to receive any form of foreign contribution.
The scenario described above indicates that the statutory framework does not require NGOs to be accountable directly to the public.

FCRA
The Foreign Contribution (Regulation) Act, 2010 has come into force. Consequently, the earlier Act, viz., the Foreign Contribution (Regulation) Act, 1976 has been repealed.

FCRA, 2010 is an improvement over the repealed Act as more stringent provisions have been made in order to prevent misutilisation of the foreign contribution received by the associations. The prime objective of the Act is to regulate the acceptance and utilization of foreign contribution and foreign hospitality by persons and associations working in the important areas

of national life. The focus of the Act is to ensure that the foreign contribution and foreign hospitality is not utilized to affect or influence electoral politics, public servants, judges and other people working the important areas of national life like journalists, printers and publishers of newspapers, etc. The Act also seeks to regulate flow of foreign funds to voluntary organizations with the objective of preventing any possible diversion of such funds towards activities detrimental to the national interest and to ensure that individuals and organizations may function in a manner consistent with the values of the sovereign democratic republic.

FCRA 2010

- The 1976 Act lists a number of organisations and individuals that are prohibited from accepting foreign contribution. The Act adds organisations of a "political nature" and electronic media organisations to the list.
- The Act requires all persons with a "definite cultural, economic, educational, religious or social programme" to register under FCRA to accept foreign contribution. The central government may deny, suspend or cancel certification under certain conditions.
- Organisations must renew FCRA certification every five years. Both the application and the renewal carry a fee.
- The Act allows the central government to conduct separate audits for FCRA certified organisations and grants it the power of search and seizure.

The new FCRA, 2010 has a much broader applicability; it is applicable to individuals, Hindu Undivided Family (HUF) etc.
The FCRA is amended to remove some inadequacies and practical difficulties in administration of the Act.

For instance Section 17 of FCRA 2010 provides that multiple bank accounts can be opened for the purposes of utilization provided only one bank account is maintained for receiving foreign contribution. This amendment provides a great relief to all the NGOs which were struggling under the arbitrary disallowance of multiple bank accounts under FCRA, 1976.

Another relief is the time limit for processing an application for registration. In the old FCRA there was no time limit but section 12 of the FCRA 2010, provides the time limit and applications for registration have to be processed within 90 days. The FCRA department shall also provide reasons for rejections.

Over 40,000 organisations in the country receive foreign contributions and of them, only 18,000, report the funds transfer and submit accounts. The rest are dormant...the Act will ensure that every five years the organisations renew their registration so that the dormant ones can be weeded out.

There was a provision in the Act where if any organisation received funds over Rs.10 lakh in an instance, the bank concerned would immediately inform the government so that government agencies would track the source of such funds.
This law would prohibit certain individuals and organisations to accept overseas funds and they include cooperative societies, candidates during elections, correspondents, editors and publishers of newspapers, judges and government servants, members of legislature and political parties.

However, remittances received from relatives abroad and salaries or wages due from foreign sources and payment for international trade are exempted. If those receiving foreign contribution do not file accounts the government will have the power to cancel their registration.

Those organisations engaged in production or broadcast of audio news, audio-visual news or current affairs through any electronic mode will be brought under the purview of the legislation. Similarly, use of foreign contribution for any speculative business is prohibited.

A total 22,735 NGOs received foreign funds to the tune of Rs 10, 335 crore in 2010-11. Over 17,700 NGOs receiving foreign funds have not filed their annual returns for 2011-12 with the Ministry of Home Affairs under the Foreign Contribution Regulations Act (FCRA). According to the FCRA, if an NGO does not file returns properly, its registration can be cancelled after serving a show cause notice. The US is the top donor nation to Indian NGOs, followed by Britain and Germany.

Since NGOs work independently and not accountable to the government, the MHA has been encouraging transparent and accountable system of governance and management in the welfare associations. The ministry had earlier observed that NGO sector in India is vulnerable to the risks of money laundering and terrorist financing and details of account with return is important to ensure that foreign funding is not misused or diverted for any anti-national activity.

National Policy on Voluntary Sector 2007

The main objectives of the policy include:

(i) Creating an enabling environment for Voluntary Organisations (VOs) that not only stimulates their effectiveness but also protects their identity and safeguards their autonomy. (ii) Enabling VOs to legitimately mobilize the necessary financial resources from India and abroad. (iii) Identifying systems by which the Government may work together with the Voluntary Sector. (iv) Encouraging VOs to adopt transparent and accountable systems of governance and management.

GOI will examine the feasibility of enacting a simple and liberal central law to register societies, trusts and non-profit companies.

There is a commitment to encourage independent philanthropic institutions to provide financial assistance to deserving VOs.

The National Policy on the voluntary sector aims to provide an enabling environment for the voluntary sector and also make it accountable, so that VOs can play their constructive role in development activities effectively.

Voluntary Organisations (VOs) taking public donations and enjoying tax benefits would be encouraged to do so even as the Government is keen to consider tightening administrative and

penal procedures to ensure that these incentives are not misused by paper charities for private financial gain.

'National Policy on Voluntary Sector' was prepared by the Planning Commission for the first time to set guidelines for the transparent functioning of VOs in various developmental activities across the country and abroad.

As a large number of government agencies operate schemes for financial assistance to VOs, concerned government agencies would be encouraged to ensure proper accountability and monitoring of public funds distributed to VOs so that arbitrary procedures, selection of unsuitable VOs, poor quality of implementation and misuse of funds would be stemmed.

