



# INDIAN CONSTITUTION AND ADMINISTRATION

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**Textbook for Class XI**

# **Indian Constitution and Administration**

**Textbook for Class XI**

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**राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद्  
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## **Foreword**

Political Science is introduced as an elective subject at the higher secondary stage. At the secondary stage of school education, the study of civics, as a component of social science, has been dealt with in a very general manner avoiding the rigours of Political Science. In fact during the first ten years of schooling the learners study the working of civic and political institutions, and the contemporary problems facing India and the world. In consonance with the objectives of an intelligent understanding of the various civic and political processes which form an important component of an integrated social science syllabus which has been introduced upto the secondary stage.

The present book entitled 'Indian Constitution and Administration' is a new book based on NCERT's new syllabus of Political Science developed as a follow-up of the *National Curriculum Framework for School Education-2000* (NCFSE - 2000). In keeping with the approach of the new syllabus an attempt has been made to provide the learner with an intelligent and comparative understanding of the Indian Constitution and its functioning and develop a comprehensive perspective of the Indian political system. The course-content will enable the learner to understand the important role played by the civil services in a dynamic state.

Some of the core areas mentioned in the NCFSE - 2000 have been suitably infused into the relevant chapters of the book. Besides the terminal exercise at the end of each chapter, the book also contains a glossary of difficult terms and concepts.

The NCERT is grateful to the learned author for taking considerable pains in developing the manuscript, which was thoroughly reviewed in a review group meeting by subject experts and experienced teachers. The NCERT is thankful to the subject experts and teachers whose suggestions and comments have helped in finalising the manuscript.

Comments and suggestions from the valued readers on any aspect of the book will be welcome.

*August 2002*  
New Delhi

J.S. RAJPUT  
*Director*  
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# **CONSTITUTION OF INDIA**

## **Part IV A**

### **Fundamental Duties of Citizens**

#### **ARTICLE 51A**

**Fundamental Duties - It shall be the duty of every citizen of India --**

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

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## GANDHIJI'S TALISMAN

**"I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test :**

**Recall the face of the poorest and the weakest man whom you may have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it ? Will it restore him to a control over his own life and destiny ? In other words, will it lead to Swaraj for the hungry and spiritually starving millions ?**

**Then you will find your doubts and your self melting away."**

*M.K. Gandhi*

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# **LANDMARKS IN THE CONSTITUTIONAL DEVELOPMENT OF INDIA**

**T**he Constitution of India, as opted by the Constituent Assembly in 1949, was not something absolutely new. It was, to a great extent, influenced by the Government of India Act of 1935 that was passed by the British Parliament. In order to understand and appreciate the Constitution, it is necessary to glance at the constitutional development during the British rule in India. Some of the landmarks in the constitutional development are given in the following passages.

The foundation of British authority in India was laid in down through the establishment of East India Company in England under a Charter of the British Queen Elizabeth. Under the Charter the Company was given an exclusive right of trading with India. In the beginning the Company was purely a trading organization, but later on due to political circumstances, it acquired territorial power.

### **Regulating Act of 1773**

With the expansion of political power of the Company, it was felt in England that the affairs of the Company needed some regulation. As a result, the Regulating Act of 1773 came into being. Some of the salient features of the Act were as follows - (i) it set up a government in Calcutta Presidency consisting of a Governor - General and

a Council of four members who exercised their authority jointly, (ii) the governments of the Presidencies of Bombay and Madras were subordinated to the government in Calcutta and (iii) it empowered the British Crown to establish a Supreme Court in Bengal with jurisdiction over Bengal, Bihar and Orissa.

The Act subjected the legislative authority of the Governor-General and Council to certain limitations: (i) the rules and regulations made by them were not to be repugnant to the laws of England, (ii) they required registration by the Supreme Court which was given the power to veto them, (iii) there could be an appeal against them to the British Government and (iv) the Governor-General and the Council were under the duty to forward all such rules and regulations to England and the King-in-Council was competent to disapprove them at any time within two years.

### **The Charter Act of 1833**

To make the legislative functions of the government distinct, the British Government enacted the Charter Act of 1833. It made substantial changes in the constitutional set up of India. The sole legislative power in India was vested in the Governor-General-in-Council. The Council was to consist of four members, of whom one was to be

a Law Member, who could attend the Council meetings, as a matter of right, only when it was to perform legislative functions. The Council's functions were, thus, divided into two categories. When it performed executive functions, it consisted of the Governor-General and three members only. But, when it performed legislative functions, it consisted of the Governor-General and the four members. In this way, the Act laid the foundation of the future Central Legislature, also called Imperial Legislative Council.

#### **The Charter Act of 1853**

In order to strengthen the legislative machinery the Charter Act of 1853 was enacted. The Act further extended the machinery of legislation. Under the new Act, the Governor-General's Council, when acting in its legislative capacity, was enlarged by the addition of six new members. Among these six members, one was to be an official representative from each of the four Provinces viz., Madras, Bombay, Bengal and North Western Provinces, and the Chief Justice and a puisne judge of the Supreme Court. Besides, the Commander-in-Chief was also given an extraordinary membership. Thus, the strength of the Legislative Council became twelve.

#### **The Act of 1858**

The First War of Independence of 1857 brought the era of the East India Company to an end. In 1858 the British Crown took over the rights of the Company's Government in India in its own hands. The Act brought substantial changes in the

constitutional set-up. Some of the important changes were: (i) it abolished the Board of Directors and the Board of Control and vested their powers in one of Her Majesty's Secretary (a Minister in the British Cabinet), (ii) he was designated as the Secretary of State for India and was empowered to superintend, direct and control all the governmental affairs in India, (iii) the Secretary of State was to be assisted by a Council of India, (iv) the Governor-General and Governors of the Presidencies were to be appointed by the Crown and the members of their Councils by the Secretary of State-in-Council, (v) Lieutenant Governors were to be appointed by the Governor-General, subject to the approval of Her Majesty and appointments to the covenanted civil service were to be made through open competition with the assistance of the Civil Service Commission.

#### **Indian Councils Act of 1861**

In 1861 the British Government decided to expand the legislative Councils. This was done through the Indian Councils Act of 1861. The main provisions of the Act were as follows – (i) the Governor-General's Council was expanded for legislative purposes by adding 6-12 new members, to be nominated for two years, (ii) prior sanction of the Governor-General was essential for introducing some measures, (iii) every Act passed by the Legislature in India was subject to approval of Her Majesty acting through the Secretary of State-in-Council, (iv) the Governor-General was authorised to exercise a veto and issue ordinances in

an emergency and (v) the strength of the Governor-General's Council for executive purposes was raised to five by addition of one more member.

#### **Indian Councils Act of 1892**

In 1892 another Act was passed to further expand and strengthen the legislative councils. The main features of the Act were as follows - (i) the strength of the central and provincial legislative councils was expanded by adding 8-20 new members, (ii) two-fifth of these new additional members were to be non-officials, (iii) the Governor-General-in-Council was authorized to make rules subject to the sanction of the Secretary of State-in-Council, for discussion of annual financial statements and for asking questions.

#### **Indian Councils Act of 1909**

During the beginning of the twentieth century, the British Government was confronted with three types of pressures. While on the one hand the moderates were appealing for more reforms and the extremists were agitating for getting Swarajya, the revolutionaries, on the other hand, were resorting to terrorist activities to achieve their goal, i.e. end of the alien rule. In order to mollify the discontent, to some extent, the government enacted the Indian Councils Act of 1909.

The salient features of the Act were as follows -

- (a) The Act provided for the expansion of the Legislative Councils at both the levels, Central as well as Provincial.
- (b) It maintained the majority of official members in the Central Legislative Council. There were four categories of members i.e. ex-officio members, nominated officials, nominated non-officials and elected members.
- (c) It provided for non-official majority in the Provincial Legislatures. But then, the combined strength of official and nominated non-official members out-numbered the elected members.
- (d) The Act enlarged the functions of the Legislative Councils. This Act (i) empowered the members to discuss the budget and move resolutions before it was finally approved, (ii) they were allowed to ask supplementary questions, to move resolutions on matters relating to loans to local bodies, additional grants and new taxes and (iii) it also extended to the members the right to discuss matters of public interest, adopt resolutions or demand a division on them, but the resolutions adopted by the House were not binding on the government.
- (e) One of the most important and unfortunate feature of this Act was the introduction of separate and discriminatory electorate. The electorate for returning the representatives to the councils was divided on the basis of class, community and interests. For the provincial councils the electorate provided for three categories, viz., general, special and class (such as land owners and chambers of commerce). For the Central Council one more category viz. Muslim was added to it.

The qualification of the electorate based on income, property and education differed from community to community and region to region.

### **The Government of India Act of 1919**

During the First World War, Gandhiji had requested the nation to help the allies in their war efforts because they were fighting for the cause of democracy. After the war was over, the people were feeling that they would also get democratic reforms. The Government of India Act of 1919 was enacted to satisfy the people of India to some extent.

**The salient features of the Act were as follows :** (a) **Preamble:** The Act provided for a Preamble that laid down the basic principles and policies upon which it was based. According to it the policy of the British Parliament was - (i) to provide for the increasing association of Indians in every branch of Indian administration, (ii) to develop self governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the empire; (iii) the time and manner of gradual advance towards this goal was to be decided by the British Parliament and (iv) accordingly, the Preamble suggested for a decentralised unitary form of government.

(b) **Distribution of Functions:** The Act divided the functions of government in two categories: central and provincial. The provincial subjects were further subdivided into *transferred* and *reserved*. In the *transferred* subjects the Governors were to be assisted by

the ministers responsible to the legislature while in the *reserved* subjects the Governors were to be advised by the councillors who were not accountable to the legislature. Thus, in the provinces a new form of government, *dyarchy*, was introduced. Dyarchy means dual set of governments, e.g. accountable and non-accountable.

(c) **Categories of Members:** The Act provided for three categories of members: elected, nominated officials and nominated non-officials. The first category had about 70% members, the second had about 10% and the third category had about 20%. There was majority of elected members.

(d) **The constituencies and franchise:** The Act provided for restricted franchise and communal electorate. The voting qualification varied from province to province and within the same province it differed from rural to urban areas. The constituencies were divided into two categories: general and special. The general constituencies were demarcated to return Hindus, Muslims, Christians, Anglo-Indians, Sikhs etc. Special constituencies were devised to give representation to land holders, universities, chambers of commerce etc.

(e) **Strength of Central Legislature:** The Act introduced bicameral legislature at the centre comprising the Council of States and the Central Legislative Assembly. The former had 60 members, of whom 33 were to be elected and 27 to be nominated. The latter consisted of 145 members, of whom 104 were to be elected and 41 to be nominated,

**(f) Powers of Central Legislature:**

The central legislature was empowered to consider, pass or reject legislation on any of the subjects enumerated in the Central list. But, the Governor-General had the last word on any Bill passed by the Legislature. He possessed the power to prevent the consideration of a Bill or any of its part, on the plea that it was injurious to the peace and tranquillity of the country. He could disallow a question in the legislature. He had the power to withhold his assent to any Bill passed by the legislature without which it could not become an Act. He also had the power to disallow an adjournment motion or debate on any matter. He could enact a law, which he considered essential for the safety and tranquillity of the empire even if the legislature had refused to pass it.

The financial powers of the central legislature were also very much limited. The budget was to be divided into two categories, votable and non-votable. The votable items covered only one-third of the total expenditure. Even in this sphere the Governor-General was empowered to restore any grant refused or reduced by the legislature, if in his opinion the demand was essential for the discharge of his responsibilities.

**(g) Powers of Provincial Legislatures:**

The strength of provincial legislatures differed from province to province. The provincial legislative councils were empowered to legislate on provincial subjects. However, the Act armed the Governor with the extensive powers of legislation. He could stop at any stage the consideration of a bill on the ground that it was injurious to safety and peace of the province. He was

empowered to return any bill to the house for reconsideration or reserve it for the consideration of the Governor-General who in his turn could reserve it for the opinion of the Crown. The Governor could also veto any bill passed by the Legislative Council. If the Council refused to introduce or failed to pass a bill relating to a reserved subject, the Governor by his power of certification could pass it on the plea that it was essential for the discharge of his responsibility.

The Act gave the legislative councils some measure of control over the finance of the province but its financial powers were very much narrowed and circumscribed by the special powers of the Governor. The budget was divided into two parts. There were about 70% non-votable items on which only discussion could take place in the house. The remaining 30% of the budget included such demands for wants as could be reduced or rejected by the house, but the Governor retained the power to restore such demands by certifying that it was essential for the discharge of his responsibilities. In case of emergency the Governor had the power to sanction any expenditure on any item.

**(h) The Executive Council:** It was responsible to the Secretary of State and not to the central legislature. The maximum limit imposed on the membership of the Governor-General's Executive Council was removed. Of the six members of the Governor-General's Executive Council, other than the Commander-in-Chief, three were required to be Indians. A pleader of the Indian High Court was also made

eligible for appointment as the Law member.

**(f) Secretary of State for India:** The control of the Secretary of State for India over the central and provincial administration was reduced.

### **The Government of India Act of 1935**

The three Round Table Conferences convened in London during 1930-32 had made a number of recommendations regarding constitutional reforms in India. The Government of India Act, 1935 was the result of these recommendations. Main features of the Act were as follows:

- (a) It was a comprehensive and detailed document. It consisted of 321 Sections and 10 Schedules. It described, in detail, not only the machinery of the centre but also of the units.
- (b) It, for the first time, introduced a federal form of polity in India. The units of federation fall into two categories: the (British) Indian provinces and the princely states (also known as native states).
- (c) The Act divided the functions of the government in three categories. The federal list contained 59 subjects, the provincial list had 54 subjects, while the concurrent list comprised of 36 subjects. While the federal and provincial governments had exclusive jurisdiction on the subjects in the federal and provincial lists respectively, both the federal and the provincial governments could legislate on the subjects in the concurrent list. It is interesting to note that the

jurisdiction of the federal legislature did not extend to all the subjects mentioned in the federal list in the native states. According to the Act, the ruler of every state was required to sign an Instrument of Accession mentioning therein the extent to which it consented to surrender its authority to the federal government.

- (d) The Act also provided that such a federation could come into existence only if as many princely states (which were given the option to join or not to join the federation) would accept to join it as were entitled to one-half of the states' seats in the upper house of the federal legislature and having one-half of the total states' population.
- (e) The proposed federal polity was to have a bicameral legislature at the centre. The upper house was to be called the Council of States. It was to consist of 260 members, of whom 156 were to represent the provinces and 104 the native states. Out of these 156 representatives of the provinces 150 were to be elected on communal lines. While the seats fixed for Hindus, Muslims and Sikhs were to be filled by direct elections, the seats reserved for Europeans, Anglo-Indian Community and Indian Christians were to be filled by an indirect method through an electoral college consisting of the members of their community in the provincial legislatures. The remaining six members were to be nominated by the Governor-General. It is interesting to note that the number of seats allotted to a state depended

not on the strength of its population but on the relative rank and importance of that state. The Council of States was to be a permanent house. One-third of its members were to retire every third year.

The lower house was to be called the Federal Assembly. It was to consist of 375 members, out of which 250 were to represent the provinces and 125 to represent the princely states. While the representatives of the princely states were to be nominated by their rulers, those representing the provinces were to be elected indirectly by the provincial legislative councils on communal lines. It is interesting to note that the seats allotted to the princely states were disproportionate to their population. Similarly, the seats allotted to the various communities in the provinces were also disproportionate to their population. The term of the Assembly was five years but it could be dissolved earlier also.

(f) The federal legislature could make laws on all the subjects included in the federal and the concurrent list. It was also empowered to legislate on provincial list in an emergency or when two or more provinces requested it to do so. However, its authority over princely states extended to those subjects only which were mentioned in their Instrument of Accession.

No Bill could become an Act unless both the houses passed it and also approved by the Governor-General. In case of differences between the two houses, provision for a joint session of both the houses was made. The

Governor-General had the authority to approve or disapprove any Bill passed by the federal legislature. Though both the houses exercised some control over the executive, by putting questions and passing adjournment motions and other resolutions, the Assembly alone could pass a vote of no confidence against the ministers.

Both the houses possessed almost equal financial powers excepting that the Money Bill could be introduced only in the Assembly. But, the Act granted only limited financial powers to the federal legislature. The Act divided the budget into two parts. The first part covered 80% of the expenditure that was beyond the control of the federal legislature. The remaining 20% required the sanction of the legislature, but, the Governor-General was empowered to restore the reductions or sanction any amount rejected by the legislature.

(g) The Act introduced dyarchy at the federal level. The federal subjects were divided into two categories: the *reserved* and the *transferred*. The *reserved* subjects included Defence; External Affairs; Ecclesiastical Affairs and Tribal Areas. In these matters the Governor General possessed discretionary powers i.e., he acted on the advice of the councillors to be appointed by him. He was not even required to consult the council of ministers in these matters. Subjects not included in the above list comprised the *transferred* subjects. These subjects were under the charge of ministers responsible to the federal



legislature. But, there were certain matters wherein the Governor-General possessed the powers relating to *individual judgement*. These were the powers wherein the Governor-General was required to consult the council of ministers but was not bound by their advice.

- (h) The Act also provided for a Federal Court that was to consist of a Chief Justice and not more than six other judges. They were to be appointed by His Majesty and retired at the age of 65. They could be removed earlier also on charges of misbehaviour or infirmity of mind or body by King of England on the recommendation of the Judicial Committee of the Privy Council.

The Court had Original, Appellate and Advisory jurisdictions. It was also a Court of Record. But, the Court was not the highest Court of Appeal. Appeal could be filed against its judgments to the Privy Council of England.

- (i) The Act did away with the dyarchy introduced by the Government of India Act, 1919 and introduced provincial autonomy in the provinces. Accordingly, the Governors were required ordinarily to act on the advice of council of ministers responsible to the provincial legislature excepting when they exercised their *discretionary powers* or powers of *individual judgement*.

It is interesting to note that the Act did not enumerate the discretionary powers of the Governor. The Governor, at his *discretion*, decided as to what were his *discretionary powers*. Thus, the Governor could misuse his

authority and make the provincial autonomy a mockery.

- (j) The Act provided for bicameral legislatures in six provinces and unicameral in five provinces. The lower house was to be called Legislative Assembly and the upper house, Legislative Council. The strength of the upper and lower houses varied from province to province.

While the Act completely abolished the categories of the nominated members from Assemblies, it continued to have a few nominated members in the Councils.

The Act suggested direct elections for both the houses. The basis of the allotment of the seats to various communities was on the notorious communal award, given by Ramsay Macdonald, as amended by Poona Pact. The basic principle of the scheme was that the seats reserved for a community were to be contested only by persons belonging to that community and they were to be elected by members of that community alone.

- (k) The provincial legislatures were empowered to legislate not only on the subjects included in the provincial list but also on those included in the concurrent list. But a provincial law on a concurrent subject held good in so far as it did not go against a federal law on the subject. In case of a conflict, the federal law was to prevail.

There were certain limitations on the legislative powers of the provincial legislatures. In some cases prior permission of the Governor-General was needed before a Bill could be

introduced in a legislature. Bills relating to an Act of the British Parliament or that of the Governor-General or Governor or affecting the *discretionary powers* of the Governor fall in this category.

Both the houses could exercise some control over the executive of the province by putting questions, supplementary questions or moving adjournment motions etc. The control of the Assembly, however, was substantial in the sense that it could pass a vote of censure against the council of ministers.

The legislatures also enjoyed some limited financial powers. The budget of the province was divided into votable and non-votable categories. Votable items constituted 30% of the expenditure while non-votable items comprised 70% of the budget. Even in the votable category, the Governor could restore any reduction or cut passed by the legislature if he considered it necessary for efficient administration of the province,

(1) Besides the above, the Act also provided for the abolition of India Council, separation of Burma from India, creation of Federal Railway, appointments of an Advocate General and a Financial Adviser.

#### **Cabinet Mission Plan**

After the War (i.e. Second World War) was over, elections were held in England. Labour Party came to power. It was sympathetic towards the cause of India. The British Government sent a Parliamentary delegation to India to get first hand information about the political situation in India. After its

report, the British Government sent a committee of three members of the British Cabinet that was authorized to evolve a formula acceptable to the prominent political parties of India.

The Cabinet Committee, accordingly, met different leaders of different political parties and then offered its recommendations in two instalments. On May 16, 1946 it announced its proposals for a long-term settlement and on June 16, 1946 it outlined a procedure for the formation of Interim Government.

**Proposals for long-term:** The main provisions of the long-term proposals were as follows:

- (a) There should be a Union of India comprising provinces and the princely states.
- (b) The Union should have jurisdiction on Foreign Affairs, Defence and Communication and should have necessary powers to raise finances.
- (c) The Union should have an executive and a legislature consisting of Representatives of both the provinces and princely states.
- (d) Any question relating to a major communal issue in the legislature should be decided by a majority of members present and voting belonging to that community as well as a majority of all the members of the legislature present and voting.
- (e) Provinces should be free to form groups and each group could determine the provincial subjects to be taken in common.
- (f) The Constitution of the Union and of the groups should contain a provision whereby any province

could, by a majority vote of the Legislative Assembly call for a reconsideration of the terms of the Constitution after an initial period of ten years and at ten yearly intervals thereafter.

**Proposals for Constitution making machinery:** The main provisions of the proposals for Constitution making machinery were as follows:

- (a) A constituent Assembly should be constituted consisting 389 members, 296 representing the provinces and 93 the princely states. Each province was to be allotted a number of seats proportional to its population. The total number of seats allotted to a province was to be divided among the main communities (General, Muslims and Sikhs) in proportion to their population and were to be elected by members of the same community in the Legislative Assembly. The number of seats allotted to each princely state was also to be fixed on the basis of population but the mode of choosing their representatives was to be settled in consultation with a Negotiating Committee.
- (b) The members of the Constituent Assembly, so constituted, would be divided into the following three groups:
  - (i) Provinces not claimed for and representing Hindu majority regions viz., Madras, Bombay, the United Provinces, Bihar and Orissa.
  - (ii) Territories claimed for Pakistan and representing the North-

Western Muslim majority regions viz., Punjab, North-Western Frontier Province, Sindh and British Baluchistan.

- (iii) Territories claimed for Pakistan and representing the North-Eastern Muslim majority regions viz., Bengal and Assam.
- (c) Each group was to settle the constitution of the provinces included in it and also whether any constitution for the group as a whole to be set up and, if so, the extent of its powers.
- (d) After the group constitutions were settled, the groups were to assemble together to settle the Union Constitution.
- (e) After the first general election under the new constitution, it was to be open to any province to come out of any group, in which it was placed, by a resolution of its legislature.

**British Indian Treaty:** A treaty will be negotiated between the Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power. It was, however, hoped that India would decide to remain a member of the Commonwealth. But at the same time, she was given the right to go out of Commonwealth, if so desired.

**Recommendation for Short-Term Plan:** The Plan envisaged immediate setting up of an *Interim Government* in order to carry on administration while the constitution making was in progress. The interim government was to have 14 members: 6 Congressmen, 5 Leaguers, 1 Indian Christian, 1 Sikh and 1 Parsee.

In the Interim Government all the portfolios were to be held by Indians and the British Government was to give full co-operation in the accomplishment of the tasks that confronted the Interim Government

**Evaluation of the Plans:** All the major political parties accepted the Plan, with all its drawbacks; and elections were held for a Constituent Assembly. But differences arose between the Congress and the League regarding the interpretation of the Plan. Though the Plan ruled out Pakistan in name, it definitely conceded in substance. This caused trouble and on July 10, 1946 the League withdrew its acceptance.

**Interim Government and Direct Action:** On August 14, 1946 an Interim Government was formed under the leadership of Jawahar Lal Nehru. The Muslim League did not join it. The League declared August 16, 1946 as 'Direct Action Day. On that day a systematic killing and looting of the Hindus began which lasted for four days. About three thousand people were killed and thousands worth of property destroyed. While the carnage continued in Calcutta, Noakhali, Bihar and other places, attempts were continued to bring the League in the Interim Government. As a result, League joined the Interim Government on October 13, 1946. This Government remained in office till the partition of India in August 1947.

#### **Mountbatten Plan**

As per Cabinet Mission Plan, the Constituent Assembly was at work framing the Constitution, but the

League members boycotted it. This made the British Government's task of transferring power to Indian hands difficult. Though it declared June 1948 to be the deadline for the transfer of power, it was felt that it would not be appropriate for it to transfer power to an Assembly that was not fully representative. In order to work out a formula, acceptable to all sections of people, for resolving this problem the British Government appointed Mountbatten as the Governor-General of India, who reached India on March 24, 1947. While on the one hand Mountbatten was negotiating with the leaders of different parties for evolving a formula, a strong agitation was started for the partition of Bengal and Punjab in the wake of communal riots and violence at a vast scale. This gave an opportunity to Mountbatten to announce his plan for solving the problem.

It declared that partition of India was the only possible solution of the Indian problem. The three disputed Provinces viz., Assam, Bengal and Punjab would also be partitioned. A referendum would be held in the North-Western Frontier Province to decide whether that Province would like to join Pakistan or India. A referendum would be held in the Sylhet division of Assam also to determine whether it would like to remain part of Assam or join East Bengal that would be a part of Pakistan.

The Plan indicated a willingness of the British Government to transfer power before June 1948. As the Plan was accepted by all the major parties of India, a Bill was introduced in the Parliament

viz., Indian Independence Bill, 1947 which was passed by it and it became the Indian Independence Act, 1947.

#### **Indian Independence Act of 1947**

The main Provisions of the Act are as follows:

- (a) The Act provided for the creation of two independent Dominions, viz., India and Pakistan.
- (b) It provided for the partition of Punjab and Bengal and separate boundary commissions to demarcate the boundaries between them.
- (c) Besides West Punjab and East-Bengal, Pakistan was to comprise territories of Sindh, North Western Frontier Province, Sylhat division of Assam, Bhawalpur, Khairpur, Baluchistan and eight other relatively minor princely states in Baluchistan.
- (d) The paramount authority of British Crown over the princely states was to lapse, and they were free to join the Dominion of India or Pakistan or remain independent.
- (e) The British Government was not to exercise any authority in future over the tribal areas and any treaty or agreement in force, at the time of passing of the Act, between British Government and any tribal authority was also to lapse.
- (f) Both the Dominions of India and Pakistan were to have Governor-Generals appointed by the British King. The Act also provided for one common Governor-General if both the Dominions so agreed.
- (g) The Constituent Assemblies of both the Dominions were free to frame the constitution for their respective countries without any limitation whatsoever. They were also free to withdraw from the British Commonwealth.
- (h) For the time being, till the new constitutions were framed, each of the Dominions and all the provinces were to be governed in accordance with the Government of India Act, 1935 with such modifications, omissions or additions as may be done by the Governor-General-in-Council.
  - (i) In each of the Dominions, the powers of the legislature of the Dominion would be exercisable in the first instance by the Constituent Assembly of that Dominion.
  - (j) The British Government would no longer possess any control over the Dominions, provinces or any part thereof after Independence.
  - (k) The Governor-Generals would become the constitutional heads, empowered to give assent to any Bill on behalf of the Crown.
  - (l) The Governor-General was invested with adequate powers until March, 1948, to issue orders for the effective implementations of the provisions of the Indian Independence Act, 1947 and the division of assets between the two Dominions and to make suitable changes in the Government of India Act, 1935 to remove any difficulty that might arise in the transitional period.
  - (m) Those persons who had been appointed by the Secretary of State or Secretary of State-in-Council to a civil service under the Crown in

India before 15<sup>th</sup> August 1947, would continue in that service after independence and enjoy the same privileges and rights in respect of

leave, remuneration, pension, disciplinary matters and tenure of office which had been enjoyed by them before Independence.

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### Exercises

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1. What are the salient features of the Indian Councils Act of 1909?
2. Describe the salient features of the Government of India Act of 1919.
3. Explain the meaning of Dyarchy. When was it introduced first in India?
4. What are the main features of the Government of India Act of 1935?
5. Enumerate the main provisions of the Indian Independence Act of 1947.
6. Write short notes on the following:
  - (a) Cabinet Mission Plan
  - (b) Mountbatten Plan

# INDIAN NATIONAL MOVEMENT AND ITS HERITAGE

### Introduction

India got Independence on 15th August 1947. It was primarily the result of the Indian National Movement led by the Indian National Congress. Besides the Indian National Congress, there were other organizations also that made their contributions to this Movement. The following passages give a brief survey of all those forces.

### Indian National Congress

Though the Indian National Congress was founded in 1885; its genesis can be traced from the various forces at work since the mid-nineteenth century. They can be summarized as follows:

**(a) Effects of the First War of Indian Independence (1857):** In this struggle for the first time rulers, soldiers and leaders from different parts of India came in close contact with each other. Though it failed in achieving its main goal due to lack of resources, coordination and appropriate planning, it helped in bringing national consciousness throughout India.

**(b) Impact of the Socio-Religious Movements:** The socio religious movements of the nineteenth century, such as Arya Samaj founded by Swami Dayanand Saraswati, Brahmo Samaj founded by Raja Rammohan Roy, Ramakrishna Mission founded by

Swami Vivekanand, Theosophical Society founded by Madame Blavatsky and Olcott, played a very important role in creating a new awakening amongst the people of India. They became proud of their glorious past and looked ahead for a new resurgence in India.

**(c) Effects of the British Rule:** Though the alien rule of the British was indifferent to the sentiments of the people, it proved to be a blessing in disguise. The network of railways and telegraphs aroused and fostered a feeling of unity amongst the people hailing from different parts of India.

**(d) Western Education:** The spread of western education brought the people in touch with the philosophies of the western thinkers with their emphasis on nationalism, democracy and scientific outlook.

**(e) Economic Exploitation:** The economic policy of the British Government in India was based on economic exploitation. They purchased raw materials from India at very cheap rates and sent it to England to feed the needs of the British industries. The readymade goods of the British industries were sold in India at very high rates. The government discouraged cottage industries of India and dumped the Indian market with goods manufactured in England.

