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CORE-II: CONSTITUTIONAL GOVERNMENT AND DEMOCRACY IN INDIA

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AUTHOR

Dr.Sulochana Dash

C.D.O.E

ଦୂର ଓ ଅନ୍‌ଲାଇନ ଶିକ୍ଷା କେନ୍ଦ୍ର, ଉତ୍କଳ ବିଶ୍ୱବିଦ୍ୟାଳୟ

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Swapna S. Prabhu, (Member)
Asst.Professor, Dept. of Political Science, Utkal University, Vani Vihar, Bhubaneswar

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COURSE WRITER:

Dr. Sulochana Dash, Faculty in Public Administration, CDOE, Utkal University

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CORE-II

CONSTITUTIONAL GOVERNMENT AND DEMOCRACY IN INDIA

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The Constituent Assembly and The Constitution

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UNIT-1: FORMATION AND WORKING OF THE CONSTITUENT ASSEMBLY

Structure

1.1: OBJECTIVES

After going through this unit, you will be able to know:

- The brief background of constituent assembly of India.
- The challenges before India to form the constituent assembly.
- The various dominate concern of India on Constitution makers.
- The composition of constituent assembly.
- The function of the constituent assembly.

1.2: INTRODUCTION

The Constituent Assembly was formed in 1946. The idea of making the Constituent Assembly for framing the Constitution of India was devised by the Cabinet Mission Plan.The Constituent Assembly consisted of the elected representatives of varioius provinces who were eminent personalities in their own fields. Some of the members were Dr. B.R Ambedkar, Dr. Rajendra Prasad, Sarojini Naidu and Nehru. he Constituent Assembly of India held several meetings, discussions, debates and passed varioius draft resolutions to frame the Constitution of the country. Our Constitution came into force on 26 Jan, 1950.

1.3 SALIENT FEATURES OF CONSTITUENT ASSEMBLY OF INDIA

- The Constituent Assembly of India came into existence as per the provisions of CabinetMission Plan of May 1946. Its task was to formulate constitution/s for facilitating appropriate transfer of sovereign power from British authorities to Indian hands.

- The Assembly was to have proportional representation from existing provincial legislatures and from various princely states. Bulk of these elections was completed by the end of July 1946, under the supervision of Reforms Office under Governor General (Viceroy).

- The Assembly was to have three sections: Punjab & North-West, Bengal-Assam and Rest of India. The Constitutions were to be formulated for Indian Union, each Sectionand for each of the Provinces therein. The Muslim League, which had won bulk of the80 Muslim seats and dominated two smaller Sections, chose not to participate so the Assembly never convened separately in sections.

- Assembly held 12 sessions, or rounds of sittings:

1. December 9-23, 1946,
2. January 20- 25, 1947,
3. April 28- May 2, 1947,
4. July 14- 31, 1947,
5. August 14- 30, 1947,
6. January 27, 1948,
7. November 4, 1948-January 8, 1949,
8. May 16- June 16, 1949,
9. July 30-September 18, 1949,
10. October 6-17, 1949,
11. November 4-26, 1949,
12. January 24, 1950.

- Membership of the Assembly kept varying for different reasons, other than resignationand death. Many public figures showed keenness to enter the Assembly but its membership was also denounced by certain groups like Muslim League, Communistsand Socialists. These attitudes changed too. After

passage of the Indian IndependenceAct by British Parliament it was decided that those members who wish to retain theirseats in provincial legislature would vacate their seats in the Assembly. But several members of provincial legislature continued to come and partake in the Assembly until the provision against this was made in the Constitution itself. Biggest change in

membership was caused by the declaration of Partition of India. Certain members likeDr. Ambedkar, who were elected from territories assigned to Dominion of Pakistan, lost their seats. Muslim League members elected from United Provinces, Bihar and elsewhere came to occupy their seats after partition. Such members were humiliatedon many occasions and Patel even told them to go to Pakistan. After initial disinterest,the princely states started negotiating with a committee of the Assembly for their representation. Over a period, hundreds of princely states were grouped into larger associations and provisions were made for them to elect their representatives to the Assembly. Till the last day of the Assembly, new members kept joining in. Hyderabaddid not send any representative till the end. The total number of people who sat as members of the Assembly at any time has not been calculated by any official or scholar. Records show that maximum membership towards the end of tenure of Assembly was 307.

- The Assembly took help of several non-members in formulation of the Constitution. Eminent public figures outside the Assembly were requested to work as members of committees formed by the Assembly for focused deliberations on specific features orsegments.

- Much of constitution-making took place in these committees, both from procedural andsubstantive viewpoint. Till date, no official report has appeared in public domain on the exact number of committees formed by the Constituent Assembly. Resolutions were moved for setting up committees as and when the need arose, and adopted afterdiscussion. Depending on swiftness of nomination or election of members of respective committees, their formal appointment took few hours, days or weeks fromthe adoption of resolution.

- Some of the known committees were:

1. **Organisational Committees**

1.1- Rules of Procedure Committee (appointed on December 11, 1946. 15 members, Chairperson- Rajendra Prasad, ex-officio. Worked till 20 Dec. 1946)

1.2- Steering Committee (appointed on January 21, 1947. 19 members, Chairperson- Rajendra Prasad, ex-officio. Worked till the end.)

1.3- Staff and Finance Committee (appointed on December 23, 1946. 11 members, Chairperson- Rajendra Prasad, ex-officio. Worked till the end.)

1.4- Credentials Committee (appointed on December 23, 1946. 5 members, Chairperson- A.K. Ayyar. Worked till the end.

1.5- Order of Business Committee (appointed on January 25, 1947. 3 members, Chairperson- K.M. Munshi. Worked till July 14, 1947)

1.6- States (Negotiating) Committee (appointed on December 21, 1946. 6 members, Chairperson- J.L. Nehru. Worked till June 5, 1947)

1.7- Flag Committee (appointed on June 23, 1947. 12 members, Chairperson- Rajendra Prasad, ex-officio. Worked till July 22, 1947)

1.8- Committee on Functions of Constituent Assembly, under the Indian Independence Act (appointed on August 20, 1947. 7 members, Chairperson- G.V. Mavlankar. Worked till August 25, 1947)

2. Principal Committees and their sub-committees

2.1- Advisory Committee on Fundamental Rights, Minorities, Tribal Areas and Excluded Areas (appointed on 24 Jan. 1947. 57 members, Chairperson- Sardar Patel. Worked till 26 May 1949)

2.2- Union Powers Committee (appointed on 25 Jan, 1947. 12 members, Chairperson- J.L. Nehru. Worked till 26 Aug. 1947)

2.3- Union Constitution Committee (appointed on 4 May. 1947. 12 members, Chairperson- J.L. Nehru. Worked till 31 July, 1947.)

2.4- Provincial Constitution Committee (appointed on 4 May. 1947. 21 members, Chairperson- Sardar Patel. Worked till 21 July, 1947.)

2.5- Drafting Committee (appointed on 29 Aug. 1947. 8 members, Chairperson- Dr. Ambedkar. Worked till 17 Nov. 1949)

3. Other Sectoral Committees

3.1- Ad-hoc Committee on Citizenship (appointed on 30 April, 1947. 7 members, Chairperson- S. Varadachariar. Worked till 12 July. 1947)

3.2- Committee on Chief Commissioner's Provinces (appointed on 31 July, 1947. 7 members, Chairperson- N. Gopalaswami Ayyangar. Worked till 21 Oct. 1947)

3.3- Experts Committee on Financial Provisions of Constitution (appointed in Nov. 1947.3 members, Chairperson- N.R. Sarkar. Worked between 17 Nov.- 5 Dec. 1947)

3.4- Sub-Committee on Minority safeguards for West Bengal and East Punjab (appointed on 24 Feb. 1948. 5 members, Chairperson- Sardar Patel. Worked till 23 Nov., 1948.)

1.4 FORMATION OF THE CONSTITUENT ASSEMBLY OF INDIA

When the Constituent Assembly met for the first time on 9 December, 1946 it was fulfilling an aspiration of a nation that had demanded the formation of such an assembly since 1924. On 8 February 1924, Motilal Nehru had introduced the 'National Demand' in the Central Legislative Assembly insisting that a representative

Round table conference be summoned to facilitate a scheme of constitution for India. Though this resolution was passed with a large majority in the Central Legislative Assembly, it received a contemptuous reaction from the Secretary of State, Lord Birkenhead who dared the Indians if they could produce such a constitution at all. Notwithstanding the demand by Indians to formulate their own Constitution, the colonial government appointed the Indian Statutory Commission or the Simon Commission on 8 November 1927 to ascertain if India was prepared for further constitutional changes. The Commission caused great agitation in the country due to its exclusive white composition and met with boycotts wherever it went on its arrival in India. It was in response to this twin challenge posed by Lord Birkenhead's provocation and the appointment of the Simon Commission that the famous Motilal Nehru Committee was constituted by the All Party Conference in May 1928 'to determine the principles of the Constitution of India (Chandra, 2000).' The Nehru Report which submitted a draft Constitution for India on 10 August 1928 laid down several provisions which were later incorporated into the Constitution. The bone of contention in the Report was, however, the proposed dominion status for India which was unacceptable to the radical younger group led by Jawaharlal Nehru, Subhash Chandra Bose and Satyamurthi, who demanded 'Complete Independence'. Moreover, the Muslim League was also unhappy with the Nehru report because "it rejected the principle of separate communal electorates on which previous constitutional reforms had been based. Seats would be reserved for Muslims at the centre and in provinces in which they were in a minority, but not in those where they had a numerical majority (Chandra 2001)." While the Muslim League withdrew support to the report, the objections put forth by the younger radicals forced Gandhi to propose a compromise solution in the Calcutta Session of the Congress in December 1928, adopting the Nehru Report on the conditionality that if the government did not accept it by 1929 the Congress would launch a noncooperation movement demanding complete

independence. As the government failed to make any progress on the demands being made, the Congress in the Lahore session of 1929declared 'Purna Swaraj' as its goal and launched the Civil Disobedience Movement in April 1930. While it was becoming clear that nothing short of self determination would be accepted in India, the idea of a Constituent Assembly was first mooted by Jawaharlal Nehru in 1933 and after 1943 it became the official stand of the Congress to accept nothing short of a Constituent Assembly to chart out the future of the country. The Congress Working Committee, while refusing to accept the Proposals for Indian Constitutional Reform of 1933, stated in 1934 that, "The only satisfactory alternative to the White paper is a Constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible (Austin, 1999).

