

Chapter-5

Institutions of Parliamentary Democracy

INTRODUCTION

We have seen in the preceding chapter that in a democracy the wishes of the people are fulfilled by the representatives elected by the people. We have also considered that whenever a representative works against the wishes of the people it loses its way from the path of democracy. The feeling of dissatisfaction and opposition rises in the people. This opposition continues until the representative institutions and the units of administration once again start ruling for the welfare of the people.

Now we have reached a point when we should know how these institutions of democracy work for the welfare of the people. We will also try to know how the major decisions of the country are implemented. Which unit of administration gives it a final shape? What processes are involved in giving it a final shape? In the case of controversies how are they solved?

As far as the decisions are concerned it can be said that there are three main institutions : **The Legislature, The Executive, and The Judiciary.** This is the central point of this chapter.

You have already read something about these institutions in earlier classes. Here we shall quickly summarize the functional aspects of these institutions and move on to asking larger questions. We shall try to see

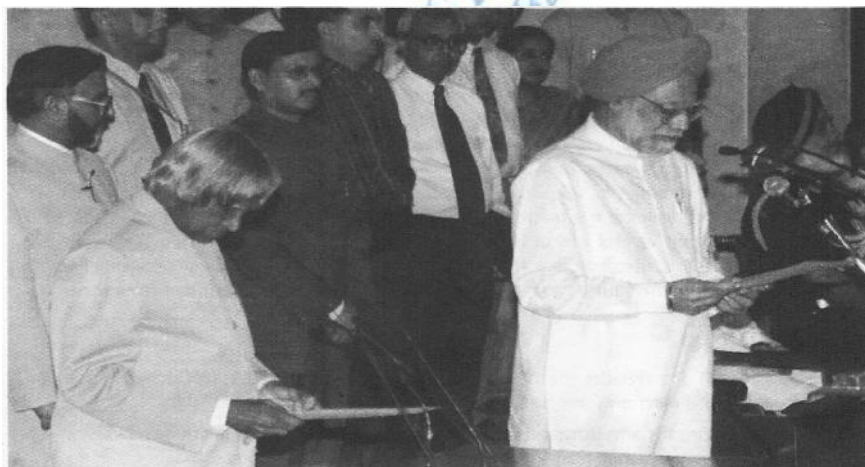
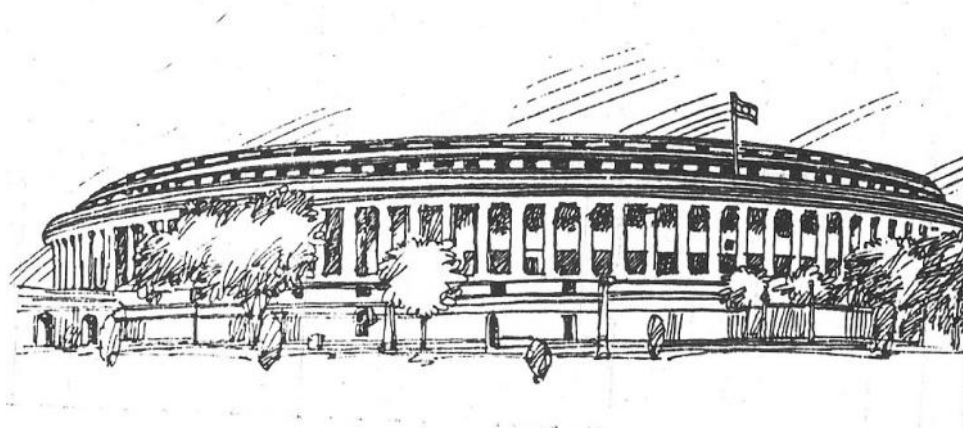
: What do these institutions do? How are these institutions connected to other institutions? What makes their functioning more or less democratic? We shall discuss the functional aspects and compare these institutions with the world's such institutions with national and local examples to make our topic clear.

Decision Making Institutions in a Democracy

Children! You know that in a democracy administration is implemented and fulfilled through three organs: Executive, Legislature and Judiciary. But the functional nature of the administration is prescribed in a practical manner by the Executive.

Children, you also know that in India a federal government has been established on the lines of U.S.A. hence, the government functions on the state and the union level as given in the constitution. Thus, the union government fulfils its responsibilities at the central level, while the state government does the same at the state level; it decides its policies and takes decisions. The union government takes decisions on subjects related to the entire country, while the state government takes decisions on local subjects.

Now, while focussing on the nature and decision taking process of the central government, we shall try to know the practical functioning of the government.



राष्ट्रपति डॉ. ए.पी.जे. अब्दुल कलाम प्रधानमंत्री डॉ. मनमोहन सिंह को पद की शपथ दिलाते हुए

To make clear the functioning of the union government we shall give an example, which will tell you the practical functioning of how decisions are taken.

The Joint Secretary, Department of Personnel and Training, Public Grievances and Pensions signed an order on 13th August 1990. It was quite short, barely one page.

G.I.Dept. of Per. & Tr. O.M. No. 36012/31/90 – Est. [SCT], dated 13.8.1990

SUBJECT: 27% Reservation for Socially and Educationally Backward Classes in Civil Posts/ Services.

1. In a multiple undulating society like ours, achievement of the objective of social justice as enshrined in the Constitution is a must. The Second Backward Classes Commission, called the MANDAL COMMISSION, was established by the then government with this purpose in view, which submitted its report to the Government of India on 31st December, 1980.
2. Government have carefully considered the report and the recommendations of the Commission in the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows :

- a. 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.

G.I. Dept. of per. & Tr. O.M. No. 36012/31/90 –[SCT], dated 8.9.1993

SUBJECT : Reservation for Other Backward Classes in Civil Posts and Services under the Government of India – Regarding.