**(f) Oppressive Agricultural Policy:** The British Government charged heavy land revenues on the poor peasants of India who heavily depended on the vagaries of nature. This caused a lot of resentment amongst Indian peasants against the British rule.

**(g) Severe Famines:** In the first half of the nineteenth century there occurred seven famines, with an estimated total of one million deaths while in the second half, there were twenty-four famines resulting in twenty million deaths. The British Government did not come out with any substantial help to relieve the suffering people.

**(h) The Role of Vernacular Press:** When the people of India noted that the English newspapers were hostile to the cause of Indians, they started newspapers in Indian languages. These newspapers began to expose the anti-people policies of the British Government. This led the Government to enact Vernacular Press Act that restricted the freedom of Vernacular Press. This provoked a lot of resentment both in India and in England. This resulted in its revocation. However, the British Government adopted other measures to deny freedom of speech and expression to the people of India.

**(i) Repressive Measures of Lord Lytton:** During the Governor-Generalship of Lord Lytton steps were taken which caused bitter feelings against the British Government. While there was a severe famine in India, in 1876, which took away toll of thousands of Indian life, Lord Lytton held a *darbar* at Delhi in 1877 to announce that Queen Victoria had assumed the title of the empress of

India which drained the Indian treasury of millions of rupees. Lord Lytton drew India which drained the Indian treasury of millions of rupees. Lord Lytton drew India into an Afghan war that caused enormous loss to India in the form of men and money. While on the one hand he imposed heavy penalties on Indians for bearing arms without licence, there was no such restriction on the Europeans. The people of India took this as an insult.

**(j) Ilbert Bill Controversy:** According to the then existing law, an Indian Magistrate was not empowered to try and punish Europeans. The Bill wanted to remove this discrimination against the Indians. The European Community organized such a strong opposition against it that it was ultimately withdrawn. This caused a feeling in the minds of the people that they could not get justice from the British Government and that agitation was a means through which one could get one's advance redressed.

#### **Birth of Indian National Congress**

It is obvious from the above that there was a lot of discontent against the British Government in India. It was felt by some observers that if this discontent was not contained in time it might lead to another outburst like the uprising of 1857. They felt that there was a need of a counter part of His Majesty's Opposition in India that could give the discontent an outlet. Mr. A.O. Hume belonged to this school of thought. He felt that it would be a great advantage to the country if leading Indian politicians could be brought together once a year on friendly



footing to discuss social matters. He discussed this idea with Lord Dufferin, the then Governor-General of India and got an encouraging response. Accordingly, a meeting was convened in Bombay on December 28, 1885 that was presided over by W.C. Bonnerji. This meeting decided to form an All India organization by the name of Indian National Congress. In the very first meeting, the Congress passed resolutions demanding various political and economic reforms in India. Though Mr. Hume wanted the Congress to confine itself to social reforms only, yet it emphasized political and economic reforms. Thus, in 1885 a firm foundation was laid for an organised Indian National Movement.

#### **Extremist Movement**

The policies that were followed by the Indian National Congress during 1885-1918 are called moderate or liberal policies. Some of the members of the Indian National Congress, however, were not satisfied with these policies. They wanted to give the policies an aggressive colour. They are known by the name of extremists.

***Difference between the liberals or moderates and the extremists:*** The moderates believed in the just sense of the British people. They felt that the British people were not aware of the miserable conditions of the Indian people and felt that once the British people came to know of their problems, they would be solved. They, therefore, believed in submitting petitions, prayers, sending delegations, writing articles in newspapers etc. The

extremists, on the other hand, believed that when a foreign power rules over another people, it is not in the interest of the people ruled but the rulers themselves. According to them, the foundation of a foreign rule was exploitation. It is through processions, protest meetings, boycott of foreign goods, strikes, picketing, use of *Swadeshi* goods and demanding *Swarajya* that a foreign government could be forced to concede their demands.

Gopal Krishna Gokhale led the moderates, Bal Gangadhar Tilak the extremists. The difference in the approach between the two clearly brings out the difference between the moderates and the extremists. In the words of Pattabhi Sitaramayya, Gokhale's plan was to improve the existing condition, Tilak's was to reconstruct it; Gokhale had necessity to work with the bureaucracy, Tilak had necessity to fight it; Gokhale stood for co-operation, wherever possible and opposition wherever necessary, Tilak inclined towards a policy of obstruction; Gokhale's ideal was love and service, Tilak's was service and suffering; Gokhale's method sought to win the foreigner, Tilak's to replace him; Gokhale's objective was self-government for which the people have to fit themselves by answering tests prescribed by the English, Tilak's objective was *Swaraj* which was the birthright of every Indian and which he should have without let or hindrance from the foreigner; Gokhale was on the level of his age, Tilak was in advance of his time.

**Cause for the Birth and Growth of Extremist Movement:** The birth and growth of extremism in the first decade of the twentieth century was the result of so many factors which could be summarized as follows:

**Discontent over the Councils Act of 1892:** The reforms introduced by this Act were inadequate and disappointing. The Councils were still dominated by the official nominees who seldom opposed government's repressive measures. Even the elected members were ineffective as they were elected by the vested interests.

**Revival of Hinduism:** The three extremist leaders viz. Bal (Bal Gangadhar Tilak), Pal (Vipin Chandra Pal), Lal (Lala Lajpat Rai) inspired revival of Hinduism. Bal initiated the worship of Lord Ganesh in Maharashtra and celebrated *Ganeshotsav* for about a fortnight wherein in the guise of religious worship speeches and debates were organized to inculcate the spirit of nationalism. The same was the case in Bengal where Vipin Chandra Pal initiated the worship of Kali and Durga and celebrated *Durgotsav* for about a fortnight wherein in the guise of religious worship debates and discourses were organized to encourage the feeling of nationalism amongst the people of Bengal, particularly the youth. These activities created a new awakening in the country.

**Economic Exploitation:** The economic policies of the British Government in India were such that the poor people of India became poorer day by day. The leaders like Dadabhai Naoroji and Ramesh Chandra Dutta,

through their writings, exposed the exploitative policies of the British Government. This aroused discontent against the British Government.

**Famine:** A big famine occurred in India in 1896-97. It affected about twenty million people spread over in different parts of India. The government did nothing to provide relief to the starving masses. This also created a severe discontent in the minds of the people of India against the British rule.

**Plague:** When famine was taking its tolls, there spread a severe plague in Poona. The failure to check the spread of plague infuriated the people to such an extent that one Damodar Hari Chapekar shot dead Rand, the Commissioner of Poona. Chapekar was hanged and many innocent people were brutally punished. This caused a lot of resentment in the minds of the people of India.

**The Repressive Policy of Lord Curzon and other Governor-Generals:** During the Governor-Generalship of Elgin several unpopular measures were enacted to harass the people. During his regime a great famine broke out. Instead of helping the people, the treasury was emptied in expanding the forces and on holding a splendid Darbar in Delhi. According to one author "if even half of the vast sum spent in connection with the Delhi Darbar had been made over for the purpose of famine relief, it might have been the means of saving millions of men, women and children from death by starvation."

The events, which occurred during the Governor-Generalship of Lord

Curzon, added insult to injury. During his regime Calcutta Corporation Act, the Official Secrets Act and the Indian University Act were passed which curtailed the freedom of the people of India. His opinions regarding the Indian culture were highly insulting to the people of India. His derogatory speeches caused a lot of discontent in the minds of the Indian People.

**Partition of Bengal and Swadeshi Movement:** During Lord Curzon's rule the Province of Bengal was partitioned. There was a sinister motive behind it. He wanted to favour the Muslims by creating a Muslim majority province by partitioning Bengal. There was a spontaneous reaction against it. The people decided to boycott the foreign goods and use Swadeshi goods. They also organized bonfire of imported goods. The Government adopted severe repressive measures to suppress the agitations. This resulted in a lot of anger against the British Regime.

**Foreign Events:** Several events that occurred in Europe in the later part of the nineteenth century also inspired the youth of India to work for the emancipation of India. The defeat of Italy at the hands of Abyssinia in 1896 and Russia by Japan in 1905 also gave a new stimulus to Indian Nationalism. The factors mentioned above gave birth to a radical wing in the Congress party. They wanted a change in the moderate policy of the Congress. To some extent they succeeded. For instance, Gopal Krishna Gokhale, in his presidential address at Banaras in 1905, condemned the partition of Bengal and supported the Swadeshi Movement.

But then, the moderates could not go too far in this direction. As a result, the Congress was divided into two groups: the extremist and the moderates. At the Surat session of the Indian National Congress in 1907 there was a formal split in the Congress. The extremists left the Congress and carried on their programmes independently.

#### **Revolutionaries**

The youth of the country was not satisfied with the policies of the extremists also. They had a firm belief that even these policies were not going to get them 'Swarajya'. For the success of their mission they believed in the cult of pistol and bomb. Hence they organized themselves into a number of societies on the model of Secret Societies of Italy and Russia. They secretly trained the young recruits in physical exercises, use of weapons and religious practices of 'Shakti Cult'. They also tried to make inroads into military camps and sow seeds of hatred against the British bureaucracy.

The British authorities dubbed the revolutionaries as terrorists. They were terrorists only in the sense that they did terrorise those English officers who had adopted severe repressive measures and committed brutalities on innocent people. Their activities did serve eye-openers to the British imperialists. The revolutionaries retaliated only when their national pride was hurt or when the ladies were insulted. Their goal was very noble. They had faith in democracy. Their ideal was to setup the rule of the farmers and workers and to remove all social and economic disparities.

Some of the prominent leaders of the revolutionary movement were: Barindra Kumar Ghosh, Bhupendranath Dutta, Shyamji Krishna Verma, Chapekar brothers, Savarkar brothers, Hardayal, Bhai Parnnanand, Ram Prasad Bismil, Sardar Bhagat Singh, Chandra Shekhar Azad, Yeshpal and Rashbehari Ghosh.

The outburst of activities of these revolutionaries greatly alarmed the British Government who adopted a three-fold policy of repression, reform and division. Repression took the form of committing brutalities on the revolutionaries. Reform took the form of constitutional reforms such as Morley-Minto Reforms (Indian Councils Act, 1909), Montagu-Chelmsford Reforms (Government of India Act, 1919) and the Government of India Act, 1935. Division took the form of encouraging the establishment of Muslim League and introducing communal electorate.

#### **Muslim Communalism**

When the Indian National Congress was established in 1885, it not only enjoyed the blessings of the powers that be, those days. The Governors of the provinces, where its sessions were held, used to grace the occasions by their presence. But when the Indian National Congress began to lay emphasis on various proposals of political and economic reforms, the attitude of the British Officials changed. They began to frown on the Indian National Congress. But, in spite of the hostile attitude of the officials, the Congress gained influence amongst the masses.

This led the British officials to conspire against the Indian National Congress. They adopted the policy of 'divide and rule' and encouraged the leaders of the Muslim community to keep away from the activities of the Congress. They were encouraged in this matter by Sir Syed Ahmed Khan and his Aligarh Movement, which was trying to establish a rapport between the Muslim community and the British Government in India. It is to be noted that the British officials used to look to the Muslim community with suspicion. They felt that the uprising of 1857 was primarily an act of the Muslim community because the British had snatched away power from the Mughal rulers. Sir Syed Ahmed Khan wanted to remove this stigma from the Muslim community. This was a golden opportunity to the British. They encouraged him and the officials of the Anglo-Indian-Mohammedan College, Aligarh, founded by him, to make a representation to the Government for separate electorate for the Muslims. Accordingly, a delegation, under the leadership of Agha Khan, met the then Governor-General and put forward their demand for separate electorate for the Muslims in the proposed constitutional reforms. The attitude of the Governor-General was sympathetic to their demands.

#### **Birth of All India Muslim League:**

The success of the Muslim deputation that met the Governor-General enthused the Muslims to start a separate political organisation of their own. Accordingly, on 30th December 1906, the Muslim League was formed. The objectives of the League were

defined as follows: (i) to promote among the Muslims of India a feeling of loyalty to the British Government and to remove any misconception that may arise as to the intention of the government with regard to any of its measures, (ii) to protect and advance the political rights and interests of the Muslims of India and to respectfully represent their needs and aspirations to the Government and (iii) to prevent the rise among the Muslims of India of any feelings of hostility towards other communities without prejudice to the aforementioned objects of the League. It is clear from the above that the primary objective of the League was anti-Congress and pro-British. It stood for separate representation for Muslims in the Legislative Councils and weightage in the appointments in the government jobs.

**Changes in the Policy of Muslim League:** The Muslim League, however, could not command support from the entire Muslim Community. Some of the top leaders like Mr Jinnah, Maulana Mohammad Ali and Maulana Abul Kalam Azad did not agree with the communal character of the League. Under the pressure of these eminent Muslim leaders the League was compelled to modify its constitution and effect certain changes in its aims and objectives. The Muslim League gave up its dogmatism and drifted closer to the Congress creed. It included the promotion of goodwill between the two major communities and the attainment of Swarajya under the patronage of the British Crown in its aims and objects.

Another reason responsible for the drift of the League towards the Congress was that Turkey had joined hands with Germany and fought against the British during the First World War. Indian Muslims, who accepted the Emperor of Turkey as their Khalifa (religious guru) began to look upon the British as their enemies. Thus began a new chapter in the history of the League. Both the Congress and the League held their annual sessions at Lucknow and formulated a scheme for post-war reforms known as Congress-League Scheme or Lucknow Pact.

**Muslim League's Attitude towards Khilafat Question:** In the First World War the Sultan of Turkey sided with Germany. The Muslims of India were afraid that in case of defeat of Axis powers, Turkey might be disintegrated. As the Sultan of Turkey was the Khalifa, the Muslims of India were opposed to the British efforts in the War. After the War was over the suspicion of the Muslims proved true. The Turkish Empire was disintegrated. This caused a lot of discontent amongst the Muslims. As the Indian National Congress supported the cause of Khilafat and made it an issue for the Non-Cooperation Movement, the Muslims came closer to the Congress. But this did not last for a long time. Communal riots in the Malabar District spoiled the whole atmosphere. When the Non-Cooperation Movement was withdrawn because of the Chauri Chaura incident, the communal forces became very active in the politics of India.

**Muslim League's Attitude towards Simon Commission:** In the Government of India Act of 1919, there was a provision for the review of the working of the Act after a lapse of ten years. The Government, however, appointed a Commission, viz. Simon Commission, two years earlier than the due time. As all the members of the Commission were English people, the Indian National Congress felt that it was an insult to the Indian people and decided to boycott it. In the League, however, there were two views, one in favour of cooperating with it, and other stood for its opposition.

**Muslim League on Nehru Report:** In 1928 an All Parties' Conference was held which appointed a committee under the chairmanship of Motilal Nehru to draft a constitution for the future political set up in India. Its report (the Nehru Committee Report) provided for joint electorate with reservation of seats for the Muslims. The League was divided on the joint electorate. However, those who were opposed to it dominated the League.

**Jinnah's Fourteen Points:** Mr Jinnah, who did not agree with Nehru Report, put forward his demands, which he called minimum, for any political settlement in India. These demands are called Jinnah's fourteen points, which were presented before and ratified by the Muslim League. Some of the main points were: (i) the form of any Constitution to be drawn for free India should be federal with the residuary powers vested in the provincial government, (ii) the minorities should be adequately represented in all the Legislative

Assemblies and Local Bodies, (iii) one-third of the total seats in the Central Assembly should be reserved for the Muslims, (iv) representation of all the communities should be on the basis of separate electorate; it should, however, be open to any group to abandon the system of separate electorate in favour of joint electorate, (v) no legislature or an elected body should adopt a Bill or a resolution which was opposed by three-fourths of the members of that community in that body on the ground that it was injurious to the interests of that community, (vi) adequate share for Muslims should be provided in the constitution of all services, subject to requirements of efficiency, (vii) adequate safeguards and state help should be given for the protection and promotion of Muslim culture, religion, language, education, laws and religious institutions, (viii) at least one-third of total number of ministers in the central and provincial cabinets should be drawn from Muslim community and (ix) no change in the Constitution should be made by Central Assembly except with the concurrence of the units constituting the Indian federation.

**League's Demand for Pakistan:** The idea of Pakistan was conceived by Mohd. Iqbal in 1930. He dreamt of a consolidated North-West Indian Muslim State. However, it was Rahmat Ali who gave the idea a precise form. In March 1940 the Muslim League passed a resolution, at its Lahore session, which stated that "no constitutional scheme would be workable in this country or acceptable to Muslims unless it is designed on the following basic principles, viz., that

geographically contiguous units are demarcated into regions which should be constituted with such territorial readjustments as may be necessary; that the areas, in which the Muslims are numerically in majority, should be grouped to constitute an independent state. The League resolved that the British Government, before leaving India, must effect the partition of the country into Indian Union and Pakistan. The basis of League's demand was its mischievous 'Two-Nation Theory'. According to this theory the Hindus and the Muslims are not two communities but two nations.

In 1942, when the Congress launched the Quit India Movement, the Muslim League, instead of supporting it, co-operated with the government to crush it. In the general elections held in 1946, the League captured majority of Muslim seats. It is to be noted that in the elections of 1937, the Muslim League's performance was not so good. Encouraged by its enormous success, the Muslim League launched its campaign for the formation of Pakistan with greater enthusiasm. When the Cabinet Mission Plan did not indicate the formation of Pakistan, the Muslim League resorted to 'direct action' which resulted in communal riots throughout India and chaos was created to such an extent that the Congress, which was totally opposed to the idea of partition, accepted the Mountbatten Plan for the partition of India into two dominions viz., India and Pakistan.

#### **Non-Cooperation Movement (1920-22)**

In 1920 the Indian National Congress decided to launch a movement against

the British Government known as the Non-Co-operation Movement. There were several reasons for it. They can be summarised as follows:

**Disappointment and Dissatisfaction of the people :** During the First World War (1914-18) the people of India helped the British Government with men and money both. After the war was over the people of India expected that they would also get their due rights and democracy would be introduced in India. But what they got was Dyarchy wherein the real powers belonged to the irresponsible executive councillors and the responsible ministers were handicapped by paucity of funds. Not only this, before the war was over the process of retrenchment in the army had already started. In order to suppress the possible agitation due to the unemployment to be caused by the policy of retrenchment the Government introduced two Bills viz. Rowlatt Bills which aimed at arresting the people for unlimited period without assigning any reason and without giving them any protection of defense through legal experts. This caused a lot of disappointment and dissatisfaction in the minds of the people of India.

**The Tragedy of Jallianwala Bagh:** When Gandhiji started a countrywide agitation against the Rowlatt Act, the people of Punjab organised a public meeting at Jallianwala Bagh in Amritsar to support Gandhiji's move. The place was enclosed on all sides by the back walls of the houses. It had only one entrance gate that was so narrow that no carriage could pass through it. The martial law administrator General

Dyer allowed the people to assemble at the place and when it was packed to full capacity, he along with a contingent of hundred Indian and fifty British soldiers reached the venue of the meeting. He ordered the soldiers to open fire without giving any warning to the crowd to disperse. The firing stopped only when the ammunition was exhausted. This massacre caused a lot of hatred in the minds of the people of India.

**Hunter Committee Report:** Due to the pressure of public opinion the Government of India appointed a committee, viz. Hunter Committee to investigate into the Jallianwala Bagh Tragedy. Even before the submission of the report of this Committee the Government of India passed an Indemnity Act that absolved all the officials of any trial and punishment in connection with the tragedy. The report of the committee also tried to white-wash the conduct of the British officers. This caused a lot of resentment in the minds of the people of India.

**Khilafat Question:** The Sultan of Turkey was recognized by the Muslims of India as their spiritual head. In the First World War, Turkey had joined hands with Axis powers. The Muslims had a suspicion that in case of defeat of Axis powers Turkey could be dismembered. In order to secure the support of the Muslims of India the British Government had assured that no change would be made in the status of the Khalifa (the spiritual head of the Muslims). But when the war was over the British Government did not honour its promise and dismembered Turkey. This caused a lot of dissatisfaction in the minds of the Muslims of India.

As a result of the above-mentioned reasons, the Congress decided to launch a political agitation viz., Non-co-operation Movement, against the British Government.

**Policies and Programme of Non-co-operation Movement:** The aim and objective of the Non-co-operation Movement was to boycott all the political, economic and social institutions connected with the British Government in India and instead, establish parallel national institutions. Some of the main items of the programme are as follows: (i) surrender of the titles and honorary offices and resignation of members occupying nominated seats in local bodies, (ii) boycott of governmental and semi-governmental educational institutions and establishing parallel national educational institutions, (iii) boycott of election to the new councils and refusal by the voters to vote at the elections, (iv) boycott of foreign goods and use of swadeshi goods, (v) refusal to attend official durbars, (vi) boycott of British courts by lawyers and litigants and instead establish Panchayats to solve the disputes, (vii) refusal by soldiers, clerks and workers to serve in Mesopotamia, (viii) popularisation of Charkha-plying and yarn-spinning, (ix) promotion of communal harmony and (x) the removal of untouchability.

**Progress of the Movement:** The response to the programme of the Non-cooperation Movement was very enthusiastic. Thousands of students boycotted their educational institutions. For their benefit several national educational institutions were established. Even lawyers of great



standing and lucrative practice gave up their profession and dedicated themselves to political work. A number of people surrendered their official titles and resigned from the honorary offices. Boycott of the elections for the newly constituted legislative councils was also, to a great extent, successful, though some moderate leaders, Zamindars and Jagirdars contested the elections. The programme of boycott of foreign goods was very popular and people organised bonfire of foreign clothes and garments.

Though the movement, by and large, was peaceful, yet a few stray incidents of violence also took place. For instance, the Moplahs in Malabar district took law in their own hands and killed not only Europeans but also thousands of Hindus. Similarly, when the Prince of Wales landed in Bombay on 17th November 1921 there was a clash between the loyalists, who turned up to receive the Prince and the boycotters which resulted in brick-battling and outbreak of violence. But, violence reached at its zenith in Chauri Chaura in U.P. when an excited mob attacked a police outpost on February 5th, 1922 and killed a few constables. Gandhiji, apprehending similar troubles in other parts of the country, announced the suspension of the Movement. Though this caused a lot of resentment amongst the leaders and workers of the Congress, nothing substantial could be done in the matter and the Movement came to an end.

#### **Swarajist Party**

The removal of Gandhiji from the political scene because of his arrest,

caused a gap left in the leadership of the Congress. The failure of the Non-co-operation Movement created bitterness in the minds of the Congressmen. There was confusion and gloominess. The nation wanted a concrete programme and political guidance that were finally supplied by a set of leaders who had opposed Gandhiji's boycott of councils. The Congress was split in two sections. One section was opposed to any change in the programme of Non-co-operation while the other section wanted to make a change in it. Their argument was that the boycott of the councils was an utter failure. The moderates and the reactionaries contested the elections and occupied seats in the councils. As a result, the Congress failed in its objective. This group, therefore, wanted to change its strategy. Instead of boycott, it wanted to contest elections, reach in the councils and obstruct its activities from within. In the beginning the no-changers dominated the scene, but later on Gandhiji gave a green signal to the changers on the condition that they would contest the election as a part of the Congress organisation. As a result, the Swarajist Party was founded.

**Principles and Programmes of the Swarajist Party:** The party wanted to contest elections, enter the councils and non-co-operate with the Government from within the councils. If the party would get majority in the councils they would reject the Government Bills, as a result of which, the Governors would be forced to use their extraordinary powers of *certification* and put the rejected Bills on statutory books.

Similarly, they would reject the budget and thereby force the Governors to use their extraordinary power of *restoration* whereby the rejected budget would be restored. In this way the party would be able to expose the non-democratic provisions of the Government of India Act, 1909. In case they would not get majority in the councils they would create obstructions in the passage of Bills and in the passing of Budgets. They felt that as a result of their activities the moderates and the reactionaries would fail in their mission to co-operate with the Government.

***Success and Work of Swarajist***

***Party:*** The Party contested the elections in 1923 and secured clear majority in the Central Legislative Assembly and in the Legislative Councils of Bengal and Central Provinces. In several other provinces, although it failed to get a clear majority, they formed strong opposition groups. Under the leadership of Moti Lal Nehru and C.R. Das, the party played a very important role in the Councils and the Central Assembly. The party, in co-operation with other groups in the Assembly, was able to secure the post of presiding officer of the Central Assembly for Vitthal Bhai Patel. As a result of the activities of the party, the Congressmen got a good diversion and the Congress remained in the lime light of people of India.

***Simon Commission and its Report***

In the Government of India Act, 1919, there was a provision for the review of the working of the Act after the lapse of ten years. The Government, however, appointed a Commission, viz. Simon

Commission, two years earlier than the due time. As all the members of the Commission were English people, the Indian National Congress felt that it was an insult to the Indian people and decided to boycott it.

The Commission was asked to enquire into the working of the Government of India Act, 1919 and to find out how successfully or otherwise the dyarchy was working in the provinces. It was also to report on the functioning of representative institutions and whether it was desirable or not to make further progress towards a fully responsible government.

When the Commission landed in Bombay on February 7th, 1928 it was greeted with black flags and wild demonstrations. The same was repeated at every place the Commission visited. In view of the disturbances all over the country, the government made an announcement to the effect that committees elected by central as well as provincial legislatures would also be associated with the Commission. This, however, did not satisfy the people.

The Commission submitted its report in May, 1930. Its main re-commendations were as follows: (i) abolition of dyarchy and introduction of provincial autonomy; (ii) the Governors and the Governor-General should be given special powers; (iii) franchise should be extended to the extent that at least 10-15 percent of the people should be able to get right to vote; (iv) retention of the communal electorate and special representation of the minorities; (v) introduction of dyarchy at the Centre; and (vi) the

Commission suggested the desirability of the reconstitution of the central legislature on federal principle, having representatives from all the provinces and those princely states which consented to join the proposed federation, the method of election for both the houses should be indirect.

Though the Report did not satisfy the people and was bitterly criticized by various leaders, it became the basis for the Government of India Act of 1935.

#### ***Nehru Committee and its Report***

In response to the challenge by the Simon Commission to draft a constitution acceptable to all the parties, the All India National Congress convened an All Parties Conference in February, 1928. Twenty-nine political parties participated in it. The Conference appointed a committee under the presidentship of Motilal Nehru to draft a constitution.

The main recommendations of the Committee are as follows: (i) dominion status should be the immediate goal and the government should be made fully responsible; (ii) future constitution should be federal in nature wherein the provinces should be given as much autonomy as was safely possible, residuary powers should reside with the centre and the provincial legislatures should be unicameral; (iii) communal electorate should be done away with but there could be reservation of seats for the minorities; (iv) the state should be secular and provide for cultural autonomy; (v) sovereignty of people should be given a recognition and fundamental rights, particularly the right to equality and

freedom of faith, should be granted to them; (vi) parliament should be bicameral wherein the lower house viz. House of Representatives, should be elected directly by the people on the basis of adult franchise and the upper house, viz., the Senate, should be elected indirectly; (vii) the Governor-General should act in accordance with the Constitution and his Executive Council should have a Prime Minister and six ministers, who should be collectively responsible to the Dominion Parliament; and (viii) a Supreme Court should be set up with the power to interpret the Constitution and to decide disputes between the provinces. There should be no appeal against its judgment to the Privy Council.

Though the All-Parties Conference at Lucknow accepted the Report unanimously, differences arose in almost all the parties when they began to scrutinise it separately. The Congress accepted it only on the condition that the British Government would accept it in its entirety on or before 31st December 1929. In the event of its non-acceptance by that date or its earlier rejection, the Congress would organize non-violent, non-cooperation movement and would declare complete independence as its goal.

#### **Civil Disobedience Movement (1930-32)**

The Congress was fully dissatisfied with the way the government proceeded with the Simon Commission. It was also not happy when the government rejected the Report of the Nehru Committee. There was a lot of discontent amongst the peasants of Gujarat where Sardar Vallabh Bhai Patel led a

movement of the peasants against the arbitrary rule of the provincial government. Similarly, there was discontent amongst the people of Bihar because of the high handedness of the provincial government. When the communist leaders assumed the leadership of peasants and workers, the government put them behind the bars and tried them for sedition. As a result, Gandhiji felt that there was a need for a new popular movement against the British rulers. He, therefore, launched the Civil Disobedience Movement in 1930.

The movement resorted to all the items of the programme of Non-cooperation Movement of 1919. In addition a new item was added viz., violation of salt law. The movement was launched by the famous Dandi march of Gandhiji in March 1930. He marched on foot from Sabarmati Ashram to the seashore and covered a distance of two hundred miles in twenty-four days. Hundreds of Congress workers joined him on his way to Dandi. During this march there arose a new political awakening amongst the masses of India. In the beginning the Government of India did not take the movement seriously but when the movement became very popular the government adopted repressive measures. As a result, thousands of Congressmen offered for Satyagrah and all the jails of India were filled with the Satyagrahis.

**First Round Table Conference:** While the Congress was active with the above-mentioned Movement in India there was a lot of activity going on in England. In accordance with the recommendations of Simon Commission, a Round Table Conference was

summoned in 1930 to discuss the scheme for future political reforms, wherein political parties and some top Indian leaders were invited to participate. The Congress party boycotted the Conference. The Conference, however, took some important political decisions and appointed various committees to workout the details.

**Gandhi-Irwin Pact (1931) and the Second Round Table Conference:**

After the first Round Table Conference, efforts were made to seek the Co-operation of Gandhiji and the Congress for the Second Round Table Conference. There were negotiations between Gandhiji and Lord Irwin. As a result, there was an agreement between the two. The Congress decided to postpone the Civil Disobedience Movement and the Government promised to withdraw the suppressive measures and release the Satyagrahis. The Congress participated in the Second Round Table Conference in which Gandhiji represented the Congress. Though the presence of Gandhiji created a lot of enthusiasm, serious differences came to the floor of the Conference - particularly on the issue of representation of the Scheduled Castes. B. R. Ambedkar insisted on separate electorate and representation for the Scheduled Castes. Gandhiji did not agree to it. The matter was ultimately left to the Prime Minister of England to give his decision in the matter.

