



IAS 100

A Civil Services Chronicle Initiative

INDIAN POLITY (Part-1)



Add : D/108, Sec-2, Noida (U.P.), Pin - 20 1301
Email id : helpdesk@campus100.in
Call : 09582948810, 09953007628, 0120-2440265

INDIAN POLITY

The Constitution of India was drawn up by a Constituent Assembly. The Assembly met for the first time on December 9, 1946. It was not a truly representative body as its members were indirectly elected by those who were themselves elected on a narrow franchise. The Assembly constituted a Drafting Committee, under the chairmanship of Dr.B.R.Ambedkar, to frame a constitution for India. Indian Constitution was adopted on November 26, 1949 and it came into effect on January 26, 1950. It is the longest written Constitution in the world containing 395 Articles, 22 Parts and 12 Schedules. During 60 years of its existence, Indian Constitution has undergone several amendments and demand to review it completely has also been raised. But, inspite of all these changes, the 'basic structure' of the Indian Constitution remains intact.

Development of the Indian Constitution

British rule in India ended on 15th August 1947 and India emerged as an independent and sovereign republic. Certain features of Indian Polity or Constitution can be understood better

Acts that facilitated constitutional development during British rule

- Regulating Act, 1773
- Amending Act, 1781
- Pitt's India Act, 1784
- Act of 1786
- Charter Act, 1793
- Charter Act, 1813
- Charter Act, 1833
- Charter Act, 1853
- Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892
- Indian Councils Act, 1909
- Government of India Act, 1919
- Government of India Act, 1935
- Indian Independence Act, 1947

with a brief review of the constitutional set up in the preceding periods. As modern political institutions originated and developed in India mainly during the British rule, the origin and growth of the Indian Constitution has its roots in the British period of Indian history. The British came to India in the 17th century as traders. From 1773 onwards, various Acts were passed by the British Government for the governance of India.

MAIN PROVISIONS OF IMPORTANT ACTS PASSED IN BRITISH INDIA

Regulating Act, 1773

- (i) First attempt by the British Parliament to regulate the affairs of the East India Company;
- (ii) Centralised the administration of Company's territories in India;
- (iii) Governor of Bengal was designated as the Governor General of Bengal and Council of 4 members was appointed for Bengal;
- (iv) Bombay and Madras Presidencies were subordinated to Bengal Presidency;
- (v) Supreme Court was set up at Calcutta; and
- (viii) Company's servants were forbidden from accepting bribes or doing private trade.

Amending Act, 1781:

It settled the question of jurisdiction of the Supreme Court

Pitt's India Act, 1784

- (i) It was the first effective substitution of Parliamentary Control over East India Company as it transferred the Indian affairs of the Company into the hands of the British Government;

- (ii) Abolished dual system of governance.
- (iii) Board of Control consisting of 6 Parliamentary Commissioners was constituted to control civil, military and revenue affairs of India;
- (iv) Court of Directors had to comply with the orders and directions of the Board;
- (v) Strength of Governor-General's Council reduced to 3;
- (vi) Control of Governor-General-in-Council on Bombay and Madras Presidency was enlarged and made more effective.

Act of 1786:

Governor-General became the Commander-in-Chief of Indian Forces.

Charter Act, 1793

- (i) East India Company's monopoly over trade was extended for 20 more years
- (ii) Expenses and salaries of the Board of Control to be charged on Indian Revenue; and
- (iii) Governor-General could over-ride his Council.

Charter Act, 1813

- (i) East India Company was deprived of its trade monopoly in India except in tea and opium trade with China;
- (ii) All Englishmen could trade with India subject to certain restrictions;
- (iii) Rules and procedures were made for use of Indian revenue; and
- (iv) A sum of Rs. 1 lakh was earmarked annually for education.

Charter Act, 1833

- (i) Governor-General of Bengal became the Governor-General of India;
- (ii) Company was asked to close its business at the earliest;
- (iii) It put an end on Company's trade monopoly even in tea and opium with China;
- (iv) Government of Madras and Bombay was deprived of legislative powers;
- (v) A fourth member (Law Member) was added to the Council of Governor-General;
- (vi) Government Service was thrown open to the people of India;
- (viii) All laws made by Governor General-in-Council, henceforth came to be known as Acts and not regulations;

- (viii) Provision was made for appointment of Law Commission for codification of laws; and
- (ix) Slavery was abolished.

Charter Act, 1853

- (i) For the first time a separate legislative machinery consisting of 12-member Legislative Council was created;
- (ii) Law Member was made a full member of the Executive Council of the Governor-General. Six additional members were added for legislative purposes; and
- (iii) Recruitment of Civil Services was based on open annual competitive examination.

Government of India Act, 1858

- (i) Rule of company in India ended and that of the Crown began;
- (ii) System of double government ended as both the Court of Directors as well as the Board of Control was abolished;
- (iii) Secretary of State for India was appointed. He was assisted by a 15-member Council (India Council). He was to exercise the powers of the Crown;
- (iv) Secretary of State was to be a member of the British Cabinet;
- (v) Secretary of State governed India through the Governor General;
- (vi) Governor-General was to be called the Viceroy and was the direct representative of the Crown in India; and
- (vii) A unitary and highly-centralised administrative structure was created.

WHAT DO YOU UNDERSTAND BY THE TERMS 'DIARCHY' AND 'DEVOLUTION RULES'?

In Indian administration, these terms were used for the first time in the Government of India Act, 1919 (Montague-Chelmsford Reforms)

Diarchy: It meant Dual Government. The Provincial subjects of administration were to be divided into two categories -- "Transferred" and "Reserved". The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council. The reserved subjects were to be administered by the Governor and his Executive Council without any responsibility towards the Legislature.

Devolution Rules: Through these Rules, subjects of administration were divided into two categories -- "Central" and "Provincial". Subjects of all-India importance (like Railways, Finance) were brought under the category of Central, while matters relating to the administration of the provinces were classified as provincial.

Indian Councils Act, 1861

- (i) Policy of Association of Indians in legislation started;
- (ii) Portfolio system was introduced;
- (iii) For legislation; Executive Council of Viceroy was enlarged by 6 to 12 members composed of half non-official members. Thus foundation of Indian Legislature was laid down;
- (iv) Legislative powers of the Presidency Governments, abolished in 1833, were restored; and
- (v) Viceroy could issue ordinances in case of emergency.

Indian Councils Act, 1892:

It was the beginning of representative system in India.

- (i) Though the majority of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils.
- (ii) Non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities, etc.; and
- (iii) Councils were given the power to discuss budget and to question the Executive.

Indian Councils Act, 1909:

Also known as the Morley-Minto Reforms

- (i) Introduced, for the first time, an element of elections to the Legislative Councils;
- (ii) In Provincial Legislative Councils, non-official members were to be in majority; and
- (iii) This Act introduced the system of separate electorates (for Muslims).

Government of India Act, 1919:

Popularly known as Montague-Chelmsford Reforms

- (i) The idea of "Responsible Government" was stressed;
- (ii) Office of the High Commissioner of India was created in London;
- (iii) Indian Legislature became "bicameral" for the first time;

- (iv) Communal representation was extended to Sikhs;
- (v) Secretary of State for India was now to be paid from British revenue; and
- (vi) Diarchy was introduced in provinces by dividing subjects of administration between official members and elected members.

Government of India Act, 1935

- (i) It provided for the establishment of an All-India Federation consisting of the British Provinces and the Princely States. The joining of Princely States was voluntary. The Federation never came into being.
- (ii) Diarchy was introduced at the Centre. Diarchy in Provinces was replaced by 'Provincial Autonomy' and they were granted separate legal identity. Responsible governments were set up in States under Prime (Chief) Ministers elected by Legislatures;
- (iii) Governor was given special responsibilities (or discretion) in several matters;

SOURCES OF INDIAN CONSTITUTION

1. Seminal Sources:

- Constituent Assembly Debates
- Reports of Committees of the Constituent Assembly
- Nehru Report
- Lahore Session of the Indian National Congress
- Objectives Resolution
- Government of India Act, 1935
- Impact of various Constitutions

2. Developmental Sources:

- Amendments of the Constitution
- Judicial Decisions
- Parliamentary Statutes
- Commentaries of Constitutional Experts
- Rules, Regulations, Ordinances, etc.
- Constitutional Practices

- (iv) Three-fold division of powers was done—Federal, Provincial and Concurrent Lists. Residuary powers were to be with the Governor-General;
- (v) The India Council of Secretary of State for India was abolished;
- (vi) Principle of separate electorate was extended further to include Anglo-Indians, Indian Christians and Europeans also; and
- (vii) A Federal Court was to be constituted with a Chief Justice and 10 other Judges. This was set up in 1937.

Indian Independence Act, 1947:

This Act did not lay down any provision for the administration of India but merely stated that from the "appointed date (Aug. 15, 1947), in place of India as defined in the Government of India Act, 1935, there would be two independent Dominions to be known as "India" and Pakistan", and the Constituent Assembly of each Dominion would have unlimited powers to frame and adopt any Constitution, and to repeal any Act of the British Parliament."

SOURCES OF INDIAN CONSTITUTION

The sources of Indian Constitution include the imaginative aspirations of the nationalist leaders, the actual working of the Government of India Act, 1935, and the experience gained from the actual working of some of the Constitutions of important countries of the world. Moreover, its sources include not only the sources upon which the founding fathers of our Constitution drew but also the developmental sources such as the judicial decisions, constitutional amendments, constitutional practices and so on. The sources of the Indian Constitution can thus be divided into the following two categories:

1. Seminal Sources

Constituent Assembly Debates: Constituent Assembly was constituted under the Cabinet Mission Plan to frame the Indian Constitution. Its members included distinguished lawyers, intellectuals and patriots who took two years, eleven months and eighteen days to prepare the Constitution. During the course of this period, debates on all the aspects of the Constitution were held in a free and fair manner. These debates produced an intelligent opinion in the light of which every word of the Constitution was screened carefully and intelligently.

Reports of Committees of the Constituent Assembly: The Constituent Assembly appointed various types of committees to make reports on different aspects. Some of the most important committees included Union Powers Committees, Union Constitution Committee, Provincial Constitution Committee, etc. Advisory Committee on the rights of citizens, minorities and tribal

ON WHAT POINTS THE INDIAN CONSTITUTION IS INFLUENCED BY THE ACT OF 1935?

The Indian Constitution has been influenced by the Government of India Act, 1935 on the following points:

- (i) Federal set-up;
- (ii) Distribution of powers in three lists;
- (iii) Provincial autonomy;
- (iv) Office of the Governor;
- (v) Bicameral legislature;
- (vi) President's or Governor's power to issue ordinances; and
- (vii) Structure of the Supreme Court.

and excluded areas ad hoc Committee regarding the Supreme Court Committee on financial relations between the Union and States. The reports of these committees were thoroughly discussed in the Drafting Committee. It was on the basis of the reports made by such committees that the draft of the Constitution was prepared.

Nehru Report: The British Government had announced the formation of the Simon Commission for making a report on the working of the Government of India Act, 1919 and suggest constitutional measures required for the efficient administration of Indian. The Congress decided to boycott this Commission because no Indian was taken on it. Instead it announced the formation of a committee under the leadership of Motilal Nehru to make recommendations about the desired constitutional set up for India. The Committee made certain recommendations which are known as the Nehru Report. The main Clauses of this Report were : (i) grant of Empire; (ii) Creation of a federal structure for India (iii) bicameralism at the Centre; (iv) Parliamentary and responsible Government in Provinces; (v) guarantee of Fundamental Right; and (vi) establishment of Supreme Court as the final court of appeal.

Lahore Session of the Congress: The Congress at its Lahore session held in 1929 resolved to make India a Republic.

Objectives Resolution: Jawharlal Lal Nehru moved in the Constituent Assembly the Objectives Resolution embodying the aspirations of nationalist India. The Objectives Resolution clearly spelled out making India a sovereign republic

where the ultimate supreme power should be vested with the people. It stated that the people would get social, economic and political justice, liberties of all types and equality. Upliftment of the backward people and areas would be ensured and the structure of the country would be federal.

Government of India Act 1935: At the time the Constitution for free India was being framed, India was governed by the Government of India Act, 1935. The fathers of the Indian Constitution drew heavily on the experience and the provisions of this Act. According to Jennings - "The Constitution derives directly from the Government of India Act, 1935 from which, in fact, many of its provision are copied textually."

Impact of Various Constitutions: The founding fathers of the Indian Constitution were wise enough to borrow from the experience gained in the working of various other Constitutions. It is on this account that the Constitution of India is regarded as a bag of borrowing from the various working Constitutions.

- (1) **British Constitution:** The British Constitution (Mother of all Constitution) had its impact in the following respects; (i) Constitutional head of State (ii) Lower House of Parliament (Lok Sabha) is more powerful than the Upper House; (iii) Responsibility of Council of Ministers towards Parliament; (iv) Parliamentary system of Government ; and (v) Prevalence of Rule of Law.
- (2) **US Constitution:** The Constitution of the United States had its impact in following respects: (i) Preamble of the Constitution (ii) Provision of Fundamental Rights; (iii) Functions of the Vice-President. (iv) Amendment of the Constitution; (v) Nature and functions of he Supreme Court; and (vi) Independence of Judiciary.
- (3) **Australian Constitution:** Australian Constitution gave us a long list of concurrent powers and the procedure for solving deadlock over concurrent subjects between the Centre and the States.
- (4) **Irish Constitution:** The Irish Constitution gave us the Directive Principles of State Policy and the method of nominating members of the Rajya Sabha.
- (5) **Weimer Constitution of Germany:** The Weimer Constitution of Germany had its

impact upon the powers of the President as well as on provisions related to Emergency.

- (6) **Canadian Constitution:** Indian Constitution borrowed the provisions of a strong nation; the name of Union of India; and vesting residuary powers with the Union; from Canada.
- (7) **South African Constitution:** The procedure of amendment with a two-thirds majority in Parliament and the election of the members of the Rajya Sabha on the basis of proportional representation by the State Legislatures have been borrowed from the Constitution of South Africa.

2. Development Sources

Indian Constitution is not a static document. It has grown with the changing needs. Thus amendments, judicial decisions, political practices, parliamentary statutes, rules, regulations and ordinances are the developmental sources of the Constitution.

Amendments of the Constitution: During the course of 60 years the Constitution has been amended about 94 times and a few other amendments are in the pipeline. In this way, the present shape of the Constitution is quite different from the original document. The 42nd Amendment made it clear that the Indian Constitution is more flexible than rigid. This Amendment is often termed as 'the mini Constitution of India' due to enormous changes it effected to the Indian Constitution.

Judicial Decisions: The judicial decisions given by the Supreme Court on important issues have added new dimensions to the Constitution. It is in the light of such decisions that further constitutional amendments are made in the Constitution. Some of the most important judicial decisions are:

- (i) Gopalan vs. State of Madras;
- (ii) State of Madras vs. Champakam;
- (iii) Golak Nath vs. State of Punjab; and
- (iv) Keshavanand Bharti vs. Kerala State.

Parliamentary Statutes: Parliament has also made various statues for furnishing details of the various Articles contained in the Constitution. It is the Constitution which itself empowers the Parliament to enact laws on certain Articles for details. These statues are considered as constitutional laws. Without their existence, a detailed study of the Constitution is not possible.

Commentaries of Constitutional Experts: While interpreting the Constitution, the views of the distinguished constitutional experts, whether Indian or foreign, enjoy special importance. The most notable constitutional experts are Jennings, Gledhill, Alexandrowit, D.D. Basu, Palkhiwala, V.N. Shukla, etc. Their views are not given legal recognition but due regard is paid to them by the judges. Moreover, true significance of any provision of the Constitution can be understood in the light of their views.

Rules, Regulations, Ordinances, etc.: Each House of the Parliament is empowered to make rules for its efficient working. The President has also got the right to make rules for fixing the constitutional subjects. President of India is also empowered to make rules with respect to the condition of services of the members of the Union Public Service Commission. He can also frame rules to establish peace and efficient administration of the Union Territories. Above all, the President has also the power to issue ordinances when Parliament is not in session. All these rules, regulations and ordinances serve as sources of the Constitution.

Constitutional Practices: Although the Constitution of India is the most detailed in the world, still certain practices independent of the Constitution have developed in India.

A few examples of such a practice can be enumerated as follows:

- The Central Government takes before hand the advice of the State Government in the appointment of its Governor.
- Governor can be recalled by the Central Government on the advice of the State Government concerned.
- Governor should not belong to the state to which he is appointed.
- One of the judges of the Supreme Court must belong to the minority community.
- The senior most judge of the Supreme Court should be appointed as the Chief Justice of India.
- The leader of the majority party in Lok sabha is appointed as the Prime Minister.

FRAMING OF INDIAN CONSTITUTION

It was under the Cabinet Mission Plan of 1946 that the Constituent Assembly was constituted to frame a Constitution for India. The

Constituent Assembly, which had been elected for undivided India and held its first sitting on Dec. 9, 1946, reassembled on Aug. 14, 1947, as the sovereign Constituent Assembly for the Dominion of India. As a result of the partition under the Plan of June 3, 1947, a separate Constituent Assembly was set up for Pakistan. The representatives of Bengal, Punjab, Sind, North-Western Frontier Province, Baluchistan and the Sylhet district of Assam (which had joined Pakistan by a referendum) ceased to be members of the Constituent Assembly of India, and there was a fresh election in the new Provinces of West Bengal and East Punjab. (Hence, when the Constituent Assembly reassembled on Oct. 31, 1947) the membership of the House was reduced to 299. Of these 284 were actually present on Nov. 26, 1949, and appended their signatures to the Constitution that was finally passed. President of the Constitution Assembly was Dr. Rajendra Prasad.

MEMBERS OF THE DRAFTING COMMITTEE

1. Dr. B.R. Ambedkar (Chairman)
2. N. Gopalswamy Ayyanagar
3. Alladi Krishnaswamy Ayyar
4. K.M. Munshi
5. Mohd. Saadullah,
6. B.L. Mitter (later replaced by N. Madhava Rao)
7. Dr. D.P. Khaitan (replaced on death by T.T. Krishnamachari)

HOW THE CONSTITUENT ASSEMBLY OF INDIA WAS CONSTITUTED?

The Constituent Assembly of India was elected through indirect election by the members of the Provincial Legislative Assembly (Lower House only), according to the scheme recommended by the Cabinet Delegation. The essentials of this scheme were as follows:

- (i) The Provinces elected 292 members; while the Indian States were allotted a maximum of 93 seats.
- (ii) The seats in each province were distributed among the three main committees Muslim, Sikh, and General, in proportion to their respective population.
- (iii) Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.
- (iv) The method of selection in the case of representatives of Indian States was to be determined by nomination.

Acceptance of the Constitution: On Aug. 29, 1947, the Constituent Assembly appointed a Drafting Committee under the chairmanship of Dr. Ambedkar. This committee came out with a draft Constitution of India in Feb. 1948.

The Constituent Assembly next met in Nov. 1948 to consider the provisions of the Draft Committee, clause by clause. The second reading of the clauses was completed by Oct. 17, 1949, and the third reading on Nov. 26, 1949, when the Constitution received the signature of the President of the Assembly and was declared as passed. While certain provisions of the constitution - those relating to citizenship, elections, provisional Parliament, etc. were given immediate effect, the rest of the Constitution came into force on Jan. 26, 1950 because the Congress had been celebrating Independence Day on January 26 every year since 1930. The Constituent Assembly itself became the first provisional parliament. The first elections to parliament were held in 1952.

PHILOSOPHY OF INDIAN CONSTITUTION

On January 22, 1947 the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objective Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations. The main principles of the resolution were:

1. India is to be an independent, sovereign republic.
2. It is to be a democratic union with an equal level of self-government in all the constituent parts;
3. All power and the authority of the Union Government and governments of the constituent parts is derived from the people;
4. The Constitution must strive to obtain and guarantee to the people justice based upon social, economic and political equality of opportunity and equality before law;
5. There should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
6. The Constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice
7. The Constitution should secure for India, a due place in the community of nations.

The philosophy of a Constitution consists of the ideals for which the constitution stands and

the policies which the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres:

- (i) **Democracy:** We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.
- (ii) **Secularism:** Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All the religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold truth. All the social reformers and political leaders of modern Indian have advocated religious tolerance, religious freedom and equal respect for all the religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word 'secularism' was nowhere mentioned in the Constitution as adopted in 1949. The word 'secularism' has now been added to the Preamble to the Constitution through the 42nd Amendment passed in 1976.
- (iii) **Socialism:** Socialism is not new to India. Vedanta philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.
- (iv) **Decentralization:** India has always practised decentralisation through the Panchayat system. Mahatma Gandhi also

- advocated decentralisation. It is on this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralisation.
- (v) **Mixed Economy:** Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system we have allowed both the private and public sectors of economy to work simultaneously. Large scale and essential industries have been put in the public sector.
- (vi) **Humanism:** Humanism is a salient feature of Indian ideology. Indian ideology regards the whole humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.
- (vii) **Spiritualism:** Spiritualism refers to what inspires and promotes the people to be their best selves. It creates a feeling of sacrifice, peace, non-violence, tolerance and cooperation. It is the basic feature of Indian philosophy. We have tried to achieve this through equality in all spheres of life. This leads to social welfare.
- (viii) **Liberalism:** Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self government, secularism, nationalism, economic reforms, constitutional approach, and representative institutions etc. all these concepts were advocated by the modern Indian leaders. All these elements have been incorporated in the Indian Constitution by virtue of which we want to establish a Welfare State in India. Everything has to be achieved through constitutional means.
- (ix) **Sarvodaya:** Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi, Acharya Vinoba Bhave and J. Narayan under which the material, spiritual, moral and mental development of

everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

- (x) **Gandhism:** Gandhism represents an ethical and moral India. Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralised in character. All these Gandhian principles have found an honourable place in the Constitution of India.

WHAT IS THE DIFFERENCE BETWEEN 'INDIAN' AND 'AMERICAN' JUDICIAL REVIEW?

Based on the principle of Judicial Review, the American Supreme Court has acquired the power to so interpret the Constitution that it has come to be known as the third chamber of the Constitution, whereas, in India the Supreme Court does not enjoy the power of adding to the Constitution but it can only strike down any act or any legislation on the ground that it is contrary to the basic framework of the Constitution or violative of the procedure established by law.

As the Indian Constitution stands today, the judiciary in India has the right to review legislative enactments and executive acts provided they are brought before the courts except for a few specific acts like the discretionary powers of the governors, the privileges and immunities of the members of the legislatures, etc. In pronouncing its verdict on legislative acts and executive actions the Supreme Court primarily bases itself on what is known as the basic framework of the Constitution—a phrase which has never been spelt out so that others could know the ingredients that go into the making of the basic frame work of the Constitution. However, it is clear from the constitution as it is today that the Parliament has the right to amend the constitution as long as it does not erode the basic frame work of the constitution. Thus, making additions or deleting some Articles of the constitution is the power of the Parliament but not that of the Supreme Court as in the case of the U.S.

NATURE AND FEATURES OF INDIAN CONSTITUTION

Every constitution aims to build up a governmental structure based upon certain basic principles. And these principles are more or less well established. Although some of these principles are common to most constitution, there are others which vary from constitution to constitution. The constitution of India is not an exception to this rule and it has its own basic principles. India, a union of states, is a sovereign, socialist, secular, democratic, republic. The constitution of a country is the basic or

supreme law. Indian constitution is federal in structure but with unitary features. It is a lengthy and legalistic document, but reasonably flexible. Its major features include.

Popular Sovereignty

Indian Constitution proclaims the sovereignty of the people in its Preamble itself. The idea is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. Article 326 declares that "the elections to the House of people and the Legislative Assembly of every state shall be on the basis of adult suffrage". As a result, the Governments at the Centre and in the States derive their authority from the people who choose their representatives for Parliament and the State Legislatures at regular intervals. Further, those who wield the executive power of the government are responsible to the legislature and through them to the people. Thus, in the affairs of the State, it is the will of the people that prevails ultimately and not the will of a few individuals. This is the principle of popular sovereignty.

Rule of Law

According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to democracy. More important is the inherent meaning that the 'law' is the sovereign in democracy. The chief ingredient of law is custom which is nothing, but the habitual practices and beliefs of common people over long years. In the

WHY THE CONSTITUENT ASSEMBLY ADOPTED THE PRINCIPLE OF ADULT FRANCHISE?

In spite of the ignorance and illiteracy of large sections of the Indian people, the constitution Assembly adopted the principle of adult franchise with faith in the common man and the ultimate success of democratic rule. The Assembly was of the opinion that democratic government on the basis of adult suffrage would alone "bring enlightenment and promote well-being." All that the Constitution provides is that every adult citizen of India shall have right to vote. This becomes significant when viewed in the background that for quite a long time, the women in many parts of Europe did not enjoy any such right. In addition, under the Government of India Act, 1935, hardly 15 per cent Indian citizens had this right. According to some thinkers this is the boldest step which has been taken by our constitution fathers. This shows that they had full faith in the capacity of the people of India to use their right properly. Some critics of course felt that it was premature to give to the people of India this right when there was poverty and illiteracy and the masses were yet politically not mature. But constitution fathers took a bold step and resolved to go ahead and wanted to make a beginning in this direction right earnestly.

final analysis, rule of law means the sovereignty of the common man's collective wisdom. Apart from this crucial meaning, rule of law means a few more things like

- (a) there is no room for arbitrariness;
- (b) each individual enjoys some fundamental rights; and
- (c) the highest judiciary is the final authority in maintaining the sanctity of the law of the land.

It is this spirit that make Article 14 (all are equal before law and all enjoy equal protection of laws) meaningful, like providing legal assistance to the needy, promotion of Lok Adalats and the venture of the Supreme court known as "public interest litigation". Also, as per today's law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

Judicial Review

The right of the judiciary to review executive acts and legal enactments when they are not in conformity with the established law of the land and its procedures is known as judicial review.

Socialism

Increasing intervention as well as participation by the State in the economic field has been a distinguishing feature of the twentieth century. There is hardly any country today in which the State is not actively engaged in a variety of economic activities. In varying degrees, governments everywhere are involved in economic, industrial, commercial management. This is broadly described as the influence of socialist ideas on State activity. Even before the adoption of a new Constitution, the Government of independent India had made clear its policy to enter the economic field in a very active manner. The Industrial Policy Resolution of 1948 gives ample evidence of this. It envisaged a greater role for the State in the economic development of the country. Certain industries such as atomic energy, manufacturing of arms and ammunition were declared to be the sole monopoly of the State. The right of the State to nationalise any major industry and bring it within the public sector was also clearly stated. The Directive Principles of State Policy, however, unmistakably set out the socialist objective of the Constitution; although one might point out that they do not go far enough to establish a full fledged socialist order.

Socialism in Constitutional Amendments

Successive amendments to the Constitution of India clearly show that the direction is more towards the realisation of socialist than the democratic ideal. The constitution was amended several times with a view to realising this objective. Among those amendments, special mention may be made of the First, Fourth, Seventeenth, Twenty fifth, Twenty ninth, Thirty fourth and Forty second Amendments. Almost all of these gave precedent to the Directive Principles over Fundamental Rights in the implementation of certain legislative enactments. The Forty second Amendment (1976) went a step further and amended the permeable of the

WHAT ARE THE FEATURES OF A SECULAR DEMOCRACY?

The distinguishing features of a secular democracy as contemplated by the Constitution of India are:

(i) The State will not identify itself with or be controlled by any religion

(ii) While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord an preferential treatment to any of them

(iii) No discrimination will be shown by the State against any person on account of his religion or faith

(iv) The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.

Constitution to include specifically the term "socialist" which was absent in the original form in which it was enacted.

Secularism

Indian Constitution aims to establish a secular state. This does not mean that the State in India is anti-religious. India has declared its identity as a "Sovereign, Socialist, Secular, Democratic, Republic." The attributes of Socialist and Secular were added in 1976 by the 42nd Amendment to the Constitution. The bulky document does not attempt to define secularism. However, a definition is derived from the fundamental right that proclaims that "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex place of birth or any one of them." The Indian State has no religion of its own. The fundamental right of speech and freedom also means the right to preaching and

HOW THE CONSTITUTION ENSURES INDEPENDENCE OF THE JUDICIARY?

In its bid to establish complete independence of the judiciary, the Indian Constitution has first erected a wall of separation between the executive and the judiciary. After effecting such separation, it has created conditions that are conducive to making the judiciary independent. Thus, rigid qualifications are laid down for the appointment of Judges and provision has been made for compulsory consultation of the Chief justice of India in the appointment of every judge of the Supreme Court and the High Courts. Conditions of service of a Judge cannot be altered to his/her disadvantage, once he/she is appointed. Judges are given high salaries and their conduct is made a subject beyond the scope of discussion in the legislature. They can be removed from office only for proved misbehaviour. For this purpose, both the houses of Parliament will have to pass resolutions against the Judge supported by a two third majority of those who sit and vote and atleast an absolute majority of the total membership of the house.

proselytising religion. This is made clearer in Articles 25-28, "Subject to public order, morality and health... all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion". Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to maintain its own affairs in matters of religion. No person shall be compelled to pay any taxes for promotion of any particular religion. No religious instructions shall be provided in any educational institutions wholly maintained out of the State funds.

Judicial Independence

The framers of Indian Constitution were aware that democratic freedom was meaningless in the absence of an independent machinery to safeguard it. No subordinate or agent of the

WHY THE FRAMERS OF INDIAN CONSTITUTION CHOSE 'FEDERALISM'?

The framers of Indian Constitution turned to federalism as a solution of a number of problems they confronted in their attempt to frame a constitution of a new united India. Particularly, they wanted to preserve both the "infinite variety and the innate unity" that animated the length and breadth of India. The choice of federalism as a constitutional form and as the basis of a national government in India was not a sudden development upon the transfer of power on 15th August, 1947. It was there for many years and, in a limited form, it was already in operation in British India. For the resolution of the constitutional problem of a multi-racial, multi-lingual and multi-communal country like India with a vast area and a huge population, fed-

eralism was only a natural choice. Nevertheless, the framers were cautious to ensure that the unity they sought to establish through federalism was of an abiding nature and in case of a future conflict between that unity and the diversity preserved under the Constitution; the former should prevail over the other. In other words, it was their intention to create an indestructible Union and the supremacy of the Union over the states in a number of matters vitally affecting the interest of the nation.

government could be trusted to be just and impartial in judging the merits of a conflict in which the government itself was a party. Similarly, a judiciary, subordinate either to the Center or the State could not be trusted as an impartial arbiter of conflicts and controversies between the Center and the State. These were compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

Federalism

Federalism is one of the most important aspects of modern constitutions. It is established all over the world perhaps, as the only form of political organization suited to communities with a diversified pattern of objectives, interests and traditions, who seek to join together in the pursuit of common objectives and interests and the cultivation of common traditions. The basic objective of federalism is thus unity in diversity, devolution in authority and decentralisation in administration. Its fundamental characteristic is the division of powers between two sets of governments - a Central Government and State Government - each independent of the other in its own sphere of activity.

Federal vs. Unitary Features

India has two governments functioning at the national and state levels with a clear cut distribution of powers. Both the State and the Union Government, draw their authority from the Constitution. The supremacy of the Republic lies not with either the Union Government or the State Governments but with the Constitution. To uphold the legal supremacy of the Constitution, the power to interpret the constitution has been vested in the judiciary. Thus, the Indian Constitution has four federal features:

(a) clear division of powers between the two governments;

WHAT ARE THE 'UNITARY' FEATURES OF INDIAN CONSTITUTION?

There are some unitary features in Indian Constitution. They may be enlisted as below:

- (a) Right of the Governor to reserve a Bill for Presidential assent;
- (2) Role and functions of the State Governors;
- (3) Emergency provisions of the Constitution regarding proclamation of national emergency, financial emergency and President's rule;
- (4) Provisions of the Constitution enabling Parliament to legislate for the States;
- (5) Uniform All-India Services;
- (6) Single and uniform citizenship;
- (7) Uniform and integrated judicial system; and
- (8) Constitutional scheme of distribution of legislative, administrative and financial powers between the Union and the States also has a strong unitary bias.

- (b) dual system of government;
- (c) supremacy of the Constitution; and
- (d) authority of the judiciary to interpret the constitution.

The word 'federation' has not been used anywhere in the Constitution. In fact, India has been described as a Union of States. The provinces and the princely States were not sovereign entities before they joined the federation. The states are not 'inviolable' or 'indestructible' as in the USA. Parliament can by law change or alter the areas and boundaries of any State. No state has the right to secede from the Union. All the constituent States of the Union are not equal. The Union Territories do not enjoy the same status as the States. Unlike the American Constitution, the Indian Constitution does not provide for any safeguards for the protection of the rights of States. Except Jammu & Kashmir, no state has its own Constitution as in the U.S. Whereas the consent of the States is vital for an amendment of the American Constitution, the consent of the States in India is necessary only in regard to a few specific matters.