The undersigned is directed to refer to this Department's O.M. No. 36012/31/90 –Estt. [SCT], dated the 13th August, 1990 and 25th September, 1991, regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the Indira Sawhney and others Vs. Union of India and other case [Writ Petition {Civil} No. 930 of 1990], the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/ sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

Though this is one of the many circulars signed by the Joint Secretary, Department of Personnel and Training, of the Ministry of Grievances and Pensions but this one was very important and became a source of controversy for several years.

Let us see how the decision was taken and what happened later.

This was in reality the announcement of a major policy decision. It said that 27% of the vacancies in civil posts and services under the

Government of India are reserved for Socially and Economically Backward Classes [SEBC].

Now we will see how was this memorandum issued? The answer would be – in the light of the direction given by the minister the order must have been issued by the secretary, but this is not so. It was neither a decision taken by the minister of Personnel and Training Department, nor by any officer. Rather the decision must have crossed various steps. The Government of India appointed in 1979 a Commission for Backward Classes. Its Chairman B. P. Mandal in his recommendations in 1980 said that 27% of government jobs should be reserved for SEBC. The report and the recommendations were discussed in the parliament. The parliamentarians and the parties kept demanding the implementation of the Commission's recommendations. Then came the Lok Sabha election of 1989 and the Janata Dal in its election manifesto promised to implement this. After the elections the leader of the Janata Dal government, V. P. Singh through the address of the President of India announced the intention of the government to implement the recommendations of the Mandal Commission. Then on 6th August, 1990, in a meeting the Union Cabinet took a formal decision to implement the recommendations and the Prime Minister V.P. Singh through a statement informed both the houses of the parliament. Then a senior officer of the Department drafted an order in line with the Cabinet decision and took the Minister's approval. The Joint Secretary signed the order on behalf of the Union government and that was how O.M. No.36012/31/90 was passed on August 13, 1990. Although there were a number of hot debates on this issue in the country. Widespread protests and counter- protests were held all over the country.

In opposition to this decision many cases were filed in many courts of the country and there were demands to declare this decision invalid. The Supreme Court of India bunched all these cases together and under 'Indira Sawhney and others Vs Union of India. The 11 senior most Supreme Court judges after listening to both the sides declared by a majority that this order of the Government of India was valid but the well to do classes among the Backward Classes should be excluded. Accordingly, the Department of Personnel and Training issued another Office Memorandum on September 8, 1993. The dispute thus came to an end and this policy has been followed since then.

CHECK YOUR PROGRESS

- ◆ A single person cannot take a major decision.
- ◆ In the modern democratic countries there are different institutions for different functions.
- ◆ Any institution can work only when these institutions work in the best possible way.
- ◆ The Prime Minister and the Cabinet are such institutions which can take major policy decisions.
- ◆ To implement the decisions taken by ministers the officers in the government are responsible.
- ◆ The Supreme Court is that institution where disputes between citizens and the government are solved.

Through the above discussions we can draw a conclusion that –

1. The policy decisions are taken by the Executive.

2. The Executive takes decision for the welfare of the people. Sometimes there is pressure on the Executive to take decisions.
3. In the process of making policies the Executive cannot ignore the Parliament.



Children, now we would tell you about the nature of the Executive which takes decisions.

As we have already said the Executive is of two types:

- a. **Political Executive**
- b. **Permanent Executive**

The real power of administration is vested in the Political Executive. The Political Executive rules on the people through the people's representatives. It has a definite period of term, and holds responsibility in the Lok Sabha until it has a majority. The Permanent Executive is a group of high officers who advise the government at different levels in making policies and they are the ones who actually devise policies as directed. Its term is until the retirement of the officers.

The Political Executive consists of the President, the Prime Minister and the Council of ministers. Although the President is the Executive head, all the works are done in consultation with the Prime Minister and his Council of ministers.

Along with the President, there is also the post of Vice- President who in the absence of the President, or when the post gets vacant, he performs all the functions of the President.

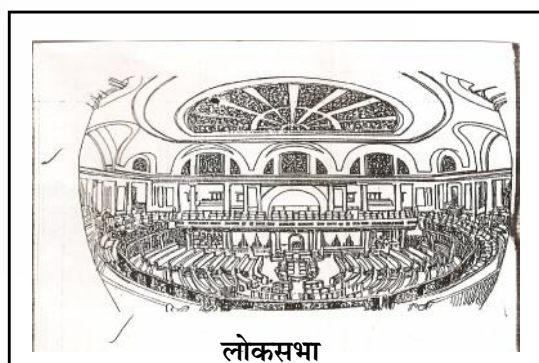
THE ELECTION OF PRESIDENT:

The president is elected indirectly by an electoral college which consists of two types of members –

1. Elected members of both the houses of the Parliament, the Lok Sabha and the Rajya Sabha.
2. The elected members of the state Assemblies, the Vidhan Sabhas.

The President is elected on the basis of a proportional representation through single representative vote. The Vice President is also elected on the same basis of proportional representation of single representative vote. In these elections both the houses of Parliament participate.

The President and the Vice President are elected



for a period of 5 years. The President can be impeached if he is accused on a charge.

The President, in consultation with the Prime- Minister, appoints other ministers. Apart from this, with the consultation of the Prime- Minister he appoints the Governor, the Chief- Justice of the Supreme Court, the Election Commissioners, Ambassadors, etc.

The President has the right to call the sessions of the Indian Parliament , adjourn it and dissolve it.

Amongst the different functions of the President, he has also the right to issue an ordinance. The President addresses both the houses of the parliament , other than these he appoints the members of the Finance Commission, and acceptance of money bill are some of his major functions. The President can also declare war, external attacks, armed rebellion, or its danger, emergency due to constitutional failure, or financial emergency. The President has used these powers in 1962, 1971 and 1975.