**Communal Award and Poona Pact:** When the Prime Minister of England gave his award in favour of separate electorate and separate representation

for the Scheduled Castes, Gandhiji opposed it and went on fast unto death. This created a lot of anxiety throughout the nation. Efforts were made to bring a compromise between Ambedkar and Gandhiji that resulted in Poona Pact. According to this Pact it was agreed by Gandhiji and Ambedkar to retain joint electorate but the number of reserved seats for the Scheduled Castes, as fixed by the award in the provincial legislature, was doubled and all the members of the Depressed Classes registered in the general electoral roll in a constituency formed an electoral college. This small body was to elect a panel of four candidates for each of the reserved seats by the method of single transferable vote. One of these candidates was to be elected for the reserved seat by the joint electorate. As a result of this agreement Gandhiji broke his fast.

**Resumption of Civil Disobedience Movement (1932-34):** Meanwhile Gandhiji, after his return from the Second Round Table Conference, had already resumed Civil Disobedience Movement. While on the one hand the Satyagrahis were active in the Movement, the government was resorting to repressive measures. In the wake of the Communal Award and Gandhiji's fast, the movement became somewhat passive. Gandhiji took up the programme for removal of untouchability from society. His followers also began to take active interest in this programme. When a famine occurred in Bihar in 1934, the workers of Congress began to take active interest in the relief measures.

Thus, the Civil Disobedience Movement gradually came to an end.

### **Quit India Movement (1942)**

Most of the Indians were not surprised at the failure of the Cripps Mission. They felt that Cripps was sent to India to mollify China and the U.S.A. who were pressurising the U.K. to make honourable offer to India to meet its national demands. The British Government wanted to demonstrate to the world that it could not hand over power to Indians because of disunity amongst them. However, this failure caused a sense of indignant frustration amongst the masses. The atmosphere was gloomy and inaction was suicidal. So Gandhiji evolved the idea of *Quit India* in his articles in the 'Harijan'.

**Quit India Resolution:** The Congress Working Committee approved the idea and passed the famous *Quit India Resolution*. The resolution demanded the immediate, complete and unconditional withdrawal by the British government regardless of the consequences. The Congress Working Committee authorised Gandhiji to take the lead and guide the nation in the steps to be taken in the coming struggle.

The Resolution was put before the All India Congress Committee on August 8, 1942 for its approval. While speaking on the resolution, Gandhiji declared that it was a decision 'to do or die' and stated that it was going to be the last struggle of his life to win the freedom of India.

The Resolution was to be put before the plenary session of the All India

National Congress on August 9, 1942. But, before it could be done, the Government arrested all the top leaders of the Congress on the night of August 8, 1942. This precipitated the crisis. In the absence of the leaders, the people resorted to 'hartals', processions and meetings. These activities of the people were suppressed ruthlessly. In the face of such provocations, public, at some places, resorted to violence. The Congress Socialist Party, a left wing organization within the Congress, encouraged such activities by interpreting the *Quit India Resolution* in its own ways. In return, the Government started a veritable reign of terror. As a result thousands of people were injured, thousands were killed and other thousands were arrested. In about three months the Government succeeded in crushing this uprising.

#### **Indian National Army**

While on the national front people were actively involved in the Quit India Movement, outside India, Subhash Chandra Bose and his Indian National Army were carrying on their activities for the liberation of India. Bose was a congressman who did not have much faith in the Congress cult of non-violence. In 1941, on the advice of Vir Sarvarkar, the revolutionary, he slipped away from India and reached Germany. On an invitation from Rasbehari Bose, the famous revolutionary, he reached Japan to lead the Indian National Army. Rasbehari Bose formed the Army for liberation of India. In 1943, Subhash Chandra Bose formed a Provisional Government of Free India. It was given

official recognition by the free governments of Japan, Germany, the Philippines, Korea, China and the Irish Republic. Meanwhile the Japanese Army had invaded and conquered Andaman and Nicobar Islands. In 1943, the Japanese Government handed over the administration of these islands to Netaji Subhash Chandra Bose who renamed them as 'Shahid Island' and 'Swarajya Island' respectively. In 1944 Subhash attacked and liberated some parts of north-eastern India. But in 1945, world politics suddenly took an unexpected turn. Germany laid down arms on 7th May, 1945 and Japan had to surrender on 13th August, 1945 due to the dropping of two atom bombs on the Japanese towns of Hiroshima and Nagasaki. On receiving the news Subhash hurried from Bangkok by a plane to Tokyo. It seems the plane crashed on the Formosa Island and nothing is known about the whereabouts of Netaji. After the War was over, the personnel of the Indian National Army were arrested. A trial of three of its officers viz., Major General Shah Nawaz, Sehgal and Dhillon took place in the Red Fort in which Jawahar Lal Nehru, along with others, pleaded the case of the accused. This generated interest not only among the masses but also in the defence forces who appeared to be in favour of the release of these freedom fighters. As a result, the British Government decided to set them free. It was a sign of changing times and indication of the loosening grip of the British Government over the Indian army.

### **Mutiny in the Air Force and the Navy (1946)**

For some time there prevailed discontent amongst the Indian soldiers against their English officers. This discontent reached such a stage that personnel in the Air Force in Karachi declared a strike on January 20, 1946. The fire spread to the aerodromes at Bombay, Lahore and Delhi. Nearly 5200 employees of the Air Wing struck work. The Naval forces followed suit. Nearly 5000 personnel of the Navy went on strike on February 19, 1946. They also displayed the badges of the Indian National Army on their breasts. The strikers attacked the English officer in Bombay. When bullets were shot at them, they also replied in bullets. All discipline was shattered. It was a sufficient hint to the British that they should leave India before it was too late.

### **Conclusion**

The above description makes it quite clear that when British left India on 15th August, 1947 it was the cumulative effect of the various nationalist forces that were active from the mid nineteenth century. There is no doubt that major share goes to the Indian National Congress which played a very important role in the national life of India, particularly after the advent of Gandhiji on the political scene, but the role played by the Extremist, the Swarajists, the Revolutionaries, the Indian National Army and the Mutiny of Air Force and Navy cannot be ignored.

### **Heritage of National Movement**

The leaders of the Indian National Movement, by their examples, have set

certain norms of behaviour that have become our national heritage. The norms can be summarized as follows:

**(a) Peace and Non-violence:** The Indian National Movement was predominantly peaceful and non-violent. Non-co-operation, civil disobedience and satyagrah were the main weapons of this movement. Instead of using violent means it resorted to win over the opposition by means of appealing to its good sense.

**(b) Democracy:** From the very beginning our leaders were demanding democratic reforms in India. They had full faith in the universal adult franchise and opposed all sorts of discrimination based on caste, creed, colour, sex, religion, race, place of birth etc. They fully supported the demand of inalienable fundamental rights of human beings.

**(c) Secularism:** Our leaders were fully committed to make India a secular nation. Their concept of secularism, however, was different from the concept prevalent in most of the European countries. They did not support the anti-religious and non-interventionist models of secularism. They had equal respect for all religions and so their secularism stood for 'sarv dharm sam bhav'.

**(d) National Integration:** Prior to the advent of the British, Indians lived in harmony. The British adopted the policy of 'divide and rule' that aroused communal and sectional feelings. Our leaders stood for equality of all people irrespective of any other consideration. They laid emphasis on national integration of all sections of society.

**(e) Upliftment of Harijans:** Our leaders laid emphasis on social equality. They did not believe in social discrimination. Removal of untouchability was one of the main items of the constructive programme of the Congress. Gandhiji founded the all India Harijan Sevak Sangh and through a journal 'Harijan' he propagated the cause of the Scheduled Castes. In the later years of his life he used to stay in Harijan Colonies so that all his countrymen could emulate his example for the upliftment of Harijans.

**(f) Emancipation of Women:** With the entry of Gandhiji in Indian politics our leaders strongly supported the cause of emancipation of women. Gandhiji brought Indian women out of purdah. Thousands of women participated actively in the freedom struggle. They went to jails and faced lathi charge as well as firing at the hands of the then rulers.

**(g) Promotion of Cottage Industries:** As our leaders stood for the cause of downtrodden and poor peasants, they supported the policy of establishing and promoting cottage industries. Gandhiji's 'charkha' became a symbol of cottage industries. Promotion of

'gramodyog' and use of 'Khadi' are the legacies of Gandhian era of our liberation movement.

**(h) Rural upliftment:** As India is predominantly a land of villages, our leaders fully supported the programme of rural upliftment. This was also included in the constructive programme of the Congress.

**(i) Anti-racial:** Our leaders were always opposed to all forms of racialism. They always supported those people who were fighting against racialism.

**(j) Anti-Imperial and Anti-colonial:** The leaders of our national movement have taken a consistent stand on imperialism and colonialism. They always stood against all forms of foreign rule. They always supported those people who were fighting for their liberation from imperial or colonial rule.

**(k) Unity in Diversity:** Our national leaders strongly supported the cause of national unity but they did not oppose diversities. In fact, they stood for unity in diversity. Their support for federal form of government was based on this policy.

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### Exercises

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1. Enumerate the causes that led to the birth of Indian National Congress.
2. Distinguish between the policies of the moderates and the extremists.
3. What are the causes that led to the growth of extremism in India?
4. Enumerate the causes that led to the rise of communalism in India.
5. Explain the programme of the Non-Co-operation Movement.
6. What were the policies and programmes of the Swarajist Party? To what extent did it achieve its goal?
7. Describe, in brief, the Civil Disobedience Movement of 1930-32 launched by Gandhiji.



8. Describe the Quit India Movement of 1942.
9. Describe, in brief, the values inherited from the Indian National Movement.
10. Write notes on:
  - (a) Simon Commission and its Report
  - (b) Nehru Committee and its Report
  - (c) Policy of Divide and Rule
  - (d) Communal Electorate

## INDIAN CONSTITUTION — PREAMBLE, SALIENT FEATURES AND INDIAN FEDERATION

### Preamble to the Indian Constitution

The term preamble literally means preface, preliminary statement or introduction. The Preamble to the Indian Constitution deals with the aims and objectives, the targets and ideals; and the basis and foundations of the Indian Constitution.

The Preamble is directly related to the Objective Resolution passed by the Constituent Assembly on January 22, 1947. Some of the important provisions of the Resolution were as follows : (1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for the future governance a constitution; (ii) wherein all power and authority of the *Sovereign* Independent India, its constituent parts and organs of government are derived from the people; (iii) wherein shall be guaranteed and secured to all the people of India *justice* - social, economic and political; *equality* of status, of opportunity, and before the law; *freedom* of thought, expression, belief, faith, worship, vocation, association and actions, subject to law and public morality, and (iv) wherein adequate safeguards shall be provided

for minorities; backward and tribal areas, and depressed and other classes.

B.N Rau, the constitutional advisor to the Constituent Assembly, prepared a draft of the Preamble based on this Resolution. The Drafting Committee considered this draft and after making some changes adopted it at the stages of the working of the Constituent Assembly so that it was in conformity with the constitutional provisions.

The Preamble states that "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*".

Now, if we analyse the Preamble, the first thing that we note is that it refers to *The People of India* who have *adopted, enacted and given* to themselves this Constitution. The implication of this terminology is that it declares the people of India to be the sovereign authority. It is to be noted

that the leaders of our national movement always emphasised the sovereignty of Indian people.

This Constitution was drafted and adopted by a Constituent Assembly that was not elected directly by the people. In fact, the Legislative Assemblies of the Indian Provinces elected it indirectly. The Assemblies themselves were elected in 1946 according to the provisions of the Government of India Act, 1935. The Act had provided for a restricted franchise. Most of the representatives of the princely states in the Constituent Assembly did not enjoy even this much representative character. In spite of these limitations, the Constituent Assembly could be called real representative of the people because it had representation of almost all shades of opinions. It was possible because of the magnanimity of those who ruled over India then. They saw to it that all sections of people of India have a place in the Constituent Assembly.

Another important feature of the Preamble is that it aims at making India a *sovereign, socialist, secular, democratic Republic*. Sovereignty implies that India is absolutely free from any other authority, internal or external. Though some critics are of the opinion that the membership of the Commonwealth compromises this status, yet it is not true. The Commonwealth has undergone a sea-change from its original position and now it is purely a voluntary association of independent and sovereign States.

The terms *socialist* and *secular* were added in the Preamble by the

Constitution (Forty Second Amendment) Act, 1976. The term *socialist* indicates the incorporation of the philosophy of *socialism* in the Constitution. It is to be remembered that K.T. Shah, a member of the Constituent Assembly proposed in the Assembly, had the inclusion of this term in the Preamble. But Nehru had strongly opposed it because according to him, they had already provided for the substance of economic democracy in the Constitution in chapters on Fundamental Rights and Directive Principles of State Policy and there was no need for the inclusion of such terms that were likely to be interpreted differently by different people.

Similarly, there was also a proposal in the Constituent Assembly for inclusion of the term *secular* in the Preamble, but it was also opposed on the ground that there was no fixed meaning attached to this term. However leadership, in 1976, felt the need for inclusion of this term in the Preamble.

It is noteworthy that the term *secular*, as interpreted by the courts in India, means that 'the State' shall not discriminate between different religions and all shall be treated equally.

The term *democratic* implies that the Governments are elected and accountable for their deeds to the people of India. Elections have to be held at regular intervals and people are allowed to exercise their franchise freely and fairly. It also means that there shall prevail the rule of law and no one could act arbitrarily.

The term *Republic* implies that the Head of the State gets his office by election by the people and not by hereditary claims.

The Preamble also aims at securing to all citizens *Justice: social, economic and political*. Though it is not easy to give a precise meaning of the term *justice*, by and large, it can be stated that the idea of justice is equated with equity and fairness. *Social justice*, therefore, would mean that all sections of society, irrespective of caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds. Similarly, *economic justice* would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. Similarly, *Political justice* entitles all the citizens equal political rights such as right to vote, right to contest elections and right to hold public office etc.

The Preamble also keeps *liberty of thought, expression, belief, faith, and worship* as its ideals. It means that the citizens would be free to follow a religion of their own choice and express their views freely and frankly. 'The State' would not interfere in all these matters.

The Preamble also provides for *equality of status and opportunity*. It implies that all the citizens would be able to make full use of their talents without any interruption and develop their personality to the maximum extent possible.

Lastly, the Preamble also aims at developing *fraternity assuring the dignity of individual and the unity and integrity of the nation*. It means that the common brotherhood, to be developed in India, would be based on

the dignity of the individual without any consideration of his status in society. Similarly, such a brotherhood should also lead to the unity and integrity of the nation.

In nutshell, the Preamble aims at a social order wherein the people would be sovereign, the government would be elected by and accountable to people, the powers of the government shall be restricted by the rights of people and people would have ample opportunities to develop their talents. Though the Preamble is not technically enforceable through courts of law, it is useful in interpreting the various provisions of the Constitution and acts as a beacon in conflicting situations.

## Indian Constitution: Salient Features

### Introduction

The salient features of the Indian Constitution are of two types. There are some features that are unique to this Constitution; no previous constitution possessed them, while there are others which, though not peculiar, are still important characteristics.

### UNIQUE FEATURES

**Framed by the People of India:** This Constitution has been framed by the representatives of the people of India through a Constituent Assembly during 1946-1949. Prior to it, the British Parliament enacted all the constitutions. The Constituent Assembly, however, was elected

indirectly by the Provincial Legislative Assemblies that were themselves elected on a restricted franchise. The representatives of the princely states were the nominees of their rulers. In spite of it, the Constituent Assembly could be called a representative body because the then ruling party at the Centre had decided to give representation to all sections of society as well as to all shades of opinion.

**Derived from Various Sources:** It is a unique document that was derived from various sources. Our constitution makers were inspired to draft the provisions regarding Fundamental Rights and Supreme Court from the U.S.A, Directive Principles of State Policy from Ireland, Emergency from Germany, Distribution of legislative powers from Canada, and Parliamentary Institutions from the United Kingdom. Besides, they borrowed extensively from the Government of India Act, 1935.

**Sovereignty of the People:** The Constitution declares the people of India to be the supreme authority. Prior to it, the supreme authority lay in the British Parliament. Even the Indian Independence Act, 1947 through which India got independence recognized the supremacy of the British Parliament. The term Sovereignty implies that the people of India are not subordinate to any other external agency. The membership of the Commonwealth of Nations, sometimes, is misinterpreted as a limitation on the sovereignty of the people of India. This, however, is not correct. The Commonwealth has now undergone a

sea-change. It is now purely a voluntary association of independent sovereign States.

**Republican Polity:** The Constitution provides for the republican form of polity in India. Prior to it, the British king was the Head of the State who owed his office to the laws of inheritance. It is note-worthy that in Ancient India there existed republican governments in a number of parts for about one thousand years. But in modern times there was not a single territory where republican form of government prevailed.

**Secular Polity:** This Constitution provides for a secular polity in India. Though the term *secular* has not been defined in the Constitution anywhere, the substance of secularism can be deduced from various provisions of the Constitution. It has been used in the sense of absence of discrimination on grounds of religion and equal respect for all religions. Prior to it, the Government of India Act, 1935 had provided for a separate department of Ecclesiastical Affairs.

**Fundamentals Rights and Duties:** The Constitution provides for Fundamental Rights and Fundamental Duties of the citizens of India. No previous constitution provided for them. The leaders of the Indian National Movement always demanded for the inclusion of Fundamental Rights in the Constitution of India. The Constitution initially did not provide for Fundamental Duties. This provision was inserted in the Constitution through the Constitution (Forty Second Amendment) Act, 1976.

**Directive Principles of State Policy:** The Constitution provides for the Directive Principles of State Policy. No previous constitution had such a provision. Though the Instrument of Instructions attached to the Government of India Act, 1935, appears to be analogous to the Directives, the aims and objects of the two are very different. It is to be noted that the leaders of the Indian National Movement had made various promises regarding the Fundamental Rights that the citizens of free India would enjoy. But when India got independence in 1947, the leaders realised that they did not possess sufficient means to grant those rights, particularly economic and social rights, immediately. But at the same time they did not want to go back upon their promises. They, therefore, decided to put the Fundamental Rights into two categories: (i) those that were granted immediately and (ii) those that would be granted in future if and when they were capable to do so. The first were included in Chapter III entitled Fundamental Rights and the second were included in Chapter IV entitled Directive Principles of State Policy. The rights included in Chapter IV are non-enforceable through courts of law but they are the fundamental principles of governance which 'the State' (i.e. the Government and Parliament of India; the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India) is required to take cognisance of.

**Judicial Review:** The Constitution provides for the judicial review of the Acts of Legislatures (of both, the Union

and States) as well as of the activities of the executives (Union and State). Prior to it, there was no such provision. This provision keeps the legislative and the executive branches of governments under restraint and they cannot exercise their authority arbitrarily.

**Universal Adult Franchise:** It provides for the universal adult franchise. Prior to it all the constitutions provided for restricted franchise. According to the Government of India Act, 1935, which granted the largest amount of franchise, only 14% of the people had a right to vote. It is noteworthy that most of the western democracies had taken a number of decades to grant such a right to their citizens. It is really a very revolutionary step taken by the Constituent Assembly to grant universal adult franchise by a stroke of pen.

**Recognition of Hindi as an Official Language:** The Constitution recognises Hindi as the official language of the Indian Union. Prior to it, English was the only official language of India. Besides Hindi, the Constitution also recognises seventeen other Indian languages as regional languages.

**Unique Blend of Rigidity and Flexibility:** The Constitution provides for an amending procedure. Prior to it, there was no provision for an amendment of the prevalent constitution. The British Parliament alone was entitled to do it. The procedure for an amendment is a unique blend of rigidity and flexibility. Some provisions of the Constitution can be amended by simple majority of the two Houses of Parliament, though technically they are not treated as

amendments in the constitution, others require absolute majority of the total strength of the two Houses of Parliament and two-thirds majority of the members present and voting and still others require an additional support by half of the States' legislatures. For instance, a change in the name or territory of a State can be made through an ordinary law enacted by the two Houses of Parliament; whenever there is a change proposed in the federal character of the Constitution, absolute majority of the total strength of the two Houses of Parliament and two-thirds majority of the members present and voting and also ratification by at least half the State Legislatures is required; in all other matters a resolution passed by an absolute majority of the two Houses of Parliament and two-thirds majority of the members present and voting is sufficient for any change in the Constitution.

#### **Other Features**

**Comprehensive Document:** It is a comprehensive document having 395 Articles and twelve Schedules. Originally there were only eight Schedules. Later on, various Constitution Amendment Acts added four new Schedules. Prior to it, the Government of India Act, 1935, was also an extensive document having 321 Sections and ten Schedules.

**Parliamentary Democracy:** It provides for a full-fledged Parliamentary Democracy. Prior to it, steps were taken in this direction, particularly by the Government of India Act, 1935, which provided for

Provincial Autonomy, but there were so many restraints laid down that full Parliamentary Democracy could not be evolved. In a parliamentary democracy elections are held at regular intervals for choosing the representatives of the people. The representatives control the executive and the Council of Ministers who in turn is collectively responsible to them.

**Federal Form of Polity:** It provides for a federal form of polity. Though the Government of India Act, 1935, had also provided for the establishment of a federal form of government, due to strong opposition, particularly from the princely states, it could not take a practical shape. Even after the establishment of a federal form of government, according to the provisions of the Constitution, there are critics who are dissatisfied with it as it is fully loaded with strong centralising tendencies. In fact, some critics go to the extent of calling it a Unitary Constitution with some Federal features rather than a Federal Constitution with strong unitary tendencies.

**Affirmative Action:** The Constitution provides for affirmative action by the State to improve the conditions of the weaker sections of society by providing reservations in the legislatures and government jobs. Prior to it the Indian Councils Act, 1909, the Government of India Act, 1919, and the Government of India Act, 1935, also had provided for the policy of reservation.

**Emergency Provisions:** The Constitution makes provisions for national emergency, failure of constitutional machinery and financial emergency. Prior to it the Government

of India Act, 1935, also had, more or less, similar provisions. By national emergency we mean an emergency which is declared when the President is satisfied that the security of India or of any part thereof is threatened by war or external aggression or armed rebellion, he may proclaim an emergency. In such a situation the federal character of the Constitution takes the shape of a unitary constitution.

By failure of constitutional machinery we mean a situation where President feels satisfied that it is not possible to carry on the Government of a State according to the provisions of the Constitution, he can impose President's rule in that State. The executive authority of the State becomes subordinate to the Union executive and the legislative authority of the State becomes subordinate to Parliament.

By financial emergency we mean a situation when the financial stability of the nation or of any part thereof is at stake, then President may declare a financial emergency. Such a declaration authorises the President to issue directions to States with regard to the way they must manage their financial affairs. It also authorises President to reduce salaries, allowances etc., of all such office holders who get them from Consolidated Fund of India and ordinarily are not subject to reduction.

#### **Independent Agencies**

The Constitution also provides for some Independent Agencies to perform functions allotted to them. Prior to it,

the Government of India Act, 1935 also had provided for such Agencies. Some of the Agencies, provided by the Constitution are as follows:

- (i) Election Commission for conducting free and fair elections of the Union and States' Legislatures and of the President and Vice President of India. Provisions have been made to make the members of the Commission free from executive control.
- (ii) Comptroller and Auditor General to keep a watch on the finances and accounts of the Union and States. Provisions have been made to keep him free from any control of the executive of the Union or States.
- (iii) Union and State Public Service Commissions to conduct examinations and interviews for recommending candidates for appointments in higher services in both the Centre and the States.

## **Indian Federation and its working**

### **Introduction**

As stated earlier, the Government of India Act 1935, for the first time, provided for a federal form of government in India. But due to strong opposition, particularly from the princely states, it could not come into existence. Our constitution makers, however, were not discouraged by the past experience and again provided for it in the new Constitution. There are, however, different opinions regarding



the character of our polity. Some people are of the opinion that it is a federal polity with strong unitary tendencies, while there are others who feel that it is primarily a unitary polity with some federal features. Prof. K. C. Wheare, who is regarded as an authority on the subject, calls it a quasi-federal polity. It is, therefore, necessary to know as to what are the features of a federal polity and then examine whether Indian polity can be termed as federal or not.

Generally speaking, when two or more than two independent states having some common features, which bind them together, combine themselves, through a written agreement, to form a new common state, to achieve some common goal, by assigning sovereign powers to it in certain subjects, in which it has an exclusive jurisdiction, while retaining all other subjects with themselves, they are supposed to have formed a federal polity.

Now, if we apply the above criteria strictly, very few federal polities in the world would stand the test. The question then is: what are the essential elements without which no polity can be called federal? Prof. K. C. Wheare in his work 'Federal Government' refers about the 'federal principle' without which no polity can be called 'federal'. According to him when "the field of government is divided between the federal and state governments, neither of which is subordinate to the other, but are coordinate and independent within the sphere allotted to them", then this arrangement represents the federal

principle. Then the question arises: are we to confine the term 'federal' only to such polities where the 'federal principle' has been applied completely and without any exception? According to Wheare exceptions are permissible provided 'federal principle' is retained predominantly.

Now, if we look at the federal principle we find that following are the most essential features:

There should be a clear-cut division of power between the central (federal or union) government and the governments of the units (i.e. states or provinces). This division must be done by a common agreement in writing. In other words, there should be a written constitution that should be the source of power of both the federal and the state governments. This agreement, i.e. constitution cannot be changed unilaterally by either federal or state Governments. In other words, the constitution should be rigid. There should be supremacy of the constitution. This means that all the authorities of the union and states, such as legislature, executive and judiciary should be subject to the authority of the constitution. There should be an impartial judiciary, such as Federal/Supreme Court, to decide disputes between different governments (i.e. federal and state or state and state) and give interpretations of the constitution in case of any dispute.

Let us examine the provisions of the Indian Constitution in the light of the above criteria.

**Division of Power:** There is a clear-cut division of power between the Union and States. Seventh Schedule of the Constitution provides for three lists (i) the Union list comprises 97 subjects wherein the Union government has exclusive jurisdiction; (ii) the State list has 66 subjects wherein the States have exclusive jurisdiction, while (iii) the Concurrent list has 47 subjects wherein both the Union and States have jurisdiction but in case of conflict between the two, law of the Union prevails.

**Written Constitution:** The source of power of both the Governments, Union and States, is the written constitution enacted by the Constituent Assembly.

**Rigidity of the Constitution:** The procedure of amending the Constitution regarding the federal principle is rigid. It requires not only the absolute majority of the members of the two Houses of Parliament and two-thirds majority of the members present and voting but also endorsement of the Legislatures of at least half the States.

**Supremacy of the Constitution:** The Constitution is supreme. All the authorities of the Union and States such as Legislatures, Executives and Judiciary, get their powers from the Constitution and are subordinate to it.

**Impartial Judiciary:** The Constitution provides for a Supreme Court which is the highest authority in India regarding the interpretation of the Constitution. It possesses Original jurisdiction in disputes arising between Union on the one hand a State or more

than one State on the other, or between one State on the one hand and another State or more than one State on the other.

It is, thus, clear that the Indian Constitution possesses almost all the essential characteristics of a federal polity. But then there are certain factors that deviate from the generally accepted norms of federalism. They can be summarised as follows:

- (a) Ordinarily, in a federal form of government, the Units of federation have their own identity and their own constitution which they can change as per their requirements, but in India it is not so. The Parliament of India can change not only the territories of a State, but also its name through an ordinary law. The States do not have a separate constitution of their own and cannot make any change in the Constitution by themselves.
- (b) The distribution of powers heavily tilts in favour of the Union. The Union list comprises the largest number of items. In the Concurrent list also the Centre supercedes the powers of the States. Thus the Centre dominates in about two-thirds of the total number of subjects of the three lists together. Some of the items in the Concurrent list, such as 'economic and social planning' or 'social security' etc. are of such potentiality that they can substantially minimize the powers of the State Legislatures. In fact, the Planning Commission, which is an extra constitutional body, plays a

very vital role in the distribution of finances under the Five Year Plans. Not only this, generally in a classical federation the residuary powers belong to the States but in India they belong to the Union.

- (c) Even in the State list the Constitution permits the Union Legislature to enact a law if the Upper House of Parliament (Rajya Sabha), passes 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 Parliament should make a law with respect to any matter enumerated in the State list, it would be competent for Parliament to make law for the States with respect to that matter to be operative for such period, not exceeding one year, as may be specified therein. The operation of such legislation can be extended for an additional period of one year at a time by resolution of Rajya Sabha passed in the same manner as the first resolution.
- (d) Not only this, laws passed by the State Legislature, on a subject on the state list, may be reserved for the consideration of the President by the Governor; some of them have to be specifically reserved and some of them cannot be even introduced or moved in the State Legislature without the previous sanction of the President.
- (e) Though Law and Order is a State subject, the Centre deploys Central Reserve Police in States, whenever it deems necessary, without the concurrence of States. In fact, some times it deploys them against the wishes of and in spite of protest by the State governments. It is noteworthy that the Opposition protests such moves of the Centre but when it suits (for instance, on Ayodhya and Gujarat issues) it demands for such a deployment.
- (f) Governors of the States are appointed by President and they hold their office during his pleasure and to the extent they exercise their powers in their discretion, are answerable to him.
- (g) The Union Government is empowered to issue administrative directions to the States in relation to certain matters (such as to ensure compliance with the laws made by Parliament or such as not to impede or prejudice the exercise of the executive power of the Union). The directions are binding on the States. The Constitution provides adequate means for securing the compliance with the directions by the States. Non-compliance can be treated as a failure of the constitutional machinery and entitle the President to impose, what in common parlance is called, President's rule in that State.
- (h) The Constitution has distributed the financial resources in such a way that States have to seek grants from the Union Government. The President of India also appoints the Finance Commission of India, which recommends allocation of such grants.