Parliamentary Government

The framers of our Constitution preferred parliamentary system of government. Our infant democracy could ill-afford any confrontation between executive and the legislature if they were separate and independent of each other. The President of India is the constitutional head of the Union Executive, but he exercises the executive power, vested in him, in accordance with the advice of the Union Council of Minis-

ters. The real executive power thus vests with the Council of Ministers with the Prime Minister as the head. The Council of ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States. The parliamentary system of government both at the Centre and in the State is based on adult suffrage whereby all citizens of India who are not less than 18 years of age and not otherwise disqualified by the Constitution or any law, have the right to vote. It is a bold political experiment in view of the vastness of the country, its large population, poverty and illiteracy. Though some current practices have vitiated the process of election, adult franchise has not shaped people's political perceptions.

Why the Indian Constitution is lengthy?

It is the most lengthy and legalistic constitutional document any country has so far adopted. One reason is that the Constitution has drawn from a variety of sources. The other is that the constitution-makers ensured that no element of uncertainty was left. It codifies in detail the relationship between the Union and the States and the State's interests and contains both justiciable and non-justiciable rights as well as fundamental duties. As the Constitution is not only a legal document, but an instrument of social change, it has to be a detailed document in order to ensure that it stands the test of any situation in future. Also, care has been taken to ensure that the Constitution is not subverted or perverted by any future government, thus, there are numerous in-built constitutional safeguards. Another reason for the length of the Constitution is that, there are temporary, transitional and special provisions for the state of Jammu and Kashmir and it also take care of the regional problems in States like Gujarat, Maharashtra, Andhra Pradesh, Sikkim, Assam, Nagaland and Manipur. The legalistic nature of the Constitution is also partly because of heavy borrowings from the Government of India Act of 1935.

Rigidity vs. Flexibility

Some eminent constitutionalists are of the view that the Indian constitution is rigid. But, then how it has been possible to amend the

constitution over 90 times. Indian constitution is more flexible than the American constitution, which requires ratification of amendments by three-fourths of the States. In Indian constitution, only amending of a few provisions requires ratification of amendments by three fourths of the states. In our constitution only amending of a few provisions requires ratification by half of the State Legislatures. While most of the provisions of the Constitution can be amended by two thirds majority of each of the Houses of Parliament and many of the provisions can be altered or modified by a simple majority. Also, the constitution can be supplemented by simple legislations like the Citizenship Act, National Security Act, and the Untouchability Act etc. Moreover, the scope for the growth of conventions to supplement the Constitution makes it more flexible. Conventions govern the privileges and rights of the legislature, the functioning of the cabinet system, the status of the Cabinet Secretariat, etc.

Single Citizenship

In a federation there is usually double citizenship. A citizen belongs to the State in which he is born and also enjoys the citizenship rights of the federation, to which his state has joined as a unit. This is one of the basic principles of federalism, that the states in a federation are units of federation, but do not give up their individual entity. But in India, there is single citizenship. Citizens belong to the Indian Union and not to any state. Provision for single citizenship for the whole of India was perhaps intentional. The constitution fathers did not like that regionalism and other disintegrating tendencies which had already raised their ugly heads and were endangering the very security and integrity of country, should be further encouraged by providing double citizenship. Provision for double citizenship would have naturally stood on the way of emotional and national integration. The people in the State would have thought more in terms of the State than the country as a whole. Single citizenship has undoubtedly forged a sense of unity among the people of India and image of United India is reflected by this provision.

INDIAN CONSTITUTION: AT A GLANCE

Part I : Union and its Territory

Article 1: Name & territory of Union.

Art. 2: Admission of new States.

Art. 2A: (Repealed).

Art. 3: Formation of new States & alteration of areas, boundaries or names of existing States.

Art. 4: Laws made under article 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

Part II : Citizenship

Art. 5 : Citizenship at the commencement of the Constitution.

Art. 6 : Citizenship right of certain persons who migrated to India from Pakistan.

Art. 7 : Rights of citizenship of certain migrants to Pakistan.

Art. 8: Rights of citizenship of persons of Indian origin residing outside India.

Art. 9 : Persons voluntarily acquiring citizenship of a foreign state not to be citizens.

Art. 10: Continuance of the rights of citizenship.

Art. 11: Parliament to regulate the right of citizenship by law.

Part III : Fundamental Rights

Art. 12 : General Definition (For the word " the State").

Art. 13 : Laws inconsistent with or in derogation of the fundamental rights.

Right to Equality

Art. 14 : Equality before law.

Art. 15 : No discrimination on grounds of religion, race, caste, sex or place of birth.

Art. 16 : Equality of opportunity in matters of public employment.

Art. 17 : Abolition of Untouchability.

Art. 18 : Abolition of titles.

Right to Freedom

Art. 19 : Protection of certain rights regarding freedom of speech etc.

Art. 20 : Protection in respect of conviction for offences.

Art. 21 : Protection of life & personal liberty.

Art. 22 : Protection against arrest and detention in certain cases.

Art. 23 : Prohibition of traffic in human beings and forced labour.

Art. 24 : Prohibition of employment of children in factories etc.

Right to Freedom of Religion

Art. 25 : Freedom of conscience & free profession, practice & propagation of religion.

Art. 26 : Freedom to manage religious affairs.

Art. 27 : Freedom as to payment of taxes for promotion of any particular religion.

Art. 28 : Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Art. 29 : Protection of minorities' interests.

Art. 30 : Right of minorities to establish and administer education of institutions.

Art. 31 : [Repealed].

Saving of Certain Laws

Art. 31 A : Saving of laws providing for acquisition of estates etc.

Art. 31 B : Validation of certain Acts and Regulations.

Art. 31 C : Saving of laws giving effect to certain directive principles.

Art. 31 D : [Repealed].

Right to Constitutional Remedies

Art. 32 : Remedies for enforcement of right conferred by this Part.

Art. 32 A : [Repealed].

Art. 33 : Power of Parliament to modify the rights conferred by this Part in their application to forces, etc.

Art. 34 : Restriction of rights conferred by this part while martial law in any area.

Art. 35 : Legislation to give effect to the provision of this part.

Part IV : Directive Principles of State Policy

Art. 36 : Definition

Art. 37 : Application of the principles contained in this Part.

Art. 38 : State to secure a social order for the promotion of welfare of the people.

Art. 39 : Certain principles of policy to be followed by the State.

Art. 39 A : Equal justice & free legal aid.

Art. 40 : Organisation of village panchayats.

Art. 41: Rights to work, to education & to public assistance in certain cases.

Art. 42 : Provision for just & humane conditions of work and maternity relief.

Art. 43 : Living wage etc. for workers.

Art. 43 A : Participation of workers in management of industries.

Art. 44 : Uniform Civil Code for the citizens.

Art. 45 : Provision for free & compulsory education for children.

Art. 46 : Promotion of educational & eco. interests of SCs, STs & OBCs.

Art. 47 : Duty of the State to raise the level of nutrition & the standard of living & to improve public health.

Art. 48 : Organisation of agriculture & animal husbandry.

Art. 48 A : Protection & improvement of environment, forests & wild life.

Art. 49 : Protection of monuments & places & objects of national importance.

Art. 50 : Separation of judiciary.

Art. 51 : Promotion of international peace.

Part IV A : Fundamental Duties

Art. 51A: Ten Fundamental Duties were incorporated through the 42nd Amendment, 1976.

Part V : The Union

Chapter I : The Executive

President and Vice- President

Art. 52 : The President of India.

Art. 53 : Executive power of the Union.

Art. 54 : Election of President.

Art. 55 : Manner of election of President.

Art. 56 : Term of office of President.

Art. 57 : Eligibility for re-election.

Art. 58 : Qualification for President.

Art. 59 : Conditions of President's office.

Art. 60 : Oath or affirmation of President.

Art. 61: Impeachment procedure of the President.

Art. 62 : Time of holding election to fill vacancy in the office of President & the term of office of person elected to fill casual vacancy.

Art. 63 : The Vice-President of India.

Art. 64 : The Vice- President to be ex- officio chairman of the Council of States.

Art. 65 : The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence of President.

Art. 66 : Election of Vice-President.

Art. 67 : Term of office of Vice-President.

Art. 68 : Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

Art. 70 : Discharge of President's function in other contingencies.

Art. 71 : Matters relating to/connected with, the election of President or Vice- President.

Art. 72 : Power of President to grant pardon, etc., and to suspend, remit or commute sentences in certain cases.

Art. 73 : Extent of executive power of Union.

Council of Ministers

Art. 74 : Council of Ministers to aid and advise President.

Art. 75 : Other provisions as to Ministers.

Attorney - General for India

Art. 76 : Attorney - General for India.

Conduct of Government Business

Art. 77 : Conduct of business of the Government of India.

Art. 78 : Duties of P. M. as respects the furnishing of information to the President.

Chapter II : Parliament

Art. 79 : Constitution of Parliament.

Art. 80 : Composition of Council of states.

Art. 81 : Composition of the House of the People.

Art. 82 : Readjustment after each Census.

Art. 83 : Duration of Houses of Parliament.

Art. 84 : Qualification for the membership of the Parliament.

Art. 85 : Session of Parliament, prorogation and dissolution.

Art. 86 : Right of President to address and send messages to houses.

Art. 87 : Special address by the President.

Art. 88 : Rights of Ministers and Attorney-General as respects Houses.

Officers of Parliament

Art. 89: The Chairman and Deputy Chairman of the Council of States.

Art. 90 : Vacation and resignation of , and removal from, the office of Deputy Chairman.

Art. 91 : Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 92 : Chairman or the Dy. Chairman not to preside while a resolution for his removal from office is under consideration.

Art. 93 : The Speaker and Deputy Speaker of the House of the People.

Art. 94 : Vacation and resignation of, and removal from the offices of Speaker and Deputy Speaker.

Art. 95 : Power of the Deputy Speaker or person to perform the duties of the office of, or to act as Speaker.

Art. 96 : Speaker or Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 97 : Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

Art. 98 : Secretariat of Parliament.

Conduct of Business

Art. 99 : Oath or affirmation by members.

Art. 100 : Voting in Houses, power of Houses to act notwithstanding vacancies & quorum.

Disqualification of Members

Art. 101 : Vacation of seats.

Art. 102 : Disqualifications for membership.

Art. 103 : Decision on questions as to disqualifications of members.

Art. 104 : Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.

Art. 105 : Power, privileges, etc., of the Houses of Parliament and of the members and committees there of.

Art. 106 : Salaries & allowances of MPs.

Legislative Procedure

Art. 107 : Provisions as to introduction and passing of bills.

Art. 108: Joint sitting of both houses in certain cases.

Art. 109 : Special procedure in respect to money bills.

Art. 110 : Definition of " Money Bills".

Art. 111 : Assent to Bills.

Procedure in Financial Matters

Art. 112 : Annual financial statement.

Art. 113 : Procedure in Parliament with respect to estimates.

Art. 114 : Appropriation Bills.

Art. 115 : Supplementary, additional or excess grants.

Art. 116 : Votes on account, votes of credit and exceptional grants.

Art. 117 : Special provisions as to Financial Bills.

Art. 118 : Rules of procedure.

Art. 119 : Regulation by law of procedure in Parliament in relation to financial business.

Art. 120 : Language used in Parliament.

Art. 121 : Restriction on discussion in Parliament.

Art. 122 : Courts not to inquire into proceeding of Parliament.

Chapter III : Legislative Powers of the President

Art. 123 : Power of President to promulgate Ordinances during recess of parliament.

Chapter IV : The Union Judiciary

Art. 124 : Establishment and Constitution of Supreme Court.

Art. 125 : Salaries, etc., of Judges.

Art. 126 : Acting C. Justice.

Art. 127 : Appointment of ad hoc Judges.

Art. 128 : Attendance of retired Judges at sitting of the Supreme Court.

Art. 129 : S. Court to be a court of record.

Art. 130 : Seat of Supreme Court.

Art. 131: Original jurisdiction of the S. Court

Art. 131 A : [Repealed].

Art. 132 : Appellate jurisdiction of S. Court.

Art. 133 : Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

Art. 134 : Appellate jurisdiction of Supreme Court in regard to criminal matters.

Art. 134 A : Certificate for appeal to the Supreme Court.

Art. 135 : Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

Art. 136 : Special leave to appeal by the Supreme Court.

Art. 137 : Review of judgments or orders by the Supreme Court.

Art. 138 : Enlargement of the jurisdiction of the Supreme Court.

Art. 139 : Conferment on the Supreme Court of powers to issue certain writs.

Art. 139 A : Transfer of certain cases.

Art. 140 : Ancillary powers of S. Court.

Art. 141 : Law declared by Supreme Court to be binding on all courts.

Art. 142 : Enforcement of decrees and orders of S. Court and orders as to discovery.

Art. 143 : Power of President to consult Supreme Court.

Art. 144 : Civil and judicial authorities to act in aid of the Supreme Court.

Art. 144 A : [Repealed].

Art. 145 : Rules of Court, etc.

Art. 146 : Officers and servants and the expenses of the Supreme Court.

Art. 147 : Interpret.

Chapter V : Comptroller and Auditor General of India (CAG)

Art. 148 : CAG- of India.

Art. 149 : Duties and powers of the CAG.

Art. 150 : Form of accounts of the Union and of the States.

Art. 151 : Audit reports.

Part VI : The States

Chapter I

Art. 152 : Definition.

Chapter II : The Executive

The Governor

Art. 153 : Governors of States.

Art. 154 : Executive power of State.

Art. 155 : Appointment of Governor.

Art. 156 : Term of office of Governor.

Art. 157 : Qualifications for appointment as Governor.

Art. 158 : Conditions of Governor's office.

Art. 159 : Oath of affirmation by Governor.

Art. 160 : Discharge of the functions of the Governor in certain contingencies.

Art. 161 : Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Art. 162 : Extent of executive power of State.

Council of Ministers

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

Art. 164 : Other provisions as to Ministers.

The Advocate - General for the State

Art. 165 : Advocate - General.

Conduct of Government Business

Art. 166 : Conduct of business of the Government of a State.

Art. 167 : Duties of Chief Minister as respects the furnishing of information to Governor, etc.

Chapter III : The State Legislature

Art. 168 : Cont. of Legislatures in States.

Art. 169 : Abolition or creation of Legislative Council in States.

Art. 170 : Composition of Legislative Assemblies.

Art. 171 : Composition of Legis. Councils.

Art. 172 : Duration of State Legislatures.

Art. 173 : Qualification for membership of the State Legislature.

Art. 174 : Sessions of the State Legislature, prorogation and dissolution.

Art. 175 : Right of Governor to address and send messages to the House or Houses.

Art. 176 : Special address by the Governor.

Art. 177 : Rights of Ministers and Advocate General as respects the Houses.

Officers of the State

Legislature

Art. 178 : The Speaker and Deputy Speaker of the Legislative Assembly.

Art. 179 : Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

Art. 180 : Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

Art. 181 : The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 182 : The Chairman and Deputy Chairman of the Legislative Council.

Art. 183 : Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

Art. 184 : Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 185 : The Chairman or the Deputy Chairman of the Legislative Council not to preside while a resolution for his removal from office is under consideration.

Art. 186 : Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

Art. 187 : Secretariate of State Legislature.

Conduct of Business

Art. 188 : Oath or affirmation by members.

Art. 189 : Voting in Houses, power of Houses to act notwithstanding vacancies & quorum.

Disqualifications of Members

Art. 190 : Vacation of seats.

Art. 191 : Disqualification for membership.

Art. 192 : Decision on questions as to disqualifications of members.

Art. 193 : Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

Art. 194 : Powers, privileges, etc, of the Houses of Legislatures and of the members and committees thereof.

Art. 195 : Salaries & allowances of members.

Legislative Procedure

Art. 196 : Provisions as to introduction and passing of Bills.

Art. 197 : Restriction on powers of Legislative Council as to Bills other than Money Bills.

Art. 198 : Special procedure in respect of Money Bills.

Art. 199 : Definition of " Money Bills".

Art. 200 : Assent to Bills.

Art. 201 : Bills reserved for consideration.

Procedure in Financial Matters

Art. 202 : Annual financial statement.

Art. 203 : Procedure in Legislature with respect to estimates.

Art. 204 : Appropriation Bills.

Art. 205 : Supplementary, additional or excess grants.

Art. 206 : Votes on account, votes of credit and exceptional grants.

Art. 207 : Special provisions as to Financial Bills.

Procedure Generally

Art. 208 : Rules of procedure.

Art. 209 : Regulation by law of procedure in the Legislature of the State in relation to financial business.

Art. 210 : Language to be used in the Legislature.

Art. 211 : Restriction on discussion in the Legislature.

Art. 212 : Courts not to inquire into proceeding of the Legislature.

Chapter IV : Legislative Power of the Governor

Art. 213 : Power of Governor to promulgate ordinances during recess to Legislature.

Chapter V : The High Courts in the States

Art. 214 : High Courts for States.

Art. 215 : High Courts to be Courts of record.

Art. 216 : Constitution of High Courts.

Art. 217 : Appointment and conditions of the office of a Judge of High court.

Art. 218 : Application of certain provisions relating to Supreme Court to High Courts.

Art. 219 : Oath or affirmation by Judges of High Court.

Art. 220 : Restriction on practice after being a Permanent Judge.

Art. 221 : Salaries, etc., of Judges.

Art. 222 : Transfer of a Judge from one High Court to another.

Art. 223 : Acting Chief Justice.

Art. 224 : Appointment of additional and acting Judges.

Art. 224 A : Appointment of retired Judges at sitting of High Courts.

Art. 225 : Jurisdiction of existing High Courts.
Art. 226 : Power of High Courts to issue certain writs.
Art. 226 A : [Repealed].
Art. 227 : Power of superintendence over all courts by the High Court.
Art. 228 : Transfer of cases to High Courts.
Art. 228 A : [Repealed].
Art. 229 : Officers and servants and the expenses of High Courts.
Art. 230 : Extension of jurisdiction of High Courts to union territories.
Art. 231 : Establishment of a common High Court for two or more states.
Chapter VI : Subordinate Courts
Art. 233 : Appointment of district Judges.
Art. 233 A : Validation of appointments of, and judgments, etc., delivered by, certain district judges.
Art. 234 : Recruitment of persons other than district judges to the Judicial service.
Art. 235 : Control over subordinate courts
Art. 236 : Interpretation.
Art. 237 : Application of the provisions of this Chapter to certain class or classes of magistrates.

Part VII : The States in Part B of the First Schedule [Repealed]

Art. 238 : [Repealed].

Part VIII : Union Territories

Art. 239 : Administration of U. Territories.
Art. 239 A : Creation of local Legislatures or Council of Ministries or both for certain Union territories.
Art. 239 B : Power of administrator to promulgate Ordinances in recess of Legislature.
Art. 240 : Power of President to make regulations for certain Union territories.
Art. 241 : High Courts for Union territories
Art. 242 : [Repealed].

Part IX : The Panchayats

Art. 243 : Definitions.
Art. 243A : Gram Sabha.
Art. 243 B : Constitution of Panchayats.
Art. 243 C : Composition of Panchayats.
Art. 243D : Reservation of seats.

Art. 243 E : Duration of Panchayats etc.
Art. 243 F : Disqualifications for members.
Art. 243 G : Powers, authority and responsibilities of Panchayats.
Art. 243 H : Powers to impose taxes by, and Funds of, the Panchayats.
Art. 243 I : Constitution of Finance Commission to review financial position.
Art. 243 J : Audit of accounts of Panchayats.
Art. 243 K : Elections to the Panchayats.
Art. 243 L : Application to Union territories.
Art. 243 M : Part not to apply to certain areas.
Art. 243 N : Continuance of existing laws and Panchayats.
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Part IX A : The Municipalities

Art. 243 P : Definitions.
Art. 243 Q : Constitution of Municipalities.
Art. 243 R : Composition of Municipalities.
Art. 243 S : Constitution and composition of Wards, Committees, etc.
Art. 243 T : Reservation of seats.
Art. 243 U : Duration of Municipalities, etc.
Art. 243 V : Disqualifications for members.
Art. 243 W : Powers, authority and responsibilities of Municipalities, etc.
Art. 243 X : Power to impose taxes by, and Funds of, the Municipalities.
Art. 243 Y : Finance commission.
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Art. 243 ZA : Municipalities Elections.
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Art. 243 ZC : Not to apply to certain areas.
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PREAMBLE

The PREAMBLE to the Indian Constitution (as amended in 1976) reads:

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

JUSTICE, social, economic, and political LIBERTY of thought, expression, belief, faith and worship;

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

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

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do hereby ADOPT, ENACT and GIVE TO OURSELVES this Constitution.

Objectives of Indian Constitution

The preamble sets out the main objectives of the Constitution; the objective which the Constitution-makers intended to be realised through it. It is the key to open the mind of the Constitution-makers. The preamble is a legitimate aid in the construction of the provisions of the Constitution. Generally, for purposes of interpretation, the preamble of the Constitution stands in the same position as the preamble of an Act.

Purposes of the Preamble

The framers of the Constitution of India set out two purposes in the preamble.

1. First, to constitute India into a Sovereign Democratic Republic. It is Republic because the head of the State is not a hereditary monarch. It is Democratic because the Constitution rests on the people's will, and the institutions set up under it shall seek to give effect to democratic principles. It is Sovereign because the Constitution does not recognise the legal supremacy of another country over India. Her membership of the Commonwealth of the Nations is not inconsistent with her independent and sovereign status. The words 'socialist' and 'secular' were added in the Preamble by the Forty-

WHAT IS THE SIGNIFICANCE OF THE PREAMBLE?

The preamble specifies the source of authority, the system of government, the objectives to be attained by the political system and the date of the adoption and enactment of the Constitution. Though the Preamble is not enforceable in a court of law and generally, not considered a part of the Constitution, it provides a key to the understanding and interpretation of the Constitution; it has, therefore, been described as the soul of the Constitution. In case of doubt the Supreme Court has referred to the Preamble to elucidate vague aspects of the Constitution.

second Amendment. The addition of 'socialist' indicates the incorporation of the philosophy of 'socialism' in the Constitution which aims at elimination of inequality in income and status and standards of life and may enable the courts to lean more and more in favour of nationalisation and State ownership of an industry. It is yet to be seen

how the new economic policy adopted by the Narsimha Rao Government since 1991 oriented towards free market and privatisation is to be viewed in the courts. The word 'secular' simply recognises the concept of secularism as manifested in the guarantee of freedom of religion as a fundamental right in the Constitution.

2. Second, to secure to citizens justice - social, economic, and political; liberty of thought, expression, faith, and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation. Although the expressions, 'justice', 'liberty', 'equality', and 'fraternity', may not be susceptible to exact definitions, yet they are not mere platitudes. They are given content by the enacting provisions of the Constitution particularly by Part III of the fundamental rights and Part IV, the Directive Principles of State Policy.

EXPLANATION OF PREAMBLE

Sovereign Republic

The Preamble begins with the words, "We, the people of India...", thus clearly indicating the source of all authority under the Constitution. The Preamble establishes the ultimate sovereignty of the people of India on whose authority the Constitution rests. It points out the Constitution of India has been ordained by the people of India through their representatives in Constituent Assembly.

In the present times, the term 'sovereignty' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" -no modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and that the people of India are not subordinate to any external authority. With the enactment of the Constitution, India was no longer a 'dominion' it was a 'republic'.

IS PREAMBLE A PART OF THE CONSTITUTION?

The preamble of an Act is not recognised as part of the Act because it is not enacted and adopted by the enacting body in the same manner as the acting provisions. The preamble of Indian Constitution was, however, enacted and adopted by the same procedure as the rest of the Constitution. This difference was not brought to the notice of the Supreme Court in *Berubari Union and Exchange of Enclaves* case where it observed that "the preamble is not part of the constitution". Later when the constituent history of the preamble was brought to the notice of the Court in *Keshavananda Bharti v. State of Kerala* it held that "the preamble of the Constitution was part of the Constitution and the observations to the contrary in *Berubari Union* case were not correct".

The recognition of the preamble as an integral part of the Constitution makes the preamble a valuable aid in the construction of the provisions of the Constitution because unlike the preamble to an Act, the preamble of the Constitution occupies the same position as other enacting words or provisions of the Constitution.

A republic derives its powers directly or indirectly from the people and "is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour" (Madison). India is a republic in that sense. From January 26, 1950 when the Constitution commenced, India ceased to owe allegiance to the British crown. India has a President as head of the Union, elected indirectly for a fixed term by the people's representatives. All citizens are equal in law, there is no privileged class, every citizen has the right to try for any public office irrespective of caste, race, sex or religion.

Despite declaring itself a republic India remained a member of the Commonwealth of Nations. Indeed the group of nations accommodated India's status as a sovereign independent republic owing no allegiance to the British Crown: the 'British Commonwealth of Nations' became simply 'Commonwealth of Nations'. The King or Queen would be the 'symbolic' head of the Commonwealth as far as India was concerned, and the decisions at the conferences of the Commonwealth will not be binding on Indians. India's conduct would be based on 'free will'. The decision to remain in the Commonwealth was in keeping with the ideal of promoting international cooperation and peace - a concept expressed in our Constitution.

Democracy

The term 'democracy' has assumed different connotations for different people. But common to all forms of democracies in the participation

of the people directly or indirectly. India has adopted the representative parliamentary democracy. The Constitution makes no provision for direct control by the people through such devices as 'referendum' and 'initiative'. However, the people of India exercise their sovereignty through a Parliament at the Centre and a legislature in each State elected on the basis of universal adult franchise. The Executive is responsible to the popular house of the Legislature.

Beyond political democracy, the Preamble also envisages social and economic democracy. Equality in the political sphere gives each adult citizen the power to vote freely. Equality must also pervade society and economic conditions, as far as possible. Dr. Ambedkar considered social and economic democracy to be the real goals to strive for. Jawharlal Lal Nehru too felt that political structure would weaken and disintegrate if socio-economic problems like poverty and gross inequalities are not tackled and removed. A vote, after all, does not mean much to a starving person. It is in this context that the Preamble speaks of justice, equality, liberty and fraternity.

Socialism

While the original Constitution did not mention any particular ideology, it did give expression to the resolve of securing to the citizens economic justice and equality of opportunity. This is the essence of socialism. The word 'socialist' was introduced in the Preamble by the 42nd Amendment. The term, however, is not defined in the Constitution. It may be pointed out that the socialism envisaged in India does not mean abolition of private property or nationalisation of all means of production. Thus a 'mixed economy' was envisaged, along with provision of equal opportunity, abolition of vested interests, and elimination of inequality in income and status and standards of living. In the present context of economic liberalisation, however, the socialist credentials of our State may well be questioned.

Secularism

The term 'secular' was inserted in the Preamble only in 1976, but the state envisaged by the Constitution was always a secular state - it could not have been otherwise in a country

of such a vast size and diversity of culture and religions. Indeed, the fraternity and unity of the country could be built only on a secular basis.

The term 'secular', has not been defined in the Constitution but its operative meaning may be drawn from the different provisions of the Constitution. Discrimination on the basis of religion is forbidden to the State. Equality is assured to all irrespective of religion. Freedom of faith, belief and worship is allowed to all. The State is to be impartial towards all religions. Furthermore, the state does not uphold any particular religion as the state religion, but protects all religions equally.

Justice

The Preamble speaks of social, economic and political justice. The concept of justice goes beyond its narrow legal connotation. Significantly the words 'social' and 'economic' occur before the word 'political'.

Social justice implies that discrimination on the basis of birth, caste, race, sex or religion should cease. To that end all citizens should enjoy equal opportunities in the matter of public appointment. It is the good of all people that the Government must strive to achieve. The concept of a welfare state as envisaged in the Directive Principles is an embodiment of guidelines for ensuring the social justice expected in the Preamble.

Economic justice implies that the gap between the rich and the poor is bridged, and the exploitation ceases. Removal of poverty is to be achieved not by taking away assets from those who have but by ensuring a more equitable distribution of national wealth and resources among those who contribute to its creation. Thus the Directive Principles call upon the state to try and secure ownership and control over resources to subserve common good, reduce concentration of wealth, ensure equal pay for equal work, and see that people, especially women and children, are not abused or forced by economic want into work unsuitable for their age or strength.

Political justice implies that all citizens should have equal opportunity to participate in the political system. One person-one vote is ensured irrespective not only of caste, sex or religion, but also of proprietary or educational qualifications. It is the basis of the political democracy envisaged in the Constitution.

Liberty

Democracy is closely connected with the idea of liberty; certain minimal rights must be enjoyed by every person in a community for a free and civilised existence. These basic rights are spelt out by the Preamble as freedom of thought, expression, belief, faith and worship. The chapter on Fundamental Rights guarantees these freedoms explicitly, subject to certain regulations; after all, liberty is not to degenerate into licence if democracy is to survive.

Equality

Rights have no meaning if they cannot be enjoyed equally by all members of the community. To ensure that it is possible for all to enjoy these rights, social and economic equality is sought to be achieved. The Fundamental Rights enjoin the State not to discriminate between citizen and citizen simply on the basis of caste, race, sex or religion. Public places are open to all citizens, titles of honour stand abolished, untouchability is abolished, among other things. The rule of law is to prevail: all citizens are equal before law and enjoy equal protection of the laws of the land. Political equality is provided by the principle of universal adult franchise and by allowing, at least in principle, any citizen the opportunity to participate in the process of governance. Economically, the same ability and work entitles persons to the same salary. Exploitation of individual or group is to be removed.

Fraternity

A democratic system would function in a healthy manner only if there is a spirit of brotherhood of oneness, among the people of the land. India being a land of immense diversity is all the more in need of this spirit of unity - the sense of belonging to one nation. The principle of common citizenship is directed towards strengthening this sense of 'unity and integrity' of the nation. Fraternity is also sought to be promoted by ensuring equal rights to all. Fraternity, said DR. Ambedkar, "is the principle which gives unity and solidarity to social life". It is the feeling that will protect the unity of India against external attack or disintegration through internal unrest born of social, political and economic causes.

Fraternity, how ever is not possible unless the dignity of each individual is preserved and respected. Maintaining this dignity requires the guarantee of certain minimal justiciable rights to each individual. The ensure that an individual is free from want and misery - without which freedom, ideas of self-respect and dignity are meaningless- the Directive Principles have been framed calling upon the State to form its policies to benefit all citizens equally in the matter of providing adequate means of livelihood. The State is also asked to provide just and humane conditions of work and create conditions in which a decent standard of life and full enjoyment of leisure and social and cultural opportunities become possible for all the people of this land. It is in keeping with the principle of individual dignity that the practice of untouchability has been abolished by the Constitution.

In the context of fraternity, it may also be mentioned that India's Constitution goes beyond national boundaries, and speaks of the ideal of universal brotherhood, an international fraternity with all nations and peoples coexisting in peace and amity.

THE UNION AND ITS TERRITORY

Part I of the Indian Constitution comprises four Articles concerned with the territory of India. Article 1 stipulates that India, that is Bharat, shall be a Union of States. The States and territories of India are to be specified in the First Schedule. It is to be noted that the expression, 'Union of India' includes only the states which are members of the federal system and share a distribution of powers with the Union while the 'territory of India' includes the entire area over which the sovereignty of India extends.

The Indian federation was not the result of an agreement between independent States. By the Indian Independence Act 1947, the principal states were given the option of joining India or Pakistan or remaining independent. The integration of the princely states was managed well by Sardar Patel. It may be recalled that in the original Constitution there were four categories of States and Territories - part A which included the nine erstwhile provinces of British India, Part B comprising the five Princely States

with legislatures, Part C which includes five centrally administered states, and Part D mentioning the territory of Andaman and Nicobar Islands. But since the Seventh Amendment Act, 1956, all the States (except for Jammu & Kashmir) belong to one class and all the constitutional provisions relating the states apply to all of them in the same manner. However, it may be pointed out in this connection that certain special provisions applicable to Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh, Mizoram and Goa override the general provisions pertaining to the States as a class. As for the administration of certain Scheduled Areas and Tribal Areas within the States, the provisions are specially listed in the Fifth and Sixth Schedules.

'INDIAN TERRITORY' IS OF HOW MANY TYPES?

The territory of India falls under three categories : (i) State territories, (ii) the Union territories and (iii) territories which may be acquired by the Government of India. No Parliamentary legislation is required to acquire a foreign territory. It is the inherent attribute of a sovereign State to acquire new territories. Article 1(3) (c), in including the acquired territory as part of the Indian territory, merely states a factual situation and does not confer a power on Parliament to acquire foreign territory. The Union Territories are centrally administered according to provisions contained in Part VII of the Constitution. They are governed by the President through an Administrator appointed by him.

At present there are 28 states in India. Since 1987, there are seven Union Territories : Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh.

Article 1 of the Constitution says that India is a Union of States, and the States and the territories thereof are specified in the First Schedule. None of the constituent units of the Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole. The Constitution contemplated changes of the territorial limits of the constituent States and there was no guarantee about their territorial integrity.

Admission or establishment of new States: Article 2 enables Parliament by law to admit

into the Union or establish new States on such terms as it thinks fit. It will be noted that there are two powers given to Parliament by Article 2 namely : (i) the power to admit into the Union new States and

(ii) **the power to establish new States.**

The first refers to the admission of duly organised political communities and second to the admission or formation of a State where none existed before. It will be recalled that the territory acquired by the Union becomes Indian Territory by virtue of clause (3) (c) of Article 1. No Parliamentary sanction is required for acquisition of territory. But a territory acquired by the Government of India, though factually becomes territory of India from the date of its acquisition, the formal or legal assimilation is brought about only by Parliamentary legislation made either under this article when the acquired territory is established as a new State of the Union, or when the acquired territory is merged into an existing State Under Article 3 of the Constitution.