Through the 44th amendment of the Constitution there has been some changes in the emergency powers of the President.

By the 44th amendment the President can ask the Council of ministers to reconsider its advice. But if the advice is given again, the President is compelled to accept the advice.

THE PRIME –MINISTER AND THE COUNCIL OF MINISTERS:

Children! You have seen that practically all the functions of the President are performed by the Prime- minister. Although the decisions regarding them are taken in the Cabinet meetings. The Prime minister

appoints ministers and can compel them to resign from their post. Hence, the Prime minister has complete control over his council of ministers. The Prime Minister , himself, is appointed by the President. But being the leader of the majority party in the Lok Sabha his appointment is supposed to be fixed. If there is no party with a majority , then different parties can form a coalition and choose a leader. In a coalition the parties join the government or support the government from outside.

THE PARLIAMENT

In all Democratic countries there is an assembly of elected representatives, which is called the **Parliament**. In America it is known as the Congress while in England it is the Parliament. In France it is called National Assembly, in Japan Diet, and in Russia it is known by the name of Dumas.

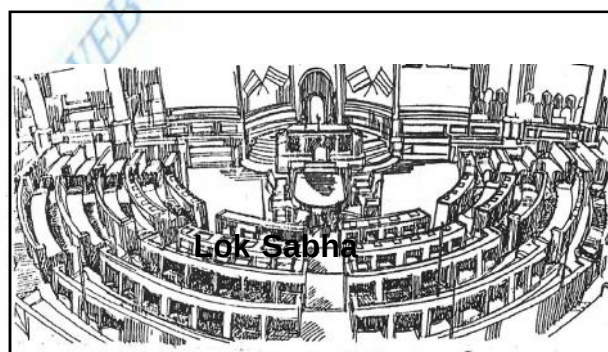
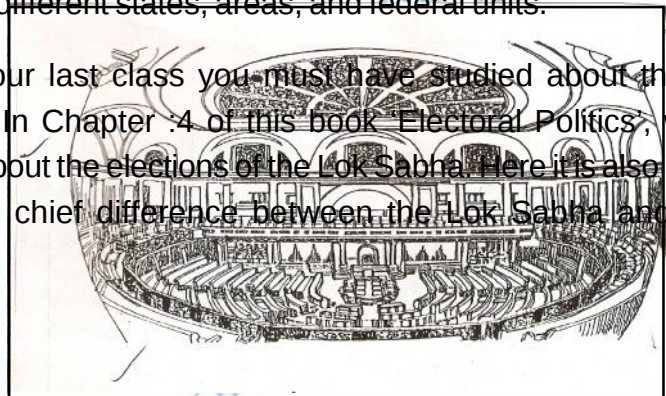
In India and England the Parliament is such an assembly of representatives who have the highest political rights. Because like other countries the Parliament has the power to make laws.

All the Parliaments of the world make new laws, amend existing laws, or abolish them. That is why we call them **Legislature**. In the centre we call it Parliament, but at the state level we call it Legislative Council.

Like all over the world, the Indian Parliament exercises control over those who run the government. But in India the control of Parliament over the government is direct and full, because the government can implement decisions only if it enjoys the support of the Parliament. There are two houses or Chambers in the Parliament, the **Lok Sabha** , and the **Rajya Sabha**.

The Lok Sabha is known as the **first house** of the Parliament, and its members are commonly chosen directly by the people, so it is the representative of the people and actually uses power on behalf of the people. In India it is called Lok Sabha, in U.S.A. it is known as the House of Representatives, and in England as the House of Commons. At the state level this house of the legislative Council is called **Legislative Assembly**. In India the Rajya Sabha is known as the **Second House**. In America, it is the Senate, and in England it is the House of Lords that are known as the Second House. The general functions of the Second House, or the Upper Chamber is to safeguard the rights of different states, areas, and federal units.

In your last class you must have studied about the Indian Parliament. In Chapter :4 of this book 'Electoral Politics', we have discussed about the elections of the Lok Sabha. Here it is also essential to know the chief difference between the Lok Sabha and a state Assembly.



Lok Sabha and Rajya Sabha

CHECK YOUR PROGRESS

- ◆ What is the total number of members in the Lok Sabha and the Rajya Sabha?
- ◆ Who elects these members?
- ◆ What is the term of their period?
- ◆ When can Lok Sabha be dissolved?
- ◆ Can a Rajya Sabha be dissolved?

Children, you know that the chief function of the Parliament is to frame laws. The proposal to make a law is called a **bill**. **Bills** are of two types – **Ordinary Bill** and **Money or Finance Bill**. Any ordinary law has to pass through **five** levels to become a law.

First reading: An ordinary bill can be introduced either in the Lok Sabha or the Rajya Sabha. The ones who introduce the ordinary bill have to name it and thereafter present its related issues.

Second Reading: At this level it is seen whether the bill is to be presented before a superior committee, or for a public voting, or is it to be immediately decided within the Parliament. After coming on a conclusion on any of these, the bill is later debated in detail.

A DAY IN LOK SABHA.....

लोकसभा में एक दिन ...

चौदहवीं लोकसभा के कार्यकाल में 7 दिसंबर 2004 एक सामान्य दिन था। आइए इस बात पर गौर करें कि सदन में इस दिन क्या हुआ। इस दिन की कार्यवाही के आधार पर संसद की भूमिका और अधिकारों की पहचान करें। आप अपनी कक्षा में इस दिन की कार्यवाही का अभिनय कर सकते हैं।



11.00 विभिन्न मंत्रियों ने सदस्यों द्वारा पूछे गए करीब 250 प्रश्नों के लिखित जवाब दिए। इन प्रश्नों में शामिल थे:

- कश्मीर के आतंकवादी समूहों से बातचीत के बारे में सरकार की नीति क्या है?
- पुलिस और आम लोगों द्वारा अनुसूचित जनजातियों के खिलाफ किए गए अत्याचारों का आँकड़ा बताएँ।
- बड़ी कंपनियों द्वारा दवाई अत्यधिक महँगी किए जाने के बारे में सरकार क्या कर रही है?