At the Congess sessions of Wardha (1936), Faizpur (1937), Haripura (1938) and Tripuri (1939) this position was re-asserted. Even in the Central Legislative Assembly, a resolution was introduced on 17 September 1937 by S. Satyamurthi who recommended that the Government of India Act 1935 be replaced with a constitution

framed by a Constituent Assembly. Increasingly, there was a growing consensus in Britain as well that India as an independent nation should be let free to frame its own Constitution. “In a meeting with Nehru in 1938 in London, Sir Stafford Cripps and Clement Attlee had agreed on the idea of an Indian Constituent Assembly elected on the basis of universal adult franchise, drafting its own constitution (Bandopadhyay, 2004).” However, as the war approached “British policy towards India was caught between two polarity: Churchillian negativism and Crippsian constructiveness.” The elections of May 1940 had brought a coalition government to power in Britain which was to be steered by Winston Churchill as the Prime Minister. On the eve of the World War II, when the strategic location of India in the face of the Nazi advance struck fear in to the hearts of the colonial rulers, an offer was extended by Viceroy Linlithgow in 1940 which came to be called as the ‘August Offer’. It accepted that the framing of a new Constitution for India should primarily be, and therefore not solely, the responsibility of the Indians. Moreover, it did not spell out the ways in which the proposed body was to be formed. Having failed to earn the good will of the Congress as well as the Muslim league, the August Offer was turned down and the phase of individual Civil Disobedience began. Meanwhile, the Japanese progress in Southeast Asia demanded Indian cooperation toward the colonial government. Keeping in mind their vested interest, Churchill dispatched the Cripps Mission in March 1942 to negotiate with the Indian Political Parties. While Cripps made it clear that Indians would have the sole responsibility of writing their own Constitution, it failed to provide any assurance on immediate self government and was therefore rejected by Congress leaders. Gandhi even criticized the Mission by saying that its offer of Dominion Status within the Commonwealth was a ‘post datedcheque drawn on a crashing bank.’ The mission was also rejected by the Muslim League because it did not recognize the Muslims’ right to self-determination and therefore, rejected the idea of partition. Withthe failure of the Cripps Mission, the struggle for independence led by the Congress entered the next phase where the demand to ‘Quit India’ was accompanied with the resolution that a Constituent Assembly would be evolved from the Provisional Government of Free India which would lay down the constitutional provisions for the country.

As the war came to an end, there was a growing recognition that the day for grant of independence to India was not far away. In July 1945, the Labour party came to power in Britain and fresh attempts were initiated to resolve the Indian issue. The Governor General, Lord Wavell convened a conference at Shimla which tried to resolve the differences among the Congress and the League and promised to convene a constitution making body as soon as possible. However, the conference failed and the British cabinet decided to send three of its own members to resolve the Indian problem. On 24 March 1946, the Cabinet Mission arrived in India aiming to discuss two issues “the principles and procedures for the framing of a new constitution for granting independence, and the formation of an interim government based on widest possible agreement among Indian political parties (Bandopadhyay, 2004).” The Cabinet Mission which comprised of Lord Pethick-Lawrence, Sir Stafford Cripps and Lord A.V. Alexander failed in making the two parties concur and reach an agreement,

and therefore announced their own proposals on 16 May 1946. The Cabinet Mission had already clarified that its aim was not lay out the future constitution of India but to put in place machinery through which Indians could write a constitution for themselves. The mission realised that though Universal Adult Franchise would be the most appropriate formulation to such an end it would deal to inordinate delay and, therefore, recommended that the newly elected legislative assemblies of the provinces should elect the members of the Constituent Assembly. While one representative would be elected for a million populations, the Sikh and Muslim legislators were to elect their quota on the basis of their population. The Cabinet Mission proposed a confederation, a three tier structure, where the Union government would be responsible for affairs such as defenses, revenue, and foreign affairs and communications. At each level of the confederation a separate constitution could be adopted, which by implication provided the space for autonomy demanded by the League. The three-tiered Constituent Assembly structure proposed by the Mission comprised of sections of states drawn from British India:

- Section A would consist of Hindu majority states such as Madras, United Province, Orissa, Bombay, Bihar and Central Provinces.
- Section B which would comprise of Muslim majority provinces of the north- west such as, Punjab, Sindh and N.W.F.P
- Section C would include Assam and Bengal.

Overall, from these three sections of British India a maximum of 292 members were to be elected through single transferable vote. Indian States were to be represented through 93 members and Chief Commisioner's Provinces through 4 members. Thus, the number of the proposed structure stood at 389 members.

The Cabinet Mission scheme further proposed that the Constituent Assembly after electing the chairman and other officials, complete the formalities and split into the three groups and work out separate constitutions. Only after the separate constitutions were formulated the Constituent Assembly was to meet as an entity to deliberate and formulate a constitution for the Union of India.

While both the Congress and the League had problems with the Plan, the Congress decided to move ahead with the Constituent Assembly. Though the League continued its opposition to the Plan, it decided to contest the elections. Since Constituent Assembly was constituted through indirect election, the results and composition of the state legislative assemblies of 1945 were reflected in the Constituent Assembly as well. The Congress captured 208 seats, while the Muslim League could garner 73 seats and the remaining 15 seats went to other parties and interest groups like those representing landlord and Commerce, the PanthikAkali Party, the Unionist Party, the KrishokPraja Party, the Scheduled Castes Federation, the Communist Party and the Sahid Jirga.

The League continued to oppose the Constituent Assembly and decided not to participate in the proceedings. So, when the Constituent Assembly was convened for its first session from 9th December to 21st December

1946 it was marked by the conspicuous absence of the League. The total strength of the House for its first session was 207. The name of Dr. Sachidananda Sinha was proposed for the temporary chairmanship of the assembly. During its first session, the Constituent Assembly had four sittings and discussed matters like presentation of credentials and signing of the register, electing the permanent Chairman, constituting a committee for rules of procedure, moving the Objectives Resolution etc. On 11th December, the Constituent Assembly elected Dr. Rajendra Prasad as its Chairman. The 'Objectives Resolution' was introduced by Jawaharlal Nehru on 13 December 1946 (though it was adopted in the Second Session). According to D.D. Basu, the Objectives Resolution provides the backdrop to the philosophy of the Indian Constitution and it has inspired the shaping of the Constitution through all its subsequent stages. For Nehru, it was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication." Through the Objectives Resolution, the Constituent Assembly declared "its firm and solemn resolve to proclaim (Basu, 2006).

India as an Independent Sovereign Republic and to draw up for her future governance a Constitution." Unequivocally, therefore the Objectives Resolution proclaimed that though the Constituent Assembly may have been drawn as per the Plan of the Cabinet Mission but the sovereignty of the Constitution is not derived from any other source but from the people of India (Basu, 2006). The second session of the Constituent Assembly which was convened from 20 January 1947 elected V.T Krishnamachari and H.C. Mookherjee as Vice-Chairmen of the Constituent Assembly. It adopted the Objectives Resolution on 22 January 1947. The Muslim League still showed no signs

of co-operation. Though it did not partake in the session, it objected to the passage of the Objectives Resolution, especially the sections where it mentioned the word "Union". Moreover, the Second session had carried out routine work like establishment of committees and the League had problems with this as well, especially the appointment of the Union Powers Committee. To add to the troubles of the Congress the League decried that "the continuation of the Constituent Assembly and its proceedings and decisions are ultra vires, invalid and illegal and it should be forthwith dissolved" arguing that the Cabinet Mission Plan's proposals were conditional its acceptance by both parties and since the two parties did not see eye to eye, the proposal of summoning the Constituent Assembly was itself invalid. Increasingly, the volatile situation indicated that partition was inevitable. All prospects of reconciliation within the framework of the Plan ended with the Vallabhbhai Patel- Liaqat Ali controversy (Chaube, 2000).

The third session was held from 28 April to 2 May 1947. Lord Mountbatten, who succeeded Lord Wavell, sent by the Attlee government tasked with winding up the British Rule from India by 30 June 1948, announced on 15 April 1947 that if no solution was found to the intransient problem, partition would happen. Even in this backdrop, when the Constituent Assembly was working it did not foreclose the possibility of participation

of the League. Infact, N. GopalaswamiAyyangar requested a postponement of consideration on the first report of the committee on Union Powers.

However, when the June Plan, which partitioned the country, was announced it brought about significant changes in the composition of the Constituent Assembly. Prior to partition, "the Congress had a built-in majority of 69 percent, in the Assembly, and, after Partition, when the number of Muslim League representatives fell to twenty-eight, the Congress majority jumped to 82 percent." The Congress which earlier had 206 elected members out of the total strength of 296 of British India, now had 192 members out of the sanctioned strength of 229. With partition, the limitations attached to the Constituent Assembly (that the Congress and the league will have to work together) were also over. The Constituent Assembly was also to function as the Union legislature by August 1947 till a legislature under the new constitution came into being. However,the business of the Assembly as a constitution-making body was to be unambiguously differentiated from its business as Union legislature (Austin 1999).