The admission or establishment of a new State will be on such terms and conditions as Parliament may think fit. There is nothing in the Constitution which would entitle a new State, after its formation or admission into the Union, to claim complete equality of status with a state existing at the commencement of the Constitution, or formed thereafter under Article 3 of the Constitution. The analogy of the Australian Constitution where complete equality of status with other States and to all "State rights " are guaranteed is inapplicable to the Indian Constitution, because Section 6 of the Constitution of Australia expressly provides that the expression "State" shall include such colonies or territories as may be "admitted into or established" by the Commonwealth as States. In India, on the other hand, Article 2 gives complete discretion to Parliament to admit or establish new States on such terms and conditions as "it thinks fit".

Formation of new States and alteration of areas, boundaries or names of existing States -

Parliament may by law -

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the name of any State;

The Constitution contemplated changes of the territorial limits of the constituent States and there was no guarantee about their territorial integrity. The new States may be established in different ways laid down in the article, namely : (i) by separation of territories from any State (ii) by uniting two or more States, (iii) by uniting parts of States and (iv) by uniting any territory to a part of any State.

The law referred to in Articles 2 and 3 may alter or amend the First Schedule of the Constitution which sets out the names of the States and description of territories thereof, and the Fourth Schedule allotting seats in the Council of State in the Union Parliament. The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provision as to services, application and adaptation of laws, transfer of proceedings and other related matters. No State can, therefore, be formed, admitted or set up by law under Article 4 by Parliament which has not effective legislative, executive or judicial organs.

What is the role of States in alteration of their areas, boundaries or names?

In regard to a Bill under Article 3 of Indian Constitution, there are two conditions. Firstly, no Bill shall be introduced in either House of Parliament except on the recommendation of the President. Secondly, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has to be referred by the President to the Legislature of the State for expressing its views thereon. The period within which the State Legislature must express its views has to be specified by the President, but he may extend the time so specified. If the period specified or extended expires and no views of the State Legislature are received, the second condition laid down in the provision is fulfilled. Also, it is not necessary to make fresh reference to the State Legislature

every time an amendment of the proposal contained in the Bill is proposed and accepted in accordance with the rules of procedure of Parliament so long as the amendment is germane to the subject-matter of the original proposal or is not a direct negation thereof.

Reorganisations of States

The grouping of the states at independence was done more on the basis of historical and political principles than social, cultural or linguistic divisions. There was not enough time to undertake a proper reorganisation of the units at the time of making the Constitution. Article 2 empowers Parliament to admit into the Union, or establish, new States on such terms and conditions as it thinks fit. By Article 3, Parliament has the power by law to form a new State from the territory of any State or by uniting two or more states, increase or decrease the area of any State, or alter the boundaries or the name of any State. The only conditions laid down for the making of such a law are that (i) such a bill must be introduced only on the recommendation of the President is to refer it to be the concerned State Legislature which would express its views within a specified period. The President is not, however, bound by the views of the State Legislature. However, in the case of Jammu and Kashmir, the consent of the State Legislature is required before a bill on such alterations is introduced in Parliament. Article 4 stipulates that any such law may make supplemental, incidental or other consequential provisions and may amend the First and Fourth Schedules without going through the Constitutional Amendment process. A simple majority and ordinary legislature procedure is enough for Parliament to form new States or alter existing State boundaries.

It may be noted that these Article does not apply to cession of territory to a foreign state. Any treaty or agreement involving ceding Indian Territory to an outside authority requires a constitutional amendment to be implemented.

First States Reorganization Commission

The Government appointed a commission under S.K. Dhar to examine the feasibility of reorganisation of States on linguistic basis. The

S.K.Dhar Commission preferred reorganisation for administrative convenience rather than on a linguistic basis. A Congress Committee under Jawaharlal Nehru, Sardar Patel and Pattabhi Sitaramayya (the JVP Committee) too did not favour a linguistic base. However, in 1953 the first linguistic state came into being in Andhra Pradesh, created by separating the Telugu speaking areas from the State of Madras. This followed a prolonged agitating and the death of Potti Sriamulu after a 56- day hunger strike. As there were several more demands for States on a linguistic basis, a commission was set up under justice F.Fazl Ali with H.N. Kunzru and K.M. Panikkar, as members to study the demand. This commission is known as the First States Reorganization Commission. It submitted its report in 1955. Its suggestions were accepted with modifications and the States Reorganisation Act was passed in 1956. As a result, the fourfold distribution of States was replaced by 14 States and six Union Territories (Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amandivi, Manipur and Tripura) vide the Seventh Constitution Amendment.

Acquired Territories

Besides, the States and Union Territories, the territories of India include any area acquired by India by purchase, treaty, cession or conquest. These are to be administered by the Government of India subject to legislation by Parliament. Thus, the French settlement of Pondicherry which was ceded to India by the French Government in 1954 was being administered as an acquired territory till 1962 when it was constituted as a Union Territory. The Portuguese territories of Goa, Daman and Diu were acquired by annexation and administered as acquired territory till they were incorporated as Union Territory in 1961. Goa was given the status of a State in 1987. Sikkim was admitted as a full-fledged State of the Indian Union after a referendum in that country favoured its becoming a constituent unit of India.

It does not matter how the acquisition has been brought about. It may be by conquest, it may be by cession following treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler, or it may be under the terms of

an agreement between two States. In cases where the only fact available is the de facto exercise of complete sovereignty by one State in a particular area, the sovereignty of that State over that area and the area being regarded as part of the territory of that State would prima facie. Follow. But this would apply normally only to cases where sovereignty and control was exercised by unilateral action. Where, however, the exercise of power and authority and the right to administer is referable to an agreement between two States, the question whether the territory has become integrated with and become part of the territory of the State exercising de facto control, depends wholly on the terms upon which the new government was invited or permitted to exercise such control and authority.

The precedents are clear that no cession of Indian territory can take place without a constitutional amendment. However, an agreement to refer the dispute regarding boundary line dividing two neighbouring countries and the very fact of referring such a dispute implies that the executive may do such acts as are necessary for permanently fixing the boundary. A settlement of a

WHAT IS AN 'ACQUIRED TERRITORY'?

A territory can be said to have been acquired when the Indian Union acquires sovereignty over such territory. The expression 'acquired' should be taken to be a reference to 'acquisition' as understood in public international law. If there was any public notification, assertion or declaration by which the Government of India had declared or treated a territory as part and parcel of India, the courts would be bound to recognise an 'acquisition' as having taken place, with the consequence that the territory would be part of the territory of the Union within Articles 1(3) (c). A statement by the Government of India that it did not consider a particular area to have been acquired by it is binding on the Court.

boundary dispute cannot, therefore, be held to be, a cession of territory. It contemplates a suitable boundary, and it is so fixed. The case is one in which each contending State ex facie is uncertain of its own right and therefore, consents to the appointment of arbitral machinery. Such a case is plainly distinguishable from a case of cession of territory known to be home territory.

CITIZENSHIP

The provisions of citizenship are covered by Articles 5 to 11 of Indian Constitution and are embodied in Part II of the Constitution. Article 5 refers to citizenship not in any general sense but to citizenship on the date of the commencement of the Constitution. It was not the object of this Article to lay down a permanent law of citizenship for the country. That business was left to the Parliament of India. Accordingly, at the commencement of the Constitution, every person who had his domicile in the territory of India and

- (a) who was born in India, or
- (b) either of whose parents was born in India, or
- (c) who had been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution, was to be considered a citizen of India.

Persons of Indian origin who had been residing outside India at the commencement of the Constitution were given the free choice of becoming Indian citizens under the above provisions if they so desired. The only condition that they had to fulfill in his connection was to get themselves registered as Indian citizens by the diplomatic or consular representatives of India in the country where they were residing (Art. 8).

Articles 6 and 7 deal with two categories of persons, namely, those who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but had migrated to India. Those who migrated from Pakistan to India were divided into two categories:

- (a) those who came before July 19, 1948 and
- (b) those who came after that date.

According to article 6 those who came before July 19, would automatically become citizens on the commencement of the Constitution, and those who came after July 19 would become such provided they had been registered in the form and manner prescribed for this purpose by the Government of India. These two articles thus provided for all cases of mass migration from Pakistan to India without making any distinction between one community and another, although the partition of the country itself was based upon such as a distinction.

Article 7 provides for those who had migrated to Pakistan but who had returned to India from Pakistan with the intention of permanently residing in India. Such a provision had to be made because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under what is called a "permit system". This permit system was introduced from July 19, 1948.

The Citizenship Act, 1955

A comprehensive law dealing with citizens was passed by Parliament in 1955 in accordance with the powers vested in it by Article 11 of the Constitution. The provisions of the Act may be broadly divided into three parts, acquisition of citizenship, termination of citizenship and supplemental provisions.

Acquisition of Citizenship

The Act provides five modes of acquiring the citizenship of India. These are:

WHY THE ISSUE OF INDIAN CITIZENSHIP WAS NOT PERMANENTLY SETTLED BY THE CONSTITUTION?

There is hardly any constitution in which an attempt has been made to embody a detailed nationality law. But since India's Constitution is of a republican character and provision is made throughout the Constitution for election to various offices under the State by and from among the citizens, it was thought essential to have some provisions which precisely determined who was an Indian citizen at the commencement of the Constitution. Otherwise, there could have arisen difficulties in connection with the holding of particular offices and even with the starting of representative institutions in the country under the republican Constitution. This is why Parliament has been given plenary power to deal with the question of nationality and enact any law in this connection that it deems suited to the conditions of the country. Such Parliamentary power embraces not only the question of acquisition of citizenship but also its termination as well as any other matter relating to citizenship (Art. 11) Also under Article 9 of the Constitution, and person who voluntarily acquires the citizenship of any foreign State, even if qualified for Indian citizenship under any provision of the Constitution, may not be a citizen of India.

- (1) **By Birth:** Every person born in India on or after January 26, 1950, shall be a citizen of

India by birth. There are two exceptions, to this rule, namely, children born to foreign diplomatic personnel in India and those of enemy aliens whose birth occurs in a place then under occupation by the enemy.

- (2) **By Descent** : A person born outside India on or after January 26, 1950, shall be citizen of India by descent if his father or mother is a citizen of India at the time of his birth. Children of those who are citizens of India by descent, as also children of non-citizens who are in service under a government in India, may also take advantage of this provision and become Indian citizens by descent, if they so desire, through registration.
- (3) **By Registration** : Any person who is not already an Indian citizen by virtue of the provisions of the Constitution or those of this Act can acquire citizenship by registration if that person belongs to any one of the following five categories :
- (a) Persons of Indian origin who are ordinarily resident in India and who have been so resident for at least six months immediately before making an application for registration.
- (b) Persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- (c) Women who are, or have been, married to citizens of India;
- (d) Minor children of persons who are citizens of India; and
- (e) Persons of full age and capacity who are citizen of the Common wealth countries or the Republic of Ireland.
- (4) **By Naturalisation** : Any person who does not come under any of the categories mentioned above can acquire Indian citizenship by naturalisation if his application for the same has been accepted by the Government of India and certificate is granted to him to that effect. An applicant for a naturalisation certificate has to satisfy the following conditions:
- (a) He is not a citizen of a country which prohibits Indians becoming citizens of that country by naturalisation;
- (b) He has renounced the citizenship of the country to which he belonged;

- (c) He has either resided in India or has been in the service of a government in India, normally, for one year immediately prior to the date of application;
- (d) During the seven years proceeding the above mentioned one year, he has resided in India or been in the service of a government in India for a period amounting in the aggregate to not less than four years;
- (e) He is of good character;
- (f) He has an adequate knowledge of a language specified in the Constitution;
- (g) If granted a certificate, he intends to reside in India or enter into, or continue in service under a government in India.

The Act provides, however, for a conspicuous exemption under which any or all of the above conditions may be waived in favour of a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally. Every person to whom a certificate of naturalisation is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as by law established, and that he will faithfully observe the laws of India and fulfill his duties as a citizen of India.

- (5) **By Incorporation of Territory** : If any territory becomes part of India, the Government of India, by order, may specify the persons who shall be citizen of India by reason of their connection with that territory.

Termination of Citizenship

The Act envisages three situations under which a citizen of India may lose his Indian nationality. These are:

- (1) **By Renunciation**: If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen of registration of such declaration. When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, become Indian citizen by making a declaration of his intention to resume Indian citizenship.

- (2) **By Termination:** Any person who acquired Indian citizenship by naturalisation, registration or otherwise, of he or she voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of the Constitution, and December 30, 1955, the date of commencement of this Act, shall have ceased to be a citizen of India from the date of such acquisition.
- (3) **By Deprivation:** The Central Government is empowered to deprive a citizen of his citizenship by issuing an order under 10 of the Act. But, this power of the Government may not be used in case of every citizen; it applies only to those who acquired Indian citizenship by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration. The possible grounds of such deprivation are : obtaining of a citizenship certificate by means of fraud, false representation, concealment of any material fact; disloyalty or disaffection towards the Constitution shown by act or speech; assisting an enemy with whom India is at war; sentence to imprisonment in any country for a term of not less than two years within the first five years after the acquisition of Indian citizenship and continuous residence outside Indian for a period of seven years without expressing in a prescribed manner his intention to retain his Indian citizenship. The Act also provides for reasonable safeguards in order to see that a proper procedure is followed in every case of deprivation of citizenship.

Single Citizenship

The most important aspect of the constitutional provisions dealing with citizenship is that it has established a unified or single system of citizenship law for the whole country. A citizen of India is accepted legally as a citizen in every part of the territory of India with almost all the benefits and privileges that attend such a status. This is in striking contrast to the system of double citizenship that prevails in some federal states. Before the inauguration of the Constitution, there were two broad divisions among Indian citizens, British Indian subjects and state subjects. Since there were over 500 Indian

States, the State subjects themselves were further subdivided into as many groups of citizens as there were states. Thus, the term Indian citizenship had little precise legal significance except that the Indian people as a whole came under the overall jurisdictions of the British Government that ruled India. The abolition of such distinctions makes the essential unity of the nation a reality. A single citizenship for the entire country removes much of the artificial State barriers that prevailed in pre Independence days and facilitates the freedom of trade and commerce throughout the territory of India.

There is, however one barrier still that hinders that full realisation of the ideal of a single citizenship established under the Constitution. This is the existence of what are known as "domiciliary rule" in the different states in India. The term "domicile" is difficult to define. According to the rules prevailing today, in the different States in India, domicile requirements vary from three to fifteen years' continuous residence within the State in addition to other conditions. Thus, the status of domicile is given only to a permanent resident of the State. On the basis of such a distinction, there exist practices in different States which amount to gross discrimination as between citizen and citizen. The also engender provincialism and parochialism which tend to disrupt the unity to the nation. Domiciliary rules which govern eligibility to public services in most of the State illustrate this point. Such rules are applied in some State not only to determine eligibility for appointment to public services but also to regulate admission to higher educational institutions, the awards of contracts and rights in respect of fisheries, ferries, toll-bridges, forests and excise shops. The conditions to be satisfied for acquiring a domicile in some of the states are of such an extremely rigorous nature that it is almost impossible for any person to satisfy them.

FUNDAMENTAL RIGHTS

The success or failure of a democracy depends largely on the extent to which civil liberties are enjoyed by the citizens in general. A democracy aims at the maximum development of the individual's personality, and the personality of the individual is inseparably

bound with his liberty. Only a free society can ensure the all-round progress of its members which ultimately helps the achievement of human welfare. Thus, every democracy pays special attention to securing this bare objective to the maximum extent without, at the same time, endangering the security of the state itself. A common device that is adopted by most of them for this purpose is to incorporate a list of fundamental rights in their constitutions and guarantee them from violation by executive and legislative authorities.

The Indian constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority. No majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as freedom of speech, movement and association, equality before law and equal protection of laws, freedom of religious belief and cultural and educational freedoms. The constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated. It is, thus, a basic affirmation of the Constitution that the political system that it establishes should provide conditions favourable for the maximum development of the individual's personality. The framers of the Constitution were conscious of the fact that in the absence of the enjoyment of the above mentioned rights, such development of the personality was impossible and democracy would sound an empty word. Having spent most of their lives under a foreign rule and having fought relentlessly for the enjoyment of these rights by themselves, it was only natural that they should have wanted to embody them in the Constitution they framed for the establishment of a democratic political order. They hoped to build this political order on the firm foundation of the freedom of political competition. The prime importance of these rights is that while the will of the majority decides how

these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised.

It must be stressed, however, that the fundamental freedoms guaranteed to the individual under the Constitution are not absolute. Individual rights, however, basic they are, cannot override national security and general welfare. For, in the absence of national security and general welfare, individual rights themselves are not secure. Freedom of speech does not mean freedom to abuse another; freedom of movement does not mean freedom of physical attack on others. The Constitution has made express provisions dealing with such limitations of fundamental rights so that those who seek to enjoy the rights may also realise the obligation attending them.

Public and Private Rights

The rights which were thus selected by the Constituent Assembly fall broadly into two categories—public and private—but both have the same purpose in view, namely, to put an end to arbitrary rule. Among the public or political rights were the right often to choose their rulers, the right to hold them responsible for their conduct, the right to share in law-making and the right to bear arms. Among the private rights were the right to personal freedom, the right to freedom of religious belief, the right to thought and expression, and the right to quality and to the possession and use of property.

Right to Equality (Arts. 14,15,16,17 & 18)

Article 14 declares that "the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". Thus, Article 14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration. The Right to Equality affords protection not only against discriminatory laws passed by legislatures but also prevents arbitrary discretion being vested in the executive. In the modern State, the executive is armed with vast

WHAT ARE 'JUSTICIABLE' AND 'NON-JUSTICIABLE' RIGHTS?

The real problem that confronted the framers of Indian Constitution was how to limit their selection of rights to certain categories only. What rights were fundamental and what are not, and why? If the rights of life, liberty and property were fundamental, what about right to employment and education? Has not the traditional concept of fundamental rights in its individualistic setting undergone a change in the modern era of the welfare State? The framers had no doubt about the answers to these questions. They were quite conscious of the change in the character of the modern state. They knew that the age of the American Bill of Rights which believed in the "perfectibility of man and the malignancy of Government" had gone for ever. And yet, it was a task of utmost difficulty. This was because the State in India was not yet in a position to guarantee the right to employment or education. It was a matter of physical impossibility, not the lack of will. Hence, they divided these rights into two categories, justiciable and non-justiciable. Justiciable rights are those which can be enforced by a court of law. Part III of the Constitution which is entitled "Fundamental Rights" contains justiciable rights like the right of life, liberty and property. Part IV, "The Directive principles of State Policy, contains non-justiciable rights such as right to employment and education. The citizen has no judicial remedy if he is denied the enjoyment of these rights.

powers, in the matter of enforcing bylaws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevents such powers being exercised in a discriminatory manner.

Article 14 prevents discriminatory practices only by the State and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his employees or treats his employees, unequally, the person discriminated against will have no judicial remedy.

What is the difference between "equality before the law" & "equal protection of laws"?

The phrase "equality before the law" occurs in almost all written constitutions that guarantee fundamental rights. Equality before the law is an expression of English Common Law while "equal protection of laws": owes its origin to the American Constitution. Both the phrases aim to establish what is called the "equality to status and of opportunity" as embodied in the Preamble of the Constitution. While equality before the law is a somewhat negative concept

implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept employing equality of treatment under equal circumstances.

Prohibition of Discrimination on Certain Grounds (Art. 15)

Not content with a mere general declaration of the right to equality, and fully conscious of the types of discrimination prevalent in the country, the framers of Indian Constitution went a step further in Article 15, which is more illustrative in character than introducing anything substantially new. Yet, there is one striking feature in it which brings within its scope, although in a limited way, the actions of the private individuals. According to the Article, "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Further, on the basis of any of these grounds a citizen cannot be denied access to shops, public restaurants or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

Article 15 has, however, two notable exceptions in its application. The first of these permits the State to make special provision for the benefit of women and children. The second, allows the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The special treatment noted out to women and children is in the larger and long range interest of the community itself. It also recognises the social customs and background of the country as a whole. The second exception was not in the original Constitution but was later on added to it as a result of the First Amendment of the Constitution in 1951.

Equality of Opportunity in matters of Public Employment (Art. 16)

Article 16 guarantees equality of opportunity in matters of public employment. In the first part of the Article, the general rule is laid down that

there shall be equal opportunity for all citizens, wherever they are living in matters of employment under the State, thereby the universality of Indian citizenship is emphasized. According to this, the State is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, descent, place of birth or residence. The next clauses are in the nature of exceptions. According to the first, residence qualifications may be made necessary in the case of appointments under the State for particular positions. But instead of leaving it to individual States to make any rules they like in this regard, the power is vested in Parliament to prescribe the requirement as to residence within the State. This is intended to make the qualifying test uniform throughout India. The second exception is in favour of reservation of positions in public employment for any backward class of citizens. This is meant to help those who had very little share so far in public employment. The determination of a backward community is a matter that is left to each State Government. The third exception seeks to take out of the scope of the general principle the management of the affairs of any religious or denominational institution under any special law providing for the same.

Abolition of Untouchability (Art. 17)

Article 17 abolishes "untouchability" and its practice in any form is made an offence punishable under the law. No article in the Constitution was adopted with such unanimity and so great an acclamation and enthusiasm as this article. The custom of untouchability had not only thrown millions of the Indian population into abysmal gloom and despair, shame and disgrace, but it had also eaten into the very vitals of the nation. There would be no better sign of the determination to eradicate the evil than incorporating this Article into the chapter on Fundamental Rights in the Constitution.

The Untouchability Offences Act was amended in 1976 making its penal clauses more stringent. The Act has been also renamed as the Protection of Civil Rights Act. One significant new provision of the Act is that a person convicted of an untouchability offence will be disqualified for contesting the elections. It was for the first time that such a provision became a law in the history of elections in India.

Abolition of Titles (Art. 18)

In the creation of a society which seeks to establish political, social and economic equality and thereby aspires to become truly democratic, there is no room for some individuals to hold titles thus creating artificial distinctions among members of the same society. Recognition of titles and the consequent creation of a hierarchy of aristocracy had been denounced as an anti-democratic practice as early as the eighteenth century by both the American and the French revolutions. In India, the practice of the British Government conferring a number of titles every year mostly on their political supporters and Government officers, had already created a peculiar class of nobility among the people. It was difficult, on principle, for independent India to recognise and accept these titles apart from considerations of the merit of those who held them. Article 18, therefore, abolished all titles and the State is prohibited from conferring titles on any person. The only exception made to the strict rule of non-recognition of titles is that provided in favour of academic or military distinctions.

Right to Freedom (Art.19)

Personal Liberty is the most fundamental of fundamental rights. Articles 19 to 22 deal with different aspects of this basic right. Taken together, these four articles form a charter of personal liberties, which provides the backbone of the chapter on Fundamental Rights. Of these, Article 19 is the most important and it may rightly be called the key-article embodying the "basic freedoms" under the Constitution, guaranteed to all citizens. These are the rights:

- 1) To freedom of speech and expression.
- 2) To assemble peaceably and without arms.
- 3) To form associations or unions;
- 4) To move freely throughout the territory of India;
- 5) To reside and settle in any part of the territory of India and
- 6) To practice any profession, or to carry on any occupation, trade or business.

It is impossible to exaggerate the importance of these freedoms in any democratic society. Indeed, the very test of a democratic society is

the extent to which these freedoms are enjoyed by the citizens in general. These freedoms as a whole constitute the liberty of the individual.

What restrictions are put on the freedom of speech and expression?

There are eight restrictions on the freedom of speech and expression. These are in respect of the:

1. Sovereignty and integrity of India
2. Security of the State
3. Friendly relations with foreign State
4. Public order
5. Decency or morality
6. Contempt of court
7. Defamation
8. Incitement to violence

Freedom of the Press

There had been much criticism, both within Constituent Assembly and outside, of the omission of a specific reference to freedom of the Press and the failure to guarantee it along with the freedom of speech. The omission was considered a serious lapse on the part of the Drafting Committee by the protagonists of "Free Press" as a separate right. Nevertheless, the Drafting Committee did not think, it necessary to incorporate right of this nature in the chapter of Fundamental Rights.

Speaking on behalf of the Committee, Dr. Ambedkar said that the Press was merely another way of expression of an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a Press or the managers of the Press are all citizens and, therefore, when they choose to write in newspapers, they are merely exercising their right of expression. Therefore, no special mention is necessary of the freedom of the Press. The word "expression" that is used in Article 19(1) (a) in addition to "speech" is comprehensive enough to cover the freedom of Press.

Other rights covered under the Right to Freedom (Art.19)

Right to Assemble [Art. 19 (1) (b) and 19

(3)]: One of the basic protections of free speech is the right of free assembly. In fact, freedom of assembly and freedom of speech go hand in hand. The framers of the Constitution knew that the right to peaceably assemble, public debate and discussion, for political activities and such other purposes was essential to make the freedom of speech and expression real. Hence, the constitutional guarantee to assemble peaceably and without arms. The right to assembly can be restricted only in the interest of public order and the restrictions ought to be reasonable.

Right to Form Associations and Unions

[Art, 19 (1) (c) and 19(4)]: The right guaranteed to form association or unions is more or less a charter for all working people in this country. The right to form associations or union can be restricted only in the interest of public order or morality. There can be no association or union for an illegal or conspiratorial purpose. Nor can there be an association to further immorality. The right to form associations or unions however, is not available to every citizen in the same measure. A member of the public services, although he is a citizen cannot claim the right to the extent that a private citizen can. Being a Government servant, he is bound by his service rules and he cannot challenge his service rules on the ground that they stand in his way of fully enjoying the right to form associations.

Right to Free Movement and to Residence

[Art. 19(1) (d), (e) and 19 (5)]: The right to move freely throughout the territory of India, to reside and settle in any part of it are guaranteed under sub-clauses (d) and (e) respectively of clause (1) of Article 19. The importance of the freedom of movement and residence cannot be exaggerated. In fact, the enjoyment of the freedoms guaranteed under the other rights depends largely on the freedom of movement unhampered and uncircumscribed. The state's power to place reasonable restrictions of these freedoms is limited.

Freedom of Profession, Occupation, Trade or Business [Art 19 (1) (g) and 19 (6)]: Article 19 (1) (g) guarantees the freedom to practice any profession or to carry on any occupation, trade or business. A doubt was expressed in the Constituent Assembly whether these were fun-

damental rights at all. Perhaps the only other Constitutions which have given them the status of fundamental rights are those of Ireland and Switzerland. It seems that the framers of the Indian Constitution had been influenced by the complex social system that prevailed in India, in seeking to guarantee rights such as these. It has been the bane of India's social life that professions were inherited rather than acquired. A society dominated by Caste, and professions based upon Caste or religion, have little to offer for the building up of a community enlivened by social mobility and dynamism. Such a society is often intolerant to persons who change the traditional professions of their ancestors and is eager to maintain a petrified social order. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society.

Protection in Respect of Conviction for Offences (Art-20)

Article 20, affords protection against arbitrary and excessive punishment to any person who commits an offence. There are four such guaranteed protections:

- (1) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed the offence;
- (2) No person can be subjected to greater penalty than what might have been given to him under the law that was prevalent when he committed the offence;
- (3) No person can be prosecuted and punished for the same offence more than once.
- (4) No person accused of an offence can be compelled to be a witness against himself.

Protection of Life and Personal Liberty (Art -21)

Article 21, is one of the shortest in the constitution over which there took place one of the longest and most through going discussions in the Constituent Assembly. It enacts that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21, gives protection to life and per-

sonal liberty to the extent therein mentioned. It does not recognise the right to life and personal liberty as an absolute right but limits the scope of the right itself. The absolute right is, by the definition in the article, qualified by the risk of its being taken away in accordance with the procedure established by law. It is this circumscribed right which is substantively protected by Article 21, as against the executive as well as the legislature,, for the Constitution has conditioned its deprivation by the necessity for a procedure established by law made by the legislature. While sub-clauses 2 to 6 of Article 19 have put a limit on the fundamental right of a citizen, Article 21 along with Article 22 puts a limit on the power of the State given under Article 246, read with the legislative lists. Under the Constitution, life and personal liberty are balanced by restrictions on the rights of the citizens as laid down in Article 19, and by the checks put upon the State by Article 21 and 22.

Right to Education (Art-21 A)

This right was inserted in the list of fundamental rights by the 86th Amendment Act, 2002. It provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Protection against Arrest and Detention (Art - 22)

Article 22 guarantees three rights. First, it guarantees the right of every person who is arrested to be informed of the cause of his arrest, secondly, his right to consult, and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority. All these rights are without any qualifications and are, therefore, in absolute terms.

There are however two exceptions to the universal application of the rights guaranteed under the first two clauses of Article 22. These relate to.

- 1) Any person who is an enemy alien, or
- 2) Any person who is arrested or detained under any law providing for preventive detention.

India owed freedom from foreign rule as a result of great sacrifices by thousands of patriots. Many of them died in British jails in the course of the struggle for independence, many others spent years of their lives in prison. Naturally, freedom and liberty are gift too precious to all of them who lived to see India free. And they wanted to safe guard these rights and facilitate their enjoyment as best as possible. Against this background it is easy to understand and appreciate the deep rooted feeling against what happened to be personal freedom during the emergency. At the same time, it must be remembered that democratic freedom in India is still too young and tender a plant to be capable of defending itself easily against overt or covert onslaughts that may be directed against it by elements which have no regard either for democratic liberties or orderly progress. Vigilance is still required to protect the country's hard won freedom and national unity from forces of subversion and violent revolution.

Right against Exploitation (Art. 23 & 24)

Article 23 and 24 deal with the right against exploitation. Article 23 which prohibits traffic in human beings and beggar; and similar forms of forced labour. This provision in Indian Constitution is comparable to the Thirteenth Amendment of the American Constitution abolishing slavery or involuntary servitude. At the time of the adoption of the Constitution there was hardly anything like slavery or the widespread practice of forced labour in any part of India. The National Freedom Movement since the twentieth century had been a rallying force against such practices. However, there were many areas of the country where "untouchables" were being exploited in several ways by the higher castes and richer classes.

According to Article 24, no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This Article is now intimately related to a Fundamental Rights as well as Fundamental Duties which call upon the State to enforce Universal Compulsory and Free Primary Education to all children in the country up to the age of 14 years. This comes of the realisation that children should prepare during this period for the task of the future as useful

and responsible citizens. Employment of children is an uncivilized and even inhuman practice. It is exploitation. It stunts their growth, corrupts their moral fibre and often drives them to delinquency. Naturally, it must be prohibited and incentives to divert them from employment should be provided.

Right to Freedom of Religion (Articles 25 to 28)

It is a paradox that while almost every religion stands for and preaches the universal brotherhood of man; religion has been a constant source of conflict in human history. The idea of guaranteed fundamental rights itself was a device directed towards the avoidance of such a contingency. The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. It went a step further and adopted a separate group of articles dealing solely with the right of freedom of religion. The freedoms provided in Articles 25, 26, 27, and 28 are conceived in most generous terms to the complete satisfaction of religious minorities.

Article 26, is in fact, a corollary to Article 25 and guarantees the freedom to manage religious affairs. According to this, every religious denomination is given the right (a) to establish and maintain institutions for religious and charitable purposes, (b) to manage its own affairs in matters of religion, (c) to own and acquire movable and immovable property, and (d) to administer such property in accordance with law. Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes.

It further may be noted that the provisions of the Indian Constitution regarding the right to religious liberty cover all the freedoms relating to religion set forth in the Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations at the Palais de Chaillot, Paris, on December 10, 1948. This document states, "Everyone has the right

to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Since the UN General Assembly has proclaimed this Declaration of Human Rights as a common standard of achievement for all peoples and all nations, Indians may well be proud that at least in the matter of religious freedom their Constitution represents a world ideal.

WHAT ARE THE RESTRICTIONS ON THE FREEDOM OF RELIGION?

Although the freedom of religion guaranteed by Article 25 of Indian Constitution is wide in scope, it is far from being absolute. It is subject to public order, morality and health, and to the other provision of Part III of the Constitution Article 25(1). This freedom also shall not affect the operation of any existing law, or prevent the State from making any law:

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, and

(b) regulating for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Other provisions related to Secularism

In conformity with the principle of the Secular State, the Constitution of India establishes a single common citizenship. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them Article 15(1). In particular, no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to : (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public Article 15 (2). The educational facilities provided by the State are to be enjoyed equally by all the citizens. No citizen shall be denied admission into any educational institution funded by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them [Article 29 (2)].

Cultural and Educational Rights (Articles 29 and 30)

Under Article 29 and 30, certain cultural and educational rights are guaranteed. Section (1) of Article 29, guarantees the right of any section of the citizen residing in any part of the country having a distinct language, script or culture of its own, to conserve the same. Section (2) prohibits any discrimination based only on religion, race, caste, language or any of them in the matter of admission to State or State-aided educational institutions.