12.00 ढेर सारे सरकारी दस्तावेज चर्चा के लिए पेश किए गए। इन दस्तावेजों में शामिल थे:

- भारत-तिब्बत सीमा पुलिस बल में नियुक्ति के नियम
- इंडियन इंस्टीट्यूट ऑफ टेक्नोलॉजी, खड़गपुर की वार्षिक रिपोर्ट
- राष्ट्रीय इस्पात निगम लिमिटेड, विशाखापत्तनम की रिपोर्ट और लेखा-जोखा



12.02 पूर्वोत्तर क्षेत्र के विकास मंत्री ने पूर्वोत्तर परिषद् को पुनर्जीवित करने के बारे में बयान दिया।

- रेल राज्य मंत्री ने एक वक्तव्य देकर बताया कि स्वीकृत रेल बजट के अतिरिक्त रेलवे को और अनुदान की जरूरत है।

- मानव संसाधन विकास मंत्री ने अल्पसंख्यक शैक्षिक संस्थान विधेयक, 2004 के लिए राष्ट्रीय आयोग की घोषणा की। उन्होंने यह भी स्पष्ट किया कि इसके लिए सरकार को अध्यादेश क्यों लाना पड़ा।



12.14 कई सदस्यों ने कुछ मुद्दों को उठाया, जिनमें शामिल थे:

- तहलका मामले में कुछ नेताओं के खिलाफ मामले दर्ज करने में केंद्रीय अन्वेषण ब्यूरो (सीबीआई) का प्रतिशोधात्मक रवैया।
- संविधान में एक आधिकारिक भाषा के रूप में राजस्थानी को शामिल करने की जरूरत।
- आंध्र प्रदेश के किसानों और कृषि मजदूरों की बीमा नीतियों के नवीनीकरण की आवश्यकता।



2.26 सरकार द्वारा प्रस्तावित दो विधेयकों पर विचार करके उन्हें पारित किया गया। ये विधेयक थे:

- प्रतिभूति कानून (संशोधन) विधेयक
- प्रतिभूति ब्याज और ऋण वसूली कानून का प्रत्यावर्तन (संशोधन) विधेयक



4.00 आखिर में सरकार की विदेश नीति और इराक की स्थिति के संदर्भ में स्वतंत्र विदेश नीति जारी रखने की जरूरत पर लंबी चर्चा हुई।



7.17 चर्चा समाप्त हुई। सदन अगले दिन तक के लिए स्थगित हुआ।

If the bill is sent to a senior committee, the committee thinks over it and if necessary, give suggestions for amendments.

Once again the Parliament considers over all the aspects of the bill in detail after it is sent by the senior committee. The supporters and those who oppose may present their votes on the amendments of the bill. Thereafter the Parliament passes the bill with or without the amendments.

THIRD READING: At this level there can be no changes in the bill. After language correction the bill is voted and considered to be passed.

After being passed from one house the bill is presented in the Second House. In the Second House it has to pass through the processes through which it had to pass in the previous House. But if there is a difference between the two Houses, the final decision is taken in a joint session in which members of both the Houses sit together; and the bill is passed with a majority. Because of the larger number of members from the Lok Sabha, the bill passed by the Lok Sabha is basically passed in a joint session.

ACCEPTANCE OF THE PRESIDENT : After the bill is passed from both the houses it is sent to the president after whose assent the bill becomes a law. here the point to be noted is

If the president wants he can once again send the bill back for reconsideration. In 2007 A.P.J. Abdul Kalam exercised this power and sent to the Parliament for reconsideration the bill related to the post of profit. If the Parliament would have once again send the bill in the same form, then it would have become mandatory for the president to sign it.

POINTS TO REMEMBER

- ◆ Most of the countries in the modern world have democratic form of government.
- ◆ The nature of government is of two types: Presidential form of government and Parliamentary form of government. The examples of Presidential form are United States of America, most Latin American countries, Sri Lanka, South Africa etc. The examples of Parliamentary form are India, England, the recent Nepal, Italy, Japan Australia [most European countries] etc. Whereas in France and Switzerland we have a combined form of Presidential and Parliamentary forms.
- ◆ The Council of Ministers is that government unit that includes all ministers. There are almost 60 to 80 ministers of different levels.
- ◆ The Cabinet Minister is generally a senior leader of the party in power, or the coalition. They are in charge of important ministries.
- ◆ The State ministers are an adjunct to the Cabinet ministers of their Department and help them.
- ◆ The Prime- minister of a coalition government cannot take independent decision. He has to accept the ideas of his alliances because he is in the government with their support. In the recent days there was a difficult situation in the Manmohan government when the left parties drew their support on the issue of Nuclear Treaty.
- ◆ In all the Parliamentary Democracies of the world the power of the Prime Minister has increased in the recent years to such an extent that they are sometimes called the Prime- ministerial form of Democracy. Because of the nature of the Prime minister to

limit almost all the powers within himself, the first Prime- Minister of India, Jawaharlal Nehru, enjoyed various rights because he had a lot of influence on the people directly. Mrs. Indira Gandhi was a very powerful Prime- Minister. It is clear that the rights of a Prime-Minister depends on the personality of the person on that chair.

- ◆ The post of President also depends upon the personality of the person chairing it. Dr. Rajendra Prasad, Giani Jail Singh, K. R. Narayanan, A. P. J. Abdul Kalam are supposed to be powerful Presidents.