- (i) During a period of Emergency (declared under Article 352 of the Constitution) the Union Parliament can make laws in relation to matters in the State list, give directions to States as to how they should exercise their authority in matters which are within their charge, empower the Union officers to exercise executive authority on matters in the State list and suspend the financial provisions of the Constitution.
- (j) In case of failure of constitutional machinery in a State (under Article 356 of the Constitution) the President can assume all the functions of the Government of the State, including the powers of the Governor, but not the powers of the High Court. He can also authorize the Parliament to exercise the powers of the State legislature.
- (k) Similarly, in case of financial emergency (declared under Article 360 of the Constitution) he can issue necessary directions, including orders for the reduction of salaries and allowances of public servants belonging to the Union and the States. All Money Bills, passed by the State Legislature during such an emergency, are also subject to the control of the Union.
- (l) Ordinarily, in a federation there prevails dual citizenship, the citizenship of the Union and that of the State. But in India there is no such provision. The Constitution provides for single citizenship. In fact, in India the Constitution grants freedom to every citizen to settle down in any part of India.
- (m) Normally, in a federation, there prevails dual judicial system. The Federal Courts are separate from the State Courts and the States have their own highest courts against whose judgments there is no appeal in any other court. But, in India there is unified judicial system where the Supreme Court of India is the highest court of appeal, both in the Union and the States' subjects.
- (n) Ordinarily in federations, there is separation of public services. The Federal Government has its own public services while the states have their own distinct services. But in India, there are All India services. The personnel of these services, though assigned to a particular State, are called on deputation by the Union Government for a fixed period. This develops a spirit of common brotherhood amongst them and thus weakens the federal principle.
- The above description makes it quite clear that the constitution makers intended to make the Centre very strong. The distribution of legislative, executive and judicial powers between the Centre and the States amply proves it. During emergency the federal polity virtually becomes unitary in character. The question then arises as to why the constitution makers were reluctant to accept the norms of federal principle. The following factors are responsible for it: (i) When the Constituent Assembly

was drafting the Constitution, there prevailed anarchic conditions in India. Communal forces were very active due to the partition of India. Communist forces were also active in some parts of India. In some areas of Warangal and Nalgoda districts the writ of the Madras Government did not prevail. There was some talk in the news papers of those days about a plot of seceding some parts of India and joining hands with the then East Pakistan (Bangladesh) to form an independent Bangla speaking nation. The States, it was felt, would not be able to face such challenges.

(ii) At the time of independence, India had a decentralised unitary form of

Government. The feeling of Indian nationalism inspired the people. In fact, the election of Provincial Legislative Assemblies in 1946 was fought and won by the Indian National Congress on the platform of 'United India'. Not only Congress, almost all the political parties then, were inspired and guided by the strong feeling of nationalism.

(iii) There is a general trend in favour of centralization in almost all the federations in the world. The development in modern means of transportation and communications and technological developments all favour this trend.

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### Exercises

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1. What do you mean by the term Preamble?
2. Examine, in brief, the aims and objectives of the Constitution as laid down in the Preamble.
3. Describe, in brief, the salient features of the Indian Constitution.
4. When and how a federation is formed?
5. Describe the distribution of legislative powers between the Union and the States.
6. What are the federal features of the Indian Constitution? Explain.
7. Examine the unitary tendencies in the Indian federation?
8. Write short notes on :
  - (a) Secular Polity
  - (b) Universal Adult Franchise
  - (c) Independent Agencies in the Indian Constitution

## Chapter 4

# FUNDAMENTAL RIGHTS, FUNDAMENTAL DUTIES AND DIRECTIVE PRINCIPLES OF STATE POLICY

## Fundamental Rights

### Introduction

'Man partly is and wholly hopes to be a god'. If proper environment is made available to a man he can develop the godly qualities in him. Rights provide that environment. Rights have been described as those claims of an individual that are necessary for the development of his ownself and recognized by society or State. Some of the rights that are recognized by the State and enshrined in the Constitution are called Fundamental Rights. Fundamental Rights are those rights of an individual that are enforceable through courts of law.

During the national struggle our leaders indicated that in the constitutional set up in free India people would be granted certain rights. In fact, in the various schemes relating to future constitutional set up, there were references of particular rights that the people of India should be granted. The Commonwealth of India Bill (1925), the Nehru Committee Report (1928), the memorandum of the National Trade Union Federation submitted to the Joint Committee on Indian Constitutional Reforms (1932-33), the Memorandum submitted by

M. Venkatarangaiah to the Sapru Committee and the Sapru Committee Proposals provided for various Fundamental Rights that the people of free India should get.

The Fundamental Rights that are provided in the Constitution can be divided into six categories that are as follows:

#### **Right to Equality (Articles 14-18):**

There are five Articles in the Constitution relating to it. Article 14 provides for equality before law or equal protection of law to all persons within the territory of India. Article 15 prohibits 'the State' from discriminating between citizens and citizens on grounds of religion, race, caste, sex or place of birth. Article 16 provides for equality of opportunity to all citizens in matters of public employment. Article 17 provides for abolition of untouchability. Article 18 provides for abolition of titles.

These rights, however, do not prohibit the 'State' from making special provisions in the interest of women, children, Scheduled Castes, Scheduled Tribes and socially and educationally backward classes. Similarly, residential qualifications may be prescribed for appointments in the services of the States.

The purpose of this category of Fundamental Rights is to establish rule of law in India; that is to say, all the

citizens should be treated equally before law, no one should get any privilege or earn any disability on grounds of religion race, caste, sex or place of birth etc. It aims at abolition of feudal inequalities prevalent in society.

**Right to Freedom (Articles 19-22):** There are 4 Articles in this category of Fundamental Rights. Article 19 provides for six freedoms: (i) freedom of speech and expression, (ii) freedom to assemble peaceably and without arms, (iii) freedom to form Associations or Unions, (iv) freedom to move freely throughout the territory of India, (v) freedom to reside and settle in any part of the territory of India and (vi) freedom to practise any profession or to carry on any occupation, trade or business.

The purpose of this Article is to provide a proper atmosphere for the proper functioning of democracy in India. Reasonable restrictions, however, can be imposed on these freedoms by 'the State'.

Reasonable restrictions can be imposed by 'the State' on the freedom of speech and expression in the interest of the sovereignty and integrity of India, the security of 'the State', friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. These restrictions clearly exhibit that in the name of freedom of speech and expression one cannot get a license.

Reasonable restrictions can be imposed on the freedom to assemble peaceably and without arms in the interest of the sovereignty and integrity of India or public order. Similarly

freedom to form associations or unions is also subject to reasonable restrictions in the interest of the sovereignty and integrity of India or public order or morality.

Freedom to move freely throughout the territory of India and the freedom to reside and settle in any part of the territory of India are, similarly, subject to reasonable restrictions in the interest of general public or for the protection of the interest of any Scheduled Tribe.

Freedom to practice any profession, to carry on any occupation, trade or business are also, similarly, subject to reasonable restrictions in the interest of the general public. 'The State' is also permitted to lay down the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

Now, if we look at the restrictions imposed on these freedoms, we feel that these restrictions are necessary. Without these restrictions chaos may prevail in society. There was, however, one fear that 'the State' may misuse its powers. In order to remove this fear, the Constitution provides that the restrictions should be reasonable. The reasonableness is to be decided by the courts of law and not by the government.

Article 20 provides for protection in respect of convictions for offences. According to this Article no one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in law prevalent at the time of its commission. It also provides that no one can be prosecuted and punished for the same

offence more than once and no one can be forced to give witness against his ownself.

Article 21 provides for the protection of life and personal liberty. According to this Article no one can be deprived of his life or personal liberty except according to the procedure established by law.

Article 22 provides for protection against arrest and detention in certain cases. According to this Article whenever a person is arrested, he should be informed, as soon as may be, of the grounds for his arrest and should be allowed to consult and to be defended by, a legal practitioner of his choice. It also provides that the arrested person should be produced before the nearest magistrate within a period of 24 hours of such an arrest excepting a person who has been arrested under a preventive detention law.

A person arrested, under a preventive detention law is not, however, helpless. His case has to be referred to an Advisory Board, consisting of persons having qualifications fit for appointment as a Judge of a High Court, within a period of three months of his arrest. He can be retained in detention beyond three months only when the Advisory Board approves it.

It is clear from the above that the constitution makers wanted to protect the people from the arbitrary rule of the executive.

**Right Against Exploitation (Articles 23-24):** There are two Articles regarding this Right. Article 23 protects the people from forced labour. This Article prohibits traffic in human beings and forced labour. However, 'the State' can

impose compulsory service for any public purpose.

Article 24 prohibits employment of children, below the age of 14 years, in factories or mines or in any other hazardous employment.

The purpose of this Right is to protect the people from exploitation. It is to be noted that the term 'traffic in human being' means a trade in which men or women are sold and purchased as material goods.

**Right to Freedom of Religion (Articles 25-28):** There are four Articles in this Right. Article 25 relates to freedom of conscience and free profession, practice, and propagation of religion. According to this Article, every one is free to follow his own conscience and follow and practice any religion of his own choice. However, 'the State' has the power to regulate any economic, financial, political or other secular activity associated with religious practice. 'The State' can also impose restrictions on this Right on grounds of public order, morality and health. 'The State' is also empowered to provide for social welfare and can also throw open the Hindu religious institutions of public character to all classes and sections of Hindus.

It is clear from the above that 'the State' in India generally does not interfere in the religious affairs of any community. But it can interfere on grounds of public order, morality, health or any other secular requirement.

Article 26 provides for freedom to manage religious affairs. According to this Article every religious denomination is free to establish and manage



institutions for religious and charitable purposes and acquire and manage property for running such institutions. However, 'the State' can impose restrictions on this freedom on grounds of public order, morality and health.

Article 27 provides for freedom as to payment of taxes for promotion of any particular religion. According to this Article no one can be forced to pay a tax the proceeds of which are utilized to promote or maintain a particular religion.

According to Article 28 no religious instruction can be provided in any educational institution that is maintained wholly out of the 'State' funds. However, such restriction will not operate in educational institutions that have been established under an endowment or trust which requires that religious instruction shall be imparted in such institutions.

Article 28 also provides that no person can be required to take part in any religious instruction that may be imparted or to attend any religious worship that may be conducted in educational institutions recognized by 'the State' or receiving aid out of 'the State' funds.

It is clear from the above that these Articles aim at giving Indian polity a secular character. The secular character of Indian polity, however, is different from secularism as prevalent in other countries of the world. 'The State' in India is neither religious nor anti-religious. It is also not non-interventionist.

**Cultural and Educational Rights (Articles 29-30):** Article 29 protects the interests of minorities. According to

this Article any minority having a distinct language, script or culture of its own has a right to conserve it. No citizen of India can be denied admission to any educational institution maintained by 'the State' or receiving aid out of 'the State funds' on grounds only of religion, race, caste, language or any of them.

Article 30 provides for the right of minorities to establish and administer educational institutions of their own. If 'the State' acquires any property of any educational institution established and administered by a minority, it can be done by providing such compensation as would not restrict or abrogate the right of the minorities. 'The State' shall not discriminate against any educational institution, owned or managed by a minority, while giving grants, simply because it is a minority institution.

#### **Right to Constitutional Remedies**

Article 32 provides for the security of the Fundamental Rights. The Supreme Court, under this Article, is empowered to issue directions, orders or writs for the enforcement of the Fundamental Rights granted under this Part of the Constitution. The Article particularly mentions the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

**Habeas Corpus:** This writ is, in form, an order issued by the court calling upon the person/authority by whom a person is alleged to be kept; without legal justification, in confinement, to bring such a person before the Court and to let the Court know on what ground the person is confined. If there

is no legal justification for the detention, the person is ordered to be released.

**Mandamus:** This writ is a judicial remedy which is in the form of an order from the Court to any government, court, corporation or public authority to do or to refrain from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of a public duty and in certain cases a statutory duty.

**Prohibition:** This writ commands the court or tribunal to whom it is issued to refrain from doing something that it is about to do.

**Quo Warranto:** This writ is issued to prevent a person who has wrongfully usurped an office from continuing in that office. The writ calls upon the holder of the office to show to the court under what authority he holds the office. If the court determines that the person is holding the office illegally, it would pass the order of ouster that must be obeyed by him.

**Certiorari:** This writ is issued to inferior courts, tribunals or authority to transmit to it the record of proceedings pending with them for scrutiny and, if necessary, for quashing the same. It is to be noted that the High Courts of the States are also empowered to issue such writs (under Article 226 of the Constitution). If any party goes to a High Court for the enforcement of his Fundamental Rights, then he cannot go simultaneously to the Supreme Court as well. In such a situation, he can go to the Supreme Court only in an appeal against the judgment of the High Court.

It is to be further noted that Parliament may, by law, empower any other court without prejudice to the powers of the Supreme Court, to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Article 32(1).

**Some Noteworthy Features of the Fundamental Rights:** It is to be noted that there are some noteworthy features of the Fundamental Rights. They can be summarized as follows:

- (a) The Fundamental Rights are of two categories. Some are available to citizens only while others are available to all persons, citizens as well as non-citizens. The rights granted under Articles 15, 16, 19 and 29 are available to citizens only while all other rights are available to all persons, citizens as well as non-citizens.
- (b) The Fundamental Rights are available against 'the State' as defined in Article 12 of the Constitution. This means that the Fundamental Rights are available only against the executive and the legislative branches of the governments and not against the judicial branch. They are not available against the private persons also.
- (c) Similarly, Parliament has the power to determine, by law, the extent to which the Fundamental Rights are available to the personnel of the armed forces and those connected with intelligence agencies.
- (d) When there is a Proclamation of Emergency under Article 352 on

grounds of war or external aggression (but not on ground of armed rebellion) the operation of Article 19 (i.e. the Right to Freedom) remains suspended.

The President can suspend operation of other Rights (excluding the Rights under Articles 20 and 21 i.e. Protection in Respect of Conviction for Offences and Protection of Life and Personal Liberty) also by a separate order (issued under Article 359) during the prevalence of Emergency.

- (e) The Parliament is also empowered, by making a law, to indemnify any person, in the service of 'the State', in respect of any act done by him in connection with the maintenance or restoration of order in any area where martial law is in force.
- (f) Initially in the Constitution there was one more category of Fundamental Rights viz, Right to Property that was omitted by the Constitution (Forty-Fourth Amendment) Act, 1978. This Right has created lots of problems for 'the State'. As it came in conflict with the programme of socio- economic reforms of the then government, it was removed from the list of Fundamental Rights and made a legal right, thereby losing the special status and protection of a Fundamental Right.
- (g) Article 13 states that any law that takes away or abridges any of the Fundamental Rights would be void. But a question arose as to what would happen if a Constitution (Amendment) Act is passed which provides for *taking away* or *abridging* a Fundamental Right. In

the beginning the Supreme Court was of the opinion that the restriction imposed by Article 13 did not apply in the case of Constitution (Amendment) Act. However, later on, the attitude of the Supreme Court changed. It was of the view that the restriction applied to Constitution (Amendment) Act as well. This created a lot of controversy. In order to remove this controversy, the Parliament passed the Constitution (Twenty-Fourth Amendment) Act, 1971. This Act clearly states that the restrictions imposed by Article 13 would not apply to the Constitution (Amendment) Act. The validity of this Constitution (Twenty-Fourth Amendment) Act of 1971 was challenged in *Keshwanand Bharti's* case. In this case the Supreme Court declared the Amendment Act as valid. It means that the restriction imposed by Article 13 does not apply to a Constitution (Amendment) Act. But, the Supreme Court added a rider to it. It stated that Parliament may amend any provision of the Constitution that *takes away* or *abridges* any of the Fundamental Right but it cannot change the *basic structure* of the Constitution. The Supreme Court, however, did not clearly lay down as to what were the basic structures; though it did give some illustrations which are as follows: (i) supremacy of the Constitution, (ii) republican and democratic form of government, (iii) secular character of the Constitution (iv) separation of powers between the legislature; the executive and the judiciary and (v) federal character of the Constitution.

It is, however, to be noted that the list given above is illustrative and not exhaustive. It is the Court that will determine in each case whether a particular feature of the Constitution can be termed as 'basic' or not.

## **Fundamental Duties**

### **Introduction**

In modern times generally there is no provision for Fundamental Duties in the constitutions of the world. There are hardly a few constitutions that have such a provision. In ancient times, however, the position was very different. In those days emphasis was laid on duties, rather than rights. It was felt that if everyone performs his duties, then the rights would automatically be safeguarded. But in 1976 the Indian Parliament felt that there was a need for inclusion of a list of Fundamental Duties in the Indian Constitution. Accordingly, Constitution (Forty-Second Amendment) Act, 1976, was passed which added a new part, viz. Part IV A, and a new Article, 51 A, to the Constitution of India. The new Part was entitled as Fundamental Duties and it gives a list of ten Fundamental Duties.

The ten duties are as follows:

- (1) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- (2) To cherish and follow the noble ideals which inspired our national struggle for freedom.

- (3) To uphold and protect the sovereignty, unity and integrity of India.
- (4) To defend the country and render national service when called upon to do so.
- (5) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- (6) To value and preserve the rich heritages of our composite culture.
- (7) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.
- (8) To develop the scientific temper, humanism and the spirit of inquiry and reform.
- (9) To safeguard public property and to abjure violence.
- (10) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

### **Implications**

*Now, let us examine these duties and find out the implications for the citizens of India. Abide by the Constitution:* It implies that every citizen should act according to the provisions of the Constitution. He should not do any thing that is prohibited by the Constitution. Some of the important

prohibitions by the Constitution are as follows: the practice of untouchability (Article 17), traffic in human beings (Article 23), abusing the health and strength of workers and the tender age of children (Article 39) and slaughter of cows, calves and other milch and draught animals (Article 48).

**Respect its Ideals:** The ideals of the Constitution are given in the Preamble. The Preamble aims at securing Justice (social, economic and political), Liberty (of thought, expression, belief, faith and worship), Equality (of status and of opportunity) and Fraternity (assuring the dignity of the individual and the unity and integrity of the Nation).

**Respect its Institutions:** Some of the important institutions of the Constitutions are President, Vice President, Cabinet, Prime Minister, Parliament, Supreme Court, Attorney General, Comptroller and Auditor General, Union Public Service Commission, Election Commission, Governor, Chief Minister, High Court etc.

**Respect the National Flag and the National Anthem:** There are certain rules framed by the Government with regard to respecting the National Flag and the National Anthem. Every citizen is expected to follow these rules. One of the rules requires that when the National Flag is unfurled or the National Anthem is sung, every citizen should remain in the position of attention and no one should make any move or murmur anything to anyone.

**Cherish and Follow Noble Ideals of National Struggle:** During our national struggle our leaders laid down certain noble ideals. Some of the important ideals are removal of

untouchability, emancipation of women, national integrity, unity in diversity, anti-colonialism, anti-imperialism, anti-racialism, democracy, secularism etc.

**Uphold and Protect Sovereignty, Unity and Integrity of India:** It implies that every citizen should give priority to the national interest. All other considerations such as religion, race, language, caste, sex, and place of birth should get a subordinate position. He should do nothing which endangers the Nation.

**Defend the Country:** Whenever there is a war or an external aggression, every citizen should come forward to defend the country and if there is a need, he should join armed forces.

**Promote Harmony and Spirit of Common Brotherhood:** India is a multi-racial, multi-linguistic, multi-religious and multi-cultural country. In spite of various diversities, there is a need for developing harmony between different races, languages, religions and cultures. We should promote the spirit of common brotherhood.

**Renounce Practices Derogatory to Women:** Since ages women in India are being given a very low status in society. Infanticide, dowry and *sati* system are some of the most derogatory practices that bring down the dignity of women. It is the duty of every citizen to renounce these evil practices.

**Value and Preserve Rich Heritage of our Composite Cultures:** Though we have varieties of cultures prevalent in different parts of India based on race religion, language, region and customs, there prevails a fundamental basic unity amongst all the cultures.

It is because of the accommodative character of the Indian people that culture of one section of society has been greatly influenced by the cultures of other sections of people. This heritage needs to be preserved and valued. It is the duty of every citizen to work for and develop the composite culture of India.

**Protect and Improve Natural Environment:** Due to pressure of population and the greed of mankind, careless exploitation of these resources have created environmental problems. There is the need of a balanced development. This necessitates the protection and improvement of natural environments such as forests; lakes; rivers and wild life.

**Develop Scientific Temper, the Spirit of Inquiry and Reform:** India has been a land of superstitions and blind faith. This needs a rapid change. We should develop a rational outlook and reform our society through the spirit of inquiry. We should develop a scientific temper which could co-relate cause and effect.

**Develop Humanism:** While developing rational outlook and scientific temper we should not ignore humanism that is the basis of all progressive societies.

**Safeguard Public Property and Abjure Violence:** Of late, there has developed a tendency to destroy public property to register one's protest against a particular policy of the government.

People should not forget that the property does not belong to those who are in power. It is, in fact, their own property that they are destroying. Similarly, violence has also become a

weapon of protest. This needs a change. We should not forget that Mahatma Gandhi succeeded in ending an alien rule through the method of non-violence.

**Strive towards Excellence:** Our nation cannot reach the top of the developed world unless every citizen individually as well as collectively strives to achieve excellence in life. Everyone should ask himself as to what has he done to achieve excellence in his own field of activity.

### Utility

A question here arises as to what purpose does this inclusion of Fundamental Duties in the body of the Constitution serve? Prima facie, it does not serve any purpose unless laws are enacted to punish those who disobey them. But like the Directive Principles of State Policy, they can be useful in interpreting the various provisions of the Constitution. The judiciary can adopt the principle of harmonious construction, as it did in cases relating to Directive Principles of State Policy. The legislatures can resort to them for legislation to implement them. The executives can rely upon them to justify actions regarding the practical application of these duties.

## Directive Principles of State Policy

One of the most noble features of the Indian Constitution given in Part IV deals with the Directive Principles of State Policy. It is one of the few

constitutions of the world that has incorporated such provisions as a part of the main body of the Constitution. The other countries that have such provisions are: Austria, Spain, Brazil, France, Italy, Burma and West Germany. However, our constitution makers were inspired to include these provisions in the Constitution by the Constitution of Ireland.

One of the main objectives of the constitution makers in including such a provision in the Constitution was to lay down certain principles for the guidance of the Governments. While formulating their policies the Governments are expected to act according to these principles.

During the freedom struggle of India our national leaders had made promises regarding the fundamental rights that the citizens of free India should get. These fundamental rights included not only civil and political rights but also social and economic rights. But when India got independence the leaders realized that it would not be possible for them to grant immediately some of the social and economic rights that they had promised in the past. But at the same time they did not want to go back on their past promises. They wanted some way to get out of this hurdle. They assigned this task to a sub-committee of the Constituent Assembly. The sub-committee suggested that the Fundamental Rights should be divided into two categories. Some rights could be granted immediately and others may be granted in future, if and when the country was in a position to grant

them. This was the genesis of the two Parts of the Constitution. Part Three of the Constitution deals with Fundamental Rights while Part IV relates to Directive Principles of State Policy.

#### **Distinction between Fundamental Rights' and Directive Principles of State Policy**

One of the main distinctions between Fundamental Rights and Directive Principles of State Policy is that while the Fundamental Rights are enforceable through courts of law, the Directive Principles are not enforceable. Another distinction between the two is that while the Fundamental Rights prohibit the State from doing certain things, the Directives are affirmative instructions to 'the State' to do certain things. While there is dominance of civil and political rights in the Fundamental Rights, economic and social rights are predominant in the Directive Principles.

#### **Nature of the Directive Principles**

In view of the non-enforceability, the Directive Principles have been described by some critics as 'pious expressions' or 'resolution made on the new years day'. To others they appear as an 'Instrument of Instructions'. These expressions, however, betray the ignorance of the critics about the legal utility of the Directives. Though they are non-enforceable, the Directives are the fundamental principles of governance and all the branches of government: the executive, the legislature and the judiciary, have to take cognisance of them. In fact, the Judiciary has

followed the principle of harmonious construction between the Fundamental Rights and the Directive Principles of State Policy. Not only this, the Judiciary has also taken the help of the Directives while interpreting the various provisions of the Constitution. While dealing with the relationship between the Fundamental Rights and the Directive Principles, Chandrachud, Chief Justice of India then, stated in *Minerva Mills case*, "the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution".

Similarly, the executive has also resorted to them while justifying its (executive) actions. For instance, in the case of *Champakam Dorairajan vs. the State of Madras*, while defending the 'Communal Order' of the Madras government, the plea was taken that it was done to promote the interests of the weaker sections of society as per Directive Principle of State Policy provided in Article 46 of the Constitution of India.

The Parliament also referred them while justifying its legislative measures. For instance, in cases of *Shankari Prasad and Golaknath*, the Government of India pleaded before the Supreme Court, while defending the Constitution (First Amendment) Act, 1951 and the Constitution (Fourth

Amendment) Act, 1955 respectively, that they were enacted to give effect to the Directive Principles of State Policy.

Now, if we look to the various Directive Principles, we find that they are related to political policies, social policies, economic policies, educational and cultural policies and health policies.

#### **Directives relating to political policies**

According to the Directives relating to political policies (i) 'the State' is required to 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, (ii) the 'State' should endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India, (iii) 'the State' is required to take steps to separate the judiciary from the executive in the public services of the 'State' and (iv) 'the State' is required to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligation in the dealings of organized peoples with one another and (d) encourage settlement of international disputes by arbitration.

It is clear from the above that the political Directives aim at a social order where there is decentralization of authority and all the citizens are governed by the same laws in the civil field without any distinctions of religion and where justice is secured through



separation of powers and where relation between nations are based on principles of international peace and security.

**Directive relating to social policies**

'The State' is required to promote with special care the educational and economic interests of the weaker sections of society and, in particular, of the Scheduled Castes and the Scheduled Tribes and to protect them from social injustices and all forms of exploitations. This Directive aims at a social order where Scheduled Castes, Scheduled Tribes and other weaker section of society are given special protection so as to make them equal partners in the national life.

**Directives relating to economic policies**

'The State' is required to direct its policy towards securing that: (i) the ownership and control of material resources of the community are so distributed as best to sub-serve the common good, (ii) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (iii) the citizens, men and women equally, have the right to an adequate means of livelihood, (iv) there is equal pay for equal work for both men and women, (v) the health and strength of workers, men and women, and the tender age of children are not abused and citizens are not forced by economic necessity to enter vocations unsuited to their age or strength, (vi) the participation of

workers is ensured in the management of undertakings, establishments or other organizations engaged in any industry by suitable legislation or in any other way, (vii) children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment, (viii) 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 is ensured within the limits of its economic capacity and development, (ix) suitable provision is made for just and humane condition of work and for maternity relief, (x) all workers, agriculture, industrial or otherwise, secure work, a living wage, condition of work ensuring a descent standard of life and full enjoyment of leisure and social and culture opportunities by suitable legislation or economic organization, or in any other way and, in particular, the State should endeavour to promote cottage industries on an individual or co-operative basis in rural area, (xi) that agriculture and animal husbandry are organized on modern and scientific lines and steps taken for preservation and improvement of the breeds and prohibition of the slaughter, of cows and calf and other milch and draught cattle, (xii) that the operation of the legal system promotes justice, on a basis of equal opportunity, and provision is

made for free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

It is clear from the above that the aim of economic Directives is to bring a social order where there is no concentration of economic power and the whole economic system is based on the good of community at large and wherein every one is guaranteed the right to work and participation in management and to adequate means of livelihood, a living wage, equal pay for equal work, public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want, just and human condition of work, maternity relief, decent standard of life, full enjoyment of leisure, social and cultural opportunities, free legal aid and wherein agriculture and animal husbandry are organised on modern and scientific lines.

#### **Directives relating to educational and cultural policies**

One of the Directives requires 'the State' to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Another Directive states that 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 (extortion), disfigurement, destruction, removal, disposal or export as the case may be.

It is clear from the above that these Directives aim at a social order where every citizen gets elementary education free of charge and wherein the cultural heritage of the past is preserved.

#### **Directives regarding health policies**

There are two Directives in this category. The first requires 'the State' to regard the raising of the level of nutrition and the standard of living of its people and the improvement of the public health as among its primary duties and, in particular 'the State' is required to endeavour to bring about prohibition of the consumption, except for medical purposes of intoxicating drinks and of drugs which are injurious to health. The second requires 'the State' to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

It is clear from the above that the Directives aim at a social order where every citizen gets nutritious food and maintains a good standard of life by keeping his health sound and by restraining himself from the consumption of intoxicating drinks and drugs injurious to health and by protecting and improving environment and by safeguarding the forest and wild life of the country.

To sum up, we can say that the Directive Principles of State policy aim

at ushering a new social order. Such a social order may be given different names by different schools of thought. To some it may appear socialistic, liberal or Gandhian, while to others it may appear merely an extension of democracy to 'economic' and 'social' fields. The contents of the Directives clearly indicate that the Constitution makers wanted to achieve the golden mean between the liberal ideas of democracy and the Fabian ideas of equality. They wanted the new social

order to be achieved through democratic means and that is why they have made it an obligation of 'the State' to endeavour to achieve it through normal democratic machinery. Three different schools of thought, Liberalism, Socialism, and Gandhism inspired the Constitution makers, and they have tried to combine all the three in the best possible form. The best and the most non-controversial title of such an order could be a 'Just Social Order'.