Section (1) of Article 30 provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". According to section (2) the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority community, whether based on religion or language.

Article 30 is a charter of educational rights. It guarantees in absolute terms the right of linguistic and religious minorities to establish and administer educational institutions of their choice and, at the same time, claim grants-in-aid without any discrimination based upon religion or language. The fact that the Constitution does not impose any express restriction in the scope of the enjoyment of this right, unlike most of the rights included in the chapter on Fundamental Rights, shows that the framers intended to make its scope unfettered. This does not, however, mean that the State cannot impose reasonable restrictions of the regulatory character for maintaining standards of education. This point has been made abundantly clear in judicial pronouncements.

Special significance of Religious, Educational and Cultural Rights

Taking the right guaranteed under religious, educational and cultural fields as a whole, it must be noted that these are couched in the most comprehensive language, and the maximum possible freedom is guaranteed to the minorities, religious and linguistic. The special significance of these provisions is that while the impact of other rights in Part-III of the Constitu-

tion is on the people of India as a whole, irrespective of religion, caste, race, or language, that of these rights is only on the minorities. The democratic basis of the Constitution would be lost if the minorities were not given adequate protection to preserve their religious beliefs, and institutions of education and culture, the Constitution may then be branded as an instrument for the furtherance of the majority community and the language of the majority. Naturally, resentment against such a position would manifest all over the country. Moreover, such a position would have discredited the foundation of the national movement against foreign rule, in which every religious and linguistic minority in India was represented and solemn promises had been made by representative of the majority community to safeguard the legitimate interests of the minorities against all forms of tyranny in a free India.

Right to Constitutional Remedies (Art. 32)

A declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of the rights. Hence the framers of the Constitution were in favour of adopting special provisions guaranteeing the right to constitutional remedies. This, again, is in tune with the nature in general of the various provisions embodied in the chapter on Fundamental Rights. Article 32 has four sections.

- The first section is general in scope and says that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed".
- The second section deals, in more specific terms, with the power of the Supreme Court to issue writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights.
- The third section empowers Parliament to confer the power of issuing writs or orders on any other court without prejudice to the power of the Supreme Court in this respect. So far, Parliament has not passed any law conferring the power of issuing writs on any courts.

- The last section deals with the conditions under which this right can be suspended.

As the guardian of fundamental rights the Supreme Court has two types of jurisdiction, original and appellate. Under its original jurisdiction, any person who complains that his fundamental rights have been violated within the territory of India may move the Supreme Court seeking an appropriate remedy. The fact that they may have a remedy in any of the High Courts does not preclude him from going directly to the Supreme Court.

Writs

Habeas corpus - 'You may have the body' (a person unlawfully detained is sought to be set at liberty)

Mandamus: 'We order' (commanding a person or a body to do that which it is his, or its duty)

Prohibition: Issued primarily to prevent an inferior court from exceeding its jurisdiction

Certiorari: Orders the removal of a suit from an inferior court to a superior court

Quo warranto: Restrains a person from acting in an office to which he is not entitled

Habeas Corpus

Habeas corpus is a Latin term which literally means "You may have the body". Under the law of England, as a result of long usage, the term came to signify a prerogative writ, a remedy with which a person unlawfully detained is sought to be set at liberty. It is mentioned as early as the fourteenth century in England and was formalized in the Habeas corpus Act of 1679. The privilege of the use of this writ was regarded as a foundation of human freedom and the British citizen insisted upon the privilege wherever he went whether for business or colonization. This is how it found a place in the Constitution of the United States when the British colonies in America won their independence and established a new State under that Constitution.

In India, under the Constitution, the power to issue writ of habeas corpus is vested only in the Supreme Court and High Courts. The writ is a direction of the Court to a person who is

detaining another, commanding him to bring the body of the person in his custody at a specified time to a specified place for a specified purpose.

A writ of habeas corpus has only one purpose: to set at liberty a person who is confined without legal justification; to secure release from confinement of a person unlawfully detained. The writ does not punish the wrong-doer. If the detention is proved unlawful, the person who secures liberty through the writ may proceed against the wrong - doer in any appropriate manner. The writ is issued not only against authorities of the State but also to private individuals or organisations if necessary.

Mandamus

The Latin word 'mandamus' means 'we order'. The writ of 'mandamus' is an order of the High Court or the Supreme Court commanding a person or a body to do that which it is his, or its duty to do. Usually, it is an order directing the performance of ministerial acts. A ministerial act is one which a person or body is obliged by law to perform under given circumstances. For instance, a licensing officer is obliged to issue a license to an applicant if the latter fulfills all the conditions laid down for the issue of such license. Similarly, an appointing authority should issue a letter of appointment to a candidate if all the formalities of selection are over and if the candidate is declared fit for the appointment. But despite the fulfillment of such conditions, if the officer or the authority concerned refuses or fails to issue the appointment letter, the aggrieved person has a right to seek the remedy through a writ of 'mandamus'. There are three essential conditions for the issue of writ of 'mandamus'.

- First, the applicant must show that he has a real and special interest in the subject matter and a specific legal right to enforce.
- Secondly, he must show that there resides in him a legal right to the performance sought, and;
- Finally, that there is no other equally effective, convenient and beneficial remedy.

Prohibition

A writ of prohibition is issued primarily to prevent an inferior court from exceeding its jurisdiction or acting contrary to the rule of natural justice, for example, to restrain a judge

from hearing a case in which he is personally interested. The term 'inferior courts' comprehends special tribunals, commissions, magistrates and officers who exercise judicial powers, affecting the property or right of the citizen and act in a summary way or in a new course different from the common law. It is well established that the writ lies only against a body exercising public functions of a judicial or quasi-judicial character and cannot in the nature of things be utilised to restrain legislative powers.

Certiorari

Certiorari is an ancient prerogative writ which order the removal of a suit from an inferior court to a superior court. It may be used before a trial to prevent an excess or abuse of jurisdiction and to remove the case for trial to a higher court. It is invoked also after trial to quash an order which has been without jurisdiction or in defiance of the rules of natural justice.

Often a writ of Certiorari is sought along with prohibition, so that not merely may an invalid act be reviewed by a superior court (certiorari), but its operation may also be restrained (prohibition). While prohibition and certiorari are so intimately related to each other, prohibition is the converse of mandamus. The former is invoked to prevent a court or other authority from doing something which it has not the power to do, while the latter is called in aid to require it to do something which it is bound to do.

Quo Warranto

The writ of quo warranto is a common law process of great antiquity. According to this, the High Courts or the Supreme Court may grant an injunction to restrain a person from acting in a office to which he is not entitled and may also declare the office to be vacant. What the court has to consider in an application for a writ of quo warranto is whether there has been usurpation of an office of a public nature and office is substantive in character, i.e., office independent in title. It is a remedy given by law at the discretion of the Court and is not issued as a matter of course. An application for the issue of a writ of quo warranto is maintainable only in respect of offices of public nature which are the creation of statute and not against private institutions.

DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Indian Constitution which deals with the Directive Principles of State Policy, is directly connected with the Preamble. The Preamble gives us the fundamental principles on which the Constitution has been founded and the Directive Principles of State Policy lay down the fundamental principles according to which the Constitution is to be operated. Though the Directive Principles are not enforceable in a Court, they are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The provisions contained in this Part, shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Part IV (Articles 37 to 51) contains what may be described as the active obligations of the State. The State shall secure a social order in which social, economic and political justice shall inform all the institutions of national life. Wealth and its source of production shall not be concentrated in the hands of the few but shall be distributed so as to subserve the common good, and there shall be adequate means of livelihood for all and equal pay for equal work. The State shall endeavour to secure the health and strength of workers, the right to his right to education is subject to the limits of economic capacity and development of the State.

What are the different categories of DPSPs?

The Directive Principles covering Article 38 to 51 of the Indian Constitution can be classified in the following categories:

- (a) **Socialistic Principles** : (i) Adequate means of livelihood for all citizens; (ii) fair distribution of wealth and material resources among all classes and to prevent concentration of wealth in a few hands; (iii) equal pay for equal work for men as well as women; and (iv) to secure just and humane conditions of work and maternity relief.
- (b) **Gandhian Principles** : (i) To organise village panchayats and to endowing them with

such powers and authority as may be necessary to enable them to function as units of self-government; (ii) to promote cottage industries on individual or co-operative basis in rural areas; (iii) the safeguard and promote the educational and economic interests of the scheduled castes and scheduled tribes; (iv) to bring about the prohibition and consumption of intoxicating liquor; and (v) to organise agriculture and animal husbandry on modern and scientific lines and in particular prohibit slaughter of cows.

- (c) **Liberal Principles** : (i) To secure uniform and liberal code of law for all citizens of India; (ii) to separate the judiciary from the executive; (iii) to raise the standard of nutrition and standard of living of the people; (iv) to protect monuments of historical and national interest; (v) equal justice and free legal aid to economically backward classes; (vi) participation of workers in management of organisations engaged in any industry; and (vii) promotion and improvement of environment and safeguarding of forests and wild life.
- (d) **Provisions relating to be International Peace and Security** : (i) To promote international peace and security ; and to maintain just and honourable relations between nations; (iii) to foster respect for international law and treaty obligations; (iv) to encourage settlement of disputes by arbitration.

WHAT IS SUPERIOR - FUNDAMENTAL RIGHTS OR DIRECTIVE PRINCIPLES?

It is now universally recognised that the difference between the fundamental rights and the directive principles lies in this that the fundamental rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the directive principles are aimed at securing social and economic freedom by appropriate action. The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts, so they are made justiciable. However, notwithstanding their great importance the directive principles cannot in their nature be enforced in a court of law. It is unimaginable that any court can compel a legislature to make a law. If the court can compel Parliament to make laws then parliamentary democracy would soon be reduced to a oligarchy of judges. It is for this rea-

son that the Constitution says that the directive principles shall not be enforceable by courts. However, it does not mean that the directive principles are less important than the fundamental rights for the simple reason that they are not judicially enforceable. Article 37 of the Constitution emphatically states that directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making principles in interpreting the Constitution and the laws. The directive principles thus be interpreted in the light of the directive principles and the latter should the Constitution must be ever present in the minds of the judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the directive principles. In *Bandhua Mukti Morcha v. Union of India*⁵², the Court has also held that though the directive principles are unenforceable by the courts and the courts cannot direct the legislature or executive to enforce them, the State to enforce the law, particularly when non-enforcement of law leads to denial of a fundamental right.

DPSPs explained

State to secure a social order for the promotion of welfare of the people: The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing -

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and

in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

This article specifically requires the State to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour. Article 39 (b) and (c) together with other provisions of the Constitution contain the main objectives, namely, the building of a welfare society and an equalitarian social order in the Indian Union. When the Constitution-makers envisaged development in social, economic and political fields, they did not desire that it should be a society where a citizen will have the dignity of the individual.

Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in another way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Organisation of village panchayats: The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Under this article, the State is expected to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. But, this directive is to be read with the directive contained in Article 50 which lays down the principle of separation of the executive from the judiciary. The organisation of village panchayats must be carried out in practice consistently with Article 50 so as to maintain the fundamental principle of the rule of law. Power of the people, which is the soul of a republic, stands subverted if decentralisation and devolution desiderated in Article 40 is ignored by the executive in action even after holding elections to the floor-level of administrative bodies.

Right to work, to education and to public assistance in certain cases: The State shall, within the limits of its economic capacity and

development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. The State is directed by this article to ensure to the people within the limits of its economic capacity and development: (i) employment, (ii) education, and (iii) public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief. These directives, like those contained in Article 38, relate to economic rights.

Living wage etc. for workers - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular State shall endeavour to promote cottage industries on an or co-operative basis in rural areas.

This article requires the State to strive to secure to the worker work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment leisure and social and cultural opportunities. The last portion of the article lays emphasis on the promotion of cottage industries on an 'individual or co-operative basis in rural areas'. Article 43 read with Article 38 requires the State to provide work but not necessarily a job in State civil service or a security against the termination of such service for good cause.

Important cases related to fixation of minimum wages of labourers are -

- *Bijay Cotton Mills Ltd. v. State of Ajmer*
- *Standard Vaccum Refining Co. of India v. Workmen*

Participation of workers in management of industries: The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment or other

organisations engaged in any industry. In upholding the right of workers to be heard in the winding up proceedings of a company, the court drew support from this article.

Uniform civil code for the citizens: The State shall endeavour to secure for the citizens a uniform civil code throughout territory of India. This article requires on the State to take steps for establishing a uniform civil code throughout the territory of India. Two objections were put forward in the Constituent Assembly against the making of a uniform civil code applying throughout India: firstly, it would infringe the fundamental right to freedom of religion mentioned in Article 25 and secondly, it would be a tyranny to the minority. The first objection is misconceived. The directive contained in Article 44 in no way infringes the freedom of religion guaranteed by Article 25. Clause (2) of that article specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in clause (1) of Article 25.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: 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. In *States of Madras v. Champakam Dorairajan*, the Supreme Court refused to let the Fundamental Right declared in Article 29(2) to be whittled down by this article. The Court asserted the supremacy of the fundamental rights over the Directive Principles of State Policy.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prolongation of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. No one has a legal right to sell liquor. From the earliest times it has been found

expedient to control the use and traffic in liquor, and this control embraces both regulatory and prohibitory measures. This doctrine has been recognised by the Directive Principles of State Policy in this article.

Organisation of agriculture and animal husbandary: The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle. The protection recommended by this part of the directive is confined only to cows and calves and to those animals which are presently or potentially capable of yielding milk or of doing work as draught cattle, but does, not from the very nature of the purpose for which it is obviously recommended, extend to cattle, such thought at one time were milch or draught cattle have ceased to be such.

Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. The Environment (Protection) Act, 1986 and the Wild Life (Protection) Act, 1972 as amended in 1986 are among the steps taken under this article.

Protection of monuments and places and objects of national importance: It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, (declared by or under law made by Parliament) to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Separation of judiciary from executive: The State shall take steps to separate the judiciary from the executive in the public services of the State. The Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts of the branches have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State of functions that essentially belong to another. Broadly stated, Article 45 provides that there shall be a separate judicial service free from executive control.

Promotion of international peace and security: The State shall endeavour to

- (a) promote international peace and security.;
- (b) maintain just and honourable relations between nations;

Directive in Other Parts of Indian Constitution (Not in Part IV)

The following Directives are also non-justiciable:

- **Art. 350 A:** Enjoins every State and every local authority within the State to provide adequate facilities for instruction in the mother tongue at primary stage to children of linguistic minorities.
- **Art 351 A:** Enjoins the Union to promote the spread of Hindi language so that it may serve as a medium of expression of all the elements of the composite culture of India.
- **Art 355 A:** Claims of Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of Union or of a State.

- (c) foster respect for international law and treat obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration

Fundamental Rights vs. Directive Principles of State Policy

It should be remembered that the Preamble, the Fundamental Rights and the Directive Principles are all integral parts of the same constitutional edifice. They are all equally important and have to be read with each other. The emphasis in the entire scheme of the Constitution under the headings of the Preamble, the Fundamental Rights and the Directive Principles is on building an egalitarian society and on the concept of socio-economic justice. Inasmuch as the Directive Principles, though declared to be fundamental as guiding principles for making and administering laws, were not made enforceable in courts of law, they represented subtle compromise between what the framers, as the leaders of the freedom struggle, looked upon as the ideal or the goal and what, as realists, they found to be immediately feasible. The Fundamental Rights and the Directive Principles together constituted the soul of the Constitution.

It is now clearly understood that there is no essential dichotomy between Rights and Duties or between the Fundamentally Rights and the

Directive Principles. They complement and supplement each other (*Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 146). If the Fundamental Rights represent the don'ts for the Government and the legislature, the Directive Principles represent the do's. There is no conflict.

Again, while speaking on the constitution Fourth Amendment in the Lok Sabha, Nehru declared that the responsibility for the economic and social welfare policies of the nation should lie with Parliament and not with the courts. In so far as the decisions of courts had shown that there was some inherent contradiction between the Fundamental Rights and the Directive Principles, it was for Parliament to remove the contradiction and "make Fundamental Rights subserve the Directive Principles of State Policy."

A distinction is sometimes sought to be made between what may be called 'positive rights' and 'negative rights'. Broadly speaking, while Part III deals with areas of individual freedom and the extent to which the State can restrain it, Part IV deals with positive duties cast upon the State to attain the ideal of social and economic justice. Even among the fundamental rights, however, there are some positive injunctions which seek to protect the interests of the society and the rights of the poor citizens from encroachment by entrenched sections. Thus, article 17 abolished untouchability and makes its practice in any form an offence punishable by law. Article 15 inter alia provides that no citizen shall be discriminated against in the use of public places like shops, wells, roads, eating houses etc. on account of his religion, race, caste, sex or place of birth. Article 23 prohibits another great social evil, that of forced labour. The whole effort has been to ensure that the fundamental rights of the citizens do not degenerate into the liberties of the few against the interests of the many.

FUNDAMENTAL DUTIES

The fundamental duties which were added by the Forty-second Amendment of the Constitution in 1976, in addition to creating and promoting a culture, also strengthen the hands of the legislature in enforcing these duties vis-a-vis the fundamental rights. Even though Part IV A, laying down certain duties of the Indian

citizens, is one of the most valuable parts of the Constitution. It is also the most neglected.

While the Fundamental Rights provisions covered the rights of the individual and the Directive Principles the duties of the State, there were until 1976 no provisions in our Constitution laying down the duties of the individual. For every right, there is a corresponding duty. Duty is an inalienable part of right; the two represent the two sides of the same coin. What is duty for one is another's right and vice versa. If all men have a right to life, a duty is also cast upon all men to respect human life and not to injure another person.

Ten Fundamental Duties were incorporated in the Constitution under Art. 51 A through the 42nd Amendment in 1976 on the recommendation of Swaran Singh Committee. Eleventh duty was added by 86th Amendment in 2002. These consist of:

1. abiding by the Constitution and national flag respectively;
2. to cherish and follow noble ideas of our freedom struggle;
3. to maintain integrity;
4. to render national service when called upon to do so;
5. to promote common brotherhood and harmony;
6. to preserve the rich heritage of our composite culture;
7. to protect and improve our environment;
8. to develop scientific temper and humanism;
9. to abjure violence and;
10. to strive towards excellence in all spheres of life.
11. to provide opportunities for education to child/ward aged 6-14 years.

The fundamental duties are not justiciable like Fundamental Rights. However, a person is liable to punishment if he deliberately violates them. Like the duties of the State under the Directive Principles, the duties of citizens also cannot be enforced by courts. There is no provision in the Constitution for ensuring their compliance or for punishing their violation. But the courts can certainly take them into consideration while construing a law amenable to more than one interpretation. Article 51 A (g) regarding protection of environment has par-

ticularly come up before the courts. In the ultimate analysis, the only way to bring about adherence to fundamental duties is through public opinion and education in citizenship values and duties, and building adequate awareness and a congenial climate wherein every citizen feels proud and bound to perform his constitutional duties to the nation and pay his debt to society.

PRESIDENT OF INDIA

In the parliamentary set up of Government, the Executive is responsible for legislation. The British model of parliamentary form was found to be most viable for Indian set up. In this system of parliamentary democracy, President, who is indirectly elected, is also the Head of the State. The executive powers of the Union Government are vested in the President. The President is also the Supreme Commander of the Armed Forces. There is no constitutional bar on the number of time a person can be elected as President. The convention of two-terms, which was started in Nehruvian period, did not last too long and from the last few Presidents Indians have resorted to one-term convention. The President is not a member of either House of Parliament or for that matter a State Legislature. The term of the office is five years though there are provisions that it can be terminated in between. It can be terminated on four infra mentioned grounds : (1) by resignation in writing to the Vice President of India, (2) by impeachment for violation of the Constitution; (3) by death, and (4) invalidation of President's election by the Supreme Court of India.

What qualifications are required for the office of the President of India?

In order to be qualified for election as the President of India, a person must ---

- (a) be a citizen of India;
- (b) have completed the age of thirty-five years;
- (c) be qualified for election as a member of the House of the People; and
- (d) must not hold and office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments [Art. 58]

But a sitting President or Vice-President of the Union or the Governor of any State or a Minister either for the Union or for any State is not disqualified for election as President [Art 58]

Election of The President

The President is elected by an electoral college consisting of elected members of both Houses of Parliament and the State Legislative Assemblies. In this provision, the term "State" includes the National Capital Territory of Delhi and the Union Territory of Pondicherry. Indirect election is resorted to because President is supposed to be a nominal titular Head of the State acting on the advice of Council of Ministers headed by the Prime Minister. Members of the State Legislative Councils are excluded from participating in President's election. In the Electoral College each member has one vote though the value of each vote is different from one State to the other. Likewise, the value of vote of the Member of Parliament also differs from the value of vote of the members of a Legislative Assembly. The election does take account of the fact that States have their uniform representation and parity is maintained between the Union and the States. This is also culminated into the fact that federal ethos is further strengthened.

Why indirect election of President was supported by the framers of Indian Constitution?

Indirect election of President gives recognition to the status of the States in the federal system. The system of indirect election was criticised by some as falling short of the democratic ideal underlying universal franchise, but indirect election of President was supported by the framers of the Constitution the following grounds:

- (i) Direct election by an electorate of some one billion of people would mean a tremendous loss of time, energy and money
- (ii) Under the system of responsible Government introduced by the Constitution, real power would vest in the ministry; so, it would be anomalous to elect the President directly by the people without giving him real powers.

Term of Office of President

The President's term of office is five years from the date on which he enters upon his office; but he is eligible for re-election [Arts 56-

57]. The President may resign his office by writing under his hand addressed to the Vice President of India,

He can also be removed from his office for violation of the Constitution, by the process of impeachment [Art. 56]. The only ground for impeachment specified in Art. 61(1) is 'violation of the Constitution'.

Procedure for impeachment of the President

An impeachment is a quasi-judicial procedure in Parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated. But the charge cannot be preferred by a House unless-

- (a) a resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than 1/4 of the total number of members of that House; and
- (b) the resolution is then passed by majority of not less than 2/3 of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than 2/3 of the total membership of the House before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed [Art. 61].

Since the Constitution provides the mode and ground for removing the President he cannot be removed otherwise than by impeachment in accordance with the terms of Arts. 56 and 61.

Conditions of President's Office

The President shall not be a member of either House of Parliament or of a House of the legislature of any State, and if a member of either House of Parliament or a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President shall not hold any other office of profit [Art 59 (1)].

Powers & Functions of The President

The Constitution says that the "executive

WHAT EFFECT THE 44TH AMENDMENT HAD ON THE PRESIDENT?

After 44th Amendment, except in certain marginal cases referred to by the Supreme Court, the President shall have no power to act in his discretion any case. He must act according to the advice given to him by the Council of Ministers, headed by the Prime Ministers, so that refusal to act according to such advice will render him liable to impeachment for violation of the Constitution. This is subject to the President's new power to send the advice received from the Council of Ministers, in a particular case, back to them for their reconsiderations; and if the Council of Ministers adheres to their previous advice, the President shall have no option but to act in accordance with such advice. The power to return for reconsideration can be exercised only once, on the same matter.

power of the Union shall be vested in the President" [Art. 53]. The President of India shall thus be the head of the 'executive power' of the Union. Before we take up an analysis of the different powers of the Indian President, we should note the constitutional limitations under which he is to exercise his executive powers. It may be said that the powers of the President will be the powers of his Ministers, in the same manner as the prerogatives of the English Crown have become the 'privileges of the people' (Dicey) An inquiry into the powers of the Union Government, therefore, presupposes an inquiry into the provision of the Constitution which vest powers and functions in the President.

The Indian Constitution, by its various provisions, vests the following powers in the hands of the President under the expression 'executive power', subject to certain limitations.

1. Executive Powers: The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry on the business of the Government, However, it is evident that President is not free to use his powers, rather he acts (binding) on the advises of the Council of Ministers. In this regard, the 42nd Amendment is a mile-stone. The 44th Amendment, however, did loosen the grip to some extent as it gave the President of India the right to return

a bill for reconsideration of the Cabinet and is bound to give his consent when returned. In broad perspective, one can say that administrative powers of the President include administrative powers and military powers. Administratively, the President may not discharge any function as there are ministries responsible for such an act. This way President becomes a formal head and action is taken in his name.

In the matter of administration, not being a real head of the Executive like the American President, the Indian President shall not have any administrative function to discharge nor shall he have that power of control and supervision over the Departments of the Government as the American President possesses. But though the various departments of Government of the Union will be carried on under the control and responsibility of the respective Ministers in charge, the President will remain the formal head of administration, and as such, all executive action of the Union must be expressed to be taken in the name of the President. The only mode of ascertaining whether an order or instrument is made by the Government of India will be to see whether it is expressed in the name of the President and authenticated in such manner as may be prescribed by rules to be made by the President [Art. 77]. For the same reason, all contacts and assurance of proper made on behalf of the Government of India must be expressed to be made by the President and executed in such manner as the President may direct or authorise [Art. 299].

Again, though he may not be the 'real' head of the administration, all officers of the Union shall be his 'subordinate' [Art. 53(1)] and he shall have a right to be informed of the affairs of the Union. [Art. 78(b)]. The administrative power also includes the power to appoint and remove the high dignitaries of the State.

Under Indian Constitution, the President shall have the power to appoint -

- (i) The Prime Minister of India.
- (ii) Other Ministers of the Union.
- (iii) The Attorney - General for India.
- (iv) The Comptroller and Auditor General of India.

- (v) The judges of the Supreme Court.
- (vi) The judges of the High Courts of the States.
- (vii) The Governor of a State
- (viii) A commission to investigate interference with water-supplies.
- (ix) The Finance Commission.
- (x) The Union Public Service Commission and joint Commissions for a group of States.
- (xi) the Chief Election Commissioner and other members of the Election Commission
- (xii) A Special Officer for the Schedule Castes and Tribes.
- (xiii) A Commission to report on the administration of Scheduled Areas.
- (xiv) A Commission to investigate into the condition of backward classes
- (xv) A Commission on Official Language
- (xvi) Special Officer for linguistic minorities.

In making some of the appointments, the President is required by the Constitution to consult persons other than his ministers as well. Thus, in appointing the Judges of the Supreme Court, the President shall consult the Chief Justice as he may deem necessary [Art. 124(2)]. These conditions will be referred to in the proper places, in connection with the different offices.

The President shall also have the power to remove

- (i) his Ministers, individually;
- (ii) the Attorney-General for India;
- (iii) the Governor of a State;
- (iv) the Chairman or a member of the Public Service Commission of the Union or of a State, on the report of the Supreme Court;
- (v) a judge of the Supreme Court or of a High Court or the Election Commissioner, on an address of Parliament.

2. Legislative Powers: With regard to the legislative powers of the President, the Constitution of India is largely different from the American Constitution. The separating line of executive and legislation is not as strong as in case of the U.S.A. In India, President is both Executive Head and also the part of legislature. The President has power to summon and prorogue Parliament. He can also dissolve the Lok Sabha before the expiry of five year term. The President also enjoys the power to summon a joint sitting of both House of Parliament in case

of difference between the two. The President also addresses the opening session of a newly elected Parliament. He can also address it jointly in between. The President also enjoys the power to nominate certain member of the Parliament. In Rajya Sabha 12 members are nominated and 2 members from Anglo-Indian communities are nominated to the Lok Sabha if the community has not been adequately represented in his opinion in the House. Certain Bills do require a previous sanction of the President like money bill, the bill involving expenditure from the Consolidated Fund India, bill for the formation of a new state, bill relating to language, and the bill affecting the taxation of state. The bill passed by the parliament cannot become an Act before it has president's assent. He can, after his comments, return the bill limited in case of money bill. Thus legislative powers of the Indian President may be summarized as follows:

- (a) **Summoning, Prorogation, Dissolution:** Like the English Crown, our President shall have the power to summon or prorogue the Houses of Parliament and to dissolve the lower House. He shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them. [Arts. 85, 108].
- (b) **The Opening Address:** The President shall address both Houses of Parliament assembled together, at the first session after each general election to the House of the People and at the commencement of the first session of each year, and "inform Parliament of the causes of its summons" [Art. 87]. The practice during the last four decades shows that the President's Opening Address is being used for purposes similar to those for which the 'Speech from the Throne' is used in England viz. to announce the programme of the Cabinet for the session and to raise debate as to the political outlook and matters of general policy or administration. Each House is empowered by the Constitution to make rules for allotting time "for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House."
- (c) **The Right to Address and to send Mes-**

sages: Besides the right to address a joint sitting of both Houses at the commencement of the first session, the President shall also have the right to address either House or their joint sitting, at any time, and to require the attendance of members for this purpose [Art. 86(1)] This right is no doubt borrowed from the English Constitution, but there it is not exercised by the Crown except on ceremonial occasions.

Apart from the right to address, the Indian President shall have the right to send messages to either House of Parliament either in regard to any pending Bill or to any other matter, and the House must then consider the message "with all convenient despatch" [Art. 86(2)]. Since the time of George III, the English Crown has ceased to take any part in legislation or to influence it and messages are now sent only on formal matters. The American President, on the other hand, possesses the right to recommend legislative measures to Congress by messages though Congress is not bound to accept them. The Indian President shall have the power to send messages not only on legislative matters but also 'otherwise'. Since the head of the Indian Executive is represented in Parliament by his Ministers, the power given to the President to send message regarding legislation may appear to be superfluous, unless the President has the freedom to send message differing from the Ministerial policy, in which case again it will open a door for friction between the President and the Cabinet.

It is to be noted that during the first fifty-five years of the working of our Constitution, the President has not sent any message to Parliament nor addressed it on any occasion other than after each general election and at the opening of the first session each year.

- (d) **Nominating Members to the Houses:** Though the main composition of the two Houses of Parliament is elective, either direct or indirect, the President has been given the power to nominate certain members to both the Houses upon the supposition that adequate representation of certain interests will not be possible through the competitive system of election. Thus, (i) In the Council

of States, 12 members are to be nominated by the President from persons having special knowledge or practical experience of literature, science, art and social service [Art. 80(1)]. (ii) The President is also empowered to nominate not more than two members to the House of the People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House [Art. 331].

(e) **Laying Reports, etc., before Parliament:**

The President is brought into contact with Parliament also through his power and study to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity of taking action upon them. Thus, it is the duty of the President to cause to be laid before Parliament - (a) the Annual Financial Statement (Budget) and the Supplementary Statement, if any; (b) the report of the Auditor-General relating to the accounts of the Government of India; (c) the recommendations made by the Finance Commission, together with an explanatory memorandum of the action taken thereon; (d) the report of the Union Public Service Commission, explaining the reasons where any advice of the Commission has not been accepted; (e) the report of the Special Officer for Scheduled Castes and Tribes; (f) the report of the Commission on Backward Classes; (g) the report of the Special Officer for Linguistic Minorities.

(f) **Previous sanction to legislation:** The Constitution requires the previous sanction or recommendation of the President for introducing legislation on some matters, though, of course, the Courts are debarred from invalidating any legislation on the ground that the previous sanction was not obtained, where the President has eventually assented to the legislation [Art. 255]. These matters are:

(g) **Assent to legislation and Veto:** (A) Veto over Union Legislation.

A Bill will not be an Act of the Indian Parliament unless and until it receives the assent of the President. When a Bill is presented to the

President, after its passage in both Houses of Parliament, the President shall be entitled to take any of the following three steps.

- (i) He may declare his assent to the Bill; or
- (ii) He may declare that he withholds his assent to the Bill; or
- (iii) He may, in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. A Money Bill cannot be returned for reconsideration.

In case of (iii), if the Bill is passed again by both Houses of Parliament with or without amendment and again presented to the President, it would be obligatory upon him to declare his assent to it [Art. 111]

Nature of the Veto Power

Generally speaking, the object of arming the Executive with this power is to prevent hasty and ill-considered action by the Legislature. But the necessity for such power is removed or at least lessened when the Executive itself initiates and conducts legislation or is responsible for legislation, as under the Parliamentary or Cabinet system of Government. As a matter of fact, though a theoretical power of veto is possessed by the Crown in England, it has never been used since the time of Queen Anne.

Where, however, the Executive and the Legislature are separate and independent from each other, the Executive, not being itself responsible for the legislation, should properly have some control to prevent undesirable legislation. Thus, in the United States, the President's power of veto has been supported on various grounds, such as (a) to enable the President to protect his own office from aggressive legislation; (b) to prevent a particular legislation from being placed on the statue book which the President considers to be unconstitutional (for though the Supreme Court possesses the power to nullify a statue on the ground of unconstitutionally, it can exercise that power only in the case of clear violation of the Constitution, regardless of any question of policy, and only if a proper proceeding is brought before it after the statue comes into effect); (c) to check legislation which he deems to be practically inexpe-

dient or, which he thinks does not represent the will of the American people.

From the standpoint of effect on the legislation, executive vetoes have been classified as absolute, qualified, suspensive and pocket vetoes.

- **Absolute Veto:** The English Crown possesses the prerogative of absolute veto, and if it refuses assent to any bill, it cannot become law, notwithstanding any vote of Parliament. But this veto power of the Crown,

HOW MANY TYPES OF 'VETO POWER' ARE THERE?