In all, the Constituent Assembly sat for a total of 12 sessions spanning nearly three years, of which the first six sessions "were devoted to preparatory functions. The seventh to eleventh sessions covering 110 days were devoted to the discussion of the Draft and other necessary business." The Constituent Assembly had 23 committees to work on substantive and procedural issues. SubCommittees and ad-hoc committees were also set up on the direction of the Committees of the House. The following

1.5 COMPOSITION OF CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan. Moreover the features are such as:

1. The total strengthen of the Constituent Assembly was 389, our of the total number 296 seats were allotted to British India and rest 93 seats are reserved for the Princely states. Out of 296 allotted to British India, 292 seats were to be

drawn the eleven governor provinces and three from the chief commissioners province and one from Baluchistan.

2. The province and the princely state or the group of small states was to be allotted seats according to their proportion of their population. Hence, one seat was to be allotted for every 10 Lakh of population.
3. All the seats allotted to the British province were to be divided among the three important communities such as Muslims, Sikhs and General. The general seats were to be divided in proportion of their population.
4. The representative of the each community were to be elected by members of that community in the provincial legislative assembly and the voting method

was to be proportional representation by means of single transferable vote system.

5. The representatives of the princely state were to be nominated by the head of the respective princely state.

However, the idea was clear to form the constituent assembly. It was a mixed form, where it was both elected and nominated body. The members were to be indirectly elected by the members of the provincial assembly who themselves were elected on a limited franchise.

The elections of the constituent Assembly was held on July-August 1946 for the 296 seats allotted to British India provinces. Out of the 296 seats, the Indian National Congress got 208 seats, the Muslim league acquired 73 seats and rest 15 seats were won by the few Independents and small groups. However, 93 seats allotted to the princely states were not filled because they had decided to stay away from the constituent Assembly. The Constituent Assembly was represented by all the section of the society, like Hindu, Muslim, Sikh, Parsis, Anglo Indian, Indian Christians, SCs, STs including Women, even though it was not directly elected by the people of India through the adult franchise.

Working of the Constituent Assembly

On December 9, 1946, the constituent Assembly met for the first time. Dr. Sachchidanand Sinha the oldest members was elected as the temporary president of the Assembly. The Muslim league boycotted the very first meeting of the constituent Assembly and rather it demanded the separate state of Pakistan. Therefore the meeting was only attened by the 211 members, the meeting was started under the leadership of Dr. Sachchidanand Sinha Later Dr. Rajendra Prasad was elected as the president of the Constituent Assembly. The Assembly had two vice-president namely

H.C. Mukhajee and V.T. Krishnamachari. They were elected for the same post, or the assembly had two vice-presidents.

Objective Resolution

On December 13, 1946 Jawaharlal Nehru moved the historic ‘Objective Resolution in the Assembly. It laid down the fundamental and philosophy of the constituent structure.

- The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and draw up for her future governance a Constitution.
- All the territories comprise British India, that territories form the Indian States. Other territories as are outside India and other provinces as are willing to be constituted into the independent sovereign India shall be union of them all.

- Wherein the said territories, whether with their present boundaries or with such other as may be determined by the constituent Assembly and thereafter according to the law of the constitution shall possess and retain the status of autonomous unit together with residuary powers and exercise all powers and functions of government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom.
- All the power and authority of the sovereign Independent India and its constituent part and organs of government are derived from the people of India.
- 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 action, subject to law and public morality.
- The minorities, backward and tribal areas and depressed and other backward classes are being protected and
- Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations: and
- The sovereign India should attain its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

The resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the preamble of the present Constitution.

1.6 FUNCTIONS OF THE CONSTITUENT ASSEMBLY

The princely states who were stayed away became gradually sent their representative and joined in the Constituent Assembly. On 28 April 1947 representatives of six states were part of the Assembly. After the acceptance of the Mountbatten plan of June 31947, for a partition of the country, the representative of most of the other princely state took their seats in the Assembly. The Indian independence act of 1947 made the three changes on the function of the Constituent Assembly.

1. The sole objective of the constituent Assembly was to frame the constitution of sovereign India. The act gave the power to the Assembly to abrogate or alter any law made by the British parliament in relation to India.
2. The constituent Assembly became the legislative body to frame the Constitution for free India and enacting the ordinary law for the country. These two tasks were to be performed on separate

days. Thus the constituent Assembly became the first Parliament of free India. When the Assembly met to frame the constitution body, it was chaired by Dr. Rajendra Prasad and

when it was met for the legislative body, it was chaired by G.V. Mavlankar. The functions continued till November 26, 1949, when the task of making constitution was over.

3. The Muslim League members (hailing from the areas included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces also came down from 296 to 229 and those of the princely states from 93 to 70.
4. The constituent Assembly was rectified India's membership of the commonwealth in may1949.
5. The Assembly adopted the national flag on July 22, 1947.
6. Assembly also adopted the national anthem on January 24, 1950.
7. It adopted the national song on January 24, 1950.
8. Constituent Assembly elected the first President of free India to Dr. Rajendra Prasad on 24 January 1950.

To perform all the functions, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The members of the Drafting Committee had gone through constitution of 60 countries and the draft constitution was considered for 114 days. The total expenditure incurred in making the Constitution was 64 Lakhs in Indian Rupees.

On 24 January, 1950, the Constituent Assembly held its final session. It however, did not end and continued as the provisional Parliament of India with effect of from 26 January 1950 till the formation of new Parliament after the general election held in 1951-52.

1.7: SUMMARY

The Constitution Assembly had been playing an important role to frame the constitution of sovereign India. The different significant committee had helped theConstituent Assembly to articulate the idea of various Constitution of the world and develop or frame the Constitution of India. The Drafting Committee of the Assembly had a significant role under the Chairmanship of Dr. B.R. Ambedkar who provided the final shape of the Constitution. The other committees had also performed their role very seriously to frame the Constitution of India.

1.8: SELF ASSESSMENT QUESTIONS

1. What is Constituent Assembely?
2. What was the role of drafting committee of Constituent Assembly?
3. Discuss the various function of the constituent Assembly.
4. Examine the composition structure of the Constituent Assembly

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UNIT-2: THE PHILOSOPHY OF THE CONSTITUTION: THE PREAMBLE AND ITS FEATURES

Structure

2.1OBJECTIVES

After going through this unit, you will be able to know:

- The historical background of the making of the Constitution
- The Significance of the Objective Resolution
- The features and objectives of the Preamble and
- The Critical Analysis of the Preamble of Indian Constitution

2.2 INTRODUCTION

The Preamble serves as the introductory statement to a constitution, outlining the guiding principles, objectives, and values that the document seeks to uphold. It is a concise and often inspirational statement that encapsulates the fundamental philosophy of a nation's governance. In the context of constitutions, including that of India, the Preamble sets the tone for the constitutional framework and reflects the aspirations of the people.

A federal system of government is a political structure in which power is divided and shared between a central or national government and regional or state governments. Each level of government possesses its own set of powers and responsibilities, and they operate independently within their designated spheres. The division of powers is typically outlined in the constitution, specifying the areas over which each level of government has authority. The concept of federalism is grounded in the principle of decentralization, aiming to strike a balance between a strong central authority and the autonomy of subnational entities. Federal systems are characterized by a distribution of powers that can encompass areas such as taxation, law enforcement, education, and healthcare.

2.3 PREAMBLE :

Every constitution is based on certain definite principles of social, political and economic relevance which constitute its philosophy that may also be termed as its ideology. For this, we must, first of all, look into the contents of the Objectives Resolution moved by Pandit Nehru on 13 December, 1946 and adopted by the constituent Assembly on 22nd January, 1947. it said :

This Constituent Assembly declared its final and firm resolve to proclaim India as Independent Sovereign Republic and to draw up for her future governance a Constitution.

(2) Wherein the territories that now comprise British India, the territories thatnow form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing tobe constituted into the independent Sovereign India, shall be a Union of them all.

(3) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and

thereafter according to the law of the constitution, shall possess and retainthe status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as areinherent or implied in the Union or resulting there from, and

(4) Wherein all powers and authority of the Sovereign Independent India, its constituent parts and organs of Government are derived from the people, and

(5) Wherein shall be guaranteed and secured to all 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 action, subject to law and public morality, and

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes, and

(7) Wherein shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations, and

(8) This ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and thewelfare of mankind.

These glorious words inspired the shaping of the Basic Law of our landthrough all subsequent stages and got into the contents of the Preamble that reads:

WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India in to a SOVERIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all 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 theNation.

IN OUR CONSTITUENT ASSEMBLY, this twenty –sixth day of November, 1949, doHEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUION.

The judiciously chosen words contained in the text of the Preamble and written in capital letters have a significance of their own. Their implications must be understood in a correct perspective. These are :

1. We, the People of India: It indicates that the architects of this great documentare the people of the country themselves it is not the gift of British parliamentas the Canadian Constitution of 1867 and the Australian Constitution of 1900, nor is it something imposed upon us by the alien conquerors the example of which may be seen in the Japanese Constitution of 1946. It embodies three cardinal points- that the ultimate sovereignty is with the people of the county;that the founding fathers are the real representatives of the people, and thatit is based on the acquiescence of the people of India.
2. **Sovereign:** We are a free people under this Constitution. India does not pay final allegiance to any external power like the British Crown and no other country can impose its will upon us. India's membership of any international body like the United Nations, Commonwealth of Nations, World Trade Organizations, etc. does not affect her sovereign character for the simple reason that it is all a voluntary affair.
3. **Socialist:** It means that the State has taken upon itself the responsibility for wiping off poverty, for initiating steps to increase employment, for modernizing national economy, for enforcing social purpose in all economic activities, for reducing disparities and setting right the historic inequalities between different sections and parts of the country and, in particular, for checking the growth of monopoly or concentration of national wealth into the hands of few persons. Ti resembles the Fabian Socialism of England and thus may be labeled as democratic socialism.
4. **Secularism:** It means that the State has no religion of its own. It ensures equal respect for all religions. Discrimination among the people on the basis ofreligion is prohibited. It is not to be identified with atheism or irreligiosity. As Dr. Radhakrishnan says: When India is said to be a secular

state, it does not mean that we reject the reality of an unseen spirit or the relevance of religion in life, or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives…. We hold that no one religion should be given preferential status…. The view of

religious impartiality or comprehension and furtherance has a prophetic role toplay within national and international life.