STATE EXECUTIVE AND LEGISLATURE:

India has a federal system of government. In the same way in many other democratic countries also there is a federal system of government for example, United States of America has the same type of federal system.

The Indian federation has organised the government on two levels – centre and state. The state executive consists of the governor, the council of ministers, and the Chief Minister. Although the Governor is the executive head of the state, but practically like the Prime- minister , the Chief- Minister is the head of the executive.

The Governor is appointed by the President, but practically the President appoints the Governor in consultation with the cabinet ministers. The Governor appoints the Chief –Minister, but he actually invites the leader of the majority party as the Chief minister. If a single party does not have a majority then he invites the leader of a coalition to the post of Chief minister and finalises a date to prove his majority in the Vidhan Sabha in consultation with the Chief Minister the Governor

appoints other members of the Council of ministers. He divides the departments amongst the ministers. The Advocate General of the state, the chairman of the State Public Service Commission, and its members, and such other high officials are appointed by the Governor in consultation with the Chief Minister.

The Governor has the rights to call one or both the houses of the state Legislature, to adjourn it, or to dissolve the Legislative Assembly. He addresses the joint sessions of both the houses which is called the Governor's Address. The Governor has the right to send messages to the state Legislature, and nominate 1/6th of the members of the Vidhan Parishad/ the Legislative Council.

Only after the signature of the Governor a bill passed by the State Legislature becomes a law. The Governor can issue an ordinance when the sessions of the state Legislature are not going on. The finance bill can be introduced in the Vidhan Sabha with his prior permission and after his assent the money bill becomes a law. He has the right to minimise the punishment of the criminal, postpone it, or change it or completely pardon it but the Governor cannot pardon death penalty. Through the recommendation of the Governor only, President's rule is implemented in a state. In the state of President's rule, the Governor acts as an agent of the centre and according to the directions given by the centre. He is also the Chancellor of different universities.

Children! It seems through the discussion of the rights and duties of the Governor that he is a powerful person, but this is not so in practice. The Governor performs his functions in consultation with the Chief minister. So he is the nominal head. The real power is vested with the Chief minister and his Council of ministers.

The Chief minister is the leader of the Vidhan Sabha. He decides the policies for the administration of the state, or acts as a co-ordinator among his ministers. For the appointment of his ministers he gives advice to the Governor. For the division of the functions of ministers his will is the supreme, though he is compelled to give important departments to persons who are senior and have an important personality.

The power of the Chief Minister depends upon the person who chairs that post. In Bihar there have been many powerful and weak Chief-Ministers.

VIDHANMANDAL/ STATE LEGISLATURE:

It is mentioned in the Constitution that every state will have a legislature which will consist of the Governor and the two house [Vidhan Sabha and the Vidhan Parishad/ Legislative Assembly and the Legislative Council]. The right to decide whether the state legislature will have one or two houses is vested with the elected representatives and the Parliament. Six states in India have two houses [Bihar, U.P., Andhra Pradesh, Karnataka, Jammu& Kashmir, and Maharashtra] and the rest 22 states have one house, and union territories, Delhi and Pondicherry will respectively have one house of Legislature. According to the Constitution, the highest number of members in Vidhan Sabha will be 500, and the lowest will be 60. At present in Bihar Vidhan Sabha we have 243 members and in the Vidhan Parishad we have 75 members.

ELECTION PROCESS:

Except the nominated members of the Anglo- Indian Community, all the other members of the Vidhan Sabha are elected by the voters

through the process of direct election. The age limit of the voters is 18 and all men and women who have crossed 25 can become candidate for Vidhan Sabha.

In normal conditions the term for Vidhan Sabha is 5 years. But the Governor can dissolve it within 5 years in special conditions.

Vidhan Sabha is the chief house for making laws. The Money Bill can be presented only in the Vidhan Sabha.

An ordinary bill can be presented in any of the two houses. The Vidhan Parishad has to pass the bill passed by the Vidhan Sabha within four months. If it is delayed by more than four months, then the bill is automatically supposed to be passed. The money bill can be delayed only by 14 days in the Vidhan Parishad. Hence, in the process of law making, Vidhan Sabha is a powerful body. The Vidhan Sabha keeps a control over the Council of ministers. By asking questions, supplementary questions, and by a cut motion during budget session, it controls over the government.

The collective responsibility of the Council of ministers is towards the Vidhan Sabha. No- Confidence motion, and No- Work motion can be brought only in the Vidhan Sabha.

SPEAKER AND DEPUTY SPEAKER:

The Vidhan Sabha, in every state, elects amongst its citizens a Speaker and a deputy Speaker. In the absence of the Speaker the Deputy Speaker conducts the proceedings of the House.

VIDHAN PARISHAD:

Vidhan Parishad is the upper House of the State Legislature. Now 6 states of India have Vidhan Parishad. In 1957 Andhra Pradesh

constituted a Vidhan Parishad and ended it in 1985. In 1969 West Bengal and Punjab also ended the upper House of the Legislature.

In the Article 169 of our Constitution there is a provision that the states which do not have an upper House can constitute its organisation. The states which have an upper House can end it. But to this they have to pass this proposal with a special majority [majority of the total members or 2/3 of the voting members] and then send it to the Parliament. If the Parliament wants, it can make laws for the related states to constitute or end the upper House.

There is a provision in the Constitution that the minimum number of members in a Vidhan Parishad should be 40, and the maximum number should be 1/3 of the total number of the members of the Vidhan Sabha. There are 75 members in Bihar Vidhan Parishad out of which 1/3rd of the total members are elected through the local bodies of that state- municipal councils, village panchayats, etc. Once again, 1/3rd of its total members are elected by the members of the Legislative Assembly. 1/12th of the total members of the Council are elected by the graduates of the universities of the state. 1/12th of the total members are elected by high schools, colleges and universities teachers and 16th of the total members are nominated by the Governor who have practically excelled in the areas literature, art, social service etc.