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### Exercises

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1. Why are the Rights granted to the citizens of India called Fundamental Rights? Explain their importance.
2. What constitutes the Right to Equality?
3. Describe, in brief, the Right to Freedom as granted to the citizens of India.
4. How is the Right to Freedom of Religion related to secularism?
5. What are the Educational and Cultural Rights granted to the citizens of India?
6. What is the significance of providing the Right to Constitutional Remedies?
7. Enumerate any five Fundamental Duties that a citizen of India is required to obey.
8. Explain the implications of any five Fundamental Duties.
9. What do you mean by the Directive Principles of State Policy?
10. Distinguish between Fundamental Rights and Directive Principles of State Policy.
11. Examine the nature of the Directive Principles of State Policy.
12. Explain any Three writs which the Supreme Court is empowered to issue for the enforcement of the Fundamental Rights.
13. Write short notes on:
  - (a) Protection against Arrest and Detention
  - (b) Right against Exploitation
  - (c) Protection of Interests of Minorities
  - (d) Economic Policies
  - (e) Social Policies
  - (f) Health Policies

# GOVERNMENT AT THE CENTRE

## Parliament of India

The legislative authority of the Union is vested in the Parliament of India. The Parliament consists of the President and the two Houses, the Rajya Sabha (Council of States) and the Lok Sabha (House of the People).

The President of India is an essential part of the Parliament. He not only summons and prorogues the two Houses but can also dissolve the Lok Sabha. Without his assent no bill passed by the two Houses can become an Act. He has the right to address either House or both the Houses assembled together. He may send messages to either House regarding any Bill pending before it and the Houses are required to deliberate upon it.

At the commencement of the first session after the general election to the Lok Sabha and at the commencement of the first session of each year, the President addresses both the Houses assembled together and informs them of the policies and programmes to be pursued. The Houses are required to deliberate upon the matters referred to in such addresses.

If at any time, when both the Houses of Parliament are not in session, the President is satisfied that circumstances exist which render it

necessary for him to take immediate action, the President may issue an ordinance which has the same force and effect as that of an Act of Parliament. Such an ordinance, however, should be laid before both the Houses of Parliament and approved by them within six weeks of their assembly. If the ordinance is not approved within six weeks referred to above, it shall cease to operate.

### Rajya Sabha

It is the upper house of the Parliament. It consists of 12 members nominated by the President from amongst those persons who have special knowledge or practical experience in such matters as literature, science, art, and social service and not more than 238 representatives from the States and the Union Territories. Hence, the total number of Rajya Sabha should not exceed 250.

The representatives of each State are elected by the elected members of the Legislative Assembly of that State in accordance with the system of proportional representation by means of single transferable vote. The representatives of each Union Territory are chosen in such manner as Parliament by law prescribes. According to the Representation of the

People Act, 1950 an electoral college is constituted in each Union Territory for the purpose.

Any citizen of India, who is not less than 30 years of age and who possesses such other qualifications as may be prescribed by or under any law made by the Parliament can be elected to the Rajya Sabha. No candidate should possess any of the following disqualifications: (i) if he holds any office of profit (excepting of a Minister under the Government of India/any State/ Union Territory), (ii) if he is of unsound mind and (iii) if he is an insolvent. The tenure of every member of Rajya Sabha is six years but every second year one-third of its members retire and fresh elections are held for those seats. The House is not subject to dissolution.

The Vice President of India is the ex-officio Chairman of Rajya Sabha. He presides over its meetings and conducts its business. In his absence, the Deputy Chairman, who is elected by the House, performs his functions.

One-tenth of the total number of members forms the quorum of any meeting of the House.

### **Lok Sabha**

It is the lower house of the Parliament. It consists of not more than five hundred thirty members elected directly by the people of the States and not more than twenty members representing the Union Territories chosen in such a manner as the Parliament may, by law, provide. Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in proportion to their population. The President of India can

nominate not more than two members of the Anglo-Indian community, if it is not adequately represented in the Lok Sabha.

Each State is allotted a number of seats in proportion to its population. Each State is divided into territorial constituencies so that the ratio between the population of each constituency and the number of seats allotted to it, as far as practicable, is the same throughout the State.

The members of Lok Sabha are elected on the basis of universal adult franchise. Anyone who is a citizen of India, and has attained eighteen years of age and whose name is in the voters' list is entitled to cast vote in the election to the Lok Sabha.

To get oneself elected to the Lok Sabha one needs to be a citizen of India, must be not less than twenty-five years of age and possesses such other qualifications as may be prescribed by or under any law made by the Parliament. A person shall be disqualified for being chosen as, and for being, a member of Lok Sabha if he holds an office of profit under the Government of India or the Government of any State, other than an office declared by the Parliament, by law, not to disqualify its holder; is of unsound mind and is an insolvent or is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is so disqualified by or under any law made by the Parliament.

The tenure of the Lok Sabha is five years but the President is empowered to dissolve it earlier also. While a Proclamation of Emergency (under

Article 352) is in operation the term of the Lok Sabha can be extended by the Parliament, by Law, for a period of one year at a time.

The House elects its own presiding officer, called Speaker, who conducts its business. In his absence from the House, Deputy Speaker, who is also elected by the House, performs his functions. The functions of the Speaker are as follows: he presides over the meetings of Lok Sabha and conducts all its proceedings except when the resolution for his removal is under consideration; he determines the order of business and prescribes the time limit for the speeches which are invariably addressed to him; he maintains order and discipline in the House; he prevents the use of unparliamentary language in the House; he can name the member for suspension or ask him to leave the House or order his physical removal by the Marshal of the house if a member disregards or flouts his ruling; he can suspend the business of the House if the House becomes unmanageable and the members are unruly; he enforces the rules of conduct; he gives his ruling whether a resolution or a question is admissible or not; he protects the members against the violation of their privileges; ordinarily he does not vote but when the house is divided equally on any issue he exercises casting vote, he decides whether an adjournment motion moved by a member is admissible or not; he decides whether a Bill is a Money-Bill or not; he presides over the joint sitting of both the houses of Parliament. One-tenth of the total

number of members forms the quorum of any meeting of the House.

### **Powers and Functions**

The primary function of the Parliament is legislation. It has an exclusive power to legislate on the subjects mentioned in the Union List as well as all the residuary subjects (subjects not included in any of the three lists). It shares the power of legislation on subjects in the Concurrent List with the State Legislatures. Both of them can legislate on them but if there is a conflict between the laws passed by the Parliament and that of a State Legislature) the law of the Parliament prevails to the extent of inconsistency.

### **Law making Procedure**

The Bills introduced in, and passed by the Parliament are of two types: Ordinary or Non-Money Bills and Money Bills. The procedure for passing a Money Bill is different from that of an Ordinary Bill. An Ordinary Bill can be introduced first in either of the two Houses. Every Ordinary Bill, before it becomes an Act, has to pass through the following stages.

The draft of the proposed Bill has to be sent to the Secretariat of the House. The Speaker of the Lok Sabha or the Chairman of Rajya Sabha, as the case may be, after consulting the Business Advisory Committee, determines the day and time when the Bill is to be moved in the House. On the appointed day and time, the mover seeks the permission of the presiding officer to move the Bill. On receiving his assent, the mover reads the title of the

Bill and gives a short speech highlighting the aims and objectives of the Bill. If there is no opposition from anyone, the Bill is supposed to have been passed in the First Reading. Ordinarily, there is no opposition at this stage, because it only implies that the House has consented to consider the Bill in details. But there are some occasions when the opposition is not prepared to even consider the Bill. In such a situation, the presiding officer allows a full debate and then the Bill is put to vote. If the House approves it, it is supposed to have been passed in the First Reading.

The Bill is moved again by the mover after an interval of some time (generally of two days). This stage is called Second Reading wherein there is a general discussion, after this there are three alternatives. The House may decide to discuss the Bill in details, clause by clause and also vote each and every clause. Alternatively, the House may decide to circulate the Bill for eliciting the public opinion. Then, the Bill is published in the Government Gazette inviting public reactions on it. The gist of the public opinion is then circulated amongst the members of the House. The House discusses the Bill in details in the light of the public opinion and then votes it clause by clause.

There is, however, another alternative. The House may decide to refer the Bill to a Select Committee consisting of such members of the House as have special interest in the subject. The presiding officer constitutes such a Committee having

20-30 members. The Committee makes a thorough scrutiny of the Bill and suggests various changes, if any, and then submits its report to the House.

The House considers the report and then discusses and votes the Bill in detail clause by clause. If the House approves it, it is supposed to have crossed the report stage.

After an interval of some time the Bill is again put before the House for final or Third Reading. At this stage, there is only a general discussion and no amendment, excepting some verbal changes, is permitted. If the House approves the Bill at this stage the Bill goes to the other House.

In the other House also the Bill has to undergo all the stages referred to above. If the other House also approves, it goes to the President for his assent. However, if the two Houses differ, the President may call a Joint Session of the two Houses. If the Bill is passed by a majority, the same is treated to be passed by the two Houses.

#### **Procedure in Financial Matters**

The famous saying 'one who controls the purse controls the mind' is fully applicable in the case of Parliament. Parliament exercises full control over the finances of the Union Government. In the beginning of every financial year an Annual Financial Statement or the Budget, showing the receipts and expenditure, is laid before the Parliament.

The Budget is prepared in two parts, Railway Budget and the General Budget. Former is presented by the

Railway Minister while the latter by the Finance Minister.

The Budget shows separately the expenditure charged on the Consolidated Fund of India, which can be discussed but not voted upon and the sums required to meet other expenditure proposed to be met from the Consolidated Fund of India, which are discussed and voted upon by the two Houses.

The Expenditure charged on the Consolidated Fund of India includes emoluments and allowances of President of India; salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha, Speaker and Deputy Speaker of the Lok Sabha, Comptroller and Auditor-General of India, Judges of the Supreme Court and High Courts and debt charges relating to the Government of India.

The other expenditure proposed to be met from the Consolidated Fund is presented in the form of Demand for Grants. The General discussion on these Demands begins after the address to the Lok Sabha by the Finance Minister who, in his speech discusses the financial position of the country and expounds the financial policy of the Government. Along with the Budget, a Finance Bill is also presented which relates to levying of new taxes or enhancing or reducing existing taxes.

The Budget speech by the Finance Minister is followed by a general discussion on the Budget as a whole. After the discussion is over, the estimates are submitted to the House

in the form of demands for grants under particular heads. They are put forward by the Ministers of the respective departments. Members discuss the demands and may ultimately assent to the demands or refuse them altogether or reduce the amount that is demanded. The House has no power to increase the amount demanded. When all the Demands have been voted by the Lok Sabha, both the charged and non-charged expenditures are put together and incorporated in a Bill called the Annual Appropriation Bill. It is presented before and passed by the Lok Sabha in the same manner as any other Bill. Then it is certified by the Speaker as a Money Bill.

A bill is considered to be a Money-Bill if it contains provisions with regard to: (a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of borrowing of money or giving of any guarantee by the government of India; (c) the custody of the Consolidated Fund or the Contingency Fund; (d) the appropriation of money out of the Consolidated Fund and (e) the receipt of money out of the Consolidated Fund or the public account. If there arises any controversy as to whether a particular Bill is a Money-Bill or not; the decision of the Speaker of the Lok Sabha is final.

A Money Bill cannot be introduced in the Rajya Sabha. After a Money Bill is passed by the Lok Sabha, it is sent to the Rajya Sabha for its recommendation. The Rajya Sabha, however, has to return the Bill with its



recommendations within fourteen days from the date of its receipt. If it does not return the Bill to the Lok Sabha within fourteen days, the Bill is supposed to have been passed by both the Houses in the form in which it was passed by the Lok Sabha. However, if the Bill is returned by the Rajya Sabha to the Lok Sabha within this period with its recommendations, the Lok Sabha has the authority either to accept or reject any of these recommendations. The Bill, thereafter, is deemed to have been passed by both the Houses of Parliament. It is, then, sent to the President for his assent who cannot withhold it.

#### **Control over the Executive**

The Council of Ministers is collectively responsible to the Lok Sabha. The Lok Sabha is empowered to pass a vote of censure against the Ministry. Whenever such a motion is passed, the Ministry has to resign.

Both the Houses exercise control over the executive through asking questions, discussing matters of urgent public importance, moving call-attention notices and adjournment motions, and also by appointing various committees such as Public Accounts Committee, Estimates Committee, Committee on Public Undertakings, Committee on Government Assurances, the Committee on Privileges, the Committee on Subordinate Legislation etc. All these activities keep the executive alert.

#### **Constitutional Amendments**

An amendment to the Constitution of India can be initiated by an

introduction of a Bill in either House of the Parliament. The Bill has to be passed in each House by a majority of the total number of members of that House and a majority of not less than two-thirds of the members present and voting.

But if such an amendment seeks to make changes in the federal character of the Constitution, the amendment also requires to be ratified by the Legislatures of not less than one-half of the States. Changes in the federal character are effected by changes in election process of the President, extent of executive power of the Union or States, power of the Parliament to constitute High Courts for Union Territories, constitution and powers of the Supreme Court and High Courts, distribution of legislative powers between the Union and the States, the representation of the States in the Parliament and power of Parliament to amend the Constitution and the procedure thereof.

After a Constitution Amendment Bill is passed by both the Houses of the Parliament (and also ratified by not less than one-half of the States in case it affects the federal character), it is presented to the President who gives his assent and thereafter the Constitution stands amended.

It is note worthy that ordinarily, there are no limits on the powers of Parliament to amend the Constitution by way of addition, variation or repealing any provision of the Constitution. However, according to a

Supreme Court ruling, the basic structure of the Constitution cannot be amended.

#### **Other Powers**

The elected members of the two Houses of Parliament, along with the elected members of the State Legislative Assemblies form the Electoral College that elects the President of India. The two Houses also possess the power to remove the President from his office through the process of impeachment. They elect the Vice President of India and also have the power to remove the Comptroller and Auditor General of India and the Chief Justice and other Judges of the Supreme Court as well as that of the High Courts through a special procedure and voting.

#### **Committees of Parliament**

As the Parliament is an unwieldy body for prompt and convenient transaction of vast business of Parliament and it cannot examine many complex and intricate issues efficiently, a device has been evolved to solve this problem. The device is the formation of Parliamentary Committees.

Broadly speaking, these committees are of two kinds – *Ad hoc Committees* and *Standing Committees*. The former are appointed as and when the need arises, they cease to exist as soon as they complete the work assigned to them. The latter are elected or appointed every year or periodically and their work goes on more or less on a continuous basis.

#### **Ad hoc/Select Committees**

The *ad hoc* Committees are constituted from time to time either by Lok Sabha or by the Speaker to enquire into and report on specific subjects. The number of the Select Committees is not fixed. Its number increases or decreases according to the necessity of work of the House. The House appoints the members of the Select Committees. The Select Committee examines every Bill very minutely, collects all data relating to it and examines witnesses. After this it submits its report to the House and is dissolved when it is no longer needed.

#### **Standing Committees**

Among the Standing Committees, the three financial committees, viz. Committee on Public Accounts, Estimates Committee and Committee on Public Undertakings, constitute a distinct class, which keep a vigil over government spending.

**Public Accounts Committee:** It consists of 15 members elected by Lok Sabha and elected by Rajya Sabha for a period of one year. The Rajya Sabha members are treated as associate members who do not enjoy the right to vote. It scrutinises the appropriation accounts of the Government of India and the reports of the Comptroller and Auditor-General of India. It ensures that public money is spent in accordance with Parliament's decisions and calls attention to cases of waste, extravagance, loss or nugatory expenditure or lack of financial integrity in public services.

**Estimates Committee:** It consists of 30 members elected by, Lok Sabha every year. The Chairman of the Committee is appointed by the Speaker from amongst its members. It reports on 'what economies, improvements in organization, efficiency or administrative reform' may be effected. It also examines whether the money is laid out within the limits of the estimates. It suggests the form in which the estimates should be presented to Parliament also suggests alternative policies in order to bring about efficiency and economy in administration.

**Committee on Public Undertakings:** This Committee consists of fifteen members, out of which ten are elected by members of Lok Sabha and five from Rajya Sabha according to proportional representation by single transferable vote system. Its Chairman is appointed by the Speaker. The Committee checks the accounts of public undertakings and examines their working and other financial matters and the reports of Comptroller and Auditor-General of India. It is clear from the above description that Parliament is a most powerful institution of Indian democracy. It is the supreme law making body of India to which the Union Council of Ministers is collectively responsible. It can also amend the Constitution of India. This, however, does not mean that it is all-powerful. Though we have parliamentary democracy in India, we also have Judicial Review that means that an Act of Parliament can be

declared null and void by the judiciary. If fact, our Constitution has adopted the doctrine of *checks and balances* between the legislative and judicial wings of the government.

## President of India

The executive authority of the Union is vested in the President of India who exercises it directly or through the officers subordinate to him.

The President of India is elected by an electoral college consisting of the elected members of the Legislative Assemblies of the States and the elected members of the two Houses of Parliament. The election is held in accordance with the system of proportional representation by means of single transferable vote system. The Constitution provides a special procedure to determine the value of a vote cast by each elector. The value of a vote cast by an elected member of a State Legislative Assembly is determined by dividing the population of the State by the total number of elected members of that State, the quotient obtained thus is further divided by one thousand. The quotient arrived at now, would be the value of his vote. For instance, let us take the case of a State whose population is 60,00,000 and the strength of the elected members of the Legislative Assembly is 400. Now, according to the formula referred above, the value of each vote would be: 60,00,000 to be

divided by  $400 \times 1000$ . Thus, each elected member of this State Assembly will cast only one vote, but the value of his vote would be 15. The value of the vote of all the elected members of the Legislative Assemblies of all the States obtained thus would form the voting strength of the Legislative Assemblies. This voting strength of the Assemblies would be divided by the total number of elected members of the two Houses of Parliament. The quotient obtained thus would be the value of each vote of elected member of the two Houses of Parliament. The value of vote of all the elected members of the two Houses obtained thus would form the voting strength of the two Houses of Parliament. Now, the result of the election of the President would be determined by the value of a sum total of all the votes cast by all the elected members of the Legislative Assemblies and that of the two Houses of Parliament.

A question here arises as to why such a complicated procedure has been adopted? One reason is the objective of bringing uniformity in the scale of representation of the elected members of different States. Though the seats allotted to each State Assembly is based on the proportion of population but then, the Constitution also lays down the minimum and maximum strength of a Legislative Assembly irrespective of any consideration of population. This creates an imbalance in the scale of representation between different States. This imbalance can be removed by the procedure prescribed above. Another

reason is the objective of bringing parity in the voting strength of the two Houses of Parliament on one hand and the Legislative Assemblies of all the States on the other.

#### **Qualifications**

Any person who: (i) is a citizen of India, (ii) has completed the age of 35 years, (iii) is qualified for election as a member of Lok Sabha, (iv) does not hold office of profit under Government of India or Government of any State or under any local authority, can contest election for the office of the President of India. However, President, Vice President, the Governor of any State or a Cabinet Minister, whether at the Centre or the State, is not debarred from becoming a candidate for contesting the election for the office of the President.

#### **Oath**

Before entering upon his office the President is required to take an oath in a prescribed form in the presence of Chief Justice or the senior most Judge of the Supreme Court of India.

#### **Procedure for his Removal**

The President holds office for a term of five years from the date on which he enters upon his office. He may resign from his office. He can be removed at any time from his office through the process of impeachment for violation of the Constitution. For this purpose a charge must be levelled in either House of the Parliament. It must be in the form of a resolution signed by at least one-fourth of the total number of members of that House and moved only after

giving a clear notice of fourteen days. If the resolution is passed by a majority of not less than two-thirds of the total membership of that House, the matter goes to the other House that investigates it. The President shall have the right to appear or to be represented at such an investigation. If, as a result of such investigation, a resolution is passed by a majority of not less than two-thirds of the total membership of that House (which investigated the charges), stating that the charge has been sustained, then the President stands removed from his office from the date on which such a resolution has been passed.

#### **Executive Powers**

All the executive functions of the Union government are carried on in the name of the President. It is he who appoints the Prime Minister. According to the Constitution he can appoint only such person to the post about whom he feels that he would be able to command the confidence of the majority of the members of Lok Sabha. The well-established convention is that he calls the leader of the majority party or an alliance of parties (if there is no one single party having majority) to form the Ministry. He appoints other Ministers and distributes portfolios amongst them on the advice of the Prime Minister. Besides, he also appoints Attorney General, Comptroller and Auditor General, Chairman and members of the Union Public Service Commission, Chief Justice and other Judges of Supreme Court and High

Courts, Governors of States and Chief Commissioners of Union Territories, members of Finance Commission, Language Commission and Election Commission, Ambassadors and other Diplomatic Agents of India to other countries.

He also appoints Inter State Council, a Commission to report on the administration of Scheduled Areas, a Commissioner for Scheduled Castes and Scheduled Tribes, Backward Class Commission, and Minority Commission.

The President has a right to be informed of all the affairs of the Union Government. If the President so requires, he can get submitted any matter for the consideration of Council of Ministers on which a decision has been taken by a Minister but which has not been considered by the Council.

#### **Legislative Powers**

As President is an inseparable part of Parliament, he possesses some legislative powers, such as summoning and proroguing the two Houses of Parliament, dissolving the Lok Sabha, addressing the Joint Session of the two Houses, sending messages to either or both the Houses, assenting the Bills passed by the two Houses, calling Joint Session of the two Houses in case of differences of opinion between them with regard to any non-Money Bill, promulgation of an ordinance etc. He also has the power to nominate twelve members to Rajya Sabha and not more than two members of the Anglo-Indian Community to the Lok Sabha if he feels,

after a general election, that the Anglo-Indian Community is not adequately represented in the Lok Sabha.

### **Judicial Powers**

Besides the appointment of Chief Justice and other Judges of the Supreme Court, the President possesses the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence (i) in all cases where the punishment or sentence is by a Court Martial; (ii) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends and (iii) in all cases where the sentence is a sentence of death.

It is to be noted that the terms 'pardons', 'reprieves', 'respites', 'remission' and 'commutation', carry different meanings. A pardon is an act of grace. It cannot be demanded as a matter of right. A pardon not only removes the punishment but also places the offender in the same position, as if he had never committed the offence. The power to grant pardon is purely an executive function. Reprieve means a temporary suspension of the punishment fixed by the law. Respite means postponement of the execution of a sentence to future. Remission means reduction in the amount of punishment without changing the character of punishment e.g. a life sentence is reduced to imprisonment for ten years. Commutation means

changing a punishment to one of a different sort than that originally proposed e.g. a death sentence is changed into life imprisonment.

### **Financial Powers**

Every financial year the Finance Minister, on behalf of the President, lays an Annual Financial Statement before both the Houses of Parliament. A Money Bill cannot be introduced or moved in Lok Sabha except on the recommendation of the President. A Bill involving expenditure from the Consolidated Fund of India cannot be passed by either House of Parliament unless President has recommended for it to that House. No demand for a grant can be made except on the recommendation of the President.

### **Military Powers**

The supreme command of the defence forces is vested in the President but its exercise is to be regulated by law. The Parliament can make any law with regard to navy, army, air force and any other armed force of the Union. The Parliament can make any law in regard to war and peace. The President cannot declare war or deploy forces of the country without the sanction of the Parliament or in anticipation of the sanction of the Parliament.

### **Powers regarding Foreign Affairs**

All the diplomatic business is conducted in the name of the President. He appoints ambassadors and other diplomatic agents of India accredited to other countries. Diplomatic agents

accredited to India present their credentials to the President. All international treaties and agreements are also conducted in his name but they are to be ratified by the Parliament later on.

### **Emergency Powers**

The Constitution envisages proclamation of emergency by the President in three types of cases:

**(i) Emergency due to war, aggression or armed rebellion:** When the President feels satisfied that the security of India or any part thereof is threatened or there is an imminent danger of such a threat by war or external aggression or by armed rebellion he can proclaim an emergency under Article 352. In order to ensure that such a proclamation has been made only after due consideration, it has been provided that the decision of the Union Cabinet recommending such a proclamation has to be given in writing to the President. Every such proclamation must be laid before each House of Parliament and receive approval of both the Houses within thirty days. However, if such a proclamation has been issued at a time when Lok Sabha stands dissolved, it shall remain in force if approved by the Rajya Sabha within thirty days. The newly constituted Lok Sabha must approve it (within 30 days of its first sitting). It shall remain in force till six months (from the day when such a resolution was passed by the Lok Sabha). It is noteworthy that the resolution of the approval of each House should be passed by absolute majority of the total number of its

members and by two-thirds majority of the members present and voting. If and so often, a resolution approving the continuance in force of such a Proclamation is passed by both the Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would have ceased to operate.

### **Effects of the Proclamation of Emergency under Article 352:**

While a proclamation of emergency is in operation - (i) the executive authority of the States becomes subordinate to the Union, (ii) the legislative authority of the Parliament extends to the making of laws on the State List, (iii) the operation of Article 19 relating to Right to Freedom remains suspended and, (iv) the President is authorized to suspend by an order, the right to move any court of law for the enforcement of such of the Fundamental Rights, excepting those in Article 20 and 21, as are mentioned in that order.

**(ii) Failure of Constitutional Machinery:** On receiving a report from the Governor of a State or otherwise (i.e. when the Governor does not send any such report) if the President feels satisfied that it is not possible to carry on the government of that State according to the provisions of the Constitution, the President (under Article 356) may issue a proclamation. Under such circumstances he may assume all or any of the executive powers of the State. He may declare that the legislative authority of the State shall be exercised by or under the authority of Parliament. He may suspend

operation of any provision of the Constitution relating to any authority in the State excluding that of a High Court. Every such proclamation must be laid before each House of Parliament and receive approval of both the Houses within two months. However, if such a proclamation has been issued at a time when Lok Sabha stands dissolved, it shall remain in force, if approved by Rajya Sabha, within two months, till one month after the first sitting of the newly constituted Lok Sabha. If the new Lok Sabha also approves it, (within thirty days of its first sitting) it shall remain in force till six months. It may pass the resolution approving its continuance for another six months. Such a proclamation shall in no case remain in force for more than three years. It is, however, to be noted that Parliament is not allowed to pass any such resolution extending a proclamation beyond a period of one year unless - (i) a proclamation of Emergency (under Article 352) is in operation at the time of passing such a resolution and (ii) the Election Commission certifies that on account of difficulties in holding general election to the Legislative Assembly of the State concerned, continuance of the proclamation (regarding failure of constitutional machinery) is necessary. **(iii) Financial Emergency:** If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any of its part is threatened, he may proclaim a financial emergency (under Article 360). Every such proclamation must be

laid before each House of the Parliament and receive approval of both the Houses within two months. However, if such a proclamation has been issued at a time when the Lok Sabha stands dissolved, it shall remain in force, if approved by Rajya Sabha within two months, till one month after the first sitting of the newly constituted Lok Sabha. If the new Lok Sabha also approves it (within 30 days of its first sitting) it shall remain in force till six months (from the day when such a resolution was passed by Lok Sabha).

**Effects of the Proclamation under Article 360:** While a proclamation under Article 360 is in operation, the executive authority of the Union shall extend to giving directions to any State to observe such canons of financial propriety as may be specified in the directions. It may also include a provision requiring all Money Bills to be reserved for the consideration of the President after the State Legislature passes them. The President may issue directions for the reduction of salaries and allowances of all or any class of persons serving the State including the Judges of the Supreme Court and High Courts.

#### **Position of the President**

If we look at the list of powers enumerated above; it would appear that, President of India is a very powerful figure. But, the reality is quite different. As we have adopted a parliamentary form of government wherein the Council of Ministers is answerable to the Parliament, the



powers really belong to the Ministry and not to the President. In spite of it, there arose a controversy with regard to the powers of the President. No less a person than Dr Rajendra Prasad, who was not only the first President of India but also the Chairman of the Constituent Assembly, raised this controversy as early as September 18, 1951. He sent a note to the Prime Minister in which he expressed his desire to act solely on his own judgement, independent of the Council of Ministers, when giving assent to Bills, sending messages to Parliament and returning Bills to Parliament for reconsideration.

Dr Rajendra Prasad while laying the foundation stone of Indian Law Institute reiterated his stand by stating that, "A close study should be made of the powers of the President of India under the Constitution, that in equating the powers of the President with those of the British monarch the Constitution was being wrongly interpreted; that there is no provision in the Constitution which, in so many words, lays down that the President shall be bound to act in accordance with advice of the Council of Ministers. In Great Britain there is an unwritten Constitution while in India there is a written Constitution. While in England there is hereditary Head of State, in India there is an Elected Head of the State who is re-eligible for election. He is, accordingly, answerable to his constituents for his official acts which implies that he must have freedom to act as he thinks right and be in a position to justify the action if the provision of re-election can have any substance."

Such controversies continued in the subsequent years. As a result, the Parliament passed the Constitution (Forty second Amendment) Act, 1976, which clearly states that the President "shall, in the exercise of his functions, act in accordance with such advice". (i.e. the advice given by the Council of Ministers). In spite of this Act, the controversy regarding the actual position of President has not stopped. Even prior to this Act, President generally used to act on the advice of the Council of Ministers. The Amendment has only given a legal colour to the actual practice. The real question is what would be his position during the extraordinary situations? We are not referring here to the period of emergency, though during emergencies also President has to act on the advice of the Council of Ministers, otherwise it may lead to a constitutional deadlock. We are referring here to extraordinary situations. For instance, if there is no clear-cut majority of a party or an alliance of parties in Lok Sabha and there are two claimants for the post of Prime Minister, whom shall the President call for assuming office? Shall he be guided by his own conscience or by the out-going Council of Ministers? Similarly, if the party in power loses majority in Lok Sabha and the Prime Minister advises the President to dissolve Lok Sabha, is the President bound by such an advice?

If the ruling party commands a thin majority in both the Houses of Parliament, it may not be able to take bold decisions. If it does not command

support from more than half the State Legislatures, the President may create situations that are not favourable to the Ministry.

Thus, it is quite clear that ordinarily (including the duration of emergency) President has to act as a constitutional head but extraordinary situations may give him opportunities to exercise his powers according to his own sweet will.

## Vice President

The Constitution states that there shall be a Vice President of India. The Constitution makes a distinction between the two categories of functions that the Vice Presidents is required to perform. When the office of the President is vacant by reason of his death, resignation or removal the Vice President becomes the Acting President. But when the President is unable to discharge his functions due to absence or illness, the Vice President discharges his functions as officiating President.