5. **Democratic:** The Constitution establishes representative government at the Centre, in the States, and also at the local levels. It guarantees universal adult franchise and free and fair periodic elections. Power is vested in the people and it is exercised by their representatives who are accountable to them for their acts of commission and omission. It has provisions for the independence of the press and the judiciary. It all enables India to become the largest democracy in the world.
6. **Republic :** A republican system is invariably democratic in view of the factthat power resides in the people and it is exercised by their chosen representatives. It also requires that the head of the State should be elected directly or indirectly for a specific period and that he must be accountable for his acts of commission and omission. Hence, the office of the head of the stateshould not be hereditary or non-elective. As President Narayana observed in his message to the nation given on the eve of the Republic day in 2000: "The word Republic is no ordinary word. It is commitment to the effect that in our State supreme power is exercised not by some remote monarch but by the people."
7. **Justice :** The essence of justice is the attainment of the common good as distinguished from the good of the individuals or even of the majority of them.It has three dimension. Social justice desires equality among the people and, as such, it seeks eradication of those barriers and discriminations which make some people high or low. The worth and dignity of each individual should be recognized irrespective of his religion, race, caste, descent and the like.Economic justice desires equitable distribution of national wealth so as to remove the evils of poverty, unemployment disease, starvation, squalor and the like. Political justice desires free and fair participation of the people intheir public affairs. It stands for a liberal – democratic order in which people enjoy their liberties within the framework of reasonable restrictions.
8. **Liberty :** Liberty lies in the existence of healthy conditions for the development of human personality. A man without liberty is no man at all, he is like a dead weight. Our Constitution ensures liberty of thought, expression, faith, belief and worship. Part III of the Constitution has a catalogue of

fundamental rights relating to equality and liberty and it is so important that Jawaharlal Nehru called it conscience of the Constitution.

9. **Equality:** Liberty and equality live together, they supplement each other. Hence, our Constitution

guarantees equality in respects of status and opportunity. It implies that all citizens, being equal in the eye of law are equally eligible to all public dignities, places and employment, according to their capacities and without discrimination of their religion, race, caste, descent, sex, place of birth etc.

10. **Fraternity:** Finally, the Preamble desires unity and integrity of the nation. It aims at the fulfillment of the idea of unity in diversity. Irrespective of their social and cultural differences, all people should regard themselves, in the words of Nehru, as Indians first and Indian last.

It may be seen that the ideals embodied in the Objectives Resolution "are faithfully reflected in the Preamble to the Constitution." Nehru termed his Objectives Resolution as "a declaration, a firm resolve, a pledge, an undertaking and for all ofus a dedication." K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, proudly described the Preamble as political horoscope and Acharya J.B. Kripalani, in a more Philosophical vein, lauded it as mystic principles ofa welfare state.

The making of our Constitution by the grand Con'sembly signifies the triumph of a revolution by the consent of the people of the country. The Assembly was a symbol of freedom (political) to achieve freedoms (social and economic). By all means, it was a people's body chosen by their representatives sitting in the Provincial Legislative Assemblies. Its sovereign character became a patent fact the day it framed its Rules of Procedure wherein it was laid down that "It shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of the members of the Assembly. And, yet a critic may say that theConstituent Assembly was not a really popular body and it was a body of prominent figures like Rajendra Prasad, Jawaharlal Nehru, Sardar Patel, Ambedkar, Munshi, Sir Alladi etc. who were men of law by their profession and so had the character of a lawyer- politician. Its provisions are unnecessarily lengthy and it provides for severalareas (as citizenship, public services, elections and official language etc.) which could and should have been covered by ordinary legislation or administrative action

or both. Moreover, on many important points it is either vague or so brief that it leaves much scope for litigation. Hence, Sir Ivor Jennings called it a "lawyer"paradise".

It is also said that the Indian Constitution lacks ideological clarity. It may be termed liberal as well as socialist. Prof. K.T. Shah's suggestion was not appreciated by the Constituent Assembly that India should be declared a socialist state. And though the word socialist has now been incorporated into the Preamble, its implications are so loose that it may mean anything to anybody ranging from a liberal to a socialist of any hue. So is the case with secularism. A critic may say that unforeseen complications have been introduced into the Constitution by the insertionof the words

socialist and secular into the Preamble. Whatever meaning might have been intended by the authors of the 42nd Amendment to be imputed to these two words, it is obvious that both these words are vague.

It may, however, be added that the founding fathers were great nationalists and they preferred to draw upon a rich fund of human experience, wisdom, heritage and traditions in the area of government process in order to fashion a system suited to the political, social and economic conditions of India.

2.4 FEDERAL SYSTEM

Special Characteristics: Though the Constitution of India has adopted federal system, it has its peculiar characteristics which may be thus enumerated.

1. The Indian federal system, as established by the provisions of the Constitution, is territorial in the sense that it sets up a dual polity with the Union government at the Centre and the State governments at the periphery, each downed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. Thus, the Indian Union, is visualized by the President of the Constituent Assembly, Dr. Rajendra Prasad is indissoluble meaning thereby that, barring the cases of emergencies, the Centre and the States remain endowed with the areas of authority allotted to them.
2. Indian federalism is horizontal with a strong unitary bias. It implies that though there is the division of powers between the national and constituent governments, the position of the former is unmistakably stronger, perhaps the

   strongest, if we compare our federal system with such other systems of the world.
3. Indian Federal system is flexible in the sense that it can be easily converted into a unitary model particularly in times of emergency. No constitutional amendment is required for this sake. A mere declaration signed by thePresident is enough to convert the basic structure of the Constitution to meet the imminent danger threatening the independence and territorial integrity of the country. Moreover, the process of constitutional amendment has been so designed that the ratificatory role of the States has been confined to the areasrelating to the federal framework alone. Thus, most of the provisions of the Constitution are amendable by the unilateral action of the Parliament.
4. Indian federal system is cooperative in the sense that it seeks the collaboration of both the Centre and the States in several matters of common interest. The National Development Council, Inter-State Council, Finance Commission, Zonal Councils etc. may be referred to in this connection. The working of these agencies shows that neither the Centre nor the States can impose their decisions on

the other.

5. Last, Indian federal system has become of a Unitarian type because of the centralized party system. The role of the Congress, the BJP and other parties at the Centre vis-à-vis the States has been governed not by the formal constitutional provisions but by the role of the party under the towering leadership of its high Command. It is the supreme leadership of the party thattakes a decision about the selection of a Chief Minister, making or unmakingof the new ministries in the States, nomination or recall of the Governors, imposition or revocation of President's rule in a State and the like. Instead of pertaining to the formal federal framework, as obtaining in different countries of the world, it desires a process of bargaining between the Union and the State Governments in which experiment, cooperation and persuasion in place of conflict, competition and coercion are requisitioned both to testify the generally accepted norms and the usual procedural patterns of interaction between national and regional governments. That it, our constitutional systemstands on the premises of cooperative federalism what Morris-Jones calls bargaining federalism assuming the interdependence of national and regional governments of a federal union instead of granting them absoluteindependence in the allotted spheres so as to satisfy the requirements of a

   classical federal mode. With the creation of a very strong Central Government,the Founding Fathers have sought to ensure that it would not necessarily result in weak provincial governments that are large administrative agencies for Central Policies.

2.5 SUMMARY

he Preamble of a constitution is an introductory statement that encapsulates the fundamental principles, values, and objectives that guide the governance of a nation. It sets the tone for the constitutional framework, reflecting the aspirations and ideals of the people. In the context of the Indian Constitution, the Preamble begins with the phrase "We, the people of India," emphasizing the democratic nature of the governance. It declares the solemn resolve to secure justice, liberty, equality, and fraternity for all citizens. While not enforceable in a court of law, the Preamble serves as a guiding document for interpreting the Constitution's provisions, expressing the collective vision and goals of the nation.

A federal system of government is a political structure in which powers and responsibilities are divided and shared between a central or national government and regional or state governments. This division of powers is typically outlined in the constitution, specifying the areas over which each level of government has authority. The federal system aims to strike a balance between a strong central authority and the autonomy of subnational entities, promoting decentralized governance. In India, the Constitution establishes a quasi-federal system, often referred to as "cooperative federalism." Powers are delineated

between the central government and the states through the Seventh Schedule. While states have autonomy in certain matters, the central government can assume more authority during specific situations, maintaining a cooperative balance in governance.

2.6 KEY TERMS

overeign: Signifies the independence of the Indian state and its ability to govern without external interference.

Socialist: Reflects the commitment to achieving social and economic equality and promoting a just and equitable society.

Secular: Affirms the principle of religious neutrality in governance, ensuring equal treatment of all religions and the separation of religion from the state.

Democratic: Highlights the commitment to a representative and participatory form of government, where power is derived from and exercised by the people.

Republic: Indicates that India is a sovereign state with an elected head of state, and it emphasizes the absence of a hereditary monarchy.

Justice, Liberty, Equality, and Fraternity: Core values and goals of the Indian Constitution, representing the commitment to ensuring fairness, individual freedom, equal treatment, and a sense of brotherhood among citizens.

2.7 QUESTIONS AND EXERCISES

1. What do you mean by Constitution?
2. Discuss the Philosophy of the Indian Constitution.
3. Outline the Objectives of the Indian Constitution.
4. Explain some basic features of the Indian Constitution.

2.8 FURTHER READING

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UNIT-3: FUNDAMENTAL RIGHTS

Structure

3.1 OBJECTIVES

After going through this unit, you will be able to know:

- Define fundamental rights provided by the Constitution of India
- The constitutionally mandated mechanisms for rights implementation work
- Trace the essential features of Fundamental rights

3.2 INTRODUCTION

The framer of the Indian Constitution's committed to include fundamental rights that ensured Liberty, Equality, and Justice. Two categories of rights one justifiable and the other not—were included in the Constitution; the first was covered in Chapter III on Fundamental Rights, and the second was covered in Chapter IV as Directive Principles of State Policy. These are comparable to economic, social, cultural, and civil and political rights. Various forms of fundamental rights can be learnt in this unit. Also one can learn about how to exercise these rights.