From the standpoint of effect on the legislation, executive vetoes have been classified as absolute, qualified, suspensive and pocket veto.

Absolute Veto: Refusal of assent to any bill. The bill cannot become law, notwithstanding any vote of Parliament

Qualified Veto: A veto is 'qualified' when it can be overridden by a higher majority of the Legislature and the Bill can be enacted as law with such majority vote, overriding the executive veto.

Suspensive Veto: A veto is suspensive when the executive veto can be overridden by the Legislature by an ordinary majority.

Pocket Veto: By simply withholding a Bill during the last few days of the session of the Legislature, the Executive can prevent the Bill to become law.

has become obsolete since 1700, owing to the development of the Cabinet system, under which all public legislation is initiated and conducted in the legislature by the Cabinet, judged by practice and usage, thus, there is at present no executive power of veto in England.

- **Qualified Veto:** A veto is 'qualified' when it can be overridden by an extraordinary majority of the Legislature and the Bill can be enacted as law with such majority vote, overriding the executive veto. The veto of the American President is of this class. When a Bill is presented to the President, he may, if he does not assent to it, return the Bill within 10 days with a statement of this objection, to that branch of Congress in which it originated. Each House of Congress then reconsiders the Bill and if it is adopted again in each House, by a two-thirds vote of the members present, - the Bill becomes a law, notwithstanding the absence of the President's signature. The qualified veto is

then overridden. But, if it fails to obtain that two-thirds majority, the veto stands and the Bill fails to become law. In the result, the qualified veto serves as a means to the Executive to point out the defects of the legislation and to obtain a reconsideration by the Legislature but ultimately the extraordinary majority of the Legislature prevails. The qualified veto is thus a useful device in the United States where the Executive has no power of control over the Legislature, by prorogation, dissolution or otherwise.

- **Suspensive Veto:** A veto is suspensive when the executive veto can be overridden by the Legislature by an ordinary majority. To this type belongs the veto power of the French President. If, upon reconsideration, Parliament passes the Bill again by a simple majority, the President has no option but to promulgate it.

- **Pocket Veto:** There is a fourth type of veto called the 'pocket veto' which is possessed by the American President. When a Bill is presented to him. He may neither sign the Bill nor return the Bill for reconsideration within 10 days. He may simply let the Bill lie on his desk until the ten-day limit has expired. But, if in the meantime, Congress has adjourned (i.e., before expiry of the period of ten days from presentation of the Bill to the President), the Bill fails to become a law. This method is known as the 'pocket veto', for, by simply withholding a Bill presented to the President during the last few days of the session of Congress the President can prevent the Bill to become law.

- (B) **Disallowance of State Legislation:** Besides the power to veto Union Legislation, the President of India shall also have the power of disallowance or return for reconsideration of a Bill of the State Legislature, which may have been reserved for his consideration by the Governor of the State [Art. 201].

Reservation of a State Bill for the assent of the President is a discretionary power of the Governor of a State. In the case of any Bill presented to the Governor for his assent after it has been passed by both Houses of the Legislature of the State, the Governor may, instead of giving his assent or withholding his assent, reserve the Bill for the Consideration of the President.

3. Power of Issuing Ordinance (Art -123): The President has a very strong position in the sense that he has the power of issuing ordinance. In case there is a matter of urgency and a law is needed for a particular situation, the President can issue ordinance. The 38th Amendment in this regard is a mile stone in the sense that his assent is important. The 38th Amendment passed in July 1975 put beyond judicial scrutiny the "satisfaction" of the President in declaring emergency. The ordinance can be promulgated by the President when the Houses of Parliament are not in session. The ordinance will have the same effect of the law of the land.

4. Judicial Powers: The President enjoys judicial powers as well. He has the power to grant pardons, reprieves, suspension, remission or condonation of a punishment or sentence by court martial. The power of pardon of the President pertains to such offences that relate to violation of acts under the Union List. The President's pardon could be sought for any death sentence.

5. Emergency Powers: The President also enjoys emergency power. This is important because in a federal structure the grip of the Union on the State is not so tight and hence the Constitution framers did provide for the exigencies which may require a tight grip of the Union on the State. Emergency can be declared due to external aggression or armed rebellion or internal disturbance. President of India enjoys nominal power as he basically acts on the advices of the Council of Minister. Article 356 is much in controversy because it gives powers to the President for the extension of his rule in the State. "If the President on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on....; the President may extend his rule to the State. Article 360 deals with financial emergency "If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory is threatened ... the President can declare financial emergency. The 38th Amendment (clause 5) has furthered the strength of the President in this regard as his decision is final and cannot be challenged in the Court of law.

The extraordinary powers of the President are of three kinds:

- (a) Firstly, the President is given the power to make a "Proclamation of Emergency" on the ground of threat to the security of India or any part thereof, by war, external aggression or armed rebellion. The Object of this Proclamation is to maintain the security of India and its effect is, inter alia, assumption of wider control by the Union over the affairs of the States or any of them as may be affected by armed rebellion or external aggression.
- (b) Secondly, the President is empowered to make a Proclamation that the Government of a State cannot be carried on in accordance with the provisions of the Constitution. The break-down of the constitutional machinery may take place either as a result of a political deadlock or the failure by a State to carry out the directions of the Union [Arts. 356, 365]. By means of a Proclamation of this kind, the president may assume to himself any of the governmental powers of the State and to Parliament the powers of the Legislature of the State.
- (c) Thirdly, the president is empowered to declare that a situation has arisen whereby "the financial stability or credit of India or of any part thereof is threatened" [Art. 360]. The object of such Proclamation is to maintain the financial stability of India by controlling the expenditure of the States and by reducing the salaries of the public servants, and by giving directions to the States to observe canons of financial propriety, as may be necessary.

6. Other Powers: The President also enjoys the power of appointment and removal of high dignitaries of the State including Prime Minister. The President is the Commander -in-Chief of Armed Forces and appoints Service Chiefs of Army, Navy and Airforce. The exercise of his military powers, however, is regulated by laws made by Parliament. The President also has diplomatic powers as he appoints and receives ambassadors. The treaties with other countries are also signed in his name.

- (a) The President has the constitutional authority to make rules and regulations relating to various matters, such as, how his orders and

- instruments shall be authenticated; the paying into custody of and withdrawal of money from, the public accounts of India; the number of members of the Union Public Service Commission, their tenure and conditions of service; recruitment and conditions of service of persona serving the Union and the secretarial staff of Parliament; the prohibition of simultaneous membership of Parliament and of the Legislature of a State; the procedure relating to the joint sittings of the Houses of Parliament in consultation with the Chariman and the Speaker of the two Houses; the manner of enforcing the orders of the Supreme Court; the allocation among States of emoluments payable to a Governor appointed for two or more States; the discharge of the functions of a Governor in any contingency not provided for in the Constitution; specifying Scheduled Castes and Tribes; specifying matters on which it shall not be necessary for the Government of India to consult the Union Public Service Commission.
- (b) He has the power to give instructions to a Governor to promulgate an Ordinance if a Bill containing the same provisions requires the previous sanction of the President under the Constitution [Art. 213(1), Proviso].
- (c) He has the power to refer any question of public important for the opinion of the Supreme Court and already eight such references have been made since 1950 [Art. 143; see Chap. 19 under 'Advisory Jurisdiction'].
- (d) He has the power to appoint certain commission for the purpose of reporting on specific matters, such as, Commissions to report on the administration of Scheduled Areas and welfare of Scheduled Tribes and Backward Classes; the Finance Commission; Commission on Official Language; an Inter-State Council.
- (e) He has some special powers relating to 'Union Territories', or territories which are directly administered by the Union. Not only is the administration of such Territories to be carried on by the President through an Administrator, responsible to the President alone, but the President has the final legislative power (to make regulations) relating to the Andaman and Nicobar Islands; the Lakshadweep; Dadra and Nagar Haveli; 22 and may even repeal or amend any law made by Parliament as may be applicable to such Territories [Art, 240].
- (f) The President shall have certain special powers in respect of the administration of Scheduled Area and Tribes, and Tribal Areas in Assam:
- Subject to amendment by Parliament, the President shall have the power, by order, to declare an area, to be a Scheduled Area or declare that an area shall cease to be a Scheduled Area, alter the boundaries of Scheduled Areas, and the like [Fifth Sch., Para. 6].
 - A Tribes Council may be established by the direction of the President in any State having Scheduled Areas and also in States having Scheduled Tribes therein but no Scheduled Areas [Fifth Sch., Para.4]
 - All regulations made by the Governor of a State for the peace and good government of the Scheduled Areas of the State must be submitted forthwith to the President and until assented to by him, such regulations shall have no effect [Fifth Sch., Para. 5(4)].
 - The President may, at any time, require the Governor of a State to make a report regarding the administration of the Scheduled Areas in that State and give directions as to the administration of such Areas [Sch. V, Para. 3]
- (g) The President has certain special powers and responsibilities as regards Scheduled Castes and Tribes:
- Subject to modification by Parliament, the President has the power to draw up and notify the lists of Scheduled Castes and Tribes in each State and Union Territory. Consultation with the Governor is required in the case of the list relating to a State. [Arts. 341-342].
 - The President shall appoint a Special Officer to investigate and report on the working of the safeguards provided in the Constitution for the Scheduled Castes and Tribes. [Art. 338].
 - The President may at any time and shall at the expiration of ten years from the commencement of the Constitution, appoint a Commission for the welfare of the Scheduled Tribes in the States [Art. 339].

Vacancy in Office of the President

A vacancy in the office of the President may be caused in any of the following ways—

- (i) On the expiry of his term of five years
 - (ii) By his death
 - (iii) By his resignation.
 - (iv) On his removal by impeachment.
 - (v) Otherwise, e.g. on the setting aside of his election as President [Art. 65(1)].
- (a) When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be completed before the expiration of the term [Art. 62(1)]. But in order to prevent an 'interregnum', owing to any possible delay in such completion, it is provided that the outgoing President must continue to hold office, notwithstanding that his term has expired, until his successor enters upon his office [Art. 56(1)(c)]. (There is no scope for the Vice-President getting a chance to act as President in this case.)
- (b) In case of a vacancy arising by reason of any cause other than the expiry of the term of the incumbent in office, an election to fill the vacancy must be held as soon as possible after, and in no case later than, six months from the date of occurrence of the vacancy. Immediately after such vacancy arises, say, by the death of the President, and until a new President is elected, as above, it is the Vice-President who shall act as President [Art. 65(1)]. It is needless to point out that

WHAT EFFECT THE 44TH AMENDMENT HAD ON THE PRESIDENT

After 44th Amendment, except in certain marginal cases referred by the Supreme Court, the President shall have no power to act in his discretion any case. He must act according to the advice given to him by the Council of Ministers, headed by the Prime Ministers, so that refusal to act according to such advice will render him liable to impeachment for violation of the Constitution. This is subject to the President's new power to send the advice received from the Council of Ministers in a particular case, back to them for their reconsiderations; and if the Council of Ministers adheres to their previous advice, the President shall have to option but to act in accordance with such advice. The power to return for reconsideration can be exercised only once, on the same matter.

the new President who is elected shall be entitled to the full term of five years from the date he enters upon his office.

- (c) Apart from a permanent vacancy, the President may be temporarily unable to discharge his functions, owing to his absence from India, illness or any other cause, in which case the Vice-President shall discharge his functions until the date on which the President resumes his duties. [Art. 65(2)].

VICE PRESIDENT OF INDIA

The Constitution provides for a Vice-President whose role in the Government is comparatively insignificant. Going through the provisions dealing with his office, one can easily see a striking similarity between the role of the Vice-President of India and that of his counterpart in the United States. The American Vice-President is sometimes called "His Superfluous Highness" to characterise his comparative insignificance in the administration. But, there is a provision in the American Constitution which makes the Vice-President potentially important. According to this, if the President dies in office, or is removed from office, the Vice-President takes over the President's office and continues in that capacity for the full length of the unexpired term. But, under the India Constitution, if the President dies or resigned or is otherwise incapacitated and, as a result, the Presidential office become vacant, the Vice-President will act as President only for a maximum period of six months.

The main function of the Vice-President like that of his American prototype is to preside over

HOW THE VICE PRESIDENT IS ELECTED? WHAT ARE THE QUALIFICATIONS REQUIRED?

The Vice-President is elected by the members of both Houses of Parliament at joint meeting. The election is conducted in accordance with the system of proportional representation by means of the single transferable vote. The voting is by secret ballot.

Any Indian citizen who has completed the age of 35 years and who is qualified for election as a member of the Council of States is eligible for election as Vice-President. But no person who holds an office of profit under the Government of India or any State or local or other authority in India is eligible for the purpose. The Vice-President cannot be a member of either House of Parliament or a member of any State Legislature.

the Council of States. He is its ex-officio Chairman. The Vice-President takes over the office of the President normally, under four situations: death of the President, resignation of the President, removal of the President from his office through impeachment or otherwise, and finally, when the President is unable to discharge his functions owing to absence, illness or any other cause. The last of these clearly provides for any temporary period of incapacity which makes the President incapable of discharging his responsibilities.

During the period, when the Vice-President is acting for the President, he will have all the powers and immunities of the President. He is also entitled for such salary and allowances and privileges as may be determined by Parliament by law for the purpose. At present, according to the Second Schedule of the Constitution, the Vice-President is entitled to the same emoluments, allowances and privileges as the President while he discharges the functions of, or is acting as the President.

Removal of the Vice-President

The Vice-President can be removed from office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People. But, this procedure does not seem to be sufficient, if at the time such removal is sought, the Vice-President is acting for the President. If he is to be removed from office while he acts in the latter capacity, the provisions ought to be exactly the same as are applicable to the impeachment of the President.

Functions of the Vice-President

The Vice-President is the highest dignitary of India, coming next after the President. No functions are, however, attached to the office of the Vice-President as such. The normal function of the Vice-President is to act as the ex-officio Chairman of the Council of States. But if there occurs any vacancy in the office of the President by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President until a new President is elected and enters upon his office [Art. 65(1)].

The Vice-President shall discharge the function of the President during the temporary absence of the President, illness or any other cause by reason of which he is unable to discharge his functions [Art. 65(2)]. No machinery having been prescribed by the Constitution to determine when the President is unable to discharge his duties owing to absence from India or a like cause, it becomes a somewhat delicate matter as to who should move in the matter on any particular occasion. It is to be noted that this provision of the Constitution has not been put into use prior to 20th June, 1960, though President, Dr. Rajendra Prasad had been absent from India for a considerable period during his foreign tour in the year 1958. It was during the 15-days visit of Dr. Rajendra Prasad to the Soviet Union in June 1960, that for the first time, the Vice-President, Dr. Radhakrishnan was given the opportunity of acting as the President owing to the 'inability' of the President to discharge his duties.

The second occasion took place in May, 1961, when President Rajendra Prasad became seriously ill and incapable of discharging his functions. After a few days of crisis, the President himself suggested that the Vice-President should discharge the functions of the President until he resumed his duties. It appears that the power to determine when the President is unable to discharge his duties or when he should resume his duties has been understood to belong to the President himself. In the even of occurrence of vacancy in the office of both the President and the Vice-President by reason of death, resignation, removal etc. the Chief Justice of India or in his absence the senior most judge of the Supreme Court available shall discharge the functions until a new President is elected. In 1969 when on the death of Dr. Zakir Hussain, the Vice-President Shri V.V. Giri resigned; the Chief Justice Shri Hidayatullah discharged the functions.

When the Vice-President acts as, or discharges the functions of the President, he shall cease to perform the duties of the Chairman of the Council of States and then the Deputy Chairman of the Council of States shall act as its

chairman and he (Deputy Chairman) will get the salary of the Chairman of the Council of States.

Doubts and disputes relating to or connected with the election of President or Vice-President

Determination of doubts and disputes relating to the election of a President or Vice-President is dealt with in Art 71, as follows:

- (a) Such disputes shall be decided by the Supreme Court whose jurisdiction shall be exclusive and final.
- (b) No such dispute can be raised on the ground of any vacancy in the Electoral College which elected the President or Vice-President.
- (c) If the election of a President or the Vice-President is declared void by the Supreme Court, acts done by him prior to the date of such decision of the Supreme Court shall not be invalidated.
- (d) Barring the decision of such disputes, other matters relating to the election of President or Vice-President may be regulated by law made by Parliament.

COUNCIL OF MINISTERS

Cardinal Principles of Parliamentary Democracy:-

1. Head of state is not the real executive. For all practical purpose Prime Minister is the real executive who is the head of the government.
2. He along with his Council of Ministers is accountable to the Lower House of the Parliament.
3. Council of Ministers is drawn from legislature itself. It is not an outside body.

Formation of Council of Ministers

Council of Ministers is formed as soon as Prime Minister is sworn in. PM alone can constitute Council of Ministers.

Categories of Ministers

Constitution does not categorize members of the Council of Ministers. It is done by the Prime Minister following the British conventions. In fact, there are three categories of ministers in India.

But it is the prerogative of PM to decide how many categories to be included. These three categories of ministers are as follows:-

Cabinet Ministers - They are senior rank ministers if allotted a portfolio. They always head a ministry. They constitute the cabinet and enjoy the right to attend cabinet meeting. They are assisted by Minister of State or Deputy in discharging official functions.

Minister of States - They are second rank ministers. They are normally not given independent charge. They assist Cabinet Ministers. PM in his discretion can give independent charge to Minister of States. He does not enjoy right to attend cabinet meeting. But he can be invited to attend cabinet meetings.

Deputy Ministers - They are junior in rank. They are never given independent charges. They cannot be invited to participate in the cabinet meeting.

Parliamentary Secretaries - They are not member of CoM. They are appointed by PM. Basically; they are Member of Parliament and from the ruling party. They are appointed to assist the ministry in discharging functions in the Parliament. They take oath of office and secrecy conducted by PM.

Strength of Council of Ministers

91st Amendment Act 2003 amended Art. 75 and inserted Art 75 (1A) which provides that "strength of Union CoM shall not exceed 15% of the total strength of the Lok Sabha.

CABINET VS COUNCIL OF MINISTERS

Council of Ministers

- (1) It is a composite body because it contains Cabinet Ministers, Minister of State and Deputy Minister.
- (2) It is a large body and rarely meets as a composite body.

Cabinet

- (1) It includes only Cabinet Ministers.
- (2) It is a body within Council of Ministers.

- (3) It meets regularly and deliberates & takes policy decision including proposed legislation.
- (4) It is the highest decision making body of the country that runs administration.
- (5) Decisions of cabinet automatically become that of Council of Ministers.
- (6) Prime Minister, Finance Minister, Home Minister and Defence Minister always remain part of the cabinet.

Collective Responsibility of CoM

Art 75 (3) of the Constitution provides for collective responsibility of CoM to the Lower House of the Parliament. Collective responsibility of CoM to the Lok Sabha means that they enjoy the majority support of the House. If any decision of CoM is defeated in Lok Sabha, decision may pertain to a single ministry but entire CoM shall have to resign.

It means each and every decision taken by the government is collectively approved by the Cabinet. Generally, it becomes the collective decision of the CoM and all ministers defend it both within & outside the Parliament. If a decision taken by an individual minister is defeated in the Lok Sabha, before it was collectively approved by the cabinet then the individual minister has to resign and not the whole CoM. Thus, CoM stands or falls together or sinks or swims together.

Collective responsibility ensures that there is no difference in CoM once a collective decision has been taken. There may be differences of opinions in the cabinet at the time of deliberation of policy issue but once a collective decision has been taken then all the ministers shall endorse collective decision. Ministers don't have individual opinion contrary to collective decision that he can express within or outside the Parliament. If a minister has a contrary view to collective decision then he has to change his view and support the collective decision or resign. He can't oppose the collective decision and at the same time continue to be a member of the CoM.

Individual Responsibility of Ministers

Under Article 75 (2) of the Constitution,

ministers are also individually responsible to the President. This means ministers hold office during the pleasure of the President. They can be removed from CoM without assigning any reason. However, they can only be removed after PM advised the President to do so.

Article 75 (2) - The Ministers shall hold office during the pleasure of the President.

Individual responsibility is essential to enforce collective responsibility of CoM. For example, minister disagrees collective decision but refuses to resign. In that case PM may advice the President to drop the minister so as to assure collective responsibility of CoM.

PRIME MINISTER

Powers & Functions of the Prime Minister

1. In Relation to the Council of Ministers

- (a) The Prime Minister recommends persons who can be appointed as ministers by the President.
- (b) He allocates and also can change the portfolios among the ministers according to his will.
- (c) If a difference in opinion arises between the Prime Minister and any of his ministers, he can ask the minister to resign or can advice President to dismiss him.
- (d) Prime Minister presides over the meeting of the Council of Ministers and he also influences the decision of the meeting.
- (e) He guides, directs, controls and coordinates the activities of all the ministers.
- (f) By resigning from office, the Prime Minister can bring about the collapse of the council of Ministers.

2. In Relation to the President

- (a) Prime Minister is the principal channel of communication between the President and the Council of Ministers. He communicates with the President regarding all decisions of the Council of Ministers relating to administration of

the affairs of the Union and proposals for legislation.

- (b) He furnishes such information relating to administration of the affairs of the Union and proposals for legislation as the President may call for and if the President so requires, Prime Minister submits for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- (c) Regarding the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission, etc. the Prime Minister advises the President.

3. In Relation to Parliament

- (a) The Prime Minister is the leader of the lower House i.e. the Lok Sabha. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- (b) He can recommend dissolution of the Lok Sabha to President at any time.
- (c) He announces government policies on the floor of the house.

4. Position of the Prime Minister

Prime Minister is described as *primus inter pares* (first among equals). Also called *interstellar minorities* (little moon among stars). He is the 'Keystone of The Cabinet Arch'. Prime Minister is generally a Member of Parliament and elected according to the same procedure similar to all MPs. He is PM only because he is the leader of the majority party in the Lok Sabha.

However, in actual practice, he is more than his colleagues. Under Article 74, Council of Minister, is headed by PM. When PM resigns or dies, entire CoM goes out of office. But when an individual minister resigns or dies there is only vacancy in CoM. Besides PM alone can constitute CoM but without PM, CoM can't exist and function. Thus he is central to the survival & death of CoM.

It is the PM who selects members of CoM and distribute portfolio among them. He can reshuffle CoM the way he likes. It is PM who coordinates the functions of various ministries. He alone enjoys right to call for files or information from any ministry to other ministry.

PM convenes the cabinet meeting and decides on the agenda of such meetings. He also gives general direction for the administration of the country. He is the chief spokesman of CoM both in & outside the Parliament. It is his prerogative to announce important policy decisions.

He is also the link between President and CoM. Ministers individually can also call upon the President but not as a matter of right. It is the PM who periodically calls upon the President and apprises him about administration of the country. PM is also the chief link between CoM and the Parliament. He can participate in any issue relating to any ministry during discussion held in Parliament. A minister normally participates on issues relating to his own ministry.

ATTORNEY GENERAL OF INDIA

The Attorney-General of India is the first Law Officer of the Government of India. The Attorney-General is appointed by the President and he holds office during the pleasure of the President. In order to be appointed as the Attorney General of India, a person must have qualified to be appointed as a Judge of the Supreme Court.

Though the Attorney - General of India is not (as in England) a member of the Cabinet, he shall also have the right to speak in the Houses of Parliament or in any Committee thereof, but shall have no right to vote [Art. 88]. By virtue of his office, he is entitled to the privileges of a member of parliament [Art. 105(4)]. In the performance of his official duties, the Attorney-General shall have a right of audience in all Courts in the territory of India. He represents the Union & the States before the courts but is also allowed to take up private practice provided the other party is not the state. Because of this he is not paid salary but a retainer to be

determined by the president. In England, the Attorney-General is a member of the cabinet but in India he is not. It is a political appointment, and therefore, whenever there is a change in the party in power, the Attorney - General resigns from his post to enable the new government to appoint a nominee of its choice. The Attorney - General is assisted by two Solicitors - General and four Additional Solicitors - General. The Attorney - General gets a retainer equivalent to the salary of a judge of the Supreme Court.

WHAT ARE THE DUTIES OF THE ATTORNEY - GENERAL OF INDIA?

Duties of the Attorney - General of India are:

- To give advice on such legal matters and to perform such other duties of a legal character as may, from time to time, be referred or assigned to him by the President; and
- To discharge the functions conferred on him by the Constitution or any other law for the time being in force [Art. 76].

COMPTROLLER AND AUDITOR - GENERAL OF INDIA

The Comptroller and Auditor General of India is appointed by the President. He holds office until he attains the age of sixty five years or at the expiry of the six-year term, whichever is earlier. He is the guardian of the public purse. His duties are to keep the accounts of the Union and the States and to ensure that nothing is spent out of the Consolidated Fund of India or of the States without the sanction of the Parliament or the respective State Legislatures. He submits an audit report of the Union to the President who shall lay it before the Parliament and the audit reports of the States to the respective Governors who shall lay it before the respective state Legislatures. In case of Union Territories, the Comptroller and Auditor-General submits audit reports to Lt. Governors where the Union territories have Legislative Assemblies of their own. The accounts of the other Union Territories are audited by him as part of the account of the Union of India.

As observed by Ambedkar, the Comptroller and Auditor-General of India shall be the "most important officer under the Constitution of India". For, he is to be the guardian of the public

purse and it is his duty to see that not a farthing is spent out of the Consolidated Fund of India or of a State without the authority of the appropriate Legislature. In short, he shall be the impartial head of the audit and accounts system of India. In order to discharge this duty properly, it is highly essential that this office should be independent of any control of the executive.

Position of the CAG

The independence of the Comptroller and Auditor-General has been sought to be secured by the following provisions of the Constitution ---

1. Though appointed by the President, the Comptroller and Auditor-General may be removed only on an address from both Houses of Parliament, on the grounds of (i) 'proved misbehaviour', or (ii) 'incapacity'. He is thus excepted from the general rule that all civil servants of the Union hold their office at the pleasure of the President [Art. 310 (1)].

WHAT ARE THE PROVISIONS TO SECURE CAG'S INDEPENDENCE?

Because of the importance of the office of the Comptroller and Auditor - General, the Constitution of India contains provisions to ensure the impartiality of the office and to make it independent of the Executive. These are as follows:

- He can be removed from his office only on ground of prove misbehaviour or incapacity in a manner a Judge of the Supreme Court is removed i.e., each House of the Parliament passing an resolution supported by two-thirds of the members present and voting and by a majority of the House.
 - His salary and conditions of service cannot be changed to his disadvantage during his term of office except under a financial emergency.
 - His salary is charge on the Consolidated Fund of India and is not subject to the vote of the Parliament.
 - After retirement he is disqualified for appointment either under the Union or the State.
 - He is paid a salary equivalent to that of a Judge of the Supreme Court.
2. His salary and conditions of service shall not be liable to variation to his disadvantages during his term of office. Under this power, Parliament has enacted the Comptroller and Auditor-General's (Conditions of Service) Act 1971 which, as amended, provides as follows;

- (i) The term of office of the Comptroller and Auditor-General shall be 6 years from the date on which he assumes office. But--
 - (a) He shall vacate office on attaining the age 65 years, if earlier than the expiry of the 6-year term;
 - (b) He may, at any time, resign his office, by writing under his hand, addressed to the President of India;
 - (c) He may be removed by impeachment [Arts. 148(1); 124(4)]
- (ii) His salary shall be equal to that of a judge of the Supreme Court.
- (iii) On retirement, he shall be eligible to an annual pension of Rs. 15,000.
- (iv) In other matters, his conditions of service shall be determined by the Rules applicable to a member of the I.A.S., holding the rank of a Secretary to the Government of India.
- (v) He shall be disqualified for any further Government 'office' after retirement - so that he shall have no inducement to please the Executive of the Union or of any State.
- (vi) The salaries, etc., of the Comptroller and Auditor-General and his staff and the administrative expenses of his office shall be charged upon the Consolidated Fund of India and shall thus be non-votable [Art. 148].

Duties of CAG

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as may be prescribed by Parliament. In exercise of this power, Parliament has enacted the Comptroller and Auditor General's (Duties Powers and Conditions of Service) Act, 1971, which, as amended in 1976, relieves him of his pre-Constitution duty to compile the accounts of the Union; and the States may enact similar legislation with the prior approval of the President, - to separate accounts from audit also at the State level, and to relieve the Comptroller and Auditor-General of his responsibility in the matter of preparation of accounts, either of the States or of the Union.

Provisions of this Act relating to the duties of the Comptroller and Auditor-General are--

- (a) To audit and report on all expenditure from the Consolidated Fund of India and of each State and each Union Territory having a Legislative Assembly as to whether such expenditure has been in accordance with the law;
- (b) Similarly, to audit and report on all expenditure from the Contingency Funds and Public Accounts of the Union and of the States;
- (c) To audit and report on all trading, manufacturing, profit and loss accounts, etc., kept by any Department of the Union or a State;
- (d) To audit the receipts and expenditure of the Union and of each State to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue;
- (e) To audit and report on the receipts and expenditure of (i) all bodies and authorities 'substantially financed' from the Union or State revenues; (ii) Government companies; (iii) other corporations or bodies, when so required by the laws relating to such corporations or bodies.

THE PARLIAMENT

Union legislature is called the Parliament which is bicameral including the Lok Sabha and the Rajya Sabha, i.e. lower and upper house respectively. The Lok Sabha is inclusive of the members directly elected by the people and Rajya Sabha represents the States of Indian Federation. Bicameralism was resorted to with a view that there should be parity between the direct representatives of the people and the representation of the States from where they were coming.

The Lok Sabha

The Lok Sabha is the popular chamber of the Indian Parliament with a maximum strength of 545 members and this is so from the Thirty-first Amendment onwards when it was increased from 525 members to 545 members body. Of the total members, not more than 525 represent states and 20 is the number of seats reserved for Union Territories. Another provision is of two members to be nominated by the

President from Anglo-Indian communities, if in the President's opinion, it does not have a fair representation in the Lok Sabha. The election of the members of Lok Sabha is out of the pre-divided constituencies and while demarcating them the two guide lines have been followed, i.e. there is uniformity of representation between the States and between the different constituencies in the State. With this regard, the States have been allotted seats and its population is, as far as practical the same for all States. Also, the number of people residing in one constituency, as far as possible, hold similar within a State. The forty-second Amendment has laid down that 1971 census will serve as the basis of allocation of seats to each State and this will remain so till 2000 A.D. Recently, the Union Cabinet has extended this cap upto 2026 AD. This also puts a halt on gerrymandering i.e. altering the boundary of constituencies of vested interest.

The term of Lok Sabha is for five years. However, it can be dissolved earlier. On the other hand, the term of Lok Sabha can be increased in a situation of emergency. The convention is of Lok Sabha meeting not less than twice every year and there must not be gap between two meeting exceeding six months. The time of meeting is decided by the President, who also has the choice of venue where the meeting can be held. The President also enjoys the power to dissolve or prorogue the House. The quorum of meeting to be held is in tenth of the total strength of the House.

A person to be able for contesting election for the membership of Lok Sabha must not be less than 25 years of age and should not hold a position of profit.

The Rajya Sabha

The Rajya Sabha consists of a maximum of 250 members including members nominated as well as elected. The number of elected members is not to exceed 238 representing the States and the Union Territories. The President nominates 12 members having exceptional qualities and experiences in diverse fields like art, literature, science, and social service. India Upper House is different from the U.S. counterpart as this

ARE THE POWERS OF LOK SABHA AND RAJYA SABHA SAME?

The Constitution has given equal power to Lok Sabha and Rajya Sabha except in certain matters like those for the executive and the money bills. This is primarily because of the parliamentary system of government which intentionally has made Rajya Sabha less influential than the Lok Sabha that is having members who are directly elected by the people. There is no denying the fact that the Rajya Sabha has the right of information. It does from time to time criticise actions and policies of the government but it cannot cause a fall of the Governments as the defeat of the Government in the Rajya Sabha does not lead to the resignation of the Council of Ministers. However, Rajya Sabha does enjoy the exclusive powers with regard to creation of All-India Services and in respect of legislation on State List in the national interest.

House is not functioning truly for giving balanced representation to the smaller States. The members are elected indirectly by the members of the Legislative Assemblies of the States in accordance with the system of proportional representation by means of a single transferable vote.

The Rajya Sabha is a permanent body and cannot be dissolved. However, one-third of the members retire at the end of every second year. This way the members enjoy a six-years term in the House.

A member must have the basic requirement of being an Indian and not less than 30 years of age. The member must also not hold any office of profit, if he is chosen. If a member remains absent from the House for more than 60 days, the seat may be declared vacant.

Functions of The Parliament

The functions and the powers of the Parliament are extensive and appear in Constitution at different places. The Parliament has extensive power to make laws on the items given in the Union List as well as in the Concurrent List. The items included in the Union List include Defence, External Affairs, Communications, Currency, Citizenship etc. These are the items whose uniformity across the length and breadth of the country is essential for the solid foundation of the national existence. The Concurrent List includes items such as marriage, divorce, trade, criminal law proce-

ture, etc. These are the items on which uniformity is desirable but not essential. The powers of the Parliament are far reaching as it can also legislate on the matters included in the State List. However, as enshrined in Article 249, a prior approval of the Upper House is essential for the purpose. Article 250 mentions that the Parliament can legislate for the whole or any part of India or any matter mentioned in the State List during the period of Emergency. The Parliament also holds the power to elect and impeach the President and Vice-President of India. The Parliament can also impeach the judges of Supreme Court and High Courts on grounds of incapacity.