The Vice President is elected by the members of both the Houses of Parliament assembled at a joint meeting. The election is held in accordance with the system of proportional representation by means of single transferable vote. All doubts and disputes related to the election of a Vice President shall be decided by the Supreme Court.

Any person who is a citizen of India, has completed the age of 35 years, is qualified to be elected a member of

Rajya Sabha and does not hold any office of profit under the Government of India or any State or local authority, can be elected to the office of Vice President.

Before entering upon his office, the Vice President is required to take an oath before the President or some person appointed by him.

The Vice President holds office for a term of five years from the date on which he enters upon his office. He may send his resignation addressed to the President. He can be removed from his office by a resolution of Rajya Sabha passed by a majority of members of the House and agreed to by Lok Sabha. However, such a resolution can be moved only by giving at least fourteen days' notice.

It is interesting to note that a peculiar situation arose when V. V. Giri was the Vice President of India and he was required to act as President because there occurred a vacancy in the office of the President due to the death of President Zakir Hussain. When the schedule for the election of the President was announced V. V. Giri decided to contest for it. But before filing his nomination he wanted to resign from his post. Now, the question arose as to from which post should he resign? Should he resign from his substantial post of Vice President or should he resign from the post he was holding at that time i.e. Acting President. When he consulted the legal experts, he was advised to resign from his substantial post i.e. Vice President of India. According to the Con-

stitutional provision the resignation letter was to be addressed to the President of India. But he himself was holding the office of President of India. What to do in such a situation? The legal experts advised him to address the resignation letter to the President and put it on his table and to simply walk out of the office. He, accordingly, did this and saved himself from the embarrassing position.

The Vice President receives such salaries and allowances as are fixed by Parliament. Whenever he acts or officiates as President he does not function as the Chairman of Rajya Sabha and is entitled to all the powers, allowances and privileges of the President. After getting elected as President, he cannot remain a member of either House of Parliament or of a State Legislature.

The Vice President is the ex-officio Chairman of Rajya Sabha. He presides over the meetings of Rajya Sabha and conducts all its proceedings except when the resolution for his removal is under consideration. He enforces the rules of conduct. Whenever there is a division in the House on any issue, he counts the votes and declares the results. He gives his ruling whether a resolution or a question is admissible or not. Ordinarily, he does not vote but when the House is divided equally on any issue, he exercises casting vote. He decides whether an adjournment motion moved by a member is admissible or not. He acts as the Chancellor/Visitor of the Central Universities of India.

## **Central Council of Ministers**

The Constitution provides for a Council of Ministers, with Prime Minister as its head, to aid and advise the President. The President is required to act according to its advice.

The President first appoints the Prime Minister and then on his advice appoints the other Ministers. The President appoints such a person as Prime Minister about whom he feels that he would be able to get support of the majority of members of Lok Sabha. If a party commands absolute majority in Lok Sabha and elects its own leader, the President has to appoint him as the Prime Minister. If no party commands absolute majority but two or more than two parties combine together and form an alliance with a common programme and that alliance is able to command absolute majority in Lok Sabha, the leader of such an alliance is called upon by the President to assume the office of Prime Minister.

The President then asks the Prime Minister to give a list of persons whom he would like to appoint as members of the Council of Ministers. The President has to appoint such persons as Ministers, who have been so recommended by the Prime Minister.

There are three categories of Ministers—Cabinet Ministers, Ministers of State and Deputy Ministers. Cabinet is a small body of Ministers who occupy a prominent position in the party and

hold important portfolios. It meets off and on and takes all important policy decisions of the government. A Cabinet Minister is the head of one or more departments. The Ministers of State, again, are of two categories. Some Ministers of State have an independent charge of their Ministry while others act under the supervision of a Cabinet Minister. Sometimes they may be called to attend meetings of the Cabinet when an important issue pertaining to their department is discussed. Deputy Ministers work under the supervision of either a Cabinet Minister or a Minister of State. Their main function is to assist the Cabinet Minister or Minister of State, as the case may be, in performing their functions.

#### **Position of The Prime Minister**

The Prime Minister occupies a unique position in the Council of Ministers. It is he who chooses other Ministers. Whenever there is a conflict between a Minister and the Prime Minister, the Minister has to give way to the Prime Minister. The Prime Minister may ask any Minister to resign from his post. If he does not do so, the President may remove *him from Council of Ministers on the advice of the Prime Minister.*

The Prime Minister presides over meetings of Council of Ministers. It is he who communicates the decision of the Council of Ministers to the President. Whenever the President wants to communicate to the Council of Ministers, he does so through the Prime Minister. Prime Minister is the chief spokesman of the government.

It appears from the above that the Prime Minister is very powerful but actually it is not so. While forming his Council of Ministers he has to take a number of considerations such as representation of different sections of society, different geographical regions, different ideological groups in the party etc. As a result of these considerations, the choice of the Ministers for the Prime Minister becomes very limited. By and large, it can be stated that about half the members of Council of Ministers are there because the Prime Minister wants them, but about half the members are there because the Prime Minister has no other alternative. It is because of these things that the Prime Minister is called *primus inter pares* which means that he is first amongst the equals.

The Council of Ministers meets very rarely. It is the Cabinet that meets frequently. The Cabinet takes all the major policy decisions. But the Council of Ministers takes the responsibility for those decisions. It may be that an individual Minister may differ on a particular decision but he cannot express it publicly unless he first submits his resignation from the Council of Ministers. The Council of Ministers is collectively responsible to the Lok Sabha. It implies that a censure motion against one Minister amounts to no confidence against the whole Ministry in which case all the members including the Prime Minister have to go out of office. The members of both the Houses of Parliament keep control over Ministers by asking questions and supplementary questions and by moving

adjournment motions, call : attention notices, and by appointing various committees such as Public Account Committee, Estimates Committee, Committee on Government Assurances, Committee on Public Undertakings, Committee on Privileges, Committee on Subordinate Legislation etc.

The Council of Ministers takes policy decisions on all matters of administration. It supervises the execution of all policy decisions. It prepares Bills and pilots them in the two Houses of Parliament so that they become laws. It prepares the Budget and regulates income and expenditure of the Union Government. It formulates foreign policy and conducts its affairs with other countries.

## **Supreme Court of India**

The highest judicial authority in India is the Supreme Court. It consists of a Chief Justice and several other judges. The number of other judges is decided by the Parliament by law. Originally the Constitution provided for seven other judges only. The Parliament increased the number several times. At present, the number of other judges is twenty-five.

Every judge of the Supreme Court is appointed by the President after consulting such of the judges of the Supreme Court and of the High Courts as President deems necessary. However, while appointing other judges

the President has to consult the Chief Justice of India.

Only such a person can be appointed a judge of the Supreme Court who is a citizen of India and has been a judge of a High Court for at least five years or has been an advocate of a High Court for ten years or is, in the opinion of President, a distinguished jurist.

The judges of the Supreme Court are paid such salaries as are determined by the Parliament by law. They are also entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as are determined by the Parliament from time to time. However, the Parliament cannot make any change, after their appointment, in the salaries, allowances, privileges, leave of absence and pension etc. of the judges adversely affecting them except in case of financial emergency. Every judge of the Supreme Court including the Chief Justice holds office until he attains the age of sixty-five years. He, however, can resign his post any time by submitting his resignation to the President. He can also be removed from his office by the President if each House of Parliament presents an address to him, supported by a majority of the total membership of that House, and by a majority of not less than two-thirds of the members of that House present and voting, for such removal on the grounds of proven misbehaviour or incapacity.

Every person appointed to be a judge of the Supreme Court is required to take an oath of office before he enters upon his office, before the President or some person appointed by him.

No person who has held office as a judge of the Supreme Court cannot plead or act in any court or before any authority, within the territory of India.

When the office of the Chief Justice of India is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform his duties, the same shall be performed by one of the other judges as the President may appoint for the purpose.

If at any time there is no quorum in the Supreme Court for performing its duties, the Chief Justice, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, may request one of the judges of a High Court, who otherwise is qualified to be appointed a judge of the Supreme Court, as its ad-hoc judge, for such period as may be necessary.

The Chief Justice of India may, at any time, with the previous consent of the President, request any retired judge of the Supreme Court or that of a High Court (who otherwise is qualified to be appointed a judge of the Supreme Court) to sit and act as a judge of the Supreme Court. Such a person will be entitled to allowances as the President may determine and shall have all the jurisdiction, powers and privileges that are enjoyed by regular judges.

#### **Original Jurisdiction**

The Supreme Court hears directly any dispute, (i) between the Government of India and one or more States, (ii) between the Government of India

and any State or States on one side and one or more States on the other or (iii) between two or more States. Such a dispute should, however, involve some question of law or fact on which the existence or extent of a legal right depends. The treaties concluded between the Centre and the princely states are excluded from the Court's original jurisdiction.

#### **Appellate Jurisdiction**

The Supreme Court hears appeals against the judgement of a High Court: *In certain cases where a High Court certifies, in a civil or criminal case, that the case involves a substantial question of law as to the interpretation of the Constitution or where the Supreme Court grants special leave for such an appeal.*

*In civil case where a High court certifies that the case involves a substantial question of law of general importance and in the opinion of the High Court the said question needs to be decided by the Supreme Court.*

*In criminal cases where the High Court has, on appeal; reversed an order of acquittal and sentenced the accused to death or where the High Court has transferred the case from subordinate court to itself, and then convicted the accused and sentenced him to death and where the High Court certifies that the case is a fit one for appeal to the Supreme Court.*

#### **Advisory Jurisdiction**

If at any time it appears to the President that a question of law or fact has arisen

or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it he may refer the question to the Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereupon. However, this advice of the Court is binding neither on the President nor on the parties affected by the opinion.

#### **Review of Judgements**

The Supreme Court is empowered to review any judgement pronounced by it.

**Enforcement of Supreme Courts' Orders and Decrees:** The decisions of the Supreme Court are binding on all the courts in India. All the civil and judicial authorities are required to assist and aid the Court in the execution of its orders.

**Guardian of the Constitution:** The principal function of the Supreme Court is to act as the guardian of the Constitution, particularly relating to the Fundamental Rights guaranteed to the citizens. The Supreme Court has concurrent right with the High Courts to issue directions, orders and writs for enforcement of Fundamental Rights, particularly the *writs of habeas corpus mandamus, prohibition, certiorari, and quo warranto*.

#### **Court of Record**

The judgments of the Supreme Court are recorded and considered authoritative and serves as cases, laws or precedents.

#### **Contempt of Court**

The Supreme Court can start contempt proceedings against anyone who indulges in malicious propaganda against the judges or tries to influence the judges.

#### **Public Interest Litigation**

Till recently the judiciary, including the Supreme Court, entertained litigation only from those parties that were affected directly by it. But during the last few years, a new practice has been started. People, who are not involved directly in the case, may file litigation, if it is in the general public interest. It is the privilege of the Court to entertain or not the application for Public Interest Litigation.

To sum up, we can say that the Supreme Court is a powerful institution of the Indian federation. It not only protects the interests of units of the federation but also guarantees the enforcement of constitutional provisions. It safeguards the Fundamental Rights of the citizens and keeps a check both on the executive and the legislative wings of the government.

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**Exercises**

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1. 'The President is an essential part of the Parliament'. Do you agree with this statement?
2. What is the difference between a Money Bill and an Ordinary Bill? How is a Money Bill passed?
3. Describe the procedure of law making in Indian Parliament.
4. Do you agree that the Rajya Sabha enjoys fewer powers than the Lok Sabha?
5. Describe the procedure of election of the President of India.
6. What are the executive powers of the President?
7. Enumerate the legislative powers of the President.
8. Discuss the judicial powers of the President.
9. Can the President of India exercise the emergency powers according to his own will?
10. Examine the actual position of the President of India.
11. Describe the powers of the Vice President?
12. Is the Prime Minister 'Primus inter pares'? Give reasons in support of your answer?
13. What do you mean by collective responsibility of the Council of Ministers?
14. Discuss the original jurisdiction of the Supreme Court?
15. When does the Supreme Court of India advise the President? Is that advice binding on him?
16. How does the Supreme Court protect the Fundamental Rights of Indian citizens?
17. Write short notes on
  - (a) Parliament's control over the Council of Ministers
  - (b) Public Accounts Committee
  - (c) Failure of constitutional machinery
  - (d) Financial emergency
  - (e) Procedure of Impeachment of the President



# GOVERNMENT IN THE STATES

## State Legislature

Every State has a Legislature. Some States have two Houses of legislature — Legislative Council (Vidhan Parishad) and Legislative Assembly (Vidhan Sabha). Other States have only one House i.e. Legislative Assembly.

### Governor

The Governor of a State is an essential part of its Legislature. He summons and prorogues the legislature. He can dissolve the Assembly. Without his assent no Bill, passed by the legislature, can become an Act. He has the right to address the legislature. He may send messages to the legislature regarding any Bill pending before it and the legislature is required to deliberate upon it. At the commencement of the first session after the general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor addresses the legislature and informs it of the causes of its summons. The legislature is required to deliberate upon the matters referred in such addresses. When the legislature is not in session and there is a need for immediate action, the Governor may issue an ordinance that

has the same force and effect as that of an Act of the Legislature. The ordinance has to be laid before the legislature and approved by it within six weeks of its assembly. If the ordinance is not approved within six weeks it shall cease to operate.

### Legislative Council

The Parliament may, by law, create or abolish a Legislative Council in a State if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total number of members of the Assembly and by a majority of not less than two-thirds of the members present and voting. At present, five States (viz. Bihar, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh) have Legislative Councils.

The Legislative Council is the Upper House of a State Legislature. The total number of members in the Legislative Council of a State does not exceed one-third of the total number of members in the Legislative Assembly of that State. However, the total number of members in the Legislative Council of a State should, in no case, be less than forty.

Until Parliament, by law, provides otherwise, one-third of the total number of members of the Council are elected by electorates consisting of members of

Municipalities, District Boards and other local authorities in the State; one-third are elected by members of the Legislative Assembly of the State; one-twelfth are elected by graduates of three years standing; one-twelfth are elected by teachers who have taught in secondary schools and above for at least three years and one-sixth are nominated by the Governor from amongst those persons who have special knowledge or practical experience in such matters as literature, science, art, cooperative movement and social service. All these elections are held in accordance with the system of proportional representation by means of single transferable vote.

In order to become a member of the Legislative Council, a person should be a citizen of India, should not be less than 30 years of age and possess such other qualifications as may be prescribed, by law, by the Parliament. He, however, should not be of unsound mind, an insolvent and should not hold any office of profit (excepting that of a minister) under the Government of India or that of a State.

The tenure of every member of the Council is six years but every second year one-third of its members retire and new members are elected.

Ten or one-tenth of the total number of members, whichever is greater, forms the quorum of any meeting of the House.

The Legislative Council chooses two of its members as Chairman and Deputy Chairman respectively. A member holding office as Chairman or

Deputy Chairman vacates his office if he ceases to be a member of the Council. He may resign his office or may be removed from his office by a resolution of the Council passed by a majority of members of the Council. But, before moving such a resolution, fourteen days' notice must be given. The Chairman and the Deputy Chairman are paid such salaries and allowances as are fixed by the Legislature.

### **Legislative Assembly**

The Legislative Assembly of each State consists of not more than five hundred and not less than sixty members elected by direct election from territorial constituencies of the State. For this purpose, each State is divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is almost the same throughout the State.

The Constitution, however, provides for reservation of seats for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of each State in proportion to their population.

If the Governor of a State feels, after a general election for the Legislative Assembly, that the Anglo-Indian Community is not adequately represented therein, he may nominate one member of that community to the Assembly.

The members of Legislative Assembly are elected on the basis of universal adult franchise. A voter should be a citizen of India, should have attained

eighteen years of age and his name should be in the voters list.

To get oneself elected to the Legislative Assembly one needs to be a citizen of India, must be not less than twenty-five years of age and must possess such other qualifications as may be prescribed by or under any law made by the Parliament.

A person can be disqualified from the membership of Legislative Assembly if he holds an office of profit under the Government of India or of a State or is of unsound mind or is an insolvent.

The tenure of Legislative Assembly is five years but the Governor is empowered to dissolve it earlier also.

The House elects its own presiding officer, called Speaker, who conducts its business. During the absence of Speaker from any sitting of the Assembly, the Deputy Speaker, who is also elected by the House, acts as Speaker.

The Speaker presides over the meetings of Legislative Assembly and conducts all its proceedings except when the resolution for his removal is under consideration. He determines the order of business and prescribes the time limit for the speeches. He maintains order and discipline in the House and prevents the use of un-parliamentary language in the House. If a member disregards or flouts his ruling, he can name the member for suspension or ask him to leave the House or order his physical removal by the Marshal of the House. Similarly, if the House becomes unruly, he can suspend the business of the House. Whenever, there

is a division in the House on any issue, he counts the votes and declares the result. Ordinarily, he does not vote but when the House is divided equally on any issue, he exercises casting vote. He decides whether an adjournment motion moved by a member is admissible or not. He decides whether a Bill is a Money Bill or not.

One-tenth of the total number of members forms the quorum of any meeting of the House.

### **Powers and Functions**

The powers and functions of the Legislature can be studied under the following heads.

#### **Legislation**

The primary function of Legislature is legislation. It has an exclusive power to legislate on the subjects mentioned in the State List. It shares the power of legislation on subjects in the Concurrent List with Parliament. In case of a conflict between the law passed by the Parliament and that of a State Legislature, the law of the Parliament prevails to the extent of inconsistency.

The Bills introduced in and passed by the Legislature are of two types, non-Money or Ordinary Bills and Money Bills. The procedure for passing a Money Bill is different from that of an Ordinary Bill. An Ordinary Bill can be introduced in either of the two Houses. Every Ordinary Bill, before it becomes an Act, has to pass through the following stages.

The draft of the proposed Bill has to be sent to the Secretariat of the

House. The Speaker of the Legislative Assembly or the Chairman of Legislative Council, as the case may be, after consulting the Business Advisory Committee, determines the day and time when the Bill is to be moved in the House. On the appointed day and time the mover seeks the permission of the presiding officer to move the Bill. On receiving his assent, the mover reads the title of the Bill and gives a short speech highlighting the aims and objectives of the Bill. If there is no opposition from anyone, the Bill is supposed to have been passed in the First Reading. Ordinarily there is no opposition at this stage, because it only implies that the House has consented to consider the Bill in detail. But there are some occasions when the opposition is not prepared even to consider the Bill, the presiding officer allows a full debate and then the Bill is put to vote. If the House approves it, it is supposed to have been passed in the First Reading.

After an interval of some time (generally it is of two days) the Bill is again moved by the mover. This stage is called Second Reading and the Bill is discussed and passed in detail clause by clause. Alternatively, the House may decide to circulate the Bill for eliciting the public opinion. Then, the Bill is published in the Government Gazette inviting public reactions on it. The gist of the public opinion is then circulated amongst the members of the House. The members discuss it in detail in the light of public opinion and vote clause by clause.

There is, however, another alternative. The House may decide to refer

the Bill to a Select Committee consisting of such members of the House as have special interest in the subject. The presiding officer constitutes such a Committee having 20-30 members. The Committee makes a thorough scrutiny of the Bill and suggests various changes and then submits its Report to the House. The House considers the Report and then discusses and votes the Bill in detail clause by clause. If the House approves it, it is supposed to have crossed the Report Stage.

After an interval of some time, the Bill is again put before the House for final or Third Reading. At this stage, there is only a general discussion and no amendment, except some verbal changes, is allowed. If the House approves the Bill at this stage the Bill goes to the other House. In the other House also the Bill has to undergo all the stages referred to above. If the other House also approves, it goes to the Governor for his assent. The Second House (Legislative Council) can reject the Bill or send it back with its recommendations. It may even sleep over the Bill for three months. If the Legislative Assembly passes the Bill again with or without changes, the Council cannot reject it. Even if it rejects; the Bill is deemed to have been passed by both the Houses after a month.

A Bill after being adopted by both the Houses, if there are two Houses or by the Legislative Assembly, if there is only one House, is presented before the Governor for his assent. The Governor either gives his assent or returns the Bill to the Legislature for reconsideration.

If the Legislature passes the Bill again, whether in amended or original form, the Governor has to give his assent after which it becomes an Act. The Governor, however, has another alternative. He may reserve the Bill for the consideration of the President. The President may give his assent or withhold it or he may refer back the Bill to the Legislature for reconsideration in the light of his suggestions. If the Legislature again passes the Bill with or without amendment, it is again sent to the President for his consideration.

#### **The Procedure Adopted for Money Bills**

The State Legislature exercises full control over the finances of the State Government. In the beginning of every financial year an Annual Financial Statement or the Budget, showing the receipts and expenditure, is laid down before the State Legislature. The Budget shows separately the expenditure charged on the Consolidated Fund of the State, which can be discussed but not voted upon and the amount required to meet other expenditure proposed to be made from the Consolidated Fund of the State which are discussed and voted upon by the Legislature.

The Budget speech by the Finance Minister is followed by a general discussion on the Budget as a whole. After the discussion is over the Legislative Assembly proceeds to the Voting of Demands. When all the Demands have been voted by the Legislative Assembly, both the charged and non-charged expenditures are put

together and incorporated in a Bill called the Annual Appropriation Bill. It is presented before and passed by the Legislative Assembly in the same manner as any other Bill. Then it is certified by the Speaker as a Money Bill and sent to the Legislative Council if there is one, for its recommendations.

Money Bills can be initiated only in the Legislative Assembly and when it is sent to the Legislative Council, the Legislative Council has to send it back within fourteen days. It can make recommendations but it can neither reject, nor amend them. In any case, the Bill is considered to have been passed by both the Houses fourteen days after its final stage in the Legislative Assembly. It is then sent to the Governor for his assent who cannot withhold it.

#### **Control over the Executive**

The Council of Ministers is collectively responsible to the Legislative Assembly. The Legislative Assembly is empowered to pass a vote of censure against the Ministry. Whenever such a motion is passed the Ministry has to resign.

Both the Houses exercise control over the Executive through asking questions, supplementary questions, discussing matters of urgent public importance, moving call-attention notices and adjournment motions, and also by appointing various committees such as Public Accounts Committee, Estimates Committee, Committee on Privileges, the Committee on Subordinate Legislation etc. All these activities keep the executive alert.

**Constitutional Amendments**

A Constitutional Amendment Bill proposing changes in the federal character of the Constitution requires the approval of half the State Legislatures if the same has been passed by both the Houses of the Parliament.

**Electoral Powers:** The elected members of the State Legislative Assemblies along with the elected members of two Houses of Parliament form the electoral college that elects the President of India.

It is quite clear from the description given above that the legislature of a State plays a very important role in the governance of the State. It not only legislates on the subjects mentioned in the State list and Concurrent list but also keeps control over the Council of Ministers. The Council of Ministers can remain in power so long as it commands the confidence of the Legislative Assembly of the State.

## Governor

The executive authority of a State is vested in the Governor of the State who exercises *it* directly or through the officers subordinate to *him*.

The President of India appoints the Governor of a State for a term of five years. He holds his office during the pleasure of the President. The President can not only remove the Governor from his office but also transfer him from one state to another.

Any person who is a citizen of India and has completed the age of 35 years can be appointed a Governor of a State in India.

The Governor shall not be a member of either House of Parliament or of Legislature of a State and if any member of any of these houses is appointed a Governor, he shall be deemed to have vacated such membership on the date on which he assumes charge of Governorship.

Before entering upon his office a Governor is required to take an oath in the presence of Chief Justice or the senior most judge of the High Court of that State. In his oath he promises to preserve and protect the Constitution and the law.

**Executive Powers**

All the executive functions in the State are carried on in the name of the Governor. He appoints the Chief Minister. According to the convention he can appoint only such person to the post about whom he feels would be able to command the confidence of the majority of members of the Legislative Assembly. The well-established convention is that he calls the leader of the majority party or an alliance of parties (if there is no single party having majority) to form the Ministry. He appoints other Ministers and distributes portfolios amongst them on the advice of the Chief Minister. Besides, he also appoints Advocate- General, Chairman and members of the State Public Service Commission. The Governor has a right to be informed of all the affairs of the State Government.

**Legislative Powers**

As Governor is an inseparable part of the Legislature, he possesses certain legislative powers, such as summoning and proroguing the Legislature, dissolving the Legislative Assembly, addressing the session of the Assembly or Joint Session of the two Houses of the Legislature. He can send messages to either or both the Houses, assent the Bills passed by the Legislature, promulgate an ordinance etc. He also has the power to nominate a member of the Anglo-Indian Community to the Legislative Assembly if he feels, after a general election, that the Anglo-Indian Community is not adequately represented in the Legislative Assembly.

**Financial Powers**

Every financial year the Governor asks the Finance Minister to lay an Annual Financial Statement before the State Legislature. A Money Bill cannot be introduced or moved in the Legislative Assembly except on the recommendation of the Governor. A Bill involving expenditure from the Consolidated Fund of the State cannot be passed by the Legislature unless the Governor has recommended for its consideration. No demand for a grant can be made except on the recommendation of the Governor.

**Judicial Powers**

The Governor possesses the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any

offence against any law relating to a matter to which the executive power of the State extends.

**Position of the Governor**

If we look to the list of powers enumerated above, it would appear that the Governor of a State is a very powerful figure. But the reality is quite different. As we have adopted a parliamentary form of government wherein the Council of Ministers is answerable to the Legislature, the powers really belong to the Ministry and not to the Governor. However, extraordinary situations may require the Governor to act at his discretion. For instance, if there is no clear cut majority of a party or an alliance of parties in the Legislative Assembly and there are two claimants for the post of Chief Minister, whom shall the Governor call for assuming the office? Shall he be guided by his own conscience or by the out-going Council of Ministers? Similarly, if the party in power loses majority in the Legislative Assembly and the Chief Minister advises the Governor to dissolve the Legislative Assembly, is the Governor bound by such an advice?

Thus, it is quite clear that the Governor ordinarily has to act as a constitutional head but then, extraordinary situation may give him opportunities to exercise his powers according to his sweet will.

In spite of this, various contro-versies have arisen regarding the powers of the Governor. As he is an appointee of the President of India and holds his office during the pleasure of the President,

the general feeling is that he has to act as per advice of the President and cannot defy it. At the same time he is required to act on the advice of his Council of Ministers. Thus, he has to serve two masters. If there is a conflict between the two advices, whom shall he obey? Generally speaking, most of the Governors have acted on the advice of the President. This has caused a lot of resentment from the supporters of the State Governments. In a number of cases it was noted that in similar situations different Governors have taken different stands, the results of which always have been in favour of the ruling party at the Centre. For instance, after the Fourth General Election, no party got absolute majority in the legislatures in Uttar Pradesh and Rajasthan. In both the States, there were two claimants for the post of Chief Minister, one from the Congress Party and another from an alliance of parties (Samyukta Vidhayak Dal). The two governors behaved in two different ways. Sampurnanand, the Governor of Rajasthan called the single largest party to form the ministry and said it was none of his business to count the heads. If the Opposition according to him was in majority let it defeat the ministry on the floor of the House. Contrary to it Biswanath Das, the Governor of U.P. asked both the claimants to give the list of their supporters. When he found some names common in both the lists he called the members concerned individually and checked up as to whom they supported. In both the

cases, it was the Congress, the ruling party at the centre then, which got an opportunity to form the ministry. This again, has caused a lot of resentment and there have been demands for laying down clear-cut guidelines for the Governors. But, the Central Government has declined to accede to it. Not only this when the Parliament passed the Constitution (Forty-Second Amendment) Act 1976 it was made mandatory for the President to act on the advice of the Council of Ministers but not so in the case of the Governor. It was kept vague particularly because the Central Government did not want to loosen its grip on the State Governments.

There is also a lot of controversy regarding the discretionary powers of the Governors. There are some commentators who observe that the Governor has no discretionary powers excepting that of the Governor of Nagaland, who has to act at his discretion, while governing the administration of the District of Tuensang or a Governor who has to administer a Union Territory attached to him, without consulting his Council of Ministers. But there are others who feel that the Governor does possess some discretionary powers. It is the Governor himself who decides, at his discretion, as to in which sphere he shall act at his discretion and in which field he shall act on the advice of the Council of Ministers. Thus, the Governor has a wide scope to determine his discretionary powers. In spite of a number of efforts by the Governors themselves, the jurists, the



constitutional experts and distinguished public men, no clear cut principles have been laid down about the ways the Governor is required to act.

## **State Council of Ministers**

The Constitution of India has vested the executive powers of the State in the Governor of the State. But; he is actually a nominal head. While exercising his powers he is aided and advised by a Council of Ministers.

The Governor first appoints the Chief Minister and then appoints other Ministers on his advice. The Governor appoints such a person as the Chief Minister about whom he feels that he would be able to get support of the majority of members of the Legislative Assembly. If a party commands absolute majority in the Legislative Assembly and elects its own leader, the Governor has to appoint him the Chief Minister. If no party commands absolute majority but two or more than two parties combine together and form an alliance with a common programme and that alliance is able to command absolute majority in the Legislative Assembly, the leader of such an alliance is called upon by the Governor to assume the office of the Chief Minister.

The Governor, then, asks the Chief Minister to give a list of persons whom he would like to appoint as members of the Council of Ministers. The Governor has to appoint such persons

as Ministers, who have been so recommended by the Chief Minister.

### **Position of Chief Minister**

The Chief Minister occupies a unique position in the Council of Ministers. It is he who chooses other Ministers. Whenever there arises a conflict between a Minister and the Chief Minister, the Minister has to give way to the Chief Minister. The Chief Minister may ask any Minister to resign from his post. If he does not do so, he may be removed from the Council of Ministers by the Governor on the advice of the Chief Minister.