Fundamental rights are necessary for a person's intellectual, moral, and spiritual growth. These are referred to as "fundamental" rights because they are necessary for an individual's survival and overall development. These are incorporated in Part III of the Indian Constitution (Articles 12 to 35). The Rights to Constitutional remedies stand for the protection of civil rights through the use of writs like Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto are among these. They include individual rights prevalent in most liberal democracies, such as equality before the law, freedom of speech and expression, religious and cultural freedom, peaceful assembly, and the Right to practice one's religion freely.

The Directive Principles of State Policy, which are mentioned in Part IV of the Indian Constitution and encompass Articles 36 to 51, are also covered in this unit. These guidelines are meant for the States to

abide by when passing laws and administering their affairs. Because creating a welfare State is the fundamental goal of these principles. These values diverge from the fundamental rights as Fundamental rights are upheld by the courts, but directive principles are not. The government cannot be forced by the courts to abide by these principles. However, it is the responsibility of every accountable government to put these ideas into practice to advance social and economic fairness for all citizens.

3.3 SIGNIFICANCE AND CHARACTERISTICS

The fundamental rights were incorporated into the Constitution because they were regarded to be crucial for the dignity of every person and the personality development of each person. The framers of the Constitution believed that democracy would be useless without state recognition and protection of civil rights, including freedom of expression and religion. They contend that since democracy is a popular government, its citizens should have access to the tools necessary to shape public opinion. TheConstitution of India guarantees everyone's Right to free speech, expression, and other freedoms as fundamental rights to achieve this goal.

Everyone has the right to file a direct petition with the Supreme Court or the High Courts to enforce his fundamental rights, regardless of race, religion, caste, or sex. The party who feels wronged does not necessarily have to take action. Because poor people may lack the resources to do so, anyone may file a lawsuit in court on their behalf if it is in the public interest. "Public interest litigation" (PIL) refers to this. Based on newspaper reporting, High Court judges have occasionally taken independent actions suo moto.

These fundamental rights contribute to both the preservation of human rights and their prevention. They highlight the country's essential oneness by ensuring that all citizens have equal access to and use the same amenities. Some fundamental rights apply to people of any nationality, while others are solely available to Indian citizens. All people have the right to religious freedom as well as the right to life and personal liberty. The freedoms of speech and expression and the Right to live and settle wherever in the state are only guaranteed to citizens, including non-resident Indian nationals.

Although some rights are enforceable against individuals, fundamental rights primarily shield people from any arbitrary official actions. For instance, untouchability and beggary are both prohibited under the Constitution. These regulations restrain both the actions of the state and private individuals. Protecting the public good necessitates some reasonable limitations on fundamental rights, so they are neither unconstrained nor unlimited. They may also be restricted in specific ways. The Supreme Court has declared that the Constitution's as provisions on fundamental rights and all other clauses are subject to change. The fundamental framework of the Constitution, however, cannot be altered by the Parliament because that come under the basic structure . Now let there be birds eye view on various Fundamental

Right.

Right to Equality (Art.14-18)

A significant right guaranteed by Articles 14, 15, 16, 17, and 18 of the Constitution is the Right to equality. It ensures the following and serves as the cornerstone for all other rights and liberties.

Equality before the law: The Right to equal protection under the law is guaranteed by Article 14 of the Constitution. It implies that the State will treat individuals in similar situations equally. According to this article, individuals—Indian citizens or not—shall receive different treatment depending on the situation.

Social equality and equal access to public areas: No one shall be subjected to discrimination based on religion, race, caste, sex, or place of birth, according to Article 15 of the Constitution. Everybody must have equitable access to public spaces, including playgrounds, museums, wells, and ghats for bathing. The State may, however, provide any special provisions for women and children. Any scheduled caste, scheduled tribe, or socially or educationally underprivileged class may receive special consideration.

Equality in matters of public employment: According to Article 16 of the Constitution, the State is prohibited from discriminating against anyone in terms of employment. The government accepts applications from all citizens. However, there are a few restrictions. The Parliament may pass legislation mandating that only residents may apply for particular positions. This can be for jobs where understanding the area's locality and language is necessary. In order to uplift the poorer segments of society, the State may additionally reserve positions for members of scheduled castes, scheduled tribes, or backward classes who are not adequately represented in state-run services. Additionally, a rule might be introduced stipulating that anyone holding a position of authority within a religious institution must likewise practice that religion.

The Citizenship (Amendment) Bill, 2003, states that Indian citizens living abroad will not be granted this status.

Abolition of untouchability: The practice of untouchability is prohibited by Article 17 of the Constitution. Untouchability is a criminal crime, and those who engage in it risk legal repercussions. The Protection of Civil Rights Act of 1976 amended the Untouchability Offences Act of 1955 to include penalties for denying access to a tank, well, or place of worship.

Abolition of Titles: Article 18 of the Indian ZConstitution prevents the State from granting titles. Indian citizens are not permitted to receive titles from foreign states. In India, the British government established

an aristocratic class known as Rai Bahadurs and Khan Bahadurs; these titles were also eliminated. However, Indian citizens are eligible to receive academic and military honors. The Bharat Ratna and Padma Vibhushan awards cannot be utilized as titles by the winner and do not fall under the constitutional ban. On 15 December 1995, the Supreme Court recognized the legitimacy of these awards.

Right to Freedom (Art. 19-22)

The Right to freedom is guaranteed in articles 19, 20, 21A, and 22 of the Indian Constitution, which was created to uphold the importance of individual rights to theConstitution's framers. Right to freedom guarantees the following six freedoms. According to Article 19 to all the citizens.

Article 19 states: All citizens shall have right to:

i. Freedom of Speech and Expression
ii. Freedom of Assembly
iii. Freedom to form associations
iv. Freedom of Movement
v. Freedom to reside and settle and
vi. Freedom of Profession, occupation, trade or business

Freedom of speech and expression, on which the State may impose justifiable limitations in the interests of India's sovereignty and integrity, its security, friendly relations with other countries, public order, decency, or morality, or in cases involving judicial disobedience, defamation, or incitement to commit an offense.

To maintain public order, India's sovereignty, and integrity, the State may impose reasonable restrictions on the Right to assemble peacefully without using force.

The State may impose reasonable restrictions on this freedom for the sake of public order, morality, and the sovereignty and integrity of India. Freedom to form groups, unions, or cooperative societies.

In India, citizens have the Right to unrestricted movement, yet this freedom may still be subject to reasonable limitations when doing so is in the general good. For instance, limits on movement and travel can be put in place to contain an outbreak.

Freedom to live and work in any area of Indian territory, subject to reasonable restrictions imposed by the State for the benefit of the general public or to protect the scheduled tribes because certain safeguards, such as those proposed here, appear to be justified in preventing the exploitation and coercion of indigenous and tribal peoples.

Freedom to engage in any profession or carry out any occupation, trade, or business, except those on which the state may place reasonable limitations in the public's interest. Therefore, running a risky or morally questionable business is not permissible. Professional or technical qualifications may also be required for the practice of any profession or the operation of any trade.

Article 20 of the Indian Constitution provides proetection against arbitrary conviction in respect of offences committed by the people

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure establhised by law. It provides the right not to be subjected to imprisonment, arrest or physical coercion on any manner without legal justification.

According to article 21 all children between the ages of six and fourteen are entitled to free education under Article 21A, as specified by the State's legal authority.

Protection from arrest and detention in certain situations is provided by Article 22.

Additionally, the Constitution places limitations on certain rights. The government restricts certain freedoms in India's independence, sovereignty, and integrity.

The government may also set limitations in the interest of morality and public order. Nevertheless, the right to life and personal freedom cannot be suspended. During a state of emergency, the six freedoms are also immediately suspended or subject to restrictions.

Article 21 provides several rights like Right to live with Human Diginity, Right to livelihood, Right to privacy, Right to Pollution Free Environment, Right Against sexual Harasment, Right Against solitary confinement, Right to Legal Aid, Speedy Trail, Right Against Custodial violence etc.

Right against exploitation (Art. 23-24)

The prohibition of human trafficking and begar (forced labor) and the employment of minors younger than 14 in hazardous occupations like mines and factories are two provisions of the Right against exploitation included in Articles 23 and 24. Child labor is a serious infraction of the Constitution's principles and rules. Landlords' historical use of begar has been ruled illegal and is punished by law. The legislation also forbids the trafficking of people for prostitution or the slave trade. Employment without compensation for mandatory services performed for the benefit of the public is an exception. This clause covers conscription into the military without consent.

Right to freedom of religion (Art. 25-28)

All Indian people have access to religious freedom according to Articles 25, 26, 27, and 28 of the Indian Constitution. The protection of India's secularism is the goal of this Right. The Constitution states that no religion shall be given favour over another and that all religions are equal before the State. Any religion is free to be preached, practiced, and propagated by citizens according to Article 25.

Article 26 states that religious groups may create philanthropic organizations. However, non-religious activities in these institutions are carried out under the rulesestablished by the government. The establishment of a charitable institution may also be prohibited for the sake of morals, health, and public order. According to Article 27 no one may be coerced to pay taxes to support a specific religion. Article 28 state that a state run educational institution cannot provide pro-religious instruction. Additionally, nothing in this article shall interfere with the operation of any existing laws or prevent the State from enacting new legislation regulating or prohibiting any political, economic, or other secular activity that may be connected to a particular religion, as well as legislation that promotes social welfare and reform.

Cultural and Educational Rights (Art. 29-30)

Every single resident of India has the right to education and cultural expression, according to the Indian Constitution. The Constitution also includes additional safeguards for minorities' rights. Every community has the right to protect and advance its language and writing system. In order to enroll in public institutions supported by the state, no citizen may be subjected to discrimination.