Financial Functions: The Parliament has a special function to have a grip on the finances of the country. No tax can be levied or money can be spent without the consent of the Parliament. It has one exception as the expenditure of Consolidated Fund of India is not put to vote of the Parliament. The financial business of Parliament is complex and parliament can not devote time and energies for the purpose of satisfactory discharges of responsibility of financial control. Thus financial committees have been set-up to enable Parliament to discharge this function efficiently. The committees for the purpose include Estimates Committee, the Public Accounts committee and the Committee on Public Undertakings. The Estimates Committee suggests economics in expenditure in various departments of Government. The Public Accounts Committee examines the appropriation accounts in the light of audit report of the Auditor General of India and draws attention of the Parliament to the irregularity, if any. The Committee on Public Undertakings examines the working of the public undertakings established by the working and powers of these committees.

Amendment of the Constitution: Amending the Constitution is another major function of the Parliament. There has been controversy regarding the power of Parliament with regard to access to any part of the Constitution for amendment purpose. Various judgements of Supreme Court have put a restriction on the unlimited amending power of the Parliament for amendment purpose. The Parliament in no way can

amend the Constitution that it affects adversely the basic structure of the Constitution, however, is ambiguous and not spelt out in the constitution and the judiciary this way has arranged for immense power so as to decide from time to time if legislation by the Parliament is adversely affecting the Constitution or not.

Control over Executive: The performance of the Parliament with regard to control on executive is enormous. The Council of Ministers is collectively responsible to the Lok Sabha and must resign in case a 'no confidence motion' is passed against the minister. Individually, the ministers are responsible for the proper working of the ministries under their charge and collectively for the general policies of the Government. The Parliament through procedures provided by the House like asking questions, calling attentions, adjournment motions, etc, keeps a constant vigil on the working of the administration and the lapses of the Government.

Parliamentary Privileges and Immunities

Parliamentary privileges i.e. exceptional right or advantages are granted to the members of legislatures all over the world. Thus, in most of the democratic countries, the legislatures and their members enjoy certain privileges so as to function effectively. Privilege though part of the law of the land, is to a certain extent an exemption from the ordinary law. It would not be wrong to say that privilege is to Parliament what prerogative is to the Crown. Just as prerogatives can be exercised by the Crown without help or hindrance from Parliament or the judges, the privileges can be exercised by the House of the Parliament without help or hindrance from the judges.

Prerogative vs. Privilege

Prerogative is the authority of the Crown whereas privilege is the discretionary authority of each House of Parliament. Privilege is an ancillary power which is essential to maintain the authority of the legislature, and the functions, privileges and disciplinary powers of a legislative body are closely connected. However, the distinction between privileges and functions is not always clear, and it is conve-

nient to retain the term 'privilege' to signify certain fundamental rights of the legislature which are generally accepted as necessary for the exercise of its constitutional functions. The privileges are the necessary complement of the functions, and disciplinary powers of the legislature. The privileges of a legislative assembly would be 'entirely in effectual to enable it to discharge its functions, if it had no power to punish offender, to impose disciplinary regulations upon its members, or to enforce obedience to its commands. Thus, necessity is the justification for the privileges of Parliament.

Constitutional provisions relating to Parliamentary Privileges

Some of the privileges of Parliament, and of its members and committees, are specified in the Constitution and there are certain statutes and the rules of procedure of the House; others continue to be based on the precedents of the House of Commons. These privileges are available to all the legislatures in the states as well. The main articles of the Constitution of India dealing with the privileges of Parliament are 105 and 122 and the corresponding articles for the states are 194 and 212. Article 105 (1) of the Constitution of India

WHAT TYPES OF PARLIAMENTARY PRIVILEGES ARE AVAILABLE IN INDIA?

There are two categories of Parliamentary privileges in India, the specified and enumerated, and the recognised but unenumerated.

- The first category includes; (a) Freedom of speech in each House of Parliament; (b) Immunity from proceedings in any courts in respect of anything said or vote given by a member in parliament or any committee thereof; and (c) Immunity from liability in respect of the publication by or under the authority of either House of Parliament, of any report, paper, votes or proceeding of either House.
- In the second category, all those privileges which were enjoyed by the House of Commons of the Parliament of the United Kingdom, and its members and committees, at the commencement of the Constitution of India and would continue to be in force unless they are modified and defined by Parliament by law.

provides that, subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament, there would be freedom of speech in the Parliament. Clause 2 of the Article provides that no member of Parliament would be liable to any proceedings

against him in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and that no person would be liable in respect of the publication of any report, paper votes or proceedings by or under the authority of either House of Parliament. Clause 3 ordains that in other respects the powers, privileges and immunities of each House of Parliament, and of the members and committees thereof, would be such as may from time to time be defined by Parliament by law, and until so defined, would be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of the Constitution of India. According to clause of this article, the provisions of clauses 1,2, and 3 would apply to persons who by virtue of the Constitution have the right to speak in or take part in the proceedings of a House of Parliament or a committee thereof, as they apply to the members of Parliament.

PARLIAMENTARY COMMITTEES

There are different types of parliamentary committees which can be classified as follows:

- Consultative committees for different ministries which provide a forum for discussion on the policies and the working of the ministry.
- Select or Joint Select Committees on individual bills for investigation or inquiry.
- Parliament may appoint a committee for specific purpose of studying a particular subject matter for example, a committee for the welfare of Scheduled caste and scheduled tribes.
- There are committees to inquire into the various matters like the Committee of Petitions and the Committee of Privileges, the Committee to Scrutinize or the Committee of Government assurance and Committee on Subordinate Legislation.
- There are also committees of administrative character relating to the business of House such as Committee on absence of Members from the sittings of the House, Business Advisory Committee and Rules Committee.
- A few committees are concerned with the facilities of a Member of Parliament like the House Committee and Library committee.

- However, the most important committees include the financial committees such as Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings.

Estimates Committee

The Committee has 30 members, who are elected in accordance with the system of proportional representation from among the members of Lok Sabha for a period of one year. The Quorum for the meeting is one-third. The Estimates Committee is a standing Committee. The Chairman is nominated by the Speaker provided if the Deputy Speaker is the member of the Committee, he automatically assumes the power of the Chairman. No minister can be a member of the Committee. The Estimates Committee is charged with the responsibility of detailed examination of budget estimates. Major functions include:

- to suggest alternative policy in order to bring about efficiency and economy in administration.
- to report how the economies, improvement in organization, efficiency or administrative reforms consistent with the policy underlying the estimates may be affected;
- to examine whether the money is well laid out within limits of the policy implied in the estimates.
- to suggest for the reform and present the estimates to the Parliament.

Public Accounts Committee

The Public Accounts Committee is essentially a committee of the Lok Sabha. The strength of the committee is 22 of which 15 are elected from the Lok Sabha and the rest are nominated from the Rajya Sabha. The Speaker nominates the Chairman, who conventionally is the Leader of Opposition in the Lower House. The major function of the public Account Committee is to scrutinize the appropriation account of the Government of India and other accounts laid before the House and the report of the Auditor General of India and also to satisfy itself that money is spent appropriately. It is also responsible for commenting on the ways of the extravagance in the spending of the public funds.

Committee on Public Undertakings

The committee constituted in 1964 consists of 15 members of Lok Sabha and 7 members of the Rajya Sabha. The major function of the committee is to examine the reports and accounts of public undertakings and suggest economic improvement in organization and financial management, etc. A few public sector undertakings are picked every year for the purpose of scrutiny.

Select Committee

The members of Select Committee are appointed by the House with their consent. The Chairman is appointed by the Speaker. He has the power to ensure the attendance of a member and also ensures the production of papers and records. Select Committees present their report to the House.

Committee on Petitions

This Committee is nominated by the Speaker and is inclusive of 15 members. No minister can be a member of this committee. Major function of the committee is to examine every petition referred to it and report to the House recording necessary evidence and suggest remedial measures to the House.

Committee on Privileges

The Speaker nominates the members of this committee. The strength is 15 members. It is empowered to take stock of the breach of privileges and determination of breach of privileges.

Committee on Government Assurances

The function of this committee is to scrutinize the various assurances, promises and undertakings given by ministers from time to time on the floor of the House. It has 15 members nominated by the Speaker for a period of one year. No minister can be a member of this committee. The committee reports to the extent to which the assurances given by ministers have been implemented.

Committee on Subordinate Legislation

It has 15 members nominated for one year by the Speaker. It scrutinises and reports to the House whether the power to make regulations,

rules, sub-rules, bye-laws delegated by the Parliament to the executive, are being properly exercised within the limits of such delegation.

Committee on Absence of Members

It has 15 members nominated by the Speaker for one year. It considers leave applications of members for absence and records if a member has been absent exceeding 60 days without permission and reports whether the absence should be condoned or the member's seat be declared vacant.

Business Advisory Committee

The committee is for the purpose of regulating the time table of the working of the House. There are 15 members nominated by the Speaker, who himself is the Chairman of this committee.

Rules Committee

The main function of this committee is to consider matters of procedure and conduct of business in the House and recommends for the amendments to the rules of the House. The Speaker is the ex-office Chairman and it includes 15 members nominated.

Committee on Welfare of SC and ST

30 members drawn from both Houses serve on this Committee which considers all matters relating to SC/ST, coming under the purview of the Union Government and ensures whether constitutional safeguards in respect of these classes are properly implemented.

Committee on Private Members Bills and Resolutions

Consisting of 15 members nominated by the speaker, the Committee classifies and allocates times to bills introduced by private members. The Deputy Speaker is invariably its members.

Joint Committee on Salaries and Allowances

10 members are nominated by the Lok Chairman to this Committee which frames rules for regulating payment of salaries etc. to Members of Parliament and rules regarding amenities like housing, telephones, postal, secretarial and medical facilities.

Joint Committee on Offices of Profit

Again a 15 members Committee - 10 elected from Lok Sabha and 5 from Rajya Sabha, it examines, the character and composition of the Committees and other bodies appointed by the Union and State Government and recommends what offices ought to or ought not to disqualify a person for being chosen as M.P.

Departmental Standing Committees

Parliament has decided to constitute committees to consider the demand for grants of various ministries, thus changing the earlier practice of the full house discussing and voting upon individual heads of grant. The committees, 23 in number, will consist of both Lok Sabha and Rajya Sabha members, but latter being denied a vote in case a particular grant calls for such a procedure. The Lok Sabha to which Council of Ministers is responsible and which alone can grant the money required for running the country's administration after detailed scrutiny. The Parliament guillotine comes in handy in such circumstances.

Adhoc Committees

These Committees are appointed as need arises and they cease to exist as soon as they complete the task assigned to them. The usual adhoc committees are select/joint committees on bills, appointed to consider and report on particular bills. Other adhoc committees are constituted from time to time either by the two houses on a motion adopted in that behalf or by the Speaker/Chairman to inquire into and report on specific subjects.

Popular Parliamentary Concepts

Zero Hour: This period follows the 'Question Hour' and it normally begins at noon. Usually, the members use this period to raise various issues for discussion.

Question Hour: The day's business normally begins with the Question Hour during which question asked by the members are answered by the Minister. The different types of questions are -

- (a) **Starred Question** : It is one for which an oral answer is required to be given by the Minister on the floor of the House. Supplementary question may be asked based on the Minister's reply. The Speaker decides if a question should be answered orally or otherwise. One member can ask only one starred question in a day.
- (b) **Unstarred Question** : It is one for which the Minister lays on the table a written answer. A ten day notice has to be given to ask such question and no supplementary questions can be asked with regard to such questions.
- (c) **Short Notice Question**: This type of question which can be asked by members on matters of public importance of an urgent nature. It is for the speaker to decide whether the matter is of urgent nature or not. The member has also to state reasons for asking the question while serving notice.
- (d) **Cut Motions** : A motion that seeks reduction in the amount of a demand presented by the govt. in known as a cut motion. Such motions are admitted at the speakers discretion. It is a device through which members can draw the attention of the government to a specific grievance or problem. There are three types of cut motions-
- (i) Disapproval of policy cut - which is to express disapproval of the policy underlying a particular demand, says that 'the amount of the demand be reduced to Re. 1".
 - (ii) Economy cut asks for a reduction of the amount of the demand by a specific amount. The aim is to affect economy in the expenditure.
 - (iii) Token cut is a device to ventilate specific grievances within the sphere of the government's responsibility. The grievance has to be specified. Usually, the motion is in the form, "The amount of the demand be reduced by Rs. 100".

Adjournment Motion: It is motion to adjourn the proceeding of the House so as to take up for discussion some matter of urgent public importance. Any member can move the motion and if more than 50 members support the demand, the speaker grants permission for the motion. The notice for such a motion has to be given before the commencement of the sitting on that day.

Calling Attention Motion: With prior permission of the speaker; a member may call the attention of a Minister to any matter of urgent public importance. The Minister may make a brief statement regarding the matter or ask for time to make a statement.

Privilege Motion: It is motion moved by a member if he feels that a minister has committed a breach of privilege of the House or of any one or more of its members by withholding facts of a case or by giving a distorted version of acts.

Points of Order: A member may raise a point of order if the proceedings of the House do not follow the rules. The presiding officer decides whether the points of order raised by the member should be allowed.

Vote on account: As there is usually gap between the presentation of the budget and its approval, the vote on account enables the govt. to draw some amount from the consolidated fund of India to meet the expenses in the intervening period.

Guillotine: On the last of the allotted days at the appointed time, the speaker puts every question necessary to dispose off all the outstanding matters in connection with the demands for grants. This is known as guillotine. The guillotine concludes the discussion and demands for grants.

Quorum: It is the minimum number of members whose presence is essential to transact the business of the House. Article 100 provides the quorum of either House shall be one tenth of the total number of members of the House.

Censure Motion: It differs from a no-confidence motion in that the latter does not specify any ground on which it is based, while the former has to mention the charges against the govt. for which it is being moved. A censure motion can be moved against the council of Minister or an individual minister for failing to act or for some policy. Reason for the censure must be precisely inumerated. The speaker decides whether or not the motion is in order and no leave of the House is required for moving it. The govt. may at its discretion fix a date for the discussion of the motion. If the motion is passed in the Lok Sabha the council of Minister is expected to resign.

THE SPEAKER

The House of the people is presided over by the Speaker who is elected by the House from among its own members. The office of the Speaker has been held in great esteem throughout the history of over three hundred years of Parliamentary Government in Britain. This is because of the manner in which he has discharged his responsibilities as a presiding officer; the detachment and objectivity which he brought to bear upon all his decision, that the framers of Indian Constitution were quite conscious of this role of impartiality of the Speaker is evident from the provisions in the Constitution that deal with the office of the Speaker. For instance, Article 94 (c) provides for the removal of the Speaker by a resolution of the House passed by a majority of all the then members of the House. Removal of officers from their position in this manner, namely, by such special resolutions and by such special majorities is restricted to only a few officers such as the President, the Vice-President, the Presiding Officers of both House of Parliament, Judges of the Supreme Court, etc, as these officers are expected to discharge their responsibilities without political and party considerations.

What is the significance of the office of Speaker?

The importance of the office of the Speaker can be seen also from the functions that he performs and the powers that he exercises.

- He presides over the meetings of the House.
 - He adjourns the House or suspends its meeting if there is no quorum.
 - While questions are decided in the House, he is not entitled to vote in the first instance (which emphasizes his impartiality) but he shall exercise a casting vote in case of a tie.
 - Any member of the House who resigns his office should address his letter of resignation to the Speaker.
 - The decision of the Speaker as to whether or not a Bill is a money bill shall be final. The Speaker will have to endorse or certify it before such a Bill is transmitted to the Council of States or presented to the President for his assent.
- He will be consulted along with the Chairman of the Council of States by the President while making rules of procedure with respect to joint sittings of the two House. In such sittings it is the Speaker's right to preside.
 - In conformity with the Speaker's power to conduct the business of the House, he is empowered to allow any member to speak in his mother tongue, if he cannot adequately express himself either in Hindi or English.
 - With respect to the discharge of his powers and functions, the Speaker is not answerable to anyone except the House.
 - No court of law can go into the merits of a ruling given by the Speaker.

Additional functions of the Speaker

In addition to the constitutional provisions, the Rules of Procedure of the House confer upon the Speaker a variety of powers in the detailed conduct of the business of the House. Under these:

1. His decision to admit notices of questions, motions, resolutions, bills, amendments, etc. is final.
2. There are certain guiding principles which the Rules of Procedure lay down for determining the admissibility of notices of motions, etc. The interpretation of these rules as well as their application to specific situations and circumstances is the prerogative of the Speaker.
3. He is the sole authority for giving priority or urgency to a matter so that it may be placed before the House in the national interest.
4. He is not expected to give reasons for his decisions which cannot be challenged by any member.
5. His powers to maintain discipline in the House and to conduct its proceedings in accordance with the rules are formidable.
6. Similarly his powers in connection with the Constitution as well as the working of Parliamentary Committees also are enormous.
7. The Speaker is thus the guardian and custodian of the rights and privileges of the members, both in their individual capacity and on the group or party basis.

8. The Speaker, in short, is the representative of the House in its powers, proceedings and dignity.

A special feature of the Speaker's office is that even when the House is dissolved, the Speaker does not vacate his office. He will continue in office until a new Speaker is elected when the new House meets. Parliament is empowered to fix the salary and allowances of the Speaker and these are charged on the Consolidated Fund of India.

THE DEPUTY SPEAKER

The Deputy Speaker who presides over the House in the absence of the Speaker is elected in the same manner in which the Speaker is elected by the House. He can be removed from office also in the same manner. When he sits in the seat of the Speaker, he has all the powers of the Speaker and can perform all his functions. One of his special privileges is that when he is appointed as a member of a Parliamentary Committee, he automatically becomes its Chairman. By virtue of the office that he holds, he has a right to be present at any meeting of any Committee if he so chooses and can preside over its deliberations. His rulings are generally final in any case, so far as they are related to the matter under discussion, but the Speaker may give guidance in the interest of uniformity in practice. Whenever the Deputy Speaker is in doubt, he reserves the matter for the ruling of the Speaker.

The Deputy Speaker, however, is otherwise like any ordinary member when the Speaker presides over the House. He may speak like any other member, maintain his party affiliation and vote on propositions before the House as any ordinary member. The Deputy Speaker is entitled to a regular salary.

CHAIRMAN AND DEPUTY CHAIRMAN OF THE COUNCIL OF STATES

While presiding officers of the House of the People are called the Speaker and the Deputy Speaker, their opposite officers in the Council of States are called the Chairman and the Deputy Chairman respectively. The Vice-President of India is the ex-officio Chairman of the Council of States. As the presiding officer of the Rajya Sabha his functions and powers are the same as

those of the Speaker. He is however not a member of the House.

In the absence of the Chairman, the Council is presided over by the Deputy Chairman. He is a member of the House and is elected by the members of the House. When he ceases to be a member of the Council, he automatically vacates the office of the Deputy Chairman. He can resign his office by writing to the Chairman. He may be removed from his office by a resolution passed by a majority of all the then member of the Council. The Deputy Chairman is empowered to discharge all the functions and to perform all duties of the office of the Chairman, whenever Chairman's office is vacant or when the Vice-President is acting as the President. As a presiding officer of the Council he is also given a regular salary and other allowances that Parliament by law has fixed. The Council of States also has a panel of members, called Vice-Chairman, nominated by the Chairman for the purpose of presiding over the House in the absence of both the Chairman and the Deputy Chairman. The Secretariat of the Rajya Sabha is headed by a Secretary who discharges the same functions as his counterpart in the Lok Sabha.

THE GOVERNOR

The Constitution of India has provided for parliamentary system of Government in which the executive head at the Centre is the President. Likewise, at the State level there is a provision for an institution of the Governor, who enjoy the same status as the President at the Centre. The Governor is appointed by the President and his tenure is of five years. As a matter of convention, the Chief Minister is consulted before the appointment of Governor for a particular State whose domicile is also of another State - another convention. The Governor must have the basic qualifications of being an Indian citizen and over the age of 35 years. The Governor enjoys protection against legal proceedings in the court of law as provided under Article 361. He is not answerable to the Court of Law for the exercise and performance of powers and duties of his office or for any act done or purporting to be done in the exercise or performance of his powers and duties. The

Governor shall also not to be the member of the legislature either the Centre or at the State. If a member of a legislature is appointed as Governor, he shall be deemed to have vacated his seat in the legislature on the date of assumption of his office as Governor. The Governor also does not hold any office of profit. The Governor can resign and can be removed from his office by the President before the expiry of the term and there are many examples in our country when large number of Governors have been called back after the change of party in power at the Centre.

Constitutional Powers of the Governor

The Governor enjoys various powers as he is the chief executive authority at the State level. All the executive actions in the State are taken in his name. Also:

- He makes rules for the transaction of business of the Government and for the allocation of work among the Ministers.
- The Chief Minister is appointed by the Governor and the Council of Ministers hold office at the pleasure of the Governor.
- The Governor has the right to be informed of the transaction of business by the Council of Ministers.
- He appoints officials such as Advocate General, Chairman and members of Public Service Commission and Vice-Chancellors for the State University.
- Article 356, which is much in debate, has given power to the Governor to recommend to the President if a situation of emergency has arisen in the State.
- After the declaration of emergency, the Governor takes the full responsibility of administration of the State and as a representative of the Centre, he carries out the functions.
- The Governor has the power to summon and prorogue the State Legislature and also to dissolve the legislative assembly at any time. In fact, legislature is summoned and prorogued on the advice of Chief Minister.
- The Governor can also independently summon the legislature only in instances when the Chief Minister seems to deliberately evading constitutional obligations.
- The first session of the State legislature, after the general elections, and its first session of

- a calendar year, is opened by the Governor.
- He can also withhold or return the bill to legislature for consideration.
- He also hold important power to hold the bill for President's consultation.
- The Governor also has the power to nominate about one-sixth of the Legislative Council members form among the persons having special knowledge in different fields.
- The Governor can also issue ordinance when the house is not in session.
- A Money Bill cannot be introduced in the state legislative without the prior approval of the Governor.
- The Contingency Fund of the State is also at the disposal of the Governor and he can use it for meeting unforeseen expenditures pending any authorization by the State Legislature.
- The Governor is also consulted by the President in matters relating to the appointment of Judges of the High Court of the State.
- The Governor also has the power to decide on matters relating to appointment, posting and promotion of district judges and judicial officers.

It seems that the Governor enjoys a large number of powers and has all chances to dictate his term on the Council of Ministers. In fact, the discretionary powers of Governor are given to meet extraordinary situations and not to be used in day -to- day functioning of the State. The concept of discretionary powers of the Governor has been taken from the Government of India Act 1935. The discretion such as appointment of Chief Minister, dismissing the Council of Ministers, summoning and dissolving the legislative assembly, reserving a bill for President's consideration, invoking Article 356, in fact, make this institution very strong. However, as the Governor acts on the advice of the Centre and has the constant threat of being called back, he is; in fact, never free to use them at his will.

DISCRETIONARY POWERS OF THE GOVERNOR IN INDIA

The entire administration of the State is carried out in the name of the Governor but practically the real authority is exercised by the Council of Ministers. During the normal cir-

cumstances, Governor acts according to the advice of his Council of Ministers. However, Constitution has also vested the Governor with certain discretionary powers, which he can use without the aid and advice of the Council of Ministers or in other words, in the discharge of these functions the Governor concerned is not bound to seek or accept the advice of his Council of Ministers.

Discretionary powers of the Governor are:

a) Article 239:

Article 239 provides that a Union Territory shall be administered by the President through an Administrator or a Governor of a State, adjoining Union Territory, may be appointed as the Administrator of that Union Territory. Where the Governor of a State is appointed as the Administrator of an adjoining Union Territory, he shall exercise his functions as the Administrator without the aid and advice of his Council of Ministers.

b) Sixth Schedule:

Para nine of 6th schedule is related to the licences or leases for the purpose of prospecting for or extraction of minerals. It provides that "such share of the royalties accruing each year from licences or leases for the purpose of prospecting for or extraction of minerals guaranteed by the government of the State in respect of any area within an autonomous District as may be agreed upon between the government of the State and the District Council of such District shall be made over to that District Council. It further provides that if any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be final.

c) Article 371:

Article 371 of the Constitution provides that the President may confer special responsibilities upon the Governor with respect to the State of Maharashtra and Gujarat for the establishment of separate Development Boards for Vidarbha, Marathwada, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these Boards will be placed each year before the State Legislative Assembly.

Article 371 A of the Constitution has conferred special responsibilities on the Governor of Nagaland for certain purposes. The Governor after consulting his Council of Ministers, shall exercise his individual judgement as to the action to be taken. These responsibilities are: with respect to law and order so long as internal disturbances occur in some areas of that State; to establish a Regional Council for Tuensang District; to arrange for equitable allocation of money between Tuensang District and the rest of Nagaland.

Article 371 C of the Constitution confers special responsibilities upon the Governor of Manipur to secure the proper functioning of a Committee of the Members of the Legislative Assembly consisting of the members representing the Hill Area.

Article 371 F (g) of the Constitution confers special responsibilities upon the Governor of Sikkim for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim.

Article 371H (a) of the Constitution confers special responsibilities upon the Governor of Arunachal Pradesh with respect to law and order in the State of Arunachal Pradesh.

However, the Sarkaria Commission recommended that "before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible consult his Ministers even in such matters, which relate essentially to the administration of a State". Such a practice will be conducive to the maintenance of healthy relations between the Governor and his Council of Ministers.

d) Appointment the Chief Minister

Governor uses his discretion in the appointment of the Chief Minister, where after the General Assembly elections, no single party or group commands absolute majority. He may call such person to form the government to whom he thinks fit to form the government. Similarly, if after the death or resignation of the Chief Minister on any political ground or after the defeat of the Chief Minister in the House, any party or group is not in majority, the Governor may appoint such person as the Chief Minister to whom he thinks fit.

e) Article 200

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.

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 therefrom: Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration Procedure in Financial Matters

f) Dissolution of State Assembly:

The Governor has the power to dissolve the Legislative Assembly.

COUNCIL OF MINISTERS

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 [Art.163(1)]. The head of the State Council of Ministers is the Chief Minister. The Chief Minister is appointed by the Governor. Other Ministers are appointed by the Governor on the advice of the Chief Minister. Ministers shall hold office during the pleasure of the Governor (Art.164). The Council of Minister shall be collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. Any person may be appointed a Minister, but he ceases to be a Minister if he does not remain, for a period of six consecutive months, a member of the State Legislature.

Art.164 (1) of the Constitution provides that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who is in charge of the welfare of the Scheduled Castes and backward classes. Art.164 (1A) says that, the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State. [Inserted in the 91st Amendment Act, 2003]. However, the number of Ministers, including the Chief Minister in a State shall not be less than twelve in any case.

Relationship between Governor and CoM

Like the relationship of President with his CoM, Governor has also similar relations with his CoM. Governor generally acts according to the advice of his Council of Ministers. He has the right to be informed about the running of administration by the Chief Minister (Art.167).

- (a) The Governor has the power to dismiss an individual Minister at any time.
- (b) He can dismiss a Council of Ministers of the Chief Minister (whose dismissal means a fall of the Council of Ministers), only when the Legislative Assembly has expressed its want of confidence in the Council of Ministers, either by a direct vote of no-confidence or censure or by defeating an important measure.

ADVOCATE-GENERAL

Each State shall have an Advocate-General for the State, an official corresponding to the Attorney-General of India, and having similar functions for the State. He shall be appointed by the Governor of the State and shall hold office during the pleasure of the Governor. Only a person who is qualified to be a Judge of a High Court can be appointed Advocate-General. [Art.165 (1)]

It is the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred to him by the Governor, and to discharge the functions conferred on him by this

Constitution or any other law for the time being in force.

The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine. He shall have the right to speak and to take part in the proceedings of, but no right to vote in, the Houses of the Legislature of the State.

THE STATE LEGISLATURE

The state legislature consists of the Governor and one or two houses. The Constitution provides that where there are two Houses in a State, one shall be known as the Legislative Council or Vidhan Parishads (Upper House), and the other as the Legislative Assembly or Vidhan Sabha (Lower House). Where there is only one House, it shall be known as the Legislative Assembly (Article 168).

How many States in India have a bicameral Legislature?

At present, Legislative Council exist in six Indian states:

- Bihar
- Maharashtra
- Karnataka
- Uttar Pradesh
- Jammu & Kashmir
- Andhra Pradesh

Andhra Pradesh abolished its upper house in 1984 but again set up a new Legislative Council following the elections in 2007.

The Upper House

When the constitution came into force on 26 January, 1950, provision was made in Article 168 for having two houses of legislature in six states, namely, Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal. Article 169 states that the Parliament may by law provide for the abolition of the Legislative Council of a state having such a council or for the creation of such a council in a state having no such council, if the Legislative Assembly of the state passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two third of the members of the Assembly present and voting.

In India, bicameral legislature is in 6 of the 28 states. The question whether the Upper House in the states have their utility is debatable. The arguments in support of these institutions may be summed up as follows:

- (i) the Upper House gives representation to the special interests in the state,
- (ii) it functions as a revising chamber,
- (iii) it is a safeguard against hasty legislation by the Lower House,
- (iv) it consists of seasoned and experienced people; and
- (v) it has made valuable suggestions on matters of public importance during debates in the House, which are profitably utilised by the Government in the implementation of its policies and programme.

The critics of the bicameral system point out that the upper chamber is

- (i) a superfluous institution and a burden on the public exchequer;
- (ii) it has not made any significant contribution as a revising chamber or as a delaying chamber;
- (iii) there is repetition of various matters that are raised in the Lower House;
- (iv) it has no power to vote demands for grants or to amend Money Bills and certain categories of Financial Bills;
- (v) 22 out of 28 states have only one chamber i.e., Legislative Assembly and the absence of the Upper House has not adversely affected the governance of those states,
- (vi) Three of the states (Madras, Punjab and West Bengal) chose to abolish their Legislative Council within a few years of its existence; and
- (iv) the members defeated in elections to the Lower House are often brought in as members of the Upper House.

It is clear from the scheme of the Constitution set out in Articles 168 and 169 that there is no mandate under the constitution for having the bicameral system in the states. The founders of the Constitution provided for upper houses in only those state which succeeded to the existing provinces under the 1935 Constitution passed

by the British Parliament. For the States newly created by the Constitution no provision for Upper House is made. Accordingly, the erstwhile states of Bombay, Madras, Punjab, Uttar Pradesh, Bihar, and West Bengal had originally Upper House but three of them voluntarily opted for their abolition.

What is the composition of a Legislative Council?

The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that state. The total number of members in the Legislative Council shall in no case be less than fourty, unless Parliament by law otherwise provides. The quorum of the Council is one tenth of the total strength or 10 members, whichever is greater. Of the total number of members of the Legislative Council of a State;

- (i) as nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the state as Parliament may by law specify,
- (ii) as nearly as may be, one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of such University,
- (iii) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the state not lower in standard than that of Secondary School, as may be prescribed or under any law made by Parliament
- (iv) as nearly as may be, one third shall be elected by the members of the Legislative Assembly of the state from amongst persons who are not member of the Assembly; and
- (v) the remainder shall be nominated by the Governor from among persons having spe-

cial knowledge or practical experience in respect of matters such as literature, science,, art, co-operative movement and social service.

Powers of Legislative Councils

As regards its powers, the Legislative Council plays a more advisory role. A Bill, other than a Money Bill, may originate in either House of the Legislature. Over legislative matters it has only a suspensive veto for a maximum period of four months. Over financial matters, its powers are not absolute. A Money Bill originates only in the Assembly and the Council may detain it only for a period of fourteen days. As in the case of the Parliament at the Centre, there is no provision for a joint sitting of both the Houses of the States Legislature to resolve a deadlock between them, over legislative matters, if any. Thus, the Legislative Council is only a subordinate component of the State Legislature.

Arguments in favour of Legislative Council

The supporters of these Upper Houses of State Legislatures advance strong arguments. They feel that these Houses must be retained in the national interest. In favour of these Houses, it is said that:

1. In India the Lower Houses are constituted on the basis of universal adult franchise. There are no voting qualifications based on education and property. In the Lower House, both the literate as well as illiterate vote on political considerations. It is argued out that in case democracy is to be saved from the caprice of uneducated persons, it is essential that there should be Upper House.
2. Another argument advanced is that in every state there are people who have excelled in certain walks of life. The nation must take advantage of their abilities and capabilities. But these persons have no interest in contesting elections. Their services can best be utilised only with the help of Vidhan Parishads.
3. It is also argued that the very fact that there is another House, creates a very sobering effect on the Lower House, which does not feel tempted to pass a bill either in haste or

under the influence of some momentary impulses. In case any half cooked measure comes up then at least Upper House points that out to the duly elected representatives of the people, leaving to them to accept the suggestion or not. In other words, it points out gravity of problems and suggests solution but does not very much care whether suggestions have been accepted or not.