TERM- Vidhan Parishad is a permanent House. Every two years 1/3rd of its members have to leave their posts. New members are elected on that place. Every member is elected for a period of six years.

OFFICERS: THE Council selects one of its members as the chairman and another one as Vice- Chairman. The chairman chairs the session of the Council, and maintains law and order in the House.

Just as in the Vidhan Sabha an ordinary bill can be presented in the Council. If a bill which has been passed by the Vidhan Sabha is sent to Vidhan Parishad, it is mandatory that it should consider it within 3 months. If the Vidhan Parishad presents some amendments to it which is not acceptable to the Vidhan Sabha, or if it rejects the bill and the Vidhan Sabha once again passes the same bill, then if the Vidhan Parishad passes the bill not within one month it is sent to the Governor for his assent. Hence, in terms of ordinary bills also the Vidhan Parishad has very little power.

JUDICIARY:

Children! Remember the story which was told in the beginning of this chapter, that of 27% reservation which created a great commotion in the country. There were struggles against it at many places in the country.

Many people filed case against 27% reservation in public sectors and central departments in the high courts and the Supreme Court. Finally the Supreme Court gave its verdict on this debate and there was a satisfactory end to the debate. Everyone accepted it.

Imagine, what would happen in the following circumstances.

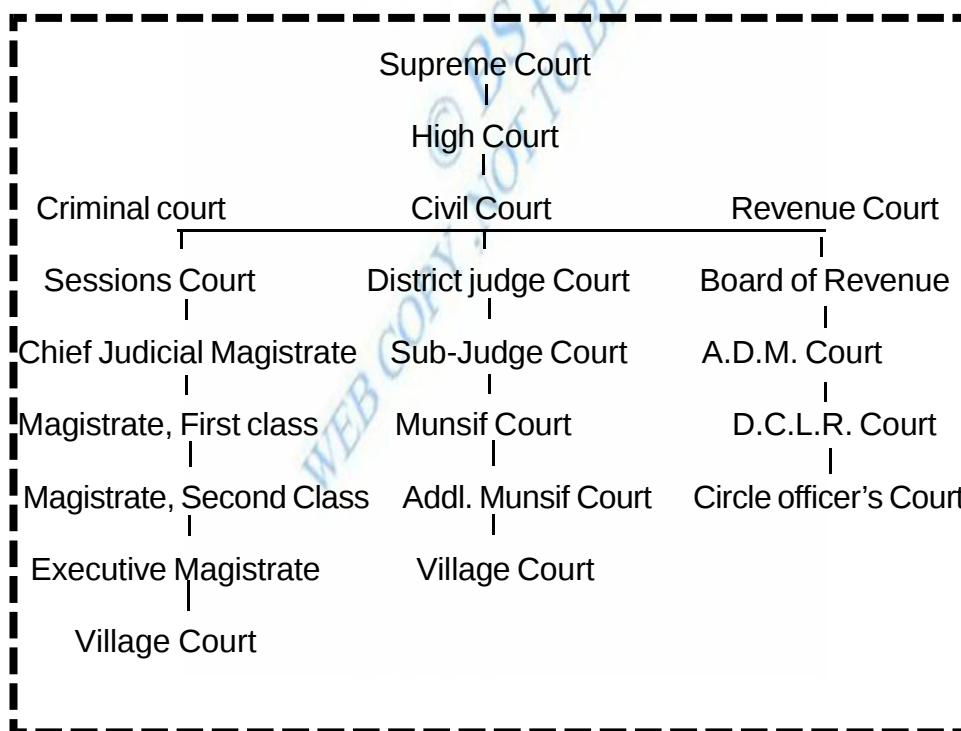
- a. There would have been no organisations like high court or Supreme Court.
- b. If government would not agree to accept the decisions of the Supreme Court, or if Supreme court did not have the power to judge the actions and decisions of the government.

It is clear that there would have been a reign of terror and uncertainty in our country. Democracy would have lost its original form. The constitutional set-up would have come to an end.

This is why an independent and powerful **judiciary** is considered essential for Democracies. All the courts at different levels in a country put together are called the judiciary.

The nature of judiciary in our country is as follows:

- a. Supreme Court.
- b. High Court in the states.
- c. District courts and the courts at the local level.



In Indian Judiciary, Supreme Court is for the entire country, High courts for states, and under the High courts are civil, criminal and revenue courts and also the ones under them. India has an integrated judiciary. In the U.S.A. the judiciary is federal, or the judiciary is at two levels. There is a federal court at the centre. All cases and issues related to federal laws are resolved in the federal court. The Supreme court, there, is at the top of the federal court.

THE SUPREME COURT OF INDIA:

Supreme Court is the highest court in the country. In India it was established on 26th January 1950, and it is situated in New Delhi. At present the minimum qualifications for the judges in the Supreme Court are as follows:

- a. Should be a citizen of India.
- b. Should have worked as a judge for minimum 5 years in an HIGH court, or
- c. Should have practised as an advocate for at least for ten years in any High Court.
- d. According to the president one who has the knowledge of law .

Appointment:

The judges are appointed by the President. In India up to the age of 65 one can remain on the post of judge in the Supreme Court. But he can be removed through impeachment. The motion of impeachment has to be passed separately by a majority of the members of the two

houses of the Parliament separately and two thirds of the members present and voting .