Chief Minister presides over the meetings of the Council of Ministers. It is he who communicates the decision of the Council of Ministers to the Governor. Whenever Governor wants to communicate to the Council of Ministers, he does so through the Chief Minister. Chief Minister is the chief spokesman of the government.

It appears from the above that the Chief Minister is very powerful. But actually it is not so. While forming his Council of Ministers he has to take number of considerations such as representation of different sections of society, different geographical regions and different ideological groups in the party etc. As a result of these considerations the choice of the Chief Minister becomes very limited. By and large, it can be stated that about half the members of the Council of Ministers are there because the Chief Minister wants them, but about half the members are there because the Chief Minister has no other alternative. It is

because of these things that the Chief Minister is called 'primus inter pares' which means that he is first amongst the equals.

### **Collective Responsibility of the Council of Ministers**

The whole Council of Ministers meets very rarely. It is the Cabinet that meets frequently. The Cabinet takes all the major policy decisions. But the whole Council of Ministers takes the responsibility for those decisions. It may be that an individual Minister may differ with a particular decision but he cannot make it public unless he first submits his resignation from the Council of Ministers. The Council of Ministers is collectively responsible to the Legislative Assembly. It implies that a censure motion against one Minister amounts to no confidence against the whole Ministry in which case all the members, including the Chief Minister, have to go out of office. The members of both the Houses of Legislature keep control over the Ministers through asking questions, supplementary questions and by moving adjournment motions, call-attention notices, and by appointing various committees such as Public Account Committee, Estimates Committee, Committee on Government Assurances, Committee on Public Undertakings, Committee on Privileges, Committee on Subordinate Legislation etc.

The Council of Ministers takes policy decisions on all matters of administration. It supervises the execution of all the policy decisions. It prepares Bills and pilots them in the Legislature so that they become laws.

It prepares the Budget and gets it passed by the Legislature. It regulates income and expenditure of the State. In fact, it is the Council of Ministers that really governs the State.

## **High Courts**

Most of the States have a High Court of their own. However, some times two or more States share one High Court. A High Court is the highest judicial authority in the State. It consists of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. The Chief Justice is appointed by the President in consultation with the Chief Justice of India and the Governor of that State. In appointing other judges the President, besides consulting the Chief Justice of India and the Governor of that State, also consults the Chief Justice of the High Court.

For the appointment as a judge of a High Court a person should be a citizen of India and should have held a judicial office at least for ten years or has been an advocate of a High Court in any State for at least ten years.

The judges of a High Court are paid such salaries, as are determined by Parliament by Law. They are also entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as are determined by Parliament from time to time. However, Parliament cannot make any change, after

their appointment, in the salaries, allowances, privileges, leave of absence and pension etc., adversely affecting them except in case of financial emergency.

Every Judge of a High Court, including the Chief Justice, holds office until he attains the age of sixty-two years. He, however, can resign his post any time by submitting his resignation letter to the President. He can also be removed from his office in the same manner as the judges of the Supreme Court.

No person who has held an office as a permanent judge of a High Court can practise in that High court. However, he can practise in the Supreme Court or in any other High Court.

The President may increase the number of judges or appoint Additional Judges if so required. A retired High Court judge can also be appointed to act as a judge by the President.

The Judgements of High Courts are recorded and considered authoritative and serve as case laws. A High Court can start contempt proceedings against anyone who indulges in malicious propaganda against the Judges. A High Court can also start contempt proceedings against anyone who tries to influence the Judges.

The President may after consultation with the Chief Justice of India transfer a Judge from one High Court to another High Court.

#### **Jurisdiction of a High Court**

A High Court is the highest court of appeal; both in civil and criminal cases,

in the State. It also enjoys original jurisdiction in some matters.

**Original Jurisdiction:** Every High Court has original jurisdiction in regard to admiralty, will, divorce, marriage, company, contempt of court and certain revenue cases. Every High Court is empowered to issue directions, orders or writs, particularly the writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the enforcement of any of the Fundamental Rights.

**Appellate Jurisdiction:** It hears appeals against the judgments of Subordinate Courts. In criminal cases, if a Sessions Judge awards death sentence, an appeal lies to the High Court. In civil cases, appellate jurisdiction extends to all such cases which involve an amount exceeding Rupees 5,00,000/- It also hears cases relating to patent and designs, succession, land acquisition, insolvency and guardianship.

#### **Transfer of Certain cases to the High Court**

If a High Court feels that a case pending in a Subordinate Court, involves a substantial question of law, it may withdraw the case and may either dispose off the case itself or determine the said question of law and return the case to the court from which it was withdrawn for final decision.

A High Court has the right of superintendence over all other courts subordinate to it, both in judicial and administrative matters. It can make rules relating to the appointment,

demotion, promotion and leave of absence for the officers of the district courts and other lower courts.

The High Court, thus, plays a very important role in the judicial matters

pertaining to the State. But it is not the highest court of appeal. There could be an appeal against its judgment to the Supreme Court even in subjects included in the State list.

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### Exercises

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1. Describe the composition of the Legislative Council and the Legislative Assembly.
2. Describe the procedure by which a Money Bill is passed in a State.
3. If the two Houses of a legislature differ on a Ordinary Bill, how is the problem resolved?
4. Who appoints the Governor of a State? What are the qualifications prescribed for the post by the Constitution?
5. Describe in brief the powers of the Governor of a State.
6. Under what circumstances does the Governor of a State use his discretion?
7. How is the Council of Ministers formed in a State?
8. What do you mean by collective responsibility?
9. Write short notes on:
  - (a) Categories of Ministers
  - (b) Functions of the Council of Ministers
  - (c) Jurisdiction of a High Court

## **LOCAL GOVERNMENT INSTITUTIONS**

### **Urban Local Government Institutions**

**I**n the Constitution of India initially there was no provision for the establishment of local self-governing institutions in urban India, though it did make reference, in one of the Directive Principles, about the establishment of Village Panchayats in rural India. Lacuna was rectified by the Constitution (Seventy-fourth Amendment) Act, 1992, which provided for the establishment and management of urban local self-government in India.

Urban Local Self Government in India has its roots in prehistoric times. The excavations at Harappa and Mohenjodaro reveal that the cities had their own councils to manage their own affairs. However, the foundation of modern system of urban government was laid by the British Government. Lord Mayo's Resolution of 1870 made arrangements for strengthening the municipal institutions and increasing the association of Indians in these bodies. However, it was Lord Ripon's Resolution of 1882 that was hailed as the Magna Carta of local government and got Lord Ripon the title of the "father of local self-government in

India". He advocated the establishment of a network of local self-governing institutions, financial decentralisation, adoption of election as a means of constituting local bodies and the reduction of the official elements to not more than a third of the total membership. In 1907, a Royal Commission on Decentralisation was established, which examined the reasons behind the failure of the local self-governing bodies. It was found that the failure was due to strict official control, excessive narrow franchise, meagre resources, lack of education and shortage of committed persons.

According to the Government of India Act, 1919, the local self-government became a 'transferred' subject under the control of a responsible minister. The Act increased the taxation powers of local bodies, lowered the franchise, reduced the nominated members and extended the communal electorate to a large number. As a result, the overall responsibility for the functioning of local bodies passed from the hands of district officer to the elected chairmen.

The working of urban local bodies during 1921-37 was neither a complete failure nor an unqualified success. According to Simon Commission, which reviewed the working of the

Government of India Act, 1919 "in every province,... a few local bodies have discharged their responsibilities with undoubted success... others have been equally conspicuous failures, the bulk lies between these two extremes".

According to the Government of India Act, 1935, dyarchy was done away with and full provincial autonomy was introduced. On 1st April 1937 popular ministries were formed and local self-government got a new impetus. But in 1939, popular ministries resigned as a protest against making India a party to the Second World War without consulting them. As a result, local self-government again got a set back.

After the War was over and elections for the Provincial Legislative Assemblies took place in 1946, the newly constituted ministries again took up the cause of local self-governing bodies. India got its independence in 1947 and a new enthusiasm set in motion. As a result, elections were held for various local self-governing bodies. The Five Year Plans also periodically highlighted the problems of the municipal bodies and the inabilities of these bodies to meet the growing demands of urbanization. The Central Government has, from time to time, showed its concern for the need to improve the urban bodies by appointing several commissions and committees. They made useful recommendations on streamlining urban development in India.

The sum total effect of the recommendations and suggestions

of these bodies resulted in the enactment of the Constitution (Seventy-fourth Amendment) Act, 1992. It made statutory provisions for the establishment, empowerment and functioning of urban local self-governing institutions. The main provisions of this Act can be grouped under two categories — compulsory and voluntary. Some of the compulsory provisions are: constitution of Nagar Panchayats, Municipal Councils and Municipal Corporations; reservation of seats in urban local bodies for Scheduled Castes/Scheduled Tribes in proportion to their population; reservation of seats for women up to one-third seats; the State Election Commission, constituted with reference to conducting elections in the Panchayati Raj bodies, should also conduct elections to the urban local self-governing bodies; the State Finance Commission, constituted with reference to financial affairs of the Panchayati Raj bodies; should also look into the financial affairs of the local urban self-governing bodies; tenure of urban local self-governing bodies fixed at five years, if dissolved earlier, fresh elections to be held within six months.

Voluntary provisions are — giving voting rights to members of the Union and State Legislatures in these bodies; providing reservation for Backward Classes; giving financial powers in relation to taxes, duties, tolls and fees etc; making the municipal bodies autonomous and devolution of powers to these bodies to perform some or all of the functions enumerated in the

Twelfth Schedule added to the Constitution through the Constitution (Seventy-fourth Amendment Act) and/or to prepare plans for economic development.

#### **Structure of Urban Bodies**

The Constitution, as amended, provides for the establishment of *Nagar Panchayats* for transitional areas (that is to say, an area in transition from a rural area to an urban area), *Municipal Councils* for smaller urban areas and *Municipal Corporations* for larger urban areas. However, no municipality can be constituted in areas that come under the jurisdiction of an industrial establishment that provides or proposes to provide municipal services therein.

#### **Composition of Municipal Bodies**

All the seats in municipal bodies should be filled by persons chosen by direct election from the territorial constituencies in the municipal area. However, the Legislature of a State may, by law, provide for the representation in a municipal body of persons having special knowledge or experience of municipal administration, the members of Rajya Sabha, Lok Sabha and the members of Legislative Council and Legislative Assembly of the State, representing constituencies which comprise wholly or partly the municipal area and the chair persons of Wards Committees.

There should be Wards Committees, consisting of one or more Wards, within the territorial area of a municipal body having a population of three lakhs or

more. The Legislature of a State may, by law, make provision with respect to the composition and the territorial area of a Wards Committee and the manner in which the seats in a Wards Committee should be filled. However, the Legislature of a State can make provision for the constitution of other committees in addition to the Wards Committees.

Seats should be reserved for the Scheduled Castes and the Scheduled Tribes in every municipal body in proportion to their population. Out of these reserved seats (for Scheduled Castes and Scheduled Tribes) one-third would be reserved for women belonging to these communities.

Similarly, not less than one-third of the total number of seats to be filled by direct election in every municipal body should be reserved for women (including their reservation in the quota of Scheduled Castes and Scheduled Tribes).

Similarly, the offices of chairpersons in the municipal bodies should be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. The Legislature of a State may also make provision for reservation of seats in municipal bodies or offices of chairpersons, for other Backward Classes.

A person who has attained the age of 21 years will be eligible to be elected as a member of a municipal body. The superintendence, direction and control of, the preparation of the electoral rolls for, and the conduct of all elections to

municipal bodies should be vested in the State Election Commission, constituted with reference to holding elections for Panchayati Raj institutions.

The tenure of every Municipal body should be five years. They can, however, be dissolved earlier after giving them reasonable opportunity of being heard. The election of the new municipal body should be held before the expiry of its tenure or within six months of its dissolution, as the case may be.

The Legislature of a State may extend powers and authority of municipal bodies, if necessary, to enable them to function as institutions of self-government. It may authorise a municipal body to levy, collect and appropriate such taxes, duties, tolls, and fees as it thinks fit. It may also assign a share in those taxes, duties, tolls, and fees that are levied and collected by the State Government itself. It may also make provision for making grants-in-aid to municipal bodies from the Consolidated Fund of the State. It may also provide for constitution of such funds for crediting all money received by the municipal bodies and their withdrawal.

#### **Finance Commission**

The Finance Commission, constituted with reference to Panchayati Raj institutions, should also review the financial position of the municipal bodies and make recommendations to the Governor, as to: the principles which should govern the distribution between the State and the municipal bodies of the net proceeds of the taxes, duties,

tolls and fees leviable by the State; the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the municipal bodies and the grants-in-aid to the municipal bodies from the Consolidated Fund of the State; the measures needed to improve the financial position of the municipal bodies.

#### **Committee for District Planning**

Committees for District Planning should be constituted in every State at the district level to consolidate the plans prepared by the Panchayats and the Municipal bodies in the district and to prepare a draft development plan for the district as a whole. Planning Committee should, in preparing the draft development plan, have regard to matters of common interest between the Panchayats and Municipal bodies. The chairperson of every District Planning Committee should forward the development plan to the government of the State.

#### **Committee for Metropolitan Planning**

An area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more municipal bodies or Panchayats may be declared by the Governor of the State as a Metropolitan area. Every Metropolitan Area should have a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

The Legislature of a State may, by law, make provision with respect to: composition of the Metropolitan



Committees and the manner in which seats in such Committees should be filled; the representation in such Committees of the Union and State Governments; the manner in which the chairpersons of such Committees should be chosen. However, not less than two-thirds of the members of such Committees should be elected by, and from amongst, the elected members of the municipal bodies and the chairpersons of the Panchayats in the Metropolitan Area in proportion to the ratio between population of the municipal bodies and of the Panchayats in that Area.

Every Metropolitan Planning Committee should, in preparing the draft development plan, have regard to the plans prepared by the municipal bodies and the Panchayats in the Metropolitan Area and also to the matters of common interest between the municipal bodies and the Panchayats. The chairperson of every Metropolitan Planning Committee should forward the development plan to the Government of the State.

#### **Functioning of Urban Local Government**

Though the Constitution (Seventy-fourth Amendment) Act, 1992, has removed some of the major hurdles in the proper functioning of the local self-governing bodies, it is sad that the concept of grass-root democracy at both, rural and urban, levels has not flourished in the country. The politicisation of administration, the entry of criminal elements in the elected bodies; rampant corruption; caste

and group division, priority to self aggrandisement over public welfare and electoral malpractices have marred and vitiated the whole atmosphere.

### **Rural Local Government Institutions**

The Constitution of India initially provided only for two levels of the Government: Central and State. One of the Directive Principles of State Policy states that '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". There was no provision regarding the composition, powers and functions of the local self-governing institutions. It was through two constitutional amendments viz. Constitution (Seventy-third Amendment) Act, 1992, and the Constitution (Seventy-fourth Amendment) Act, 1992, that provisions were made in the Constitution relating to the establishment of rural local self-governing institutions and urban local self-governing institutions respectively. Thus, the Constitution now clearly provides for a third level of Government viz. local self-government.

In ancient times every Indian village had a Village Panchayat that used to function as an autonomous body. They were free from State interference. According to Sir Charles Metcalf, the village communities "seem to last where

nothing else lasts. Dynasties tumble down, revolution succeeds revolution. Hindu, Pathan, Mughal, Maratha, Sikh and English, all are masters in turn but the village communities remain the same". However, during the early British period the village panchayats lost their vitality and significance. The village disputes began to be brought before the city courts for hearing and decision. In the 19<sup>th</sup> century some attempts were made to organise them in Bombay and Madras presidencies, but the then, district authorities did not encourage them. It was during Lord Ripon's time that the local self-government got a new impetus. However, the successors of Lord Ripon threw cold water upon his scheme. When Dyarchy was introduced in Provinces in 1919 and local self-government was made a transferred subject, the Village Panchayat Acts were passed in a number of Indian Provinces and a new era of establishment and functioning of village panchayats began. But then, due to paucity of funds, the village panchayats could not come in their full form. After the Government of India Act, 1935 came into force and full fledged Provincial Autonomy was established, the village panchayats again got a new impetus. With the beginning of the Second World War, responsible governments resigned. As a result, the village panchayats again got a setback. After the war was over and elections for the Provincial Legislative Assemblies took place in 1946 and responsible governments took charge a new era of village panchayats started.

After India achieved independence in 1947, a number of provinces enacted new Village Panchayat Acts that tried to develop village panchayats as units of self-government. The U.P. Village Panchayat Act of 1947 was regarded as a model Act by the Conference of the Local Self-Government Ministers of the States and other States were requested to remodel their Acts on the U.P. pattern. Meanwhile a scheme of Community Development Programme was started in 1952 and another scheme of National Extension Service came into force in 1953. Both these schemes aimed at the socio-economic upliftment of the villagers. However, these schemes did not achieve expected success. It was felt that the bureaucracy could not evoke people's participation. As a result, the Government of India appointed a Committee in 1957 under the Chairmanship of Balwant Rai Mehta to examine the working of the Community Development Programme and the National Extension Service and to report on the creation of institutions through which the participation of the rural population could be elicited. The Committee submitted its report to the National Development Council on November 24, 1957. The main recommendations of the Committee were as follows — a three-tier system of Panchayati Raj be created; the institutions envisaged were Zila Parishad at the district level, Panchayat Samiti at the block level and the Gram Panchayat at the village level; there should be a genuine transfer of power to these institutions; adequate resources should be made available to

them and all developmental schemes should be channelled through these institutions.

The recommendations of this Committee, which are called by various names such as Panchayati Raj Scheme, Three-Tier System, Decentralisation Scheme etc., were welcomed by the Central as well as the State governments. Steps were taken by the various State governments to enact laws to implement them. Accordingly, most of the States established three-tier Panchayati Raj institutions but some of them established only two-tier institutions. In the beginning, these institutions created a lot of enthusiasm amongst the people but by mid-1960s, they started losing appeal because of the increasing tendency towards centralisation, lack of resources, corruption, inefficiency and repeated postponement of elections of these bodies. As a result, in 1977 the Janata Government, with a view to exploring the possibilities of reviving and strengthening Panchayati Raj, appointed a Committee under the Chairmanship of Ashok Mehta. This Committee submitted its report in 1978. Its main recommendations were as follows — creation of a two-tier system of Panchayati Raj, with Zila Parishad at the district level and, below it, the Mandal Panchayat consisting of a number of villages having a population of 15, 000 to 20,000; Nyaya Panchayat, presided over by a qualified Judge, to be kept as a separate body; open participation of political parties in the elections to the Panchayati Raj

institutions; elections to these institutions to be organised by the Chief Electoral Officer of the State in consultation with Chief Election Commissioner; Zila Parishad to be made responsible for planning at the district level; reducing the dependence of these institutions on State funds and endowing them with powers of taxation and development functions to be transferred to Zila Parishad. Due to the collapse of the Janata Government in 1980, the report of the Ashok Mehta Committee could not be implemented.

In 1984 a Working Group on District Planning was set up under the Chairman of C. H. Hanumanth Rao. This Group recommended that separate district planning bodies should be created under either a Minister or the Collector. The Collector should have a major role in the decentralised planning. The Panchayati Raj institutions should also be associated with the process.

In 1992 the Constitution (Seventy-third Amendment) Act was passed which made statutory provisions for the establishment, empowerment and functioning of Panchayati Raj institutions. The main provisions of the Act can be grouped under two categories: provisions relating to compulsory functions and provisions relating to optional functions.

Some of the compulsory functions provided are: organisation of Gram Sabhas; creation of a three-tier Panchayati Raj Structure at the Zila, Block and Village levels; almost all posts, at all levels to be filled by direct

elections; minimum age for contesting elections to the Panchayati Raj institutions to be twenty- one years; the post of Chairman at the Zila and Block levels should be filled by indirect election; there should be reservation of seats for Scheduled Castes/Scheduled Tribes in Panchayats, in proportion to their population and for women in Panchayats up to one-third seats; State Election Commission for each State to conduct elections to Panchayati Raj institutions; the tenure of Panchayati Raj institution should be five years, if dissolved earlier, fresh elections to be held within six months; a State Finance Commission should be set up in each State every five years.

Some of the optional functions provided are: giving voting rights to members of the Central and State legislatures in these bodies; providing reservation for Backward Classes; the Panchayati Raj institutions should be given financial powers in relation to taxes, levy fees etc. and efforts shall be made to make Panchayats autonomous bodies.

#### **Structure of Rural Bodies**

The Constitution, as amended, provides for the establishment of Panchayats at the village, intermediate and district levels. However, Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

**Composition of Panchayats:** The Legislature of a State may make provision with respect to the composition of Panchayats. All the

seats in a Panchayat should be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. Provisions have been made for the representation of the chairpersons of the village panchayats to the block and district level Panchayats. The members of the Rajya Sabha, Lok Sabha and Legislative Assembly representing that area will also be members of the Block samiti and Zila samiti. Seats should be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat in proportion to their population. However, one-third of these (reserved) seats should be reserved for women belonging to these communities. Similarly, not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat should be reserved for women. Minimum age for contesting the elections for Panchayat has been fixed at 21 years.

The tenure of every Panchayat should be five years. They can, however, be dissolved earlier. The election of the new Panchayat should be held before the expiry of its tenure or within six months of its dissolution, as the case may be.

The Legislature of a State may extend the powers and authority of the Panchayati Raj Institution.

A Panchayat can levy, collect and appropriate taxes, duties, tolls, and fees as it thinks fit. It may get a share in the

taxes, duties, tolls, and fees that are levied and collected by the State Government. The State also provides grants-in-aid to Panchayat.

At the expiry of every fifth year, a Finance Commission is constituted to review the financial position of the Panchayats and make recommendation to the Governor for their improvement.

All elections of Panchayats are conducted, supervised, directed and controlled by the State Election Commission. The State Election Commissioner is appointed by the Governor and cannot be removed from his office except in the like manner and on the like grounds as a judge of a High Court.

### **Functioning of Rural Local Government**

After the introduction of Panchayati Raj, particularly after the Constitution (Seventy-third Amendment) Act, 1992 came into force; there was a feeling that the Local Self Governing institutions in rural India would work smoothly. But it is unfortunate that it still remains a dream. Caste rivalry, group clashes, electoral violence, participation of criminals, lack of political will, misuse of Panchayat funds by the Sarpanch and non-co-operative attitude of bureaucracy are some of the factors that have derailed the functioning of Panchayati Raj institution.

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### **Exercises**

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1. Describe, in brief, the composition of municipal bodies in India.
2. What are the different sources of income of municipal bodies in India?
3. Do you agree with the view that grass-root democracy has not flourished in urban India? What are the reasons for it?
4. What are the three tiers of the Panchayati Raj institutions?
5. Describe, in brief, the composition of Panchayats.
6. Describe, in brief, the machinery that conducts the elections of the Panchayati Raj institutions.
7. How is the Finance Commission of the State constituted? What functions does it perform regarding the Local Self Government?
8. Write short notes on:
  - (a) Committee for District Planning
  - (b) Metropolitan Planning
  - (c) Nagar Panchayats

## **INDIAN ADMINISTRATION — ORGANISATION AND FUNCTIONS**

### **Central Administration — Organisation and Functions**

**T**he Constitution of India does not make any provision for the machinery of administering public affairs. Article 77 (1) states that all executive actions of the Government of India shall be taken in the name of the President. However, Article 77 (3) states that the President shall make rules for the transaction of the business of the Government of India. The Ministries and the Departments are collectively known as the Secretariat. The Secretariat can be divided into two categories — Central Secretariat and the Cabinet Secretariat. While the Central Secretariat caters to the needs of the administration in general, the Cabinet Secretariat deals with the administration relating to the Cabinet affairs only.

The number of Ministries and Departments varies from time to time depending on the volume and variety of work priorities and political expediency. A ministry may comprise one or more allied Departments or may not have any separate Department. The ministry is headed by a Minister, who

is assisted by career bureaucrats such as the Secretary, Additional Secretaries, Joint Secretaries, Directors, Deputy Secretaries, Under Secretaries and the Section Officers. For purposes of internal organisation, a ministry is divided into segments with an officer in charge of each of them to expedite matters.

The lowest segment is a Section, which is in charge of a Section Officer and consists of a number of assistants, clerks, 'daftaries', typists and peons. It deals with the work relating to the subjects allotted to it. It is also referred to as the Office. Two Sections constitute a Branch, which is under the charge of an Under Secretary, who is also known as the Branch Officer. Two Branches ordinarily form a Division, which is normally headed by a Deputy Secretary. When the volume of work in a ministry exceeds the manageable size, one or more Wings are established, with a Joint Secretary in charge of each wing.

The functions and the role of all these above-mentioned officers are as follows.

#### **Secretary**

A Secretary is the administrative head of a ministry or a department; as the case may be. He is the principal advisor to the Minister on all the matters of

policy and administration and is responsible for its efficient administration. He represents his Ministry/Department before the Public Accounts Committee of Parliament. He receives weekly report from the Department. Recently, a new trend has developed in the administrative structure. In some ministries a post has been created by the name of *Special Secretary* to look after some specific work.

### **Additional Secretary**

Originally, the officer next in hierarchy to the Secretary was the Deputy Secretary, but then, due to either pressure of work on the Secretary or to reward some senior Joint Secretaries, by raising both their salary and rank, the post of Additional Secretary was created.

### **Joint Secretary**

This post was created for three reasons: increase in the functions of some departments making it difficult for one Secretary to cope with the increased work, difficulty in combining separate items of business under one Secretary and the emergence of two Houses of Central Legislature which necessitated the presence of senior officers in both the Houses to assist the members in the legislative work.

### **Deputy Secretary**

A Deputy Secretary is an officer who acts on behalf of the Secretary and holds charge of a Division. He ordinarily disposes off the majority of cases coming to him.

### **Under Secretary**

An Under Secretary is in charge of a Branch and exercises control both in regard to the dispatch of business and the maintenance of discipline.

### **Section Officers**

Superintendents, who are in charge of Sections, are called Section Officers. Their supervisory duties comprise distribution of work among their staff; training, helping and advising the staff; coordination of work in the section; ensuring prompt and efficient disposal of work in the section and adoption of proper methods to deal with the cases; timely submission of arrear statements and other periodical returns etc.

In addition to the Section Officer, each section consists of Assistants, Upper Division Clerks, Lower Division Clerks and Typists. They are entrusted the work of a routine nature and submit the relevant papers to the Section Officer referring to the pages of the file.

The bulk of the posts are filled by the officers of the Indian Administrative Service, Class I Central Services and the Selection grade of the Central Secretariat Service. The Union Government, thus, depends, to a large extent, on officers taken on deputation for a fixed period. However, there are some exceptions. For instance, all the Secretariat posts in the Ministry of External Affairs are held by officers belonging to the Indian Foreign Service. Similarly, the officers in the Ministry of Railways and Central Legal Service are held by those who belong to the Railway Service and Central Legal Service respectively.

**Functions of Central Secretariat**

The main functions of the Central Secretariat are to — assist the Minister in the process of policy making; assist in the framing of legislation, rules and regulations; exercise supervision and control over the executive departments or semi-autonomous field agencies, regarding the execution of policies and programmes; help the Minister in the discharge of his parliamentary responsibilities and help in preparing the Budget and controlling the expenditure to be incurred by the Ministry/Department.

**Cabinet Secretariat**

The origin of the Cabinet Secretariat can be traced back from the time of the British period. When the work of the Government of India expanded, the Governor-General distributed the work of different departments among the various members of the Executive Council and retained only some important functions with himself. He was assisted by a Private Secretary in these functions. In the beginning, the Private Secretary did not accompany the Governor-General to the Executive Council, but during the regime of Lord Wellington, the Private Secretary, for the first time, was asked to accompany the Governor-General to the meetings of the Executive Council. Later on, in 1935, the Private Secretary was designated as the Secretary to the Executive Council. He performed two-fold functions, Private Secretary to the Governor-General as well as Secretary to the Executive Council. A little later

the two functions were separated and were assigned to two different persons holding two different posts. Thus, the post of the Secretary of the Executive Council came into being. This post, later on, when India became independent, began to be called the Cabinet Secretary. The office attached to the Cabinet Secretary began to be called Cabinet Secretariat.

The efficiency of the Cabinet depends, to a large extent, on the Cabinet Secretariat whose functions are to prepare the agenda of the Cabinet meeting, to provide information and material necessary for its deliberations and to draft records of the discussions and decisions, both of the Cabinet and its committees. It keeps the President, the Vice-President and all the Ministries informed of the major activities of the Government. It has three wings viz. the civil wing, the military wing and the intelligence wing. The civil wing provides secretarial machinery for the Cabinet and the various Committees of the Cabinet. The military wing is responsible for all secretarial work connected with meetings of the Defence Committee, National Defence Council, Military Affairs Committee and a number of other Committees concerned with defence matters. The intelligence wing concerns itself with matters relating to the Joint Intelligence Committee of the Cabinet.

The head of the Cabinet Secretariat is the Cabinet Secretary. The Cabinet Secretary is usually the senior most civil servant of the country and the official precedence gives him the first place among the civil servants.



The role of the Cabinet Secretary has been very well brought out by S. S. Khera, who states that the Cabinet Secretary provides the eyes and ears for the Prime Minister to keep in touch with the process of official business in the Central Government.

### **Public Undertakings**

A significant feature of administration in independent India is the increasing Government intervention in the economic field. Such intervention has assumed three principal forms — introduction of planned economy, manipulation of public finance and administration of public undertakings. Governmental intervention of a positive kind in the ownership, operation and regulation of public enterprises and public utility services has today become all comprehensive and varied. There are three principal forms in which our public enterprises have been organised: Departmental Undertakings, Government Companies and Statutory Public Corporation.

### **Public Corporations**

A public corporation is a legal entity created by the Government, but exterior to the Government organisation, hence financially independent for the purposes of carrying on the specified activity in the manner prescribed in the law creating it. It is "a combination of public ownership, public accountability and business management for public ends". Some of the important public corporations are — Damodar Valley Corporation, Indian

Airlines Corporation, Air India, Life Insurance Corporation, Food Corporation of India, Industrial Finance Corporation.