4. Another utility of the Legislative Council is that minority communities in every state can be given representation in this House. Such representation is likely to keep them very much happy and satisfied. Similarly, the services of experienced persons who do not wish to contest elections can also be used in this House.
5. Legislative work everywhere has much increased and it is becoming impossible for a single House to handle it efficiently. So some non-money bills or less controversial matters can be introduced in the Upper House and in this way pressure of work in the Lower House is considerably reduced. This is always a welcome relief for the Lower House.
6. It is accepted that law making process has become time consuming and sufficient time is taken by each House before a bill becomes an Act. It is also accepted that during this time, the people get an opportunity to express their view point. But when the bill goes to the Upper House, the people are bit more clear as to what is going to be passed. Moreover, this time interval is always a welcome because during this period the people can express themselves and if need be changes can even now be introduced.
7. It is also argued that Upper House does not stand in any way against the determination of the duly elected representatives of the people. All that they do is that they point out certain drawbacks and shortcomings, which should always be welcome. These Houses can serve very useful purpose in case all political parties return there men of eminence who have long and varied experience of life and maintain a good position in society. If they are the people with the strength of character and also capacity to

render service to the society, they can do a lot of good to the society. Only those should be nominated who enjoy high reputation for their qualities of head and heart and a spotless life career.

Arguments against Legislative Council

1. In view of inherent weaknesses of Vidhan Parishads (Legislative Councils), some critics are of the view that these should be abolished. According to them, in case Parishad agrees with what is passed by the Assembly then it is simply a superfluous House. In case, it does not then it will be characterized as a mischievous House and will be charged as citadel of reaction standing on the way of policies and programme of duly elected House.
2. Another criticism levied against this House is that it is no check on the Assembly. A money bill can be delayed only for a period of 14 days, which is very insufficient period for the members to express their view point. Even in the case of non-money bills, it can only delay a bill for a period of 4 months and if the Assembly is bent upon passing a measure no efforts on the part of the Parishad can check it.
3. The Council of Ministers also does not much fear from it because a vote of no confidence does not have any effect for the Ministry.
4. It is also argued that the Parishads are usually not even progressive. These have no directly elected elements. Some of the members are nominated ones. Their composition is such that these are not supposed to know public sentiments. Thus, the House is characterised as reactionary and conservative.
5. It is argued that in these Houses scholarly or literary or social workers are not nominated. Instead, this chamber is used for providing berth to defeated politicians or those active party workers who somehow or other could not be accommodated in the Assembly or dissidents in the party to avoid party frictions. In other words, the Upper Houses neither represent any caste, class or section of society but only vested interests. All elections or nominations are made on party basis and these chambers are only for increasing party interests and influences.

6. A usual argument is that since these chambers do not serve much useful purpose, therefore, their maintenance is not worth the cost which the nation is required to pay for its upkeep and by way of salaries, allowances and other expenses of the members. In case Parishads are abolished the tax payer will be much saved and the money saved can be used for other useful purposes, including economic development.
7. The very fact that only six States have retained Vidhan Parishad proves that bicameralism is not a very popular institution in India in the states. Moreover, practical experience has shown that those states which have no Legislative Councils are in no way doing work less efficiently than the other states. In case, the Councils had been doing very useful work, then the other states must have gone for it.
8. Then it is not clear to whom the Parishads represent. In case it is said that in it the teachers, and graduates are to be given representation, along with those who are engaged in the promotion of co-operative work, then why only these vocations and why not other very important vocations and occupations. In case it is felt that in that those who have excelled in any walk of state life, should be given representation, then why nomination has been kept at only 1/6th. It should have been kept much higher.
9. It is presumed that in this House there will be calm and serene atmosphere, where every problem will be discussed in a passionless atmosphere because the elders have held out no promises to the people at the time of their election. But again this is not true because in the Upper House also political considerations very much weigh with the members. Each member votes more or less on party lines and it is said that an Upper House is just extension of the Lower House, in so far as political parties are concerned. There is also no calm atmosphere in these Houses. The elders quite often quarrel with each other and do not provide much needed calmness.
10. According to some thinkers, Upper Houses are necessary because these give sufficient

time to the people to express their views. According to them when a bill is traveling from the Assembly to the Parishad, the people come to know what is going to be passed. Intervening time can be utilised for expressing opinion by the public and in case there are strong reservations, the bill can be modified as well. But again this is not correct because the time taken in passing each bill in one House and stages through which it passes are so many that the people have sufficient time to express themselves, through press and platform. On this ground also, the Upper Houses have no utility.

To conclude, the Upper Houses of State Legislatures are likely to remain under criticisms, in case these are used for providing berth to defeated politicians so that they can become Chief Ministers or Ministers by becoming a member of either House of legislature. Politicians must take the responsibility to firmly establish the prestige of these constitutional institutions.

The Lower House

The Legislative Assembly consists of not more than 500 and not less than 60 members chosen by direct election from territorial constituencies in the state. For the purpose of election, each state shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it, as far as practicable, be throughout the state. At the end of each decennial Census, the constituencies will be recasted to make the necessary adjustments to meet the variation in population.

Thus, the members of the Legislative Assembly are elected on the basis of universal adult franchise without any consideration of caste, creed and religion. There is, however, a provision for safeguarding the interests of scheduled castes and scheduled tribes and Anglo Indian community. Some constituencies are reserved for Scheduled Caste and Scheduled Tribe and members belonging to these community can be elected from them. There is a provision in the constitution that when the Governor of a State

feels that the Anglo-Indian community has not been given proper representation, he can nominate a fixed number of members belonging to that community in the State Assembly. The members of the Legislative Assembly are entitled to receive such salaries and allowances as may from time to time be determined by the legislature by law.

Functions and Powers of the Legislative Assembly

The Legislative Assembly is popular and more powerful chamber of the State Legislature. Assembly has the following important functions and power:

1. It can make laws on any subject provided in the State List. It can also make a law on a subject of the Concurrent List in case it is not in conflict with a law already made by the Parliament.
2. It has control over the Council of Ministers. Its members may ask questions from the minister, introduce resolutions or motions, and may pass a vote of censure to dismiss the government. The Ministry is collectively responsible to the Assembly. The defeat of the Ministry in the Assembly amounts to the passing of a vote of no confidence against it.
3. It controls the finances of the state. A money bill can originate in the Assembly and it is taken as passed by the Legislative Council after a lapse of 14 days after reference made to it by the Assembly. It may pass, reject the demands or reduce their amount implying adoption or rejection of the budget and thereby victory or defeat of the government. Thus, no tax can be imposed or withdrawn without the approval of the Legislative Assembly.
4. It has constituent powers too. According to Article 368, a bill of constitutional amendment first passed by the Parliament shall be referred to the states for ratification. It is here that the Assembly has its role to play. It has to give its verdict by passing a resolution by its simple majority showing approval or disapproval of the said bill.

5. It is also provided that the President shall refer to the Assembly of the concerned state a bill desiring alteration in its territory for eliciting its views in this regard before he recommends that such a bill be introduced in the Parliament.
6. The Assembly also elects its own Speaker and Deputy Speaker and may remove them by a vote of no confidence. It takes part in the election of the President of India. It consider reports submitted by various independent agencies like the State Public Service Commission, Auditor-General, and others.

Speaker of Legislative Assembly

Every Legislative Assembly chooses two members of the Assembly to be the Speaker and the Deputy Speaker respectively whenever these offices become vacant. They vacate their offices if they cease to be the members of the Assembly. The Speaker or the Deputy Speaker as the case may be resigns his office by writing to the Deputy Speaker in the case of the Speaker and to the Speaker in the case of the Deputy Speaker. They may be removed from office by a resolution of the Assembly passed by a majority of all the then members of the Assembly. No resolution for the purpose of the removal of the Speaker or the Deputy Speaker is moved unless at least 14 day notice is given of the intention to move such a resolution. While any resolution for the removal of the Speaker from the office is under consideration, the Speaker though he is present, will not preside over such a meeting.

The Presiding Officers are paid such salaries and allowances as are prescribed by the Legislature of the State by law. The main characteristics of this high office are dignity, independence and impartiality. The legislature is the pivot of a democratic system of Government and the Speaker is the pivot of the parliamentary machinery. He is vested with powers to ensure orderly discussion in the House, to enforce the rules of procedure, to control disorder and to take disciplinary action against members indulging in unruly behaviour.

The Presiding Officer should stand above party strife and away from stormy state politics to be able to command respect of all groups.

Viewed in this perspective, one can appreciate the step taken by N. Sanjeeva Raddy, when he was Speaker of the Lok Sabha, who resigned from the Party to which he belonged. But most of the Speakers at the State did not sever their party connections. Some of them even joined the Ministries by resigning their office of Speaker and Deputy speaker. Persons who have ministerial ambitions cannot be expected to be completely impartial and free from party politics. The Speaker has not always lived up to these principles and in certain states they have acted in a patently partisan manner.

What are the Qualifications and Terms of the members of State Legislatures?

No person can be a member of both Houses of the State Legislature at the same time. Person holding office of profit under the Union or the State Government and persons convicted by the Court of election malpractices or other crimes are also not eligible for membership of the Legislature. A person is not qualified to become a member of the Legislature unless he is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose.

Terms

The Legislative Council is a permanent body, not subject to dissolution. One-third of its members retire every two years, after completing the term of six years.

Every Legislative Assembly has a five years term from the date appointed for its first meeting unless dissolved earlier. The Assembly stands automatically dissolved after five years. The period of five years, may, while a proclamation of emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time, and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

Qualifications

A person seeking election to the Legislative

Council must have completed the age of 30 years, and possess such other qualifications as may be prescribed by the Parliament from time to time.

A person seeking election to the Legislative Assembly must be twenty five years old and possess such other qualification as may be prescribed in that behalf by or under any law made by Parliament.

Restriction on Powers of The State Legislatures

There are many restrictions on the powers of the state legislature which make them subservient to the will of the Parliament, despite the fact that the Constitution allots them a certain residue of authority that, just for some theoretical reasons, may be identified with their area of sovereignty. The restriction on the powers of the state legislatures are as follows:

- (i) State legislatures can neither legislate on an item of the Union List nor a residuary subject.
- (ii) Though it can enact laws on a subject mentioned in the Concurrent List, it is Central law which shall prevail and to the extent to which the state law is violative of Central law it will be ultra vires or constitutional.
- (iii) Article 249 provides that the Rajya Sabha may pass a special resolution by a two thirds majority of members, present and voting, to transfer any item from the State List to the Union or Concurrent Lists for the period of one year on the plea that it is expedient in the national interest.
- (iv) There are some categories that require that a bill passed by the state legislature shall be reserved by the Governor for the consideration of the President, even though unanimously passed by the state legislature. Bill dealing with compulsory acquisition of private property, being derogatory to the powers of the High Court, or seeking imposition of tax on a commodity 'essential' by an act of Parliament, or any other bill likely to conflict with some Union law, already in force fall within this category.

- (v) The state legislatures cannot override the veto of the President.
- (vi) There are some kinds of bills that cannot be introduced in the state legislatures without the prior permission of the President. Bills seeking to impose restrictions on trade, commerce or intercourse with other states or within the state fall within this category.
- (vii) The President is empowered to declare a states of emergency in the country without consulting the states. But once such an emergency has been declared, the Parliament is empowered to legislate on the subject mentioned in the State List.

Thus, the position of the state legislatures, in practical terms, is like that of a local and vassal Parliament working under the over lordship of the Parliament of India.

RELATIONS BETWEEN UNION & STATES

The Constitution of India provides a dual polity with a clear division of powers between the Union and the States, each being supreme within the sphere allotted to it. The States in India are not the creation of the Centre nor do they draw their authority from the Union Government. On the other hand, like the Union Government, they draw their authority directly from the Constitution and are free to operate in the field allocated to them by the Constitution. At the outset, it may be noted that the Constitution of India has made most elaborate provisions regarding relationship between the Union and the States. This was done with a view to minimize the conflicts between the Centre and the States. But the actual operation of the Centre-State relations for all these years has given rise to a controversy about the wisdom of arrangements made under the Indian Constitution. Critics have expressed doubts about the existing arrangements and demanded re-allocation and adjustment of the Centre-State relations. The relations between the Centre and the States can be conveniently studied under the following categories.

LEGISLATIVE RELATIONS

The Union State relations in the legislative sphere have been dealt by Articles 245 to 254.

The Constitution clearly provides that the Parliament shall have exclusive jurisdiction to make law for the whole or any part of the territory of India with regard to subjects mentioned in the Union List. This list contains 97 subjects like defence, foreign affairs, currency, union duties, communication, etc. On the other hand, the State enjoys exclusive power over the 66 items enumerated in the State List. This List contains

WHAT IF THE LAW OF THE UNION AND THE STATE GOVERNMENT COME INTO CLASH WITH EACH OTHER?

If the law of the Union Government and the State Government come into clash with each other the former prevails. However, a State law on the Concurrent List shall prevail over the Central law if the same had been reserved for the consideration of the President and his consent had been received before the enactment of the Central law on the same subject. This clearly gives some leeway to the States.

subjects like public order, health, sanitation, agriculture etc. In addition, there is a Concurrent list containing 47 subjects like criminal law and procedure, marriage, contracts, trust, social insurance etc. over which both the Union and the State Governments can legislate. The constitution also vests the residuary powers (viz., enumerated in any of the three Lists) with the Central Government. It may be noted that in this distribution of powers, the Union Government has certainly been given a favoured treatment. It has not only been granted more extensive powers than the States, even the residuary powers have been granted to it contrary to the convention in other federations of the world, where the residuary powers are given to the States.

Union's power to legislate on States' subjects

Though under ordinary circumstances the Central Government does not possess power to legislate on subjects enumerated in the State List, but under certain special conditions the Union Parliament can make laws even on these subjects. In the following cases Union Parliament can legislate on the subject listed in the State List.

- a) If the Rajya Sabha declares by a resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that the Parliament should make laws with

- respect to any matter, enumerated in the State List, specified in the resolution. After such a resolution is passed it is lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Such a resolution remains in force for a period of one year and can be further extended by one year by means of a subsequent resolution. It may be observed that this provision has been used only in very few cases and has not added to the powers of the Parliament.
- b) The Parliament can legislate on the subjects mentioned in the State List when the Proclamation of Emergency has been made by the President on grounds of internal disturbances or external aggression. However, the laws thus made by the Parliament shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiry of the said period. Thus, during emergency the Parliament can legislate on subjects in all the three lists and the Federal Constitution gets converted into unitary one.
 - c) The President can also authorise the Parliament to exercise the powers of the State legislature during the Proclamation of Emergency due to breakdown of constitutional machinery in a state. But all such laws passed by the Parliament cease to operate six months after the Proclamation of Emergency comes to an end.
 - d) The Parliament can also be authorised to legislate on a state subject if the legislatures of two or more states feel it desirable that any of the matters with respect to which the Parliament has no power to make laws for the states should be regulated in such states by Parliament by law and if resolutions to that effect are passed by legislatures of those states. Thereafter, any act passed by the Parliament shall apply to such states and to any other state by which it is adopted afterwards by resolution passed in that behalf by the house, or, where there are two houses, by each house of the legislature of that state. The Parliament also reserves the right to amend or repeal any such act.
 - e. The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the state list.
 - f. Certain bills passed by the state legislature have to be reserved by the Governor of the state for the consideration of the President. These bills become law only after the President gives his assent. The bills which the Governor must reserve for the consideration of the President relate to compulsory acquisition of property, or those which adversely affected the Powers of the High Court.
- It is quite evident from the above discussion that the Union enjoys a position of superiority in the legislative sphere and at times the states are completely at its mercy.

ADMINISTRATIVE RELATIONS

The administrative jurisdiction of the Union and the State Governments extends to the subjects in the union list and state list respectively, which clearly establishes the superiority of the Union Government in the administrative sphere as well. In addition, the Constitution contains a number of provisions which accord a position of superiority to the Union Government.

Article 256 lays down that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. Similarly, Article 257 of the Constitution provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions

to a state as may appear to the Government of India to be necessary for that purpose. In short, the Union Government can issue directions to the state Government even with regard to the subjects enumerated in the state list.

Union's power to give Directions

The Union Government can also give directions to the state with regard to construction and maintenance of the means of communication declared to be of national or military importance. It can also ask the state Governments to construct and maintain means of communication as part of its functions with respect to naval, military and air force works. It can also issue them necessary directions regarding the measures to be taken for the protection of the railways within the jurisdiction of the state. It may be noted that the expenses incurred by the state Governments for the discharge of these functions have to be reimbursed by the Union Government. It may be noted that the state Governments cannot ignore the directions of the Union Government, otherwise the president can take the plea that the Government of the state cannot be carried on the accordance with the provisions of the Constitution and impose President's rule on the state. In such an eventuality the President shall assume to himself all or any of the functions of the state Government. The President of India can also entrust to the officers of the State certain functions of the Union Government. However, before doing so the President has to take the consent of the state Government. Further, the extra cost incurred by the states in the discharge of these obligations has to be reimbursed by the Union Government.

All-India Services

The presence of the All India Services like the Indian Administrative Services, and the Indian police Services etc. further accords a predominant position to the Union Government. The members of these services are recruited and appointment held by the Union Public Service Commission. The members of these services are posted on key posts in the states, but remain loyal to the Union Government. The right to create new All India Services

also rests with the Union Parliament. The Union Parliament can create a new All India Service only if the Rajya Sabha passes a resolution by two-thirds majority of the members present and voting that it is necessary in the national interest to do so.

Water Disputes

The Parliament has been vested with power to adjudicate any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river-valley. In this regard, the Parliament also reserves the right to exclude such disputes from the jurisdiction of the Supreme Court or other Courts.

Responsibility of the Union

Under the Constitution, it is the responsibility of the Union Government to protect the states from external aggression and internal disturbances. This leaves much scope for Centre's interference in the spheres of the state. The President can declare national emergency in case of war or possible threat of war as well as armed rebellion. During this emergency the Centre can give directions to the states as to the manner in which their executive power is to be exercised. The President can authorise the Parliament to make laws with respect to any matter including power to make laws conferring powers and imposing duties or authorising the conferring of power and the imposition of duties upon the Union officers and authorities of the Union as respects that matter unmindful of the fact, that the matter does not belong to the Union list. Similarly, it is the duty of the President to ensure that the government of the state is carried on in accordance with provisions of the Constitution. If the President is satisfied that the government of the state cannot run along constitutional lines, he can declare constitutional emergency in the state and assume to himself all or any of the functions of the Government of the state and all powers of the State other than those exercised by the legislature and High Court of the State. The President can also declare that the powers of the state legislature shall be exercised under the authority of the Parliament and make such incidental and consequential provisions as appear to him to be

necessary or desirable for giving effect to the objects of the Proclamation.

Role of Governors

The Central Government exercises effective administrative control over states through the Governors of State who are appointed by the President and hold office during his pleasure. The Governors can reserve certain bills passed by the State legislatures for the consideration of the President. President can also issue directions and orders to the Governor which are binding on him. Thus, the Centre can exercise effective control over the States through the Government to topple State Governments which are irksome to the Central Government.

Judicial System

As the Constitution of India provides for a single judicial system both the Union and the State Governments are duty bound to give full faith and credit to public acts, records, proceedings and judicial decisions of the Supreme Court and the High Court. The manner in which these acts, records and proceedings have to be preserved is determined by Parliament by law and the states do not have any say in this regard. In the matter of appointment of the Chief Justice and the Judges of the Supreme Court as well as the High Courts, the states have no say. They are appointed by the President in consultation with the Chief Justice of India and such other judges of the supreme courts and the High Court as he deems fit to consult. The initiative for the removal of these judges also rests with the Parliament which can pass necessary resolution for their impeachment and recommend to the President to take necessary action. The States are in no way connected with the appointment or removal of the judges of the Supreme Court or High Court.

State Government's Power

The State Governor can entrust conditionally or unconditionally certain functions with respect to the executive powers of the state to the officers of the Union with the consent of the Union Government. (Article 258A). It may be

observed that the original Constitution did not contain this provision. This provision was added through Seventh Amendment in 1956 in view of the objections by the Comptroller and Auditor-General over construction of Hirakund Dam by the Central Government on behalf of the Orissa Government and debiting of cost to the state accounts.

Impact of the 42nd Amendment Act

A new turn was given to the Centre-State Relations in the administrative sphere by the Forty- Second amendment of 1976, which empowered the Central Government to deploy armed forces for dealing with any grave situation of law and order in the States. The contingents so employed were to act in accordance with the instructions of the Central Government and not to work under the direction, superintendence and control of the state government concerned, unless specifically directed by the Central Government. This change naturally greatly restricted the autonomy of the states and was resented by the states. Ultimately this provision was nullified by the 44th Amendment.

It is thus, evident that in the administrative sphere the states cannot act in complete isolation and have to work under the directions and in cooperation with others of the federation.

FINANCIAL RELATIONS

Generally, in typical federation alongwith the distribution of legislative and administrative powers, the financial resources of the country are also so distributed as to ensure financial independence of the units. However, the Indian Constitution does not make a clear cut distribution of the financial resources and leaves much to be decided by the Central Government from time to time. The financial resources which have been placed at the disposal of the state are so meagre that they have to look up to the Union Government for subsidies and contributions. The distribution of financial resources in India has broadly been made as follows.

1. **Taxes Exclusively assigned to the Union**
Income from certain subjects like customs

and export duties, income tax, excise duty on tobacco, jute, cotton etc., corporation tax, taxes on capital value of assets of individuals and companies; estate duty and succession duty in respect of property and other than agricultural land; and income from the earning departments like the railways and postal departments have been exclusively assigned to the Union Government by the Constitution.

2. Taxes exclusively assigned to States

Income from land revenue, stamp duty except on documents included in the Union List; succession duty and estate duty in respect of agricultural land; income -tax on agricultural lands; taxes on goods and passengers carried by road or inland water; taxes on vehicles used on roads, animals, boats, taxes on the consumption or sale of electricity, tolls, taxes on lands and buildings; taxes on professions, traders, calling and employment; duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs, taxes on the entry of goods into local areas, taxes on luxuries, entertainments, amusements, betting and gambling, etc. has been assigned to the States.

3. Taxes Leviable by Union but collected and appropriated by the State

The taxes on the following items are levied by the Union Government but the actual revenue from them is collected and appropriated by the States; (i) stamp duties on bills of exchange, cheques, promissory notes, bills of landing, letters of credit, policies of insurance, transfer of shares etc.; (ii) Excise duties on medicinal toilet preparation containing alcohol or opium or Indian hemp or other narcotic drugs.

4. Taxes levied and collected by the Union but assigned to states

The taxes in this category are levied and collected by the Union Government although they are subsequently handed over to the states where from they have been collected. Such taxes included duties in respect of succession to property other than agricultural land; state duty in respect of property other than agricultural land terminal taxes on goods or passengers carried by railways,

sea or air, taxes on railway freights and fares; taxes other than stamp duties on transactions in stock exchanges and future markets; taxes on the sale or purchase of newspapers and on advertisements published therein; taxes on purchase or sale of goods other than newspapers where such sale or purchases take place in the course of inter - state trade or commerce.

5. Taxes levied and collected by the Union but shared with the States

Taxes on income other than agricultural income and excise duties other than those on medicinal and toilet preparations are levied and collected by the Union Government but shared with the states on an equitable basis. The basis of distribution is determined by the Parliament through a law.

CENTRE - STATE RELATIONS: TENSION AREAS

Arising out of the nature of Centre - State relations as well as difference in political ideology of the ruling parties at the Centre and States, following major areas of tensions have emerged in Indian federalism.

1. Role of Governor as a representative of the central Government with regard to appointing and dismissing State ministers and dissolution of the State Assemblies.
2. Misuse of powers of imposition of President's Rule under Article 356.
3. Reservation of Bills for the consideration of the President under Article 201.
4. Sharing of finances, and central approval of state projects.
5. Demand for autonomy by the States

Within these five major areas, there are several other issues of administrative and political processes that cause tensions in Centre - State relations

Role of Governor

Since 1967, when the monopoly of the Congress Party was shattered, the role of Governor has assumed greater significance. This has further become so because of nature of multi-party system and prevalence of the phenomenon of defections. In this the ruling party at the Centre has found in the office of Governor

an effective instrument to assume power for itself. During seventies and eighties in particular, the office of Governor was used to topple down the State Governments on one pretext or the other. Apart from toppling or dismissing ministries, the Governors have also started interfering in the State Government's affairs in the name of their discretionary powers. Also starting from 1967 Governors have been using their powers to dissolve or suspend State Legislative Assemblies to help the ruling party at the centre to form Governments at its convenience.

Such interferences by Governors in State Government affairs and abuse of their powers for partisan reason has been giving rise to a feeling of insecurity among the States followed by demands for settling the issues of appointment and dismissal of Governors themselves, and a definite code for the exercise of discretionary powers by the governor.

Misuse of Article 356

It was a major issue of contention, as the use of Act 356 was subjected to only the subjective satisfaction of the president. However the situation was changed after the 49th amendment act, which has introduced many safeguards against misuse of the powers of the President under article 356. The act has restored the original 6 months period when parliament extends its approval to the state emergency. The original constitution provided that the state emergency could be extended for a max. period of 3yrs. with parliamentary approval, without any preconditions, however the 44th amendment has divided these 3yrs. into (1 yr. normal period + 2yr. extra-ordinary period). If it is to be extended beyond normal 1yr. then two conditions are to be satisfied-

1. There should be a national emergency in force in whole of the country or the state concerned.

2. The EC of India shall certify that under the prevailing condition a general election to the state leg. assembly can not be held.

This situation was further improved in the SR Bommai vs UOI 1994 case when the SC held that the satisfaction of the President u/a 356 is

subject to the judicial review, however the judicial review would be limited to -

- (1) Whether there was any material on which the President formed his satisfaction.
- (2) Whether the material was relevant.
- (3) Whether there was any malafide intention on the part of the President while exercising his power.

All these provisions have by and large contributed positively towards restricting the misuse of Act 356 in the recent past and Art 356 no longer remains such an important issue of the contention between the centre & states, as it used to be earlier.

Article 200 & 201

The power of the Governor to reserve all bill, passed by the legislature for the President's assent is another cause of tension between the Centre and the State. This has especially been so in case where the Governor has reserved a bill against the advice of the State Ministry, presumably under the direction of the Central Government. The main purpose of this provision is that the Centre wants to keep a watch on the activities of the States. Unfortunately, Governor has used these Articles in most of the cases to serve the interest of the ruling party at the Centre which led to a good deal of controversy. The opposition ruled states have from time to time raised a hue and cry against the misuse of Article 200 and 201. The West Bengal Government in its reply to the Sarkaria Commission's questionnaire felt that Articles 200 and 201 had to be deleted. If the deletion was not feasible, the State suggested that a constitutional amendment should clarify that the Governor would not act in his discretion but only on the advice of the State Council of Ministers. Further there is also a suggestion about making such discretion of the Governor subject to Judicial review.

Revenue

One of the most controversial areas between the Centre and the State in a federal system is that of financial relations and the Indian federal system is no exception to this. The demand of

the states for greater fiscal autonomy has now become one of the most debated issues of the Indian federation. The tension between Centre and States with regard to fiscal relations arises because of:

- (a) Comparative powers of taxation,
- (b) Statutory versus discretionary grants, and
- (c) Economic planning.

Fiscal matters: Sources of revenue to the Centre are relatively elastic and expansive as against those of the states. The Centre also controls vast resources generated through deficit financing, loans from organized money market in the country as well as huge funds of foreign aid. The residuary powers of taxation are also vested with the Central Government. In addition to this, Constitution also authorizes the Centre to collect surcharges on taxes to raise additional funds in times of emergency. In practice surcharge has become a permanent feature of income tax structure. Another loophole in taxation system, on account of which states suffers, is the cooperative tax, which keeps on expanding and is in the exclusive purview of the Centre. The states therefore have to be dependent on Central assistance.

Grants - in - Aid: With regard to sharing of resources and assignment of certain resources entirely to the State, Articles 280 and 281 provide for the appointment of an independent Finance Commission every fifth year or earlier as the President of India desires. The provision of Finance Commission was to regulate, coordinate and integrate the finances of the Government of India and the State Government. Originally, the Finance Commission was intended to cover all the financial transfers from the Centre to States. However, slowly Planning Commission has also been brought in for the purpose and now it plays a rather important part in devolution of resources from the Centre to the States. Since the Planning Commission is a completely Central institution the politically influenced States have a sense of discrimination in location of grants. States are sore not only because of the fact that the Planning Commission's authority to determine the scope and pattern of a major portion of Central assistance to States has relegated the role of

Finance Commission to a subsidiary one but also because the Centre does not seem to be much serious even about the reduced role of the Finance Commission. According to opposition ruled state, provision for grants-in-aid by the Centre has become purely a political and arbitrary means of devolution.

Centre gives grant-in-aid to States under Article 281 on its discretion for undertaking welfare schemes, meet natural calamities or for removal of disparities etc. There is a general feeling that Centre discriminated between States being ruled by different political parties. A close scrutiny of the Central relief to the States affected by natural calamities indicates that no well considered norms were followed in this regard. The Central teams preoccupied by political considerations have always assessed the damage done by droughts, flood, etc. in an ad hoc perfunctory manner.

The States therefore, have sharply questioned the need for the Centre to wield heavy financial clout in the shape of discretionary grants, as there are inherent dangers of their being used as a political weapon against a State that happens to be out of favour with the Centre. The States want more resources to be ear-marked for statutory devolution so that the trend of increasing allocations through discretionary grants can be curbed.

Economic Planning: It is generally agreed that the process of planning in India has tended to push the political system to greater centralisation due to both the central control over resources for development and the preponderance of the centralised planning machinery. The gravest and most harmful consequence of the atrophy of the state's domain in the economic field is in regard to industries and economic planning. Similarly it is alleged that in the name of national planning, the centre for political considerations has been inordinately delaying viable and important state projects. Infact the Centre has been alleged to be superimposing its schemes on the States which are deemed by State governments to be irrelevant to the conditions prevailing in the States

Demand for Autonomy

The constituent units of the Indian Union i.e. the States have been developing a feeling of deprivation on the ground that the Centre has denied them the autonomy that has been guaranteed under the Constitution. Moreover, despite changes in Government, the trend towards centralization has not been weakened. In this context the demand for a greater and more meaningful devolution of power has been assertively and more stridently articulated over the years. The Administrative Reforms Commission (appointed in 1967) recommended that powers should be delegated to the maximum extent to the States. It also expressed the opinion that centralized planning had tended towards excessive interference in the freedom of States to work out their policies and programmes. The Commission also made some recommendations with regard to the office of Governor and also suggested the need to establish an Inter-State Council under Article 263 of the Constitution. The recommendations of the Commission however remained on paper and process of centralization continued.

SARKARIA COMMISSION

The decades of the eighties witnessed a struggle to get the federal issue on the nation's agenda. And when the political challenge assumed new dimensions and tensions between the Centre and the States grew in sharpness, it became necessary to ease the situation. It was in this context that the Government of India announced on March 24, 1983 the appointment of a Commission to examine and review the working of existing arrangements between the Union and the States in regard to powers, functions and responsibilities in all spheres and recommend appropriate changes and measures. The Commission came to be known as the Sarkaria Commission on Centre-State Relations after the name of its Chairman R.S. Sarkaria. The Commission was asked to keep in view the social and economic developments that has taken place over the years as also the scheme and the framework of the Constitution and the need for preserving the unity and integrity of the country.

Report of Sarkaria Commission

The Sarkaria Commission in its report submitted on October 27, 1987. The Commission favoured a strong Centre as the only safe-guard to national integrity which was being threatened severely in the light of recent fissiparous tendencies in the body politics. But, the Commission did not equate strong Centre with centralisation of powers. Infact, it viewed centralisation as dangerous for national integration. The Commission observes, those in power at the centre, have been obliged to use diverse strategies and tactics which were not always sound from long term interests, to maintain their control over state level forces. Many a time, the actions of the centre, its discriminatory approach towards some states, its lack of understanding of local problems, its object insensitiveness and the blatant misuse of authority vis-à-vis the states have all distanced it from the people. This, in turn, it is believed that reversed the process of national integration, the divisive tendencies have been further compounded by such a short sighted approach.

Recommendations of Sarkaria Commission

Salient suggestions made by the Sarkaria Commission are:

1. More extensive and generous use of Article 258 which gives powers to Union government to confer powers, etc. to State governments should be made than as hitherto being done.
2. Any move to disband the All India Service or to permit the State government to opt out the scheme must be regarded as retrograde and harmful to the larger interest of the country. The All India Services should be further strengthened and greater emphasis given on the role expected to be played by them.
3. Whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State government, individually, but also collectively. There should be regular consultations on the management of All India Services between the Union and the State governments.