According to article 29 all minorities, regardless of religion or language, are free to establish their own educational institutions to protect and advance their unique cultures. The state cannot treat any institution differently while providing funding for it because a minority institution runs it. The state can nevertheless intervene in poor administration despite the Right to administer. Article 30 states that all minorities are guaranted cultural freedom; whether based on religion or language shall have the right to establishe and educational institutions of their choice.

The Supreme Court ruled in a case-setting decision in 1980 that the state can implement regulatory measures to encourage the effectiveness and perfection of educational standards. Additionally, it has the authority to adopt regulations to protect

the services of the institution's professors or other staff members. The Supreme Court ruled in another historic decision on 31 October 2002 that aided minority institutions offering professional courses could only admit students through a common entrance exam administered by the State or a university. The merit of the applicants for admission should not be disregarded, not even by an unsupported minority institution.

Right to constitutional remedies (Art. 32)

Right to constitutional remedies is considered as the soul of the constitution. It is also called the safety value which protect all other rights.The Right to constitutional remedies (Articles 32 to 35) allows citizens to file a legal complaint if their fundamental rights are violated. For instance, in the event of imprisonment, any person may file a public interest lawsuit asking the court to determine whether the sentence is under the country's legal provisions. The person must be released if the court determines that it is not. There are several ways to ask the courts to uphold or protect a citizen's fundamental rights. The courts have the authority to issue numerous writs to defend citizens' rights. These are:

- Habeas corpus
- Mandamus
- Writ of Prohibition
- Quo warranto
- Certiorari

The Writ of Habeas Corpus:

The writ of Habeas Corpus means To have a body. It is a powerful safeguard against arbitrary acts not only on private individuals but also on the executive. Anyone can file this writ, including the arrested person, his relatives, friends, etc. This petition will force the arresting authorities to produce the person bodily in court.

The Writ of Mandamus:

The writ of mandamus means we command that this writ commands the person to whom it is addressed to perform a public or quasi-public legal duty that he has refused to perform, which any other legal remedy cannot enforce.

The Writ of Prohibition:

The writ of prohibition simply means to forbid or to stop. The Supreme Court or High Court issues directions to an inferior court or institution of governance, forbidding the latter to continue proceeding in a case above its jurisdiction or to encroach on jurisdiction with which it is not legally vested. **The Writ of Certiorari:**

Certiorari means to be more fully informed. It is issued to a lower court after a case has been decided by it denouncing or abolishing that order. The objective is to secure that order. The jurisdiction of an inferior court does not encroach on the jurisdiction it does not possess.

The Writ of Quo warranto :

The writ of Quo warranty means by what warrant or by what order or authority. It is a proceeding by which the court inquires into the legality of the claim, which a party asserts to a public office and to remove from his or her employment if the claim is not found.

This allows citizens to move to court if they believe that any of their Fundamental Rights have been violated by the state. Article 32 is also called the citizen's right to protect and defend the Constitution, as the citizens can use it to enforce it through the judiciary. Dr. B. R. Ambedkar declared the Right to constitutional remedies "the heart and soul" of the Indian Constitution. When a national or state emergency is declared, this Right is suspended by the central government.

3.4 FEATURES OF FUNDAMENTAL RIGHTS

The Republic of India's Constitution has a chapter on fundamental rights, just like most constitutions of civilized nations. It is stated in Articles 12 to 35 of Part III of the Constitution. For a nation like India, the inclusion of the Fundamental Rights in the Constitution has a special significance on its own. The Indian polity had degraded into autocratic governance by the bureaucracy during the protracted period of a foreign administration. Favoritism, nepotism, etc., were prevalent. Residents felt humiliated and demoralized. The founders of our Constitution believed it was appropriate to establish Fundamental Rights in the Constitution in order to restore dignity to the people and protect them from governmental excesses.

Our fundamental rights have few unique features, which are listed as follows:

The fundamental rights guaranteed by our Constitution are accorded to every citizen of the republic without ant discrimination on the ground of race, religion, caste, creed, gender, or sexual orientation.

Inalienable: Our rights are not inalienable. Every one of them is subject to some limitations. These limitations have been put in place as a defence against third parties interfering with the same rights of one or more citizens.

Justiciable: We have been granted the Right to knock on the court doors and obtain redress if there is ever an infringement of our rights by the State, a person, or a group of people. If any of the Fundamental Rights protected by our Constitution are curtailed, even a law passed by the nation's legislature could be overturned by a court.
Comprehensive: The method taken by the Fundamental Rights is thorough. Our social, economic, cultural, and religious interests are frequently fiercely protected by them.

Suspendable: In the event of a National Emergency, the fundamental rights of Indian citizens may be suspended for the sake of the security and stability of our nation.

1. Fundamental Rights are a part of the Constitution and cannot be removed by ordinary law because they are a component of the Constitution. If a law violates the rights protected by the Constitution, it will be deemed unconstitutional by any legislature in the nation.
2. Comprehensive and thorough: Part III of the Constitution has a reasonably elaborate list of rights. The scope and restriction of each Article have been described.
3. Inadequate social and economic rights: The Constitution solely protects civil liberties and rights. The Fundamental Rights do not include rights like the Right to work, the Right to health, or the Right to social security.
4. Rights have limitations: All fundamental human rights, except the prohibition against untouchability, are not unqualified. They are qualified with reasonable restrictions and serve society's general good. The Constitution describes each Right's reach while also outlining its restrictions. These have been established to safeguard India's security, morality, public order, and health. Additionally, certain exceptions to fundamental rights are made for members of security and law enforcement agencies while martial law is in effect.
5. Rights Can Be Enforced: Fundamental Rights are Justiciable. A person has the right to petition the Supreme Court or one of the High Courts to protect and enforce his or her Fundamental Rights if any of these rights are violated by the government or anybody else. As a result, these rights are not only granted but also guaranteed by the Constitution. The Right to constitutional remedies, public interest litigation, and human rights commissions are only a few of the many tools available to preserve these rights.
6. Fundamental Rights are amendable: They are not inalienable and unchangeable. Any provision of the Constitution, including the Fundamental Rights, may be amended by Parliamentaccording article 368. Despite their inherent inviolability, the Fundamental Rights might be changed by the

Parliament but Parliament can not amend the basic structure.

7. Provision for Rights Suspension: During an emergency, the Constitution allows for the suspension of all or some of the Fundamental Rights. However,

the suspension immediately expires when the emergency is lifted, or the president withdraws it.

8. The fundamental rights of citizens have constitutional precedence above ordinary laws and directive principles of the state, even if the president withdraws them.
9. Unique Rights for Minorities: According to the Fundamental Rights, minorities of all kinds are guaranteed special rights. This stands apart from the Constitution's promise of secularism. Their rights to culture and education have been recognized. Untouchability is prohibited and is now a felony. Additionally, it has provided additional safeguards for women and children.
10. No natural rights: The doctrine of "natural rights" is not the foundation of the chapter on fundamental rights. Natural rights are claimed to be the property of man and unalienable from him by "nature." It is asserted that man already had certain rights before the (idea of) state emerged. Natural rights, therefore, do not derive their existence from being listed in the Constitution. Natural or unlisted rights are not recognized in the Indian Constitution. Only the rights outlined in Part III of the Constitution are guaranteed to Indian citizens.
11. The Constitution of India does not guarantee property rights, a characteristic of liberal democracies. Actually, as of 1949, the original Constitution gave citizens a fundamental property right. The property right was removed from the list of fundamental rights due to the obstacles it posed to executing some socio-economic changes. A legal right was established for it under Article 300A. As a result, the property right is now a legal right and not a fundamental human right.

3.5 SUMMARY

From the above unit, we may summarise that fundamental rights contribute to protecting human rights and their prevention. They highlight the country's essential oneness by ensuring that all citizens have equal access to and use the same amenities. Some fundamental rights apply to people of any nationality, while others are solely available to Indian citizens. All people have the right to religious freedom as well as the right to life and personal liberty. The freedoms of speech and expression and the Right to live and settle wherever in the territory of the state are only guaranteed to citizens, including non-resident Indian nationals.

Fundamental rights fulfill the basic and essential conditions of human life. Part III of the Indian Constitution provides six Fundamental Rights to the Indian citizens. These are- the Right to Equality

(Article 14 – Article 18), the Right to Freedom (Articles 19

– Article 22), the Right against Exploitation (Articles 23 – Article 24), the Right to Freedom of Religion (Articles 25 – Article 28), Cultural and Educational Rights (Articles 29 – Article 30) and the Right to Constitutional Remedies (Article 32). Fundamental Rights are not absolute. Therefore within some reasonable restrictions, citizens can enjoy them.

3.6 SELF ASSESSMENT QUESTIONS

1. What do fundamental rights entail?
2. Describe the six fundamental rights embodied in the Indian constitution..
3. List the fundamental rights' key characteristics.

3.7 KEY TERMS

We, the people of India: Emphasizes the democratic foundation of the Indian Constitution, indicating that the authority of the government is derived from the citizens.

Sovereign: Signifies the independence of the Indian state and its ability to govern without external interference.

Socialist: Reflects the commitment to achieving social and economic equality and promoting a just and equitable society.

Secular: Affirms the principle of religious neutrality in governance, ensuring equal treatment of all religions and the separation of religion from the state.