Public Corporations are owned by the State and created by a special law defining its objects, powers, duties and privileges and prescribing the form of management and its relationship with government departments. They are usually independently financed. They obtain funds by borrowing either from the government or, in some cases, from the public and through revenues derived from the sale of goods and services. The employees of public corporations are not government servants. However, they may be taken from government departments on deputation.

### **Constitutional Statutory Authorities**

In the administration of public affairs, along with the Ministries and Departments, extensive use has been made of Statutory Authorities at various levels of Government. In order that the executive functions of the Government could be carried out without any fear or pressure, the constitution makers have provided for setting up of the following Constitutional Statutory Authorities to deal with certain specified duties.

#### **Union Public Service Commission**

The Constitution makes it obligatory for the central government to constitute a Public Service Commission to assist it in the recruitment, promotion and

maintenance of discipline amongst the Central and All India Services. The exact strength of the Commission is not specified in the Constitution. The President is empowered to determine the strength.

The President appoints the Chairman and other members of the Commission on the advice of the Central Ministry. The Constitution provides that, as nearly as may be, one-half of the members must be persons who have held office for at least ten years under the Government of India.

A member of the Union Public Service Commission holds office for a period of six years from the date he assumes his office or until he attains the age of sixty-five years, whichever is earlier. A member of the Commission may address his resignation letter to the President.

The Chairman or any other member of the Commission can be removed from his office by the order of the President only on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure laid down, reported that the Chairman or the member, as the case may deserve, to be removed.

The President may remove the Chairman or any other member, as the case may be, if he is adjudged insolvent or is engaged in any paid employment out-side the duties of his office or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

**Functions of the Commission:** It shall be the duty of the Commission to conduct examinations for appointments to the services of the Union Government. The Commission shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. The Commission is also consulted on any claims for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State, in a civil capacity and any question as to the amount of any such awards as well as on all disciplinary matters affecting the persons serving under the Government of India or the Government of a State.

It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission and the President shall cause it to lay before each House of the Parliament.

#### **Election Commission**

In order to hold the elections freely and fairly; the Constitution provides for an Election Commission that consists of the Chief Election Commissioner and such number of other Commissioners, as the President may from time to time fix. They are appointed by the President. If other Commissioners are appointed

as members of the Election Commission, the Chief Election Commissioner acts as the Chairman.

The President may also appoint, after consultation with the Election Commission, such Regional Commissioners, as he may consider necessary, to assist the Election Commission in the performance of its functions.

The Chief Election Commissioner cannot be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court. The conditions of service of the Chief Election Commissioner cannot be changed to his disadvantage after his appointment. Any other Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.

**Functions of the Commission:** The powers and functions of the Commission are determined not only by the Constitution but also by the Acts of Parliament. The main powers and functions of the Commission are — to superintend, direct and control the preparation of electoral rolls; conduct elections/by-elections for Parliament, State Legislative Assemblies and the offices of the President and Vice President; receive election petitions challenging the validity of elections and appoint tribunals to enquire into them; examine the returns of election expenses filed by the candidates; entertain and decide the applications for removal of disqualifications; give recognition to political parties about their status, as to whether they are

national parties or regional parties and allot/withdraw symbols to/from political parties.

#### **Finance Commission**

The Constitution provides for a Finance Commission consisting of a Chairman and four other members. The President of India appoints all of them. The Chairman is a person having experience of public affairs and the four other members are selected from among the persons who are qualified to be appointed as judges of a High Court, have special knowledge of the finances and accounts of the governments, have had wide experience in financial matters and in administration and have special knowledge of economics.

Every member of the Commission holds office for such a period as is specified in the order of the President appointing him and is eligible for re-appointment. The members of the Commission render whole-time or part-time service to the Commission, as the President in each case specifies. The Commission has the power to require any person to furnish information on such points or matters as in the opinion of the Commission may be useful.

**Functions of the Commission:** It is the duty of the Commission to recommend to the President as to — the distribution and allocation of the net proceeds of taxes; the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and any other matter referred to the Commission by the President in the interests of sound finances.

The President causes to lay before each House of Parliament the recommendations made by the Finance Commission and on the action taken by it.

### **The Attorney General of India**

The President appoints a person who is qualified to be appointed a judge of the Supreme Court, as the Attorney General of India. It is the duty of the Attorney General to give advice to the Government of India upon 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. He also discharges the functions conferred upon him by or under the Constitution.

In the performance of his duties the Attorney General has a right of audience in all courts in the territory of India. He also has a right to speak in and otherwise to take part in the proceedings of, either House, any Joint sitting of the Houses and any Committee of Parliament, but he shall not be entitled to vote.

### **Comptroller and Auditor General of India**

The Constitution of India provides for the appointment of a Comptroller and Auditor General of India by the President. He can be removed from office in the like manner and on the like grounds as a judge of the Supreme Court. Before entering upon his office he has to take an oath in a prescribed form. He is not eligible for further office either under the Government of India

or under the Government of any State after his retirement.

The administrative expenses of the office of the Comptroller and Auditor General of India, including salaries, allowances and pensions payable to or in respect of persons serving in that office, are charged upon the Consolidated Fund of India.

The Comptroller and Auditor General of India performs such duties and exercises such powers in relation to the accounts of Union and of the States or any other authority as may be prescribed by the Parliament.

The accounts of the Union and of the States are kept in such forms as the President prescribes on the advice of the Comptroller and Auditor General of India.

The reports of the Comptroller and Auditor General of India relating to the accounts of the Union are submitted to the President, who causes to lay them before each House of Parliament.

In addition to these constitutional or statutory authorities, the Constitution provides for some other authorities such as the Commission and Committees of Parliament on Official Language, National Commission for Scheduled Castes and Scheduled Tribes and Other Backward Classes, Commission on Minorities etc. These have been provided to deal with various issues that face our political systems. These statutory bodies hold regular meetings and contribute in solving the various problems. They present their respective reports to the President of India on the action taken by them that

in turn are placed by the President before each House of the Parliament.

## **State Administration— Organisation and Functions**

For the sake of administrative convenience, the administrative structure of the government of a State is divided into several departments. The departments, however, are of two categories: Secretariat Departments and Executive Departments. A Secretariat Department is ordinarily headed by a Secretary who is a generalist, while an Executive Department is ordinarily headed by a Director who is a specialist.

The Secretariat Department assists the minister in the process of policy making; in the framing of legislation, rules and regulations and supervising and controlling the executive department. It helps the minister in the discharge of his responsibilities as well as in preparing the Budget.

### **Officers of the Secretariat Departments**

The Secretariat Department is a hierarchy of a number of officers with the Secretary at the apex of the pyramid structured on a wide base of clerical personnel. The hierarchy consists of the Secretary, the Deputy Secretary, Under Secretary and Assistant Secretary. There are also Special Secretary,

Additional Secretary and Joint Secretary in some Departments of the Secretariat. The functions performed by these officers are, more or less, the same as that of the Central Secretariat that we have discussed earlier.

Besides the above administrative officers, the States have one more officer viz. Chief Secretary. The Chief Secretary is the administrative head of the State administration. He is, in many ways, the counter part, at the State level, of the Cabinet Secretary in the Union Government. He is appointed by the Chief Minister of the State from amongst the senior Secretaries. Three factors viz. seniority, service-record and confidence of the Chief Minister, are the main considerations while selecting him. Out of these three factors, ultimately the confidence of the Chief Minister dominates in the final choice of the Chief Secretary.

There is no fixed tenure for the post of Chief Secretary. It depends upon his administrative tact, experience, rapport with the Chief Minister and, to a large extent, on his capacity to take an objective stand on sensitive matters. Such civil servants who are able to maintain dignity, neutrality and a degree of anonymity are able to work with Chief Ministers of any political party or group.

**Role and Functions of the Chief Secretary:** The Chief Secretary controls and supervises the Cabinet Secretariat Department. His main functions are:

- (i) He is an ex-officio Secretary of the Cabinet and so he attends all the

Cabinet meetings as well as the meetings of its sub-committees. He arranges for the recording of the decisions taken in the Cabinet meetings and forwards a copy of the same to the Governor, the Chief Minister and other members of the Council of Ministers.

- (ii) He acts as the main source of information and advice to the Chief Minister.
- (iii) He supervises the follow-up action for the implementation of the decisions taken at the Cabinet meeting.
- (iv) Contrary to the practice prevalent at the Centre, the Chief Secretary of the State is generally the administrative head of a few departments. The most important departments that he generally heads are general administration, personnel administration, administrative reforms and planning.
- (v) He deals with matters relating to inter-state disputes.
- (vi) He coordinates the activities of all the departments and agencies of the State government. He resolves conflicts, mitigates over-lapping work among various government departments and ensures cooperation and team-work among his colleagues.
- (vii) He is a major channel of communication between the Centre and the State government.

### **Executive Departments/Directorates**

The policies that are decided upon by the ministry, in consultation with the Secretaries, are executed by the Executive Departments headed by a Director/Director-General. The Director may be a technical person or a civil servant. But the general practice in most of the States is to keep a technical person as the head of an Executive Department.

It is to be noted that some of the departments like P. W. D., Forests, and Police do not have directors as such. They have technical persons or specialists as the heads of the departments. For instance, the Public Works Department is headed by a Chief Engineer, Forest Department by the Chief Conservator of Forests, and the Police Department by the Director General of Police.

### **The State Services**

The State Services consist of such services as the State Government may, from time to time, declare by notification in the official, Gazette to be included in that category. The number of such services varies from State to State. A State has, generally speaking State Civil Service, Medical Service, Police Service, Judicial Service, Public Health Service, Forest Service, Education Service, Veterinary Service, Cooperative Service, Engineering Service, Accounts Service etc. Generally the State services are divided into four

categories viz. Class I, Class II, Class III and Class IV services. Class I and Class II belong to the officers' class. Class III is related to ministerial staff and Class IV comprises unskilled staff.

#### **State Public Service Commission**

The Constitution makes it obligatory for the State Government to constitute a Public Service Commission to assist it in the recruitment, promotion and maintenance of discipline amongst the State Services. The exact strength of the Commission is not specified in the Constitution. The Governor of the State is empowered to determine the strength. However, the Constitution permits for constituting a Joint State Public Service Commission for two or more States. If a resolution to this effect is passed by the Legislature; Parliament may, by law, provide for constituting such a Joint State Public Service Commission. In such a case the strength or a Joint State Public Service Commission is determined by the President of India.

The Governor appoints the Chairman and other members of the State Public Service Commission, while the Chairman and other members of a Joint State Commission are appointed by the President of India. The Constitution provides that, as nearly as may be, one-half of the members must be persons who have held office for at least ten years either under the Government of India or under the Government of a State. If the office of the Chairman of the Commission falls vacant for any reason, the President, in case of Joint State

Public Service Commission and the Governor in case of a State Public Service Commission, appoints a person from amongst the members to take charge until a new Chairman is appointed.

A member of the Joint State Public Service Commission/State Public Service Commission holds office for a period of six years from the date he assumes his office or until he attains the age of sixty-two years, whichever is earlier. A member of the Commission may resign by addressing a letter to the President in case of Joint State Public Service Commission or to the Governor of the State in case of State Public Service Commission.

The Chairman or any other member of the Commission can be removed from his office by the order of President only on the ground of misbehaviour. The President may also, by order, remove from office the Chairman or any other member, as the case may be, if he is adjudged insolvent or engages during his term of office in any paid employment outside the duties of his office or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

On ceasing to hold office, the Chairman of a State Public Service Commission, shall be eligible for appointment as the Chairman or a member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission. He cannot take up any other employment either under the Government of India or under the Government of a State.

**Functions of the Commission:** It shall be the duty of the Commission to conduct examinations for appointments to the services of the State Government. The Commission shall be consulted on all matters relating to the methods of recruitment to civil services and for civil posts and the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. The Commission is also consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State, in a civil capacity including memorials or petitions relating to such matters and on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State, in a civil capacity, and any question as to the amount of any such awards.

It shall be the duty of the State Public Service Commission to present annually to the Governor a report as to the work done by the Commission. The Governor shall cause it to lay its copy together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance, before the Legislature of the State.

#### **Advocate-General**

The Constitution provides for the office of an Advocate-General. He is appointed by the Governor on the

advice of the State Ministry. He holds office during the pleasure of the Governor, but, in actual practice, he holds office during the tenure of the ministry appointing him. The only qualification laid down is that he should be qualified to be a judge of a High Court.

Though he is not a member of the State Legislature, he is empowered to attend its meetings when called upon to explain certain legal technicalities. He has the right to speak and take part in the proceedings of the legislature but he cannot vote.

He performs all such functions as are enjoined on him by law. He is the highest legal adviser to the State Government and appears on its behalf in almost all courts. He is also the public prosecutor in all cases coming up before the High Court in exercise of its original criminal jurisdiction. He examines all the Bills drafted by different departments.

#### **State Finance Commission**

The Constitution (Seventy-third Amendment) Act of 1992 and the Constitution (Seventy-fourth Amendment) Act of 1992 have added Part IX and Part X respectively, to the Constitution of India regarding the constitution and empowerment of Panchayats and Municipalities respectively. These amendments have provided for constituting and empowering Finance Commission in each of the States of India.

The Governor of a State shall constitute a Finance Commission for the State every five years. The



Legislature of the State may (by law) provide for the composition of the Commission, the qualifications that shall be requisite for the appointment of its members, and the manner in which they shall be selected. The Commission is empowered to review the financial position of the Panchayats and the Municipalities and to make recommendations to the Governor as to — (i) the principles which should govern the determination, the distribution and allocation between the State and Panchayats as well as the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State; besides the decision about the grants-in-aid to the Panchayats/Municipalities from the consolidated fund of the State, (ii) the measures needed to improve the financial position of the Panchayats / Municipalities, and (iii) any other matter referred to the Commission by the Governor in the interests of the Panchayats/Municipalities.

The Governor shall cause it to lay every recommendation made by the commission together with an explanatory memorandum as to the action taken on it before the Legislature of the State.

To sum up, we can say that the real administration of the state is carried on by the Secretariat and the Executive Departments. The policies of the Government are framed by the ministers on the advice of the Secretariat and the Executive Departments implement them.

## **District Administration in India**

District Administration, as a unit of governance goes back to ancient times. We come across a reference of District Administration in the works of Manu. According to Manu, a thousand villages formed a district that was under the charge of a separate official known as 'Sthanika'. During the times of Mauryas and the Guptas there was a well-knit administrative machinery at the district level. The Mughal rulers also had a distinct organisation for administration at the district level. The East India Company also followed the Mughal pattern with minor changes. When the Company acquired the 'diwani' rights from the Mughal emperors, it appointed its own officers to collect revenue. Warren Hastings created the post of the Collector in 1772 for the dual purpose of collecting revenues and dispensing justice. Later on, this post acquired more and more powers and the District Collector became the eye and ear of the British Administration in India. After India achieved independence in 1947 and Central and State Governments launched development programmes, the powers and functions of the District Collector increased immensely.

It is at the level of the district that the policies of government are translated into practice and the problems of local people are studied and communicated to the State Government. It may be truly said that

the district is the unit of administration with which almost every citizen comes into contact. Most departments of State Governments; outside the secretariat, have field offices in the district. In certain cases even the Union Government has its field offices located at this level. The sum total of the activities of these departments together constitutes the administrative machinery of the district. The many and varied tasks of the District Administration can be summarised as follows:

- (i) The regulatory functions include the maintenance of law and order; control of crime; land administration which includes the assessment and collection of land revenue and other public dues; control, regulation and distribution of food and civil supplies.
- (ii) The District Administration performs certain developmental functions that include agricultural production, co-operation, animal husbandry, fisheries and welfare activities like public health, education and social welfare.
- (iii) The District Administration organises the holding of elections to Parliament, State Legislature and local bodies (rural and urban).
- (iv) It also deals with providing emergency services, natural calamities like floods, droughts etc.
- (v) The Collector, in his capacity as the Chief representative of the Government, performs a number of functions such as issue of arm

licences, their renewal, suspension and cancellation; small savings campaigns; publicity and public relations; protocol duties etc.

A survey of the history of Indian Administration shows that in the early stages of evolution a single authority viz. District Collector was in charge of all these functions of Government at the district level. In course of time, local self-governing institutions and the technical departments were set up. As a result; the unity of command was replaced by the multiplicity of commands. The district has, thus, become a sort of sub-capital where district headquarters of the various departments are located. These departments are headed by district level officers having different nomenclatures. This has resulted in a change of role of the District Collector.

#### **Role of the Collector in the District Administration**

The Collector, as the head of the District Administration, occupies a unique position in the Indian administrative system. During the pre-Independence era he belonged to the Indian Civil Service. After Independence, he is recruited through the Indian Administrative Service. Sometimes he gets this position through promotions from the State Civil Service. He is required to perform multifarious functions. They can be summarised as follows:

**(i) As a Collector:** The District Collector is the head of the revenue department of the District. He is responsible for the collection and

recovery of the land revenues and other cesses and dues of the government. All the officers of the revenue department of the district such as Revenue Assistants, Tehsildars, Naib Tehsildars, Kanungos, Lambardars and Patwaris work under his direction, supervision and control. He distributes taccavi loans and recovers them. He assesses losses to crops and makes recommendations for relief during floods and droughts. He is in-charge of the management of Government estates.

**(ii) As a District Magistrate:**

Previously he used to exercise powers of a First Class Magistrate, but now, after separation of judiciary from the executive, his position has changed. The District Magistrate no longer exercises the judicial functions that are now performed by the Additional District Magistrate or Judicial Officer. The District Magistrate only exercises general supervision over the criminal administration of his district. He is responsible for the maintenance of law and order. He is assisted by the superintendent of Police in this matter. The District Magistrate also controls the jails of his district and inspects them from time to time. He is responsible for the proper administration of criminal Jaws in his district. He grants licences of arms, explosives and petroleum etc.

**(iii) As District Administrative Officer:** As a District Administrative Officer the Collector, is the principal agent of the State Government. He looks after the general interest of Government

in the district. He coordinates all the activities of other government offices at the district level. He looks after the postings, transfers and leave of Niab-Tehsildars, Tehsildars and other gazetted officers working under him. He submits annual budget estimates to State Government. He is incharge of the treasury. He is the Chief Protocol Officer of the district. He compiles and submits the annual administrative reports of the district to the State Government. He sees to it that the public grievances against the administration in the district are properly and effectively dealt with.

**(iv) As a District Development Officer:**

Before independence, the District Collector had not to do any development work but with the dawn of independence it has become one of the important functions of the District Collector. The Community Development Plans and the Five Year Plans have increased his duties in this field. After the introduction of Panchayati Raj, the developmental functions are assigned to the people's representatives. But the District Collector is an important member of Zila Parishad, which has been assigned powers and finances relating to District Development Plans.

**District Planning**

The District Collector is the chief coordinator who gets the district plans prepared. Some States have set up District Planning and Development Councils/Boards headed by the District Collector or a Minister from the

district. These Councils/Boards are empowered to formulate plans in some States, while in other States these are only advisory in nature.

Although District Planning Boards/Councils have been set up in some States, planning at the district level continues to be a unit within the framework of State Planning. The machinery of planning at the district level continues to remain weak. The

grass-root planning has not yet acquired any significance.

To sum up, we can say that there has occurred a radical change in the fundamental aims of the district administration. It is being re-modelled in all the States to enable it to carry out the new responsibilities. As a practical unit of field administration, it has stood the test of time and, we hope, it will retain this position in future also.

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### Exercises

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1. What are the functions of the Central Secretariat?
2. What functions does the Cabinet Secretariat perform?
3. Name three Constitutional Statutory authorities.
4. How is a member of the Union Public Service Commission appointed? List any two qualifications.
5. Explain the role and functions of the Chief Secretary of a State.
6. Describe the composition and functions of the State Public Service Commission.
7. What functions does the District Administration perform?
8. Discuss the role of District Officer as a Collector.
9. 'The district headquarter is like a sub-capital of the State'. Discuss.
10. Write short notes on:
  - (a) Election Commission of India
  - (b) Comptroller and Auditor General of India
  - (c) Attorney General of India
  - (d) The Finance Commission of a State
  - (e) Advocate General.

## DIFFICULT TERMS

**Adjournment Motion:** A motion that proposes to adjourn the regular business of the house of a legislature as fixed in its agenda and instead gives priority to some other matter, which, the mover of the motion feels, needs immediate attention.

**Affirmative Action:** Positive steps taken to improve the conditions of the down trodden people such as reservation of seats in the legislatures and / or reservation in jobs.

**Appropriation Bill:** A bill that provides for setting aside the money (out of the Consolidated Fund) needed to meet the requirements of various departments of the government that have already been approved by the lower house of the Legislature/Parliament in the form of demands for grants.

**Axis Powers:** An alliance of powers under the leadership of Germany that fought Great Britain and its allies during the First World War.

**Backward Classes:** The Constitution makes special provisions for promoting the interests of Backward Classes. A Commission appointed by the President/Governor decides as to who constitute Backward Classes.

**Certiorari:** This is a writ that is issued to inferior courts, tribunals or

authority to transmit to it the record of proceedings pending with them for scrutiny and, if necessary, for quashing the same.

**Colonialism:** A body of people living in a new territory but retaining ties with the parent state are called a colony. A power that controls a dependent country or people is called a colonial power. A policy based on such control is called colonialism.

**Communal/Macdonald Award:** In the Second Round Table Conference, in London, when there was no agreement amongst the participants on the issue of representation of the Scheduled Castes in legislatures the matter was left to be decided by Macdonald, the Prime Minister of England, whose decision came in the form of an award known as Communal/Macdonald Award.

**Commutation:** Reducing a punishment to one of a different kind than originally awarded, e.g. a death sentence is changed into life imprisonment.

**Composite Culture:** A culture that combines the characteristics of two or more cultures.

**Concurrent List:** A list of subjects wherein both, the Parliament and the State Legislatures, have a right to legislate.

**Consolidated Fund :** All the revenues received by the government, all moneys raised by loans and moneys received in repayment of loans are put together in a common fund called Consolidated Fund.

**Court of Records:** When the acts and proceedings of a court are enrolled for perpetual memory and testimony and the court enjoys the authority to impose a fine and put a person in prison for contempt of itself as well as of subordinate courts, then it is called a Court of Record.

**Decentralised Unitary form of government:** When legally the power belongs to the central government but for administrative convenience it decentralises its authority by creating provincial governments whom it grants powers in certain subjects but which it can withdraw at any time it likes, then it is called a decentralised unitary form of government. For instance, the Montague Chelmsford Reforms of 1919 provided for such a form of Government in India.

**Detention:** Keeping a person under arrest.

**Discretionary Powers:** Those powers that can be exercised by an officer according to his own judgment of the particular case rather than by fixed rules decided beforehand.

**Dominion:** A self governing nation of the (British) commonwealth, other than the U.K. that acknowledges the British monarch as the Chief of State.

**Electoral College:** A body comprising the electors.

**Estimates Committees:** A Committee of Parliament/State Legislature that examines the financial estimates and suggests alternative policies to the government so that efficiency and economy may be imparted to government administration.

**Ex-officio:** Where a person occupies an office by virtue of holding another office, for instance, the Vice President of India is ex-officio Chairman of Rajya Sabha. This means he shall be the Chairman till he remains the Vice President of India.

**Flexible/Rigid Constitution:** A Constitution that can be amended by a simple majority and through an ordinary procedure is called a flexible constitution. A Constitution that requires special majority and a special procedure for its amendment is called a rigid constitution.

**Habeas Corpus:** This is a writ that is in the form of an order by the court calling upon the person/authority by which a person is alleged to be kept, without legal justification, in confinement, to bring such a person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released.

**Indian National Army:** An Army that was raised in Japan by Ras Behari Ghosh and led by Subhash Chandra Bose for liberating India from the clutches of the British rulers. It is also called Azad Hind Fauj.

**Indemnity Act:** An act of a legislature that exempts an officer from the incurred penalties.

**Instrument of Accession:** According to the Government of India Act, 1935 the princely states of India were given the option to join or not to join the federation of India. Those who intended to join were required to submit an Instrument of Accession wherein they were to mention those subjects which they wanted to surrender to the federation.

**Joint/Separate Electorate:** Where the voters are organised separately on the basis of community, such as Hindus/Muslims, they are called separate electorate. When they are organised jointly (without any consideration of community) they are called joint electorate.

**Judicial Review:** It is a process through which judiciary examines whether the laws enacted by a legislature are within the limits prescribed by the constitution. It is also applicable in a case where the judiciary examines whether the actions of the executive are within the limits prescribed by the constitution or law of the land.

**Magna Carta:** It is regarded as a Charter of liberties. In 1215, John, the king of England, was compelled by barons and clergy to concede to their demands. Though it was in no sense a people's charter at that time, subsequent tradition transformed it into a Charter of English liberties. These liberties provide that no free man might be arrested, imprisoned, dispossessed, outlawed, exiled or harassed in any other way save by authority of law of the land.

**Mandamus:** This is a writ that is in the form of an order from the Court to any government, court, corporation or public authority to do or to refrain from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of a public duty and in certain cases a statutory duty.

**Metropolitan Area:** According to the Constitution (Seventy-fourth Amendment) Act, 1992 Metropolitan Area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor of a State by public notification to be a metropolitan area.

**Money Bill:** A bill that provides for the imposition, abolition, remission, alteration or regulation of any tax; the custody of the consolidated fund or the contingency fund or the appropriation of any money from these funds.

**National Integration:** It means incorporation of individuals belonging to different groups as equals into the nation.

**Pardon:** It is an act of grace. It not only removes the punishment but also places the offender in the same position as if he had never committed the offence.

**Powers of the Individual Judgement:** Under the Government of India Act, 1935 the Governors and the Governor-General were required to consult their Council of Ministers in certain matters but were not bound by their advice. They applied their own judgement in

the matter. This power was called the Power of Individual Judgement.

**Preamble:** The introductory part of a constitution/Law that states the reasons for and intent of the constitution/law.

**Preventive Detention Act:** An Act which provides for detention of a person, for not committing an offence but, in order to prevent him from committing an offence.

**Prohibition:** This writ commands the court or tribunal to whom it is issued to refrain from doing something that it is about to do.

**Proportional Representation:** It is a system where seats are allotted to a party or group in a legislature or an executive in proportion to the population of or the votes cast in favour of that party or group.

**Public Accounts Committee:** It is a committee of Legislature/Parliament. It scrutinizes the appropriation accounts of the government. It ensures that public money is spent in accordance with Parliament's/Legislature's decisions and calls attention to cases of waste, extravagance, loss or nugatory (worthless) expenditure or lack of financial integrity in public services.

**Public Corporations:** A public corporation is set up by an Act of Legislature which defines the organisation and functions of the corporation. The idea behind establishing a corporation is to secure "a combination of public ownership, public accountability and business management for public ends".

**Public Undertakings:** The newly independent states in order to overcome their economic stagnation and the poor rate of growth during colonial rule had to enter the field of industrial and commercial enterprise to ensure better utilization of available resources and build essential infrastructure for national development. This led the setting up of public undertakings. There are three principal forms into which our public undertakings have been organised, viz., departmental undertakings, government companies and statutory public corporation.

**Quo Warranto:** This is a writ that is issued to prevent a person who has wrongfully usurped an office from continuing in that office. The writ calls upon the holder of the office to show to the court under what authority he holds the office. If the court determines that the person is holding the office illegally, it would pass the order of ouster that must be obeyed by him.

**Race:** A division of mankind possessing traits that is transmissible by descent and sufficient to characterize it as a distinct human type.

**Racialism:** An ideology that believes in racial prejudices or racial discrimination.

**Reasonable Restrictions:** The rights under Article 19 are subject to certain restrictions. These restrictions should be reasonable. Whether a particular restriction is reasonable or not is to be decided ultimately by the judiciary.

**Remission:** It means reduction in the amount of punishment without



changing the character of punishment e.g. a life sentence is reduced to imprisonment for ten years.

**Reprieve:** It means a temporary suspension of the punishment fixed by the law.

**Reserved Transferred Subjects:** According to the Government of India Act, 1919 provincial subjects were divided into two categories. Some subjects were *transferred* to and put under the charge of a Minister responsible to the provincial legislature. Others were *reserved* to and put under the charge of councillors not accountable to the legislature.

**Respite:** It means postponement of the execution of a sentence to future.

**Scheduled Castes/Tribes:** Under the Government of India Act, 1935 names of some castes/tribes that were given special protection were put in a Schedule attached to the Act. Since then, persons belonging to these castes/tribes began to be called Scheduled Castes / Scheduled Tribes.

**Secularism:** There is a school of thought which believes that the State should confine itself to the temporal or worldly affairs. It should be indifferent to religious matters. This is called secularism. However, the term secularism gives different connotations to different people. Some people treat it as anti-religious, while to others it means absence of discrimination on

grounds of religion. Still, there are others who regard it to mean equal respect to all religions. The judiciary in India has interpreted it to mean that the state should treat all religions equally and there should be no discrimination on grounds of religion.

**Single Transferable Vote System:** This is one of the devices of proportional representation. Ordinarily, this device is adopted in a multi-member constituency, i.e. a constituency from where two or more members are to be elected. According to the normal practice a voter is required to cast as many votes as the number of members are to be elected from that constituency. But in the system of single transferable vote, the voter is given one single vote only but the voter is given a choice to get his vote transferred to another candidate of his choice. That's why it is called Single Transferable Vote System.

**Subordinate Legislation:** When the legislature enacts a law, it leaves the details to be worked out by the executive through rules and regulations subject to the approval of the legislature. This arrangement is called subordinate legislation.

**Weaker Sections:** The Constitution does not define this term. The courts, however, have interpreted it to mean people belonging to the Scheduled Castes, the Scheduled Tribes and other backward classes.