Some Indian NGOs

Pratham

Pratham is the largest non-governmental organisation in India. It works towards the provision of quality education to the underprivileged children in India. Established in Mumbai in 1994 to provide pre-school education to children in slums, it now has activities in 21 states of India.
Pratham's founder and current CEO, Madhav Chavan,
Pratham's mission is "Every Child in School and Learning well". By increasing the literacy levels of India's poor, Pratham aims to improve India's economic and social equality. This is carried out through the introduction of low cost education models that are sustainable and reproducible.

What it does?

Annual Status of Education Report (ASER), India's largest NGO-run annual survey, has been conducted by Pratham since 2005 to evaluate the relevance and impact of its programs. Findings are disseminated at national, state, district and village levels, and influence education policies at both state and central levels.

Read India - Despite India's educational reforms in recent years, quality education is still a concern, especially among low-income communities. Findings of ASER since 2005 revealed that 50% of children in government schools could not read, write or do basic arithmetic despite being in school for 4–5 years. Hence Read India was launched in 2007 to improve reading, writing and basic arithmetic skills of 6-14 year old children and is carried out by school teachers, anganwadi workers and volunteers, whom Pratham trains. Read India has reached approximately 34 million children to date, resulting in large-scale improvements in literacy levels across several states in India.

Pratham Books, a non-profit organization which publishes affordable, quality books for children, was set up in 2004 to complement Read India. It has published over 200 original titles in 10 Indian languages and reached over 14 million children.

Direct programmes – Pratham's direct programmes seek to supplement governmental efforts to improve quality of education through balwadis (pre-school education), learning support programs, libraries and mainstreaming drop-out children. Full-year learning support is provided at centres for children living in the immediate vicinity. These programmes are typically conducted in urban slums or poor villages, where children do not have easy access to quality education.

Other Work - Pratham has also set up other programmes for disadvantaged Indian children and youth, including Pratham Council for Vulnerable Children (PCVC), Early Childhood Care and Education Centre (ECCE), Vocational Skills Programme, and Computer-aided Literacy.

HelpAge India

It is a non-profit and a non-governmental organisation in India registered under the Societies' Registration Act of 1860. Set up in 1978, HelpAge India is a registered national level voluntary organisation. Since its foundation, its mission is to work for the cause and care of disadvantaged older persons, in order to improve the quality of their lives. HelpAge India is one of the founding members of HelpAge International.

Bachpan Bachao Andolan

BBA is a movement campaigning for the rights of children and for an end to human trafficking. Its focus since formation in 1980 has centred on ending bonded labour, child labour and trafficking, as well as demanding the right to education for all children.

Akshaya Patra Foundation

It runs school lunch programs across India. The organization distributes freshly cooked, healthy meals daily to 1.3 million underprivileged children in 9,000 government schools through 20 locations in 9 states across India. Built on a public-private partnership, Akshaya Patra has supporting chapters in the United States, and UK.

It costs just Rs. 750 to feed a child daily for the entire school year due to government subsidy and provision of grains and technology. For many of the children, this is their only complete meal for the day. It gives them an incentive to come to school and stay in school and provides them with the necessary nutrients becoming the food for education. The mission of the organization is to reach out to 5 million children by 2020, and holds to the belief that "no child in India shall be deprived of education because of hunger."

Akshaya Patra partnered with the Karnataka government in 2003 under the mid-day meal scheme to act as one of the implementing arms of the government in many regions. It now works with central and state governments in 9 states (Karnataka, Andhra Pradesh, Assam, Chattisgarh, Gujarat, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh) and has set up kitchens in 20 locations.

Assets such as state-of-the-art centralized kitchens are constructed and maintained across regions to ensure timely mass production of over 100,000 meals in most hygienic condition every day. Continuous R&D is taken up leading to innovations in the construction process. Akshaya Patra Blue Bus delivers food to the schools once the hot nutritious meals are ready.

Sammaan Foundation

It works towards organizing the rickshaw-pulling class of people by providing them with opportunities to earn their livelihood. Irfan Alam popularly known as the "rickshaw man of Bihar" is its founder.

Udaan Welfare Foundation

The Udaan Welfare foundation was formed with a mission to empower lives of the downtrodden. Their main areas of focus are children, destitute women, senior citizens and environment protection. Till date, they have launched various health and education initiatives involving children and destitute women. They even have a cancer chemotherapy centre as one of their main projects.

LEPRA Society

LEPRA society actively promotes quality health care through various initiatives. It aims to support various health programmes in the prevention and control of diseases like AIDS, Leprosy, and Tuberculosis etc. Their programmes are mainly focussed to communities which are poor comprising women and children.

Deepalaya

Deepalaya is a development-based NGO which works on issues pertaining to the poor and the downtrodden, especially children. It works in slums of Delhi and initiated rural development in Haryana and Uttarakhand. It works in collaboration with both governmental and non-governmental agencies. Their areas of focus include education, healthcare, gender equality, vocational training, empowering other NGOs which have the same vision.and upliftment of the differently-abled.

Uday Foundation

Uday foundation provides support to the families of children suffering from critical disorders, congenital defects and other diseases and syndromes which affects their health, growth and education. It has launched various health related projects for the common man in general. Their special focus is child rights i.e. providing a right to live with dignity. It is more of a parents support group who tackle the problem of saving the lives of the future of our country. They also support research to develop new healthcare technologies.