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UNIT-4: DIRECTIVE PRINCIPLES OF STATE POLICY, FUNDAMENTAL DUTIES

Structure

4.1 OBJECTIVES

After going through this unit, you will be able to know:

- Define DPSP mentioned in the Constitution of India
- The Meaning of Directive Principle of State Policy
- The Types of Directive Principle of State Policy
- Trace the essential features of DPSP
- Understand the Historical Background of Fundamental Duties in India
- Types of Fundamental Duties mentioned in the Indian Constitution
- Understand the Significance and Limitations of Fundamental Dutie

4.2 INTRODUCTION

The Directive Principles of State Policy, which are mentioned in Part IV of the Indian Constitution and encompass Articles 36 to 51, are also covered in this unit. These guidelines are meant for the States to abide by when passing laws and administering their affairs. Because creating a welfare State is the fundamental goal of these principles. These values diverge from the fundamental rights as Fundamental rights are upheld by the courts, but directive principles are not. The government cannot be forced by the courts to abide by these principles. However, it is the responsibility of every accountable government to put these ideas into practice to advance social and economic fairness for all citizens.

4.3 MEANING OF DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, or DPSPs, are one of the unique aspects of the Indian Constitution. The Irish Constitution was referred in the concepts introduced in the Indian Constitution in Part IV from Article 36 to Article 51. These guidelines were considered essential in the country's governnance, which embodied the aspirations and ambitions of Indians. The member of the Constituent Assembly followed the Irish Constitution. The members of the Constituent Assembly noted that most of the post-World War I constitutions, especially those of Germany and East European nations, and acknowledged that one of the primary responsibilities of the State must be to foster and secure the social well-being of the people and the economic prosperity of the country. Such a mindset inspired the writers of our Constitution to include these ideals.

The Directive Principles are some affirmative directives to the State authorities to ensure that all citizens have access to social, economic, and political justice; liberty of thought, expression, belief, and worship; equality of status and opportunity; and to promote among them all fraternity while upholding the dignity of the individual and the unity and integrity of the nation. To protect the lofty objectives outlined in the Preamble to the Constitution, these values serve as the cornerstone of the concept of Democratic Socialism. The Directive Values aim at creating a welfare state where economic and social democracy can flourish, and it is the responsibility of the State to uphold these principles in matters of administration as well as in the drafting of laws.

The Directive Principles of State Policy can be divided into several categories, ranging from declarations of the nation's international policy to socio-economic rights. Notably, the nature of these principles is not justiciable. If the State does not adhere to these principles in areas of administration and the creation of laws, these cannot be enforced by the legal system. However, it is the State's responsibility to uphold them to support equality and fraternity and ensure that the citizen of the country's are treated fairly.

The Directive Principles are still recognized as the fundamental cornerstone of democracy and the welfare state. They are included in the Constitution to fulfill the social and economic ambitions of the citizens of our nation. Economic security is necessary for political democracy to succeed. Therefore, the Directive Principles were added to the Fundamental Rights by the authors of our Constitution. The Directive Principles offer certain economic tenets to guarantee economic stability and justice.

4.4 CLASSIFICATION OF THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are a set of guidelines and objectives outlined in the Constitution of India. They are aimed at ensuring that the government promotes social and economic welfare and justice. Here’s a brief overview:

1. **Social and Economic Justice**: These principles emphasize the need for the government to ensure a just and equitable distribution of resources, and to work towards reducing economic inequalities.
2. **Promotion of Welfare**: They guide the state in framing policies to improve the quality of life for all citizens, including through measures for health, education, and public assistance.
3. **Economic Development**: Directives encourage the state to adopt policies for the development of industries, agriculture, and infrastructure to promote economic growth.
4. **Environmental Protection**: They stress the importance of preserving and improving the environment and safeguarding forests and wildlife.
5. **Empowerment of Marginalized Groups**: The principles advocate for the protection and empowerment of vulnerable and marginalized communities, including women and minorities.
6. **Decentralization**: They promote the concept of decentralization by encouraging the establishment of local self-governments.

While these principles are not justiciable (i.e., they cannot be enforced in a court of law), they are intended to guide the government in making laws and policies.

Part IV of the Indian Constitution contains the Directive Principles of State Policy. They are enshrined in Articles 36 to 51 and serve as guiding principles for the government in the framing of policies and laws. Here's a breakdown:

1. **Article 36**: Defines the term "State" as including the government and authorities of the Union and the States.
2. **Article 37**: States that the Directive Principles are not justiciable but are fundamental in the governance of the country and should be implemented by the State in making laws.
3. **Article 38**: Directs the State to promote the welfare of the people by securing a social order that is just and ensures the dignity of the individual.
4. **Article 39**: Mandates that the State should direct its policies towards:
    - Providing adequate livelihood to everyone.
    - Ensuring that ownership and control of material resources are distributed to serve the common good.
    - Preventing the concentration of wealth and means of production in the hands of a few.
5. **Article 39A**: Promotes equal justice and free legal aid, aiming to ensure that the poor and disadvantaged have access to legal remedies.

6. **Article 40**: Advocates for the organization of village panchayats and their empowerment to achieve self-governance.
7. **Article 41**: Directs the State to provide work, education, and public assistance to the unemployed, underemployed, and disabled.
8. **Article 42**: Emphasizes the need for just and humane conditions of work and maternity relief.
9. **Article 43**: Encourages the State to ensure that workers receive a living wage and adequate facilities for health and education.
10. **Article 43A**: Provides for the participation of workers in the management of industries, aiming for better working conditions and industrial harmony.
11. **Article 44**: Calls for the promotion of a uniform civil code across the country to ensure that all citizens are governed by the same set of laws in personal matters.
12. **Article 45**: Mandates the State to provide free and compulsory education to all children until they complete the age of 14 years.
13. **Article 46**: Promotes the welfare and protection of the interests of Scheduled Castes, Scheduled Tribes, and other weaker sections of society.
14. **Article 47**: Aims to raise the standard of living and improve public health.
15. **Article 48**: Directs the State to promote the protection and improvement of the environment, including forests and wildlife.
16. **Article 48A**: Enforces the duty of the State to protect and improve the environment and safeguard forests and wildlife.
17. **Article 49**: Provides for the protection of monuments and places of national importance.
18. **Article 50**: Encourages the separation of the judiciary from the executive in the public services.
19. **Article 51**: Directs the State to promote international peace and security and maintain just and honorable relations between nations.

These principles are designed to guide the state in the formulation and implementation of policies to create a more just and equitable society.

4.5 FUNDAMENTAL DUTIES

The Fundamental Duties constitute an important part of the Indian Constitution. They are included in Part IV of the Constitution in Article 51A. These fundamental duties are certain obligations given by the Constitution tothe Indian citizens to be followedso that the country can stand strong and unified and achieve progress and prosperity in all fields. The Indian citizens have eleven Fundamental Duties to be followed. These Duties are not compulsory, yet they are expected to be followed honestly. In this unit, we

will discuss the Fundamental Duties of Indian citizens. The background that led to the inclusion of these duties in the Indian Constitution will also be examined. The significance and limitations of these fundamental duties will also be discussed in this unit.

4.6 HISTORICAL BACKGROUND OF FUNDAMENTAL DUTIES IN INDIA

Originally, the Indian Constitution did not contain any list of Fundamental Duties. The framers of the Constitution did not feel it necessary that a list of fundamental duties should be included in the Constitution. They believed that the people of the country would automatically realize their responsibilities and carry them out accordingly. But in the absence of certain well-defined codes of obligations and responsibilities, people mostly remained indifferent and negligent. Therefore, an urgent need was felt for the inclusion of a clearly defined set of duties for the Indian citizens, and in the year 1976, Article 51A was inserted in Part IV of the Constitution by the Forty-Second Amendment.

The Fundamental Duties have been included in the Indian Constitution based on the recommendation of the Swaran Singh Committee which was constituted in 1976 during a national emergency to study the question of amending the Constitution based on past experiences. The Committee recommended an eight-point code of fundamental duties for the Indian citizens and the Government, based on that recommendation, formulated ten important duties and inserted them in the Constitution by the Forty-Second amendment (of the Constitution). These duties are found in Article 51A (a) to (j) of the Constitution. Now, the Eighty-Sixth amendment of the Constitution in2002 has added one more duty in clause (k).So, Indian citizens have eleven duties to perform at present.

The Fundamental Duties have been included in the Indian Constitution by taking inspiration from the constitutions of other countries as well as other international documents. Among them, the Constitution of the former U.S.S.R. was important as this was the first constitution in the world to mention a set of fundamental duties. Again, our Fundamental Duties are following Article 29(1) of the Universal Declaration of Human Rights of the UN which says that everyone has duties to the community in which alone the free and full development of his personality is possible. The Fundamental Duties have been included in the Indian Constitution with the hope that citizens will behave more responsibly and work for peace, prosperity, and brotherhood in the country.

4.7 TYPES OF FUNDAMENTAL DUTIES MENTIONED IN THE INDIAN CONSTITUTION

Article 51A of the Indian Constitution provides 11 Fundamental Duties for the citizens of Indiawhich can be discussed in the following way:

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 heritage of our composite culture;
7) To protect and improve the natural environment including forests, lakes, rivers, and wildlife, 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 endeavor and achievement;
11) Every parent or guardian to provide opportunities for education to child or ward between the age of 6 and 14 years.

While discussing the Fundamental Duties, we must note that the first duty which is mentioned in the list of duties is to abide by the Constitution and respect its ideals and institutions. This is very important for the unity and integrity of the country. The citizens must remain united under one Constitution and one Flag. Secondly, it is said that the citizens should cherish the noble ideals which inspired our freedom fighters to achieve independence. This is because we must remember our freedom fighters respectfully and take inspiration from their principles to carry on success in the coming days. Protecting the sovereignty, unity, and integrity of the country is also important because our identity is attached to them. Defending the country is another important duty of an Indian citizen and every citizen is expected to perform this duty whenever the countryfaces any kind of danger from inside or outside. Another duty of the Indian citizens is to value and preserve our rich culture. We must do honor to our culture and should always work for its preservation and promotion.It is another duty of ours that preserve our natural environment and should not involve in its destruction. One Fundamental Duty also requires us to develop a scientific temper and the spirit of reform in us. This means we must renounce superstitions and obscurantism and always try to be rational and scientific in our behavior and actions. We are also asked to protect public property and not to resort to violence. Because violence will not help any positive development in society, on the other hand, it will bring hatred and ill-feeling among us. Another duty asks us always to work for achieving excellence in every act of ours so that from our contributions society can reach higher stages of development. Last but not least is the duty assigned to the parents or the guardians. They have been asked to ensure adequate opportunities for education for their children. This is important

because when children are educated today, they will be worthy citizens tomorrow.