Jurisdiction : The Supreme Court has both the rights - primary and appellate. Among its primary rights are included -conflict between state and centre, cases related to Fundamental Rights, conflict between two or more states, etc. In Supreme court we have the right to appeal in both the areas- civil or criminal. Any citizen or state government can appeal in the Supreme Court against the decisions given by the High courts. The Supreme Court is also the protector of the Constitution. That is why the Constitutional bench of the Supreme Court explains the Constitution.

The Supreme Court also has the advisory rights. The President of India can take the views of Supreme Court on any legal matter. Neither the Supreme Court is compelled to advise the President, nor the President is compelled to accept the advice of Supreme Court. The Supreme Court can reconsider its own decisions. It can issue orders and writs to protect Fundamental rights. These writs include Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto etc. The Supreme Court can inspect the courts under it. With the prior permission of the President, the Supreme court can make rules related to salary, allowances, leave, pension and other conditions related to service. The Supreme Court of India has been made independent and impartial. Arrangements have been made in the constitution for its independence. By the 42nd amendment act of the constitution there has been attempts to restrict the constitution but through the 43rd amendment its independence has been established once again.

Once again by the 44th amendment some changes have been made in the jurisdiction of the Supreme Court.

HIGH COURT: According to the constitution there will be one high court in one state or for more than one state. This court is above all other courts in the state. That is why it has been named as High Court. The Patna High Court is the highest court of the state which was established on 1st March 1916. At present in Patna High Court there is one chief justice and many judges other than him. The chief justice of the high courts are appointed by the President in consultation with the Governor of the related states and the other judges are appointed by the President in consultation with the chief justice. Only those persons can be appointed in the high court who :

- a. Is a citizen of India.
- b. Has held a judicial post for five years, or has practised in a high court for at least ten years.

After consulting the chief justice the President can transfer a judge of a high court to any other high court. The high court judges retire at the age of 62 years. But the parliament can pass a proposal for impeachment by a 2/3rd majority. The high court judges after retirement cannot practise in any court.

Jurisdiction: it has been said in the constitution that whatever rights the high courts had before the implementation of the constitution the same jurisdiction would continue in the high courts of the states. The jurisdiction of the high courts are as follows:

Primary Jurisdiction: under the Primary Jurisdiction any case related to Fundamental Rights can be taken directly to the high court.

To implement the Fundamental rights, just like the Supreme Court, it can also issue writs like Habeas Corpus, mandamus, Prohibition,

Certiorari, and Quo Warranto. Again divorce, will, water resource department, contempt of court, case related to company laws also comes under the primary jurisdiction of high courts.

Appellate jurisdiction: Against the decisions of the sub-ordinate courts the following cases can be appealed in the high court:

- a. Those civil cases related to an amount of Rs. 5000 or more or property with its valuation of Rs. 5000 or more.
- b. Those criminal cases where the culprit is punished for more than four years of imprisonment.
- c. The punishment of execution can also be appealed in the high court. It is to be noted that the punishment of execution has compulsorily to be confirmed by the high court.
- d. Those cases where the explanation of constitution is involved.

Other than this the high court, like the Supreme Court, has the right to revision. It can also inspect the sub-ordinate courts.

Apart from this on the district level in the states for civil, criminal and revenue cases sub-ordinates courts have been abolished. At the lowest level there is the village court which has the right to impose maximum a fine of Rs 100 and a punishment of one month. The village court can listen to civil cases up to Rs 500.

POINTS TO REMEMBER:

- ◆ In the 42nd amendment act of the constitution made in 1976, the President is compelled to accept the advice of the Council of ministers. In the 42nd amendment of the

constitution the word cabinet was used for the first time and that the President is compelled to accept the advice of the cabinet.

- ◆ In the Presidential election there cannot be a discrimination on the basis of birth and otherwise.
- ◆ A contestant for the Presidential election has compulsorily to deposit a security of Rs15000. The names of the contesting candidates for the election of President should have been proposed by 50 voters and also recommended by 50 voters.
- ◆ It is compulsory to present a proposal of impeachment signed by 1/4th of the total members of the House 14 days prior to the chairman.
- ◆ The nominated members of the Parliament and the Legislative Assembly will not participate in the Presidential election but will definitely participate in the process of impeachment.
- ◆ The general secretaries of the Lok Sabha or the Rajya Sabha are elected by the election commission.
- ◆ The President is the Commander-in-chief of the army.
- ◆ The vice president is the ex officio chairman of the Rajya Sabha.
- ◆ In the Indian constitution there is no provision for Deputy Prime minister. But in 1978 Morarji Desai appointed Babu

Jagjivan Ram and Choudhary Charan Singh as Deputy Prime ministers. In 1990 Chandrashekhar appointed Choudhary Devlal as Deputy prime minister and in 2002 Mr. Bajpeyi appointed Lal Krishna Advani as Deputy prime minister. Although according to the constitution the Deputy prime minister has no special powers.

- ◆ N. V. Gadgil had said that the powers of the prime minister are so great that there is a danger of his becoming a despot if he is not of a democratic mentality. In 1975-77 by implementing emergency, Indira Gandhi has created somewhat a similar situation.
- ◆ From 15th 1947 till date 19 persons have been made prime-ministers and 13 persons have been made the President.
- ◆ In the Rajya Sabha of India all the states have not been given equal representation whereas in America, Russia, Switzerland both the houses have been given equal representation.
- ◆ The members of the Rajya Sabha are elected through open voting rather than secret voting. [through the amendment of 2003 in the public representative law.]
- ◆ For the working of the Rajya Sabha it is essential that 1/10th of its total members are present.
- ◆ The Rajya Sabha has got some special powers. By a majority of 2/3rd members of the Rajya Sabha, it has the right to establish all India services.