4. The Planning Commission and the National Development Council are to be reformed assuring at the same time of full and effective consultation with the States at all stages of the planning process so that they feel that their role in it is not that of a supplicant, but of an equal participant.
5. Before the Union government deploys its armed and other forces in a state in aid of the civil power otherwise than on request from the State government or declare an area within a State as disturbed, it is desirable that the State government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State government is not obligatory.
6. Convention as to consultation with State governments in Concurrent List individually as well as collectively should be strictly adhered to except in extreme emergency.
7. Governor should not, on demitting his office, be eligible for any other appointment or office of profit under the Union or State government.
8. Article 356 (emergency provisions) should be used very sparingly in extreme cases as a measure of last resort when all available alternatives fail.
9. An expert committee should be constituted to enquire into and revive from time to time in consultation with the States, the operational feasibility of the scope for levying taxes and duties under Article 269 and the complementary measures, the State governments would be required to (Taxes levied under this article are collected by the Union Government and assigned to the States).
10. In order to ensure effective consultation with the State Chief Minister, in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending it.
11. Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of parliament while the residuary subjects other than that of taxation should be placed in the Concurrent List.
12. Safeguards should be incorporated in Article 356 to enable Parliament to revive continuance in force of a proclamation.
13. The Constitution should be suitably amended to add the subject of taxation of 'advertisement broadcast by radio or television to the present Entry 92, List (Union list) and Article 269 (1) relating to duties and taxes levied and collected by the Union assigned to States.
14. Inter State River Water Disputes Act may be amended to make it mandatory on the Union government to constitute a tribunal within one year of receipt of an application from a State and should be amended to empower the Union government to appoint a tribunal when it is satisfied that a case exists, to require States to furnish necessary data to the tribunal, to make the award of the tribunal effective within 5 years to give the award of the tribunal the same sanction and force as that of a decree of a Supreme Court.

Inter State Council

On top of this elaborate scheme of establishing cooperative Union State relations, was the recommendation relating to the setting up of a permanent Inter State Council under Article 263 of the Constitution to discuss many of the problems of common Union-State interest. Consisting of a General Body with Prime Minister as Chairman and all Union Cabinet Ministers and all Chief Ministers as members, and Standing Committee with the Prime Minister as chairman, Six Union Cabinet Ministers and Six chief Ministers one from each zone as members, such a Council is expected to provide a forum for discussion in an era among senior statesmen. The arrangement is expected to promote proper understanding and mutual confidence among the Chief Executive of the Union and the States.

In the light the recommendations of the Sarkaria Commission, the Ministry of Home Affairs issued an order dated 28th May, 1990 by which an Inter-State Council was established under article 263 of the Constitution. The Inter-State Council consists of the Prime Ministers,

Chief Ministers of all States and Union territories with or without a Legislative Assembly and six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Ministers or Ministers of State having independent charge in the Union Government when any item under their charge comes up for discussion. The Prime Minister is the Chairman of the Council.

The Inter-State Council is required to meet at least thrice every year. Its proceedings are to be held in camera and decisions on all questions are required to be taken by consensus. Decision of the Chairman as to whether or not there is a consensus is final.

It is a recommendatory body with the following duties:

- (a) Investigating and discussing such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, as may be brought up before it;
 - (b) Making recommendations upon any such subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and
 - (c) Deliberating upon such other matters of general interest to the States as may be referred by the Chairman to the Council.
- Out-of-the-box suggestions to improve Centre-State Relations
- i) Amend Article 248 to provide the states with powers to make any law with respect to any matter not listed in the Union List or Concurrent List. That is, the residuary power on the federation should lie both with the states as well as the centre.
 - ii) Amend Article 249 that gives power to Parliament to legislate on the State List, by the concurrence of the Rajya Sabha on a matter deemed by it to be of national interest. This short circuits the amending process laid down in Article 368, and unilaterally transfers a subject from the State List to the Concurrent List. A better and more equitable alternative is any how available in Article 252 (1) even if it be cumbersome and time consuming.

- iii) Amend Article 280 (regarding the Finance Commission), and provide for the transfer of seventy five per cent of the total revenue raised by the Centre from all sources, to the States.
- ix) Amend Article 3, to ensure that the name and area of a State cannot be changed by Parliament without the consent of the state legislative concerned.

PUNCHHI COMMISSION

The Punchhi Commission on Centre - State relation was constituted on April 28, 2007 by the UPA government, under the chairmanship of former Chief Justice of India Justice Madan Mohan Punchhi, which submitted its report on April 20, 2010. The Punchhi commission made very pertinent observations regarding the qualifications, appointment and removal of governors. As for qualifications pertaining to governor, the Punchhi Commission was forthright in suggesting that the nominee should not have participated in active politics at even local level for at least a couple of years prior to his appointment.

Originally, it had four members: Justice Punchhi (Chairman), former Home Secretaries Dharendra Singh and V K Duggal, and former Bangalore-based Law School Director Prof. N R Madhava Menon. Later, Dr. Amaresh Bagchi, Professor Emeritus and former Director of the National Institute of Public Finance and Policy (NIPFP) was also made a member of the Commission.

The Commission for Centre-State Relations headed by Justice Madan Mohan Punchhi has submitted its report to the Central government without much fanfare. This is a contradiction to the Liberhan Commission Report which was "full of sound and fury, signifying nothing" and which wasted 15 years.

A comprehensive review of Centre-State Relations was undertaken by the Sarkaria Commission in the mid-eighties. In the two decades that have gone by both the polity and economy have undergone profound

changes, posing new challenges for government at all levels and calling for a fresh look at the relative roles and responsibilities of each level and their inter-relations. The present Commission has been entrusted with this task and asked to make recommendations that would help to address the emerging challenges.

The major recommendations may be enumerated as follows

1. There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period.
2. The commission has proposed "localising emergency provisions" under Articles 355 and 356, contending that localised areas - either a district or parts of a district - be brought under Governor's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.
3. The commission however supports their right to give sanction for the prosecution of ministers against the advice of the state government.
4. To make an amendment in the communal violence Bill to allow deployment of Central forces without the state's consent for a short period. It has proposed that state consent should not become a hurdle in deployment of central forces in a communal conflagration. However, such deployment should only be for a week and post-facto consent should be taken from the state.
5. Among the significant suggestions made by the Commission is, laying down of clear guidelines for the appointment of chief ministers. Upholding the view that a pre-poll alliance should be treated as one political party, it lays down the order of precedence that ought to be followed by the governor in case of a hung house:
 - a) Call the group with the largest pre-poll alliance commanding the largest number;
 - b) the single largest party with support of others;
 - c) the post-electoral coalition with all parties joining the government; and last
 - d) the postelectoral alliance with some parties joining the government and remaining including Independents supporting from outside.
6. The panel also feels that governors should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it wants the convention of making them chancellors of universities done away with.
7. As for qualifications for a governor, the Punchhi commission suggests that the nominee not have participated in active politics at even local level for at least a couple of years before his appointment. It also agrees with the Sarkaria recommendation that a governor be an eminent person and not belongs to the state where he is to be posted.
8. The commission also criticises arbitrary dismissal of governors, saying, "the practice of treating governors as political football must stop". There should be critical changes in the role of the governor - including fixed five year tenure as well as their removal only through impeachment by the state Assembly. It has also recommended that the state chief minister have a say in the appointment of governor.
9. Underlining that removal of a governor be for a reason related to his discharge of functions, it has proposed provisions for impeachment by the state legislature along the same lines as that of President by Parliament. This, significantly, goes against the doctrine of pleasure upheld by the recent Supreme Court judgment.
10. Endorsing an NCRWC recommendation, it says appointment of governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice- President can also be involved in the process.

11. Unlike the Sarkaria report, the Punchhi report is categorical that a governor be given fixed five-year tenure. The Punchhi Commission report also recommends that a constitutional amendment be brought about to limit the scope of discretionary powers of the governor under Article 163 (2). Governors should not sit on decisions and must decide matters within a four-month period.
12. The creation of an overriding structure to maintain internal security along the lines of the US Homeland Security department, giving more teeth to the National Integration Council.
13. For the National Integration Council (NIC), the commission has proposed that it should meet at least once a year. In case of any communal incident, it has said that a delegation of five members of the Council, who would be eminent persons, should visit the affected area within two days National debate and submit a fact-finding report.
14. The commission, however, rejects a suggestion from some stakeholders as well as the Liberhan Commission that the NIC be accorded constitutional status.
15. The commission has also studied new set-ups like the National Investigation Agency, and recommended procedures to ensure smooth co-operation of the states in terror investigations entrusted to NIA. One can say that the extreme politicization of the post of Governor must be decried and certain specific norms for the appointment and removal have to be evolved.
16. The recent ruling of the Supreme Court has indicated that the sanctity of this constitutional post should be preserved. In democracy, nobody can have absolute power in the name of smooth administration and good governance. The administrative apparatus has to be in the line of the constitution, which was prepared by the people of the country and amended by the elected representative of the people of India. The 'doctrine of pleasure' has to be understood in this light.

FINANCE COMMISSION VS PLANNING COMMISSION

Indian Constitution has made an effort to allocate every possible source of revenue either to the Union or the states. For the purpose of allocation of certain sources of revenue, between the Union and the state Governments, the Constitution provides for the establishment of a Finance Commission. On the other hand, the Planning Commission is neither a constitutional body nor a statutory body. Moreover, Planning Commission does not have representation of States. Mutual overlapping of these two bodies is often a source of tensions in Centre - State relations.

Finance Commission

The Constitution of India contains the following provisions regarding the Finance Commission:

- (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.
- (2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.
- (3) It shall be the duty of the Commission to make recommendations to the President as to-
 - (a) The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
 - (b) The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
 - (c) the measures needed to augment the Consolidated Fund of a State to supplement the

- resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;
- (d) 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;
 - (e) Any other matter referred to the Commission by the President in the interests of sound finance.
- (4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

Ever since the inauguration of the Constitution, Finance Commissions have been appointed at regular intervals regarding sharing of revenues between the Centre and the States. So far, thirteen (13) such Commissions have been set up. One notable feature of the Finance Commission has been that the terms of reference have been made wider and wider with each Finance Commission. Even issues like debt burden of the state, financing of relief expenditure and returns of public sector undertakings have been placed under the purview of Finance Commissions. Further, the Union Government has mostly accepted the recommendations of the Finance Commissions. Despite this liberal attitude of the Union Government in financial matters, certain states have disapproved of the existing arrangement for distribution of resources and emphasizes that the distribution of resources should be more progressive favoring the relatively poorer states. So far the Union Government has not shown preference for any particular settle and has generally distributed the resources keeping in view the principle that the limited resources of the country should be deployed to attain best possible results without generating tensions.

Planning Commission

The Planning Commission also plays a vital role in the financial relations between the Centre and the States. Though the Planning Commission is an extra-constitutional body it plays

a leading role in deciding the outlays of the plans of the States as well as the Centre. It also decides how much money should be allotted to the various states for expenditure on various items. As the Planning Commission is headed by the Prime Minister (who acts as its chairman) and some of the important ministers of the Union Cabinet are also associated with it, has virtually become a handmaiden of the Central Government. The National Development Council, which was created in 1952 as an adjunct to the Planning Commission, to review the plans also works more or less as an agency of the Centre, even though the Chief Ministers of the State are also its members. It has been alleged that the Planning Commission plays more important role in the allocation of funds and grants to the state than the Finance Commission.

Grants-in-aid

The Constitution also makes provision for Grants -in- aid to the states out of the revenues of the Centre. These grants are given by the Parliament out of the Consolidated Fund of India to such States which are in need of assistance. The decision whether a State is in need of assistance or not rests with the Parliament. Further different States may be granted different sums. The Union Government also pays to the states such capital and recurring sums as may be necessary to enable that state to meet the costs of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribe in that State of raising the level of administration of the Scheduled areas therein.

Controversy

It has been alleged by critics that the role assigned to the Finance Commission has been greatly undermined to the creation of the Planning Commission which has tended to play increasing role in determining the transfer of funds to the states. According to a study, more funds were transferred to the states through the

Planning Commission and the Finance Ministry than the Finance Commission. Generally, the Finance Commission is only required to plug the non-development budgetary gaps in the finances of the states only, while the plan outlays are determined by the Planning Commission. Similarly the discretionary grants are also regulated by the Finance Ministry and the Planning Commission and the Finance Commission hardly play any role in this respect.

It is clear from the above discussion that the states in India do not possess adequate finances and have to look to the Union Government for assistance. The increasing dependence on the Union Government inevitably results in the curtailment of their autonomy, which poses a serious threat to the existence of a federal structure. In view of the weak position of the state, in the financial sphere, there has been a growing demand for allocation of more financial resources to the states so that they may be able to enjoy greater autonomy.



1. Consider the following about the doctrine of severability and select the correct answer:

- i) The doctrine of severability means severing part of a statute which is inconsistent with any of the constitutional provisions and particularly the provisions of fundamental rights.
- ii) Supreme Court of India considered the doctrine of severability for the first time in Kesavananda bharati Case.
- iii) The severability of the valid and invalid provisions of a Statute does not depend on whether provisions are enacted in same section or different section; it is not the form but the substance of the matter that is to be considered.

Codes : -

- (a) All of the above (b) i and ii
(c) i and iii (d) i only

2. Match the following:

List I

1. Article 111
2. Article 123
3. Article 200
4. Article 213

List II

- I) assent to the bills/veto power of President to the bill passed by parliament
- II) ordinance making power of Governor.
- III) Presidential veto over state legislation.
- IV) ordinance making power of President.

Codes:

- (a) 1-I, 2-IV, 3-III, 4-II
(b) 1-I, 2-IV, 3-II, 4-III
(c) 1-IV, 2-I, 3-III, 4-II
(d) 1-IV, 2-I, 3-II, 4-III

3. The parliament of India consists of the President and the two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The Parliament has been vested with different powers. Match the

following powers with the correct article mentioned in the Constitution.

List A

- A. Parliament's Control over Legislation
- B. Parliament's Control over Executive
- C. Parliament's Control over Finance

List B

- I. Article 266 (3)
- II. Article 75
- III. Article 253

Codes:

- (a) A-III; B-II; C-I (b) A-II; B-I; C-III
(c) A-III; B-I; C-II (d) A-II; B-III; C-I

4. A Bill becomes an Act after being duly passed by both the houses of Parliament and given an assent by the President. According to the Indian Constitution the President has the veto powers over the Bills passed by the Parliament. Match the followings:

List A

(Veto powers)

- A. Absolute veto
- B. Suspensive veto
- C. Pocket veto

List B

(provisions)

- I. President returns the Bill or part of it for the reconsideration.
- II. President is withholding the assent to a Bill.
- III. President is not taking any action for an indefinite time.

Codes:

- (a) A-II; B-I; C-III (b) A-I; B-II; C-III
(c) A-II; B-III; C-I (d) A-I; B-III; C-II

5. Consider the following statements regarding forming of new State or altering the boundaries of an existing State

- A. No Bill for the purpose can be introduced except on the recommendation of the President.
- B. The President shall, before giving his recommendation, refer the bill to the Legislative of the State which is going to be af-

affected by the changes proposed in the bill, for expressing its views on the changes.

- C. The Legislative of the State should express its views within the period specified by the President.
- D. The President is bound by the views of the State Legislature.

Which of the following statement is/are correct?

- (a) A, B and C (b) A and B only
 - (c) B only (d) All of them
6. Which of the following statements regarding the President of India is false?
- 1. The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.
 - 2. The supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
 - 3. Every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly.
 - 4. The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by open ballot.

Codes:

- (a) 1, 2 and 3 (b) 3 and 4
 - (c) Only 4 (d) None of the above
7. Which of the following pairs is/are correctly matched?
- I. Parliament can provide for grants-in-aid to states by the Centre. Such sums are charged on the Consolidated Fund of India.-----
-----Article 275
 - II. The Centre can grant loans to states and also give guarantee in respect of loans raised by them. -----Article 282
 - III. Parliament can impose restrictions on Intra-state trade and commerce in the public

interest.-----Article 301

Select the answer from the code given below:

- (a) Only I is correct (b) Only II is correct
- (c) Only III is correct (d) All are correct

8. In which of the following important matters in respect of that both Houses (Rajya Sabha And Lok Sabha) enjoy equal powers?
- I. Election and impeachment of the President
 - II. Election and impeachment of the Vice-President
 - III. Approving the Proclamation of emergency and the the Proclamation regarding failure of constitutional machinery in States

Select the correct answer from below:

- (a) Only I and II (b) Only I and III
- (c) Only II and III (d) All I, II and III

9. The Council of Ministers and Cabinet are often used interchangeably though there is a definite distinction between them. Which of the following is NOT included in the Council of Ministers?
- I. The Council of Ministers is collectively responsible to the Lower House of the Parliament.
 - II. It deals with all major legislative and financial matters.
 - III. It is a constitutional body, dealt in detail by the Article 74 and 75 of the Constitution.
 - IV. It was inserted in the Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act.

Select the correct answer from below:

- (a) Only I, II and III (b) Only II and IV
- (c) Only I, II and IV (d) All II, III and III

10. The Indian Parliament exercises final control on Public Finance through ...
- (a) Public Accounts Committee
 - (b) Ministry of Finance
 - (c) Comptroller and Auditor General of India
 - (d) Estimates Committee
11. Which of the following statements is not correct regarding the functions and powers of the Comptroller and Auditor General of India?

- (a) He examines the accounts of the Union Government and submits his report to the President.
- (b) He examines the accounts of the state governments and submits his reports to the Governors.
- (c) He does not exercise any administrative control over the offices of the auditors working in the states.
- (d) Any information asked by the Parliament can only be given by CAG through PAC.

12. Consider the following statements:

- (i) The governor has the power to suspend, remit or commute a sentence of death, if conferred by law.
- (ii) President has the pardoning power in respect of all cases of punishment by a Court Martial.
- (iii) As regards law in the concurrent sphere, the jurisdiction of President is concurrent with that of the governor.
- (iv) The only authority for pardoning a sentence of death is the President.

Which of the above statements are correct?

- (a) (ii), (iii) and (iv)
- (b) (i), (ii) and (iv)
- (c) (ii) and (iv)
- (d) All are correct.

13. Consider the following two statements regarding Consolidated Fund of India:

1. The estimates that relate to the expenditure charged upon the consolidated fund of India shall not be submitted to the vote of the Parliament.
2. Parliament is not empowered to discuss expenditure charged upon the consolidated fund of India.

Which of the options is correct?

- (a) 1 only
- (b) 2 only
- (c) Both are correct
- (d) Both are incorrect

14. Consider the following statements about the Finance Commission and select the correct ones:

1. The Finance Commission consists of a Chairman and four other members to be appointed by the President on the advice of the Council of Ministers.
2. The chairman should be a person having specialised knowledge of Finance and the members should have experience in public affairs.
3. Finance Commission also makes recommendations to the President on the matters relating to the principles that should govern the grant-in-aid to the states by the centre.
4. Recommendations made by the Finance Commission are binding on the government.

Codes:

- (a) 1 and 2 (b) 2 and 4
- (c) 3 and 4 (d) 1 and 3

15. Consider the following provisions regarding administration of Union Territories and Acquired Territories:

- (i) All the Union Territories are administered by an Administrator as the agent of the President and not by a Governor acting as the head of the state.
- (ii) The Government of Delhi has all the legislative power in the state list except on Public order, Police and land.
- (iii) Provisions relating to the Union Territories extend to the administration of Acquired Territories.
- (iv) Parliament may, by law, constitute a High Court for a Union Territory.

Which of the above statements are correct?

- (a) (i), (iii) and (iv) (b) (ii), (iii) and (iv)
- (c) (i), (ii) and (iv) (d) All are correct.

16. Which of the following financial powers are enjoyed by the Governor?

- (i) All the demands for grants are presented before the state legislature on the recommendation of the Governor.
- (ii) He is in charge of the Contingency Fund of the state and can make advances out of it to meet unforeseen expenditure.
- (iii) The supplementary grants, if any, are presented before the state legislature on the

recommendation of the governor.

- (iv) He can order the reduction of salaries and allowances of the state civil servants during the President's rule in the state.

Codes:

- (a) (i) and (iv)
(b) (ii), (iii) and (iv)
(c) (i), (ii) and (iii)
(d) (i), (ii) (iii) and (iv)

17. Which of the following statements regarding ministers is NOT correct?

- (a) A minister can be a member of either House of the Parliament, but he is liable to vote only in the house to which he belongs.
(b) Deputy Minister cannot hold independent charges but is paid salary equal to that of Cabinet Ministers.
(c) Minister of States cannot attend cabinet meeting unless invited.
(d) A person, not a member of any House, can be made minister for 6 months.

18. In which of the following aspects, does the Finance Commission differ from the Planning Commission?

1. Legal status
2. Composition
3. Tenure
4. Form of organisation
5. Functions

- (a) 1, 2, and 5 (b) 1, 2, 3 and 5
(c) 1, 2, 4 and 5 (d) 1, 2, 3, 4 and 5

19. Consider the following regarding Article 41 of the Constitution. It does not include....

- (a) Securing just and humane conditions of work.
(b) Securing right to work.
(c) Securing public assistance in case of unemployment.
(d) Provision of assistance in case of disabled people.

20. When the Vice-President is acting as President, he...

- (i) Will have all powers and functions of both

the President and the Vice-President.

- (ii) Will get all allowances and privileges of the President.
(iii) Should continue to work as the Chairman of Rajya Sabha

Which of the above statements is/are correct?

- (a) (i), (ii) and (iii) (b) (i) and (ii)
(c) (ii) and (iii) (d) (ii) only

21. What are the Rights Implicit under Art (19).

1. Right of a convict to express himself before media.
2. Right to commercial advertisement.
3. Furling of National Flag.
4. Voters have right to know / Rights to information
5. Rights to Bandh.

Codes:

- a. 1,2,3,4,5 b. 1,2,3,4
c. 2,3,4,5 d. 3,4,5

22. Which of the following statements is/are correct?

- 1- Estimates Committee comprising of 30 members, all from Lok Sabha, is a Committee of Lok Sabha.
- 2- Public Accounts Committee and Committee on Public Undertaking which though comprise of members from both the houses of Parliament are also Committees of Lok Sabha only.

- a. 1 only B. 2 only
c. Both 1 & 2 D. None

23. Which of the following features of Indian Constitution is not an aberration to federal nature of it?

- a. Absence of dual citizenship
- b. Independent judiciary
- c. All India services
- d. Unequal representation of states in Council of State

24. Match the following:

- | List -I | List-II |
|---------------------------------|--------------|
| (Schedules in the Constitution) | (Provisions) |

- I. Sixth Schedule
1. Administration and control of scheduled areas and scheduled tribes.
- II. Second Schedule
2. Administration of tribal areas in states of Assam, Meghalaya, Tripura and Mizoram.
- III. Twelfth Schedule
3. Provisions as to the Speaker and Deputy Speaker of State Legislative Assemblies.
- IV. Fifth Schedule
4. Powers, authority and responsibilities of Municipalities.

	I	II	III	IV
a.	2	4	3	1
b.	1	4	3	2
c.	1	3	4	2

d. 2 3 4 1

25. Which of the following statements is/are correct regarding the rights of minorities to establish and administer their own educational institutions?
- A. To choose its governing body in whom the founder of the institute have faith and confidence to manage the affairs of the institution.
- B. To appoint teaching staff as also non-teaching staff, and to take action if there is dereliction of duty on the part of the employees.
- C. To admit eligible students of their choice and to set up a reasonable fee structure.
- D. To use its properties and assets for the benefit of the institution.

Codes:

- (a) A, B and C (b) A, B and D
(c) B, C and D (d) All of them



**INDIAN POLITY
(ANSWERS)**

1 (a)

2 (a)

3 (a)

4 (d)

5 (c)

6 (a)

7 (b)

8 (e)

9 (a)

10 (a)

11 (a)

12 (b)

13 (d)

14 (c)

15 (c)

16 (a)

17 (d)

18 (d)

19 (a)

20 (b)

21 (b)

22 (c)

23 (b)

24 (b)

25 (b)



1. What will follow if a Money Bill is substantially amended by the Rajya Sabha?
 - (a) The Lok Sabha may still proceed with the Bill, accepting or not accepting the recommendations of the Rajya Sabha.
 - (b) The Lok Sabha cannot consider the Bill further.
 - (c) The Lok Sabha may send the Bill to the Rajya Sabha for reconsideration.
 - (d) The President may call a joint sitting for passing the Bill.

2. Which one of the following statements is correct?
 - (a) In India, the same person cannot be appointed as Governor for two or more States at the same time.
 - (b) The Judges of the High Court of the States in India are appointed by the Governor of the State just as the Judges of the Supreme Court are appointed by the President.
 - (c) No procedure has been laid down in the Constitution of India for the removal of a Governor from his/her post.
 - (d) In the case of a Union Territory having a legislative setup, the Chief Minister is appointed by the Lt. Governor on the basis of majority support.

3. Consider the following statements
 1. An amendment to the Constitution of India can be initiated by an introduction of a bill in the Lok Sabha only.
 2. If such an amendment seeks to make changes in the federal character of the Constitution, the amendment also requires to be ratified by the legislature of all the States of India.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

4. Consider the following statements:

Attorney General of India can

1. take part in the proceedings of the Lok Sabha.
2. be a member of a committee of the Lok Sabha.
3. speak in the Lok Sabha.
4. vote in the Lok Sabha.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 4
- (c) 1, 2 and 3
- (d) 1 and 3 only

5. Which of the following bodies does not/do not find mention in the Constitution?
 1. National Development Council
 2. Planning Commission
 3. Zonal Councils

Select the correct answer using the codes given below.

- (a) 1 and 2 only
- (b) 2 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

6. The Parliament can make any law for whole or any part of India for implementing international treaties
 - (a) with the consent of all the States.
 - (b) with the consent of the majority of States.
 - (c) with the consent of the States concerned.
 - (d) without the consent of any State.

7. The Government enacted the Panchayat Extension to Scheduled Areas (PESA) Act in 1996. Which one of the following is not identified as its objective?

- (a) To provide self-governance.
- (b) To recognize traditional rights.
- (c) To create autonomous regions in tribal areas.
- (d) To free tribal people from exploitation.

8. Under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, who shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both?

- (a) State Forest Department
- (b) District Collector/Deputy Commissioner
- (c) Tahsildar /Block Development Officer / Mandai Revenue Officer
- (d) Gram Sabha

9. 'Economic Justice' the objectives of Constitution has been as one of the Indian provided in

- (a) the Preamble and Fundamental Rights.
- (b) the Preamble and the Directive Principles of State Policy.
- (c) the Fundamental Rights and the Directive Principles of State Policy.
- (d) None of the above.

10. According to the Constitution of India, which of the following are fundamental for the governance of the country?

- (a) Fundamental Rights
- (b) Fundamental Duties
- (c) Directive Principles of State Policy
- (d) Fundamental Rights and Fundamental Duties

11. In the areas covered under the Panchayat (Extension to the Scheduled Areas) Act, 1996, what is the role/power of Gram Sabha?

1. Gram Sabha has the power to prevent alienation of land in the Scheduled Areas.
2. Gram Sabha has the ownership of minor forest produce.
3. Recommendation of Gram Sabha is required for granting prospecting license or mining lease for any mineral in the Scheduled Areas.

Which of the statement given above is/are correct?

- (a) 1 only
- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

12. In the Parliament of India, the purpose of an adjournment motion is

- (a) To allow a discussion on a definite matter of urgent public importance
- (b) To let opposition members collect information from the ministers
- (c) To allow a reduction of specific amount in demand for grant
- (d) To postpone the proceedings to check the inappropriate or violent behaviour on the part of some members.

13. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India:

1. Securing for citizens of India a uniform civil code
2. Organizing village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
- (b) 2 and 3 only
- (c) 1,3 and 4 only
- (d) 1, 2, 3 and 4

14. Consider the following statements:

1. Union Territories are not represented in the Rajya Sabha.
2. It is within the purview of the Chief Election Commissioner to adjudicate the election disputes.
3. According to the Constitution of India, the Parliament consists of the Lok Sabha and the Rajya Sabha only.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 3
- (c) 1 and 3
- (d) None

15. Regarding the office of the Lok Sabha Speaker, consider the following statements:

1. He/she holds the office during the pleasure of the President.

2. He/she need not be a member of the House at the time of his/her election but has to become a member of the House within six months from the date of his/her election.
3. If he/she intends to resign, the letter of his/her resignation has to be addressed to the Deputy Speaker.

Which of the statements given above is/are correct?

- (a) 1 and 2 only (b) 3 only
(c) 1, 2 and 3 (d) None

16. Which of the following are included in the original jurisdiction of the Supreme Court?

1. A dispute between the Government of India and one or more States
2. A dispute regarding elections to either House of the Parliament or that of Legislature of a State
3. A dispute between the Government of India and a Union Territory
4. A dispute between two or more states

Select the correct answer using the codes given below:

- (a) 1 and 2 (b) 2 and 3
(c) 1 and 4 (d) 3 and 4

17. Which of the following special powers have been conferred on the Rajya Sabha by the Constitution of India?

- (a) To change the existing territory of a State and to change the name of a State
- (b) To pass a resolution empowering the Parliament to make laws in the State List and to create one or more All India Services
- (c) To amend the election procedure of the President and to determine the pension of the President after his/her retirement
- (d) To determine the functions of the Election Commission and to determine the number of Election Commissioners

18. Which of the following are the methods of Parliamentary control over public finance in India?

1. Placing Annual Financial Statement before the Parliament
2. Withdrawal of moneys from Consolidated

Fund of India only after passing the Appropriation Bill

3. Provisions of supplementary grants and vote-on-account
4. A periodic or at least a mid-year review of programme of the Government against macroeconomic forecasts and expenditure by a Parliamentary Budget Office
5. Introduction Finance Bill in the Parliament

Select the correct answer using the codes given below:

- (a) 1, 2, 3 and 5 only (b) 1, 2 and 4 only
(c) 3, 4 and 5 only (d) 1, 2, 3, 4 and 5

19. Which of the following provisions of the Constitution of India have a bearing on Education?

1. Directive Principles of State Policy
2. Rural and Urban Local Bodies
3. Fifth Schedule
4. Sixth Schedule
5. Seventh Schedule

Select the correct answer using the codes given below:

- (a) 1 and 2 only (b) 3, 4 and 5 only
(c) 1, 2 and 5 only (d) 1, 2, 3 4 and 5

20. In India, other than ensuring that public funds are used efficiently and for intended purpose, what is the importance of the office of the Comptroller and Auditor General (CAG)?

1. CAG exercises exchequer control on behalf of the Parliament when the President of India declares national emergency/financial emergency.
2. CAG reports on the execution of projects or programmes by the ministries are discussed by the Public Accounts Committee.
3. Information from CAG reports can be used by investigating agencies to press charges against those who have violated the law while managing public finances.
4. While dealing with the audit and accounting of government companies, CAG has certain judicial powers for prosecuting those who violate the law.

Which of the statements given above is/are correct?

- (a) 1, 3 and 4 only (b) 2 only
(c) 2 and 3 only (d) 1, 2, 3 and 4

21. The Prime Minister of India, at the time of his/her appointment:

- (a) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months.
(b) Need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months
(c) Must be a member of one of the Houses of the Parliament.
(d) Must be a member of the Lok Sabha.

22. With reference to the Delimitation Commission, consider the following statements:

1. The orders of the Delimitation Commission cannot be challenged in a Court of Law.
2. When the orders of the Delimitation Commission are laid before the Lok Sabha or State Legislative Assembly, they cannot effect any modifications in the orders.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

23. According to the Constitution of India, it is the duty of the President of India to cause to be laid before the Parliament which of the following?

1. The Recommendations of the Union Finance Commission.
2. The Report of the Public Accounts Committee.
3. The Report of the Comptroller and Auditor General.

4. The Report of the National Commission for Scheduled Castes.

Select the correct answer using the codes given below:

- (a) 1 only (b) 2 and 4 only
(c) 1, 3 and 4 only (d) 1, 2, 3 and 4

24. A deadlock between the Lok Sabha and the Rajya Sabha calls for a joint sitting of the Parliament during the passage of

1. Ordinary Legislation
2. Money Bill
3. Constitution Amendment Bill

Select the correct answer using the codes given below:

- (a) 1 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

25. How do District Rural Development Agencies (DRDAs) help in the reduction of rural poverty in India?

1. DRDAs act as Panchayati Raj Institutions in certain specified backward regions of the country.
2. DRDAs undertake area-specific scientific study of the causes of poverty and malnutrition and prepare detailed remedial measures.
3. DRDAs secure inter-sectoral and inter-departmental coordination and cooperation for effective implementation of anti-poverty programmes.
4. DRDAs watch over and ensure effective utilization of the funds intended for anti-poverty programmes.

Which of the statements given above is/are correct?

- (a) 1, 2 and 3 only (b) 3 and 4 only
(c) 4 only (d) 1, 2, 3 and 4



**POLITY UPSC QUESTIONS
(ANSWERS)**

1 (a)

2 (c)

3 (d)

4 (c)

5 (d)

6 (d)

7 (a)

8 (d)

9 (b)

10 (c)

11 (d)

12 (a)

13 (d)

14 (d)

15 (b)

16 (c)

17 (b)

18 (a)

19 (a)

20 (c)

21 (a)

22 (c)

23 (c)

24 (a)

25 (b)