- ◆ If the Rajya Sabha passes by a majority of 2/3rd on a subject mentioned in the State List, that it is essential to make a law by the parliament for the welfare of the people, then the parliament can make laws related to that subject.
- ◆ The number of the elected members of the Lok Sabha has been fixed to a maximum of 550. Out of 550 members 530 represent the federation of the states while the rest 20 represent the union territories.
- ◆ The Indian parliament has frozen the total number of seats in the parliament till 2026 by a constitutional amendment of 2001.
- ◆ The present 14th Lok Sabha was composed on 17th May 2004 and out of the total 539 members only 44 women members were elected.
- ◆ The speaker of the Lok Sabha and the chairman of the Rajya Sabha have the deciding voting right when the total number of votes on both sides are equal.
- ◆ The Speaker of the Lok Sabha presides over the joint session of both the houses.
- ◆ After the approval of the President the bill is published in the Indian Gazette. In this way the bill takes the form of law in the country.
- ◆ If there is a delay on an ordinary bill in both the houses then the President can call a joint session but on a money bill the joint session cannot be called.

GLOSSARY

Coalition Government: a government formed by an alliance of two or more political parties usually when no single party enjoys majority support of the members in a Legislature.

Executive : a body of persons having authority to initiate major policies make decisions, and implement them on the basis of the constitution and laws of the country.

Government : a set of institutions that have the power to make, implement and interpret laws so as to ensure an orderly life. In its broad sense, government administers and supervises over citizens and resources of a country.

Judiciary : an institution empowered to administer justice and provide a mechanism for the resolution of legal disputes. All the courts in the country are collectively referred to as judiciary.

Legislature: an assembly of people's representatives with the power to enact laws for a country. In addition to enacting laws, legislatures have authority to raise taxes and adopt the budget and other money bills.

Office Memorandum : a communication issued by an appropriate authority stating the policy or decision of the government.

Political Institution : a set of procedures for regulating the conduct of government and political life in the country.

Reservations : a policy that declares some positions in government employment and educational institutions 'reserved ' for people and communities who have been discriminated against, are disadvantaged and backward.

State : political association occupying a definite territory, having an organised government and possessing power to make domestic and foreign policies. Government may change, but the state continues. In common speech, the terms country, nation and state are synonyms.

QUESTIONS

1. If you are elected as the President of India which of the following decisions can you take on your own?
 - a. Select the person you like as Prime Minister.
 - b. Dismiss a Prime Minister who has a majority in Lok Sabha.
 - c. Ask for a reconsideration of a bill passed by both the Houses.
 - d. Nominate the leaders of your choice to the Council of Ministers.
2. Which among the following is a part of the political executive?
 - a. District Collector.
 - b. Secretary of the Ministry of Home Affairs.
 - c. Home Minister.
 - d. Director General of Police.
3. Which of the following statements about the judiciary is incorrect?
 - a. Every law passed by the parliament needs approval of the Supreme Court.
 - b. Judiciary can strike down a law if it goes against the spirit of the constitution.
 - c. Judiciary is independent of the executive.
 - d. Any citizen can approach the courts if her/his rights are violated.

4. Which of the following institutions can make changes to an existing law in the country?
- The Supreme Court
 - The President
 - The Prime Minister
 - The Parliament
5. Match the ministry with the news that the ministry may have released:

A	B
A new policy is being made to increase the jute exports from the country.	Ministry of Defence
Telephone services will be made more accessible to rural areas.	Ministry of Agriculture, Food and Public Distribution
The price of rice and wheat sold under the Public Distribution System will go down	Ministry of Health
A pulse polio campaign will be launched, allowances will be increased.	Ministry of Commerce and Industry.

6. Name the institution among the legislature, executive and the judiciary that exercises the powers on each of the following matters.
- a. Decision on allocation of money for developing infrastructure like roads, irrigation, etc. And different welfare activities for the citizens.
 - b. Considers the recommendation of a Committee on a law to regulate the stock exchange.
 - c. Decides on a legal dispute between two state governments.
 - d. Implements the decision to provide relief for the victims of an earthquake.
7. Why is the Prime Minister in India not directly elected by the people? Choose the most appropriate answer among the given four choices and give reasons for your answer.
- a. In a Parliamentary democracy only the leader of the majority party in the Lok Sabha can become the Prime Minister.
 - b. Lok Sabha can remove the Prime Minister and the Council of Ministers even before the expiry of their term.
 - c. Since the Prime Minister is appointed by the President there is no need for direct election by the people.
 - d. Direct election of the Prime Minister will involve lot of expenditure.

8. Three friends went to watch a film that showed the hero becoming Chief Minister for a day and making big changes in the state. Imran said this is what the country needs. Rizwan said that the rule of this sort of man, without supported by any institution is dangerous. Shanker said that this is a fantasy. No minister can do so much in one day. What would be your reaction to such a film?
9. A teacher was making preparations for a mock parliament. She called two students to act as leaders of two political parties she gave them an option: each one could have a majority either in the mock Lok Sabha or in the mock Rajya Sabha. If this choice was given to you, which one would you choose and why?
10. After reading the example of reservation order, three students had different reactions about the role of the judiciary. Which view, according to you, is a correct reading of the role of judiciary?
 - a. Srinivas argues that since the Supreme Court agreed with the government, it is not independent.
 - b. Anjaiah says that judiciary is independent because it could have given a verdict against the government order . the Supreme Court did direct the government to modify it.
 - c. Vijaya thinks that the judiciary is neither independent nor conformist, but acts as a mediator between opposing parties. The court struck a good balance between those who supported and those who opposed the order.

Project Work

We have discussed four different institutions of our country in this chapter. Collect newspaper for the last one week and classify the news in four groups.

- √ Working of the legislatures.
- √ Working of the political executive.
- √ Working of the civil services.
- √ Working of the judiciary.