From the point of view of thenature of the Fundamental Duties, we candiscuss them in three categories:

Duties of a moral nature include cherishing noble ideals of our freedom struggle, preserving the rich heritage of our composite culture, developing scientific temper, humanism, and the spirit of inquiry and reform, striving for excellence in all individual and collective activities and providing opportunities for education to a child between the age of 6 and 14 years.

Political duties are– respecting the Constitution, the National Flag, and the National Anthem; upholding and protecting sovereignty, unity, and integrity of the country; defending the country and rendering national service and promoting harmony and spirit of brotherhood amongst all.

Duties of special nature include protecting the natural environment and safeguarding public property and abjuring violence.

4.8 SIGNIFICANCE OF FUNDAMENTAL DUTIES

The Fundamental Duties of the Indian citizens are non-justifiable. Unlike Fundamental Rights, we cannot approach the courts of law for the preservation and enforcement of the Fundamental Duties. No one can make the citizens oblige the duties legally even if they are violated. Obligation or obedience to these duties depends purely on the moral consciousness of the citizens.

However, our Fundamental Duties have their importance. They have constitutional significance. When we do not obey or follow these duties, then it means we are not following constitutional principles. They should be followed in the greater interest of society. Our Fundamental Duties are certain principles that are very much rooted in our culture and traditions. They are sacred and have moral values. So, if we follow them, then it will help our country to grow better and prosper among the nations of the world.

Again, the inclusion of the Fundamental Duties in our Constitution aims at making the citizens conscious regarding their responsibility towards society and fellow citizens. It is very important to note that the rights of the citizens would be meaningless if duties are not properly performed. We will be able to enjoy our rights in the true sense only when we respect the rights of our fellow citizens. If we do not respect others' rights, then others will also not respect our rights. Then nobody will be

able to enjoy his/her right. Therefore, we must give due importance to our duties like that our rights.

Though our Fundamental Duties are not justifiable, they are termed as fundamental in the Constitution.This implies that our duties have great significance. They should be performed by us as responsible citizens. We should perform them to show our honesty and sincerity to this land and its people. Obedience to these duties is very much linked to the health and wealth of this country. The judiciary can also take note of these duties while deciding various cases. There are legal provisions through which some

of the Fundamental Duties can be enforced. For example, to ensure that no disrespect is shown to the National Flag, the Constitution of India, and the National Anthem, the Prevention of Insults to National Honour Act, of 1971 was enacted.

So, we can say that our Fundamental Duties have great significance. Though they are not binding on us, we should obey them in the greater interest of our society.

4.9 SUMMARY

From the above unit, we may summarise thatthe purpose of Directive Principles of State Policy is to establish the social and economic frameworks necessary for fulfilling live of the citizens. They also seek to build social and economic democracy by creating a welfare state. The State is required to apply the Directive Principles in creating laws, even though they are fundamental social rights that are not subject to judicial review. Additionally, these ideas should serve as a guide for all federal and state executive agencies. Even the legal system must consider them while making decisions.

The Fundamental Duties constitute an important part of the Indian Constitution. They are included in Part IV of the Constitution in Article 51A. They are certain obligations given by the Constitution to the citizens to be followed for the unity and prosperity of the country. Originally, the Indian Constitution did not include any list of Fundamental Duties. It was only in the year 1976, that Article 51A was inserted in Part IV of the Constitution by the Forty-Second Amendment which included a list of ten Fundamental Duties for Indian citizens. The Eighty-Sixth amendment of the Constitution in 2002 has added one more duty to the list of Fundamental Duties. There are certain limitations of the Fundamental Duties. The Fundamental Duties of the Indian citizens are non-justifiable. Fundamental Duties are not binding upon us. In the Indian Constitution, the Fundamental Duties are not treated equally with that the Fundamental Rights. Many important duties have not been included in the list of Fundamental Duties of the Indian Constitution. For example, the duty to pay taxes on time, to vote consciously, to participate actively in the democratic process, etc. is not included in the list of Fundamental Duties.

Fundamental Duties have their importance. When we do not obey orfollow these duties,then it means we are not following constitutional principles. They should be followed for the greater interest of society. Obedience to these duties is very much linked to the health and wealth of this country.

4.10 SELF ASSESSMENT QUESTIONS

1. Describe the many forms of state policy directives.
2. List the Directive Principles of State Policy's primary characteristics

3. Write a short note on the significance of the Fundamental Duties of the Indian citizens.
4. Explain the three categories of Fundamental Duties from the point of view of the nature of the Fundamental Duties.
5. Discuss the background of Fundamental Duties incorporated in the Indian Constitution.
6. Examine the limitations of the Fundamental Duties of the Indian citizens

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UNIT-5: THE LEGISLATURE

Structure

5.1 OBJECTIVES

After going through this unit, you will be able to know:

- The Bicameral Model of our Constitution
- The process and procedures of both houses of the Parliament
- The powers and functions of the Lok Sabha and the Rajya Sabha
- The position of either house in the parliament

5.2 INTRODUCTION

Parliament contained in Part V titled "The Union" provides for the constitution of the Union legislature called Parliament (Samsad) consisting of the President, the Rajya Sabha (Council of States) and the Lok Sabha (House of People) respectively as the upper and lower chambers. The President is an integral part of the Parliament, though he is not a member of any House, for the reason that he summons and prorogues the sessions, may dissolve Lok Sabha, delivers inaugural address and may send messages and finally, places his

signatures to authenticate the bills passed by the Parliament. However, the peculiar thing about our Parliament is that while its general pattern is like that ofthe English Parliament, it is a non-sovereign law-making body like the American Congress.

5.3 CENTRAL LEGISLATURE/UNION PARLIAMENT

The Parliamentary model of the constitution made the parliament a supreme body of the constitution. It occupies a central and pre-eminent position in our country. Part V, Chapter II of the constitution between Articles 79 and 123 deals with the provisions relating to the Union Parliament. The provision of Article 79, states that "there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People". Here the Council of States is Rajya Sabha, and the House of the people is Lok Sabha.

The Lok Sabha was given a distinctive role in the government of the nation since it was an elected chamber when the Constitution's founders decided to create a bicameral legislature. On the other side, the Rajya Sabha plays a smaller function. Due to constitutional advantages in its favour, the Lok Sabha has been able to solidify its position in cases of confrontation between the two chambers.

5.4 RAJYA SABHA :

The Parliament is a bicameral body. Its upper chamber is the Rajya Sabha. It consists of 250 members at the most. Out of this 12 members are nominated by the President from amongst persons distinguished in the filed of literature, art, science and social service. The remaining members are therepresentatives of the States and Union Territories. The number of representatives, as specified in IV schedule of the constitution, varies from state to state as the number of seats allocated to them is based on the factor of population. It is due to this that while a small state like Nagaland has only one seat, a very big State like the UP has 31 seats. The members are elevated bythe members of the State Legislative Assemblies in accordance with proportionalrepresentation with single transferable vote system. The Parliament may make some other arrangement for the representation of Union Territories. It is due to this that the party- wise composition of the Rajya Sabha reflects the party- wise composition of Vidhan Sabhas in the country.

A member of the Rajya Sabha must possess three qualifications. First, he must be a citizen of India. Second, he must have completed the age of 30 years.Last, he must possess all other qualifications laid down in an act of Parliament. The conditions that a person contesting election must ordinarily be a resident of that State has been done away with. Open ballot system has also been provided now. The disqualifications for the membership of this House are:

holding an office of profit under the Government of India of any State except that of a minister or any other exempted by a law of Parliament, being of unsound mindor an undischarged insolvent as declared by a competent court, being an alien or a non-citizen, and being disqualified under any law of the Parliament.

The Rajya Sabha is a continuing chamber. Its one-third members retire after every second year and elections are held for the vacant seats. Thus, a member of the Rajya Sabha has six years to serve, but he may be re-elected any number of times. (It applies to the nominated members as well). A member of the Rajya Sabha may tender his resignation or cease to be its member in case he incurs some disqualification as provided in Art. 101 of the Constitution. thatis, a member of this House shall forfeit his membership in case he becomes a member of the Lok Sabha or of any State legislature, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegianceor adherence to a foreign State, or remains absent from all meetings of the House and its committees for a period of 60 days without any reason conveyedto the House, or he is expelled from the membership of the House, or is held a political defector by the Chairman of the House.

Though a House of Elders, the Rajya Sabha is regarded as a weakchamber in comparison to the Lok Sabha for these reasons:

1. A Money bill cannot be introduced in the Rajya Sabha and when such abill is referred to it after it is passed by the Lok Sabha, it has to pass it within a period of 14 days. The Rajya Sabha may return a money bill with some recommendations, but the Lok Sabha may accept them or not while reconsidering the same bill.
2. A non-money bill may be introduced in any House of Parliament and here the Rajya Sabha is again a weak, though not very weak (as in thecase of passing a money bill) chamber. In case there is disagreement between the two chambers, the President may convene a joint session of Parliament. Such a session (as occurred in 1961 in the case of Dowry Prohibition Bill, in 1978 in the case of Banking Service Commission (Repeal), Bill, and in 2003 in the case of POTA Bill) shallbe held under the chairmanship of the presiding officer of Lok Sabha (Speaker) and the matter shall be decided by the majority of votes.The Speaker alone has the right to decide whether a bill is money billor not. It is provided that the Rajya Sabha must pass a bill already passed by the Lok Sabha or return it to Lok Sabha for consideration within six months.
3. The Rajya Sabha cannot pass a motion of no-confidence against the government. Its members cannot put adjournment motion which, indeed, amounts to a censure motion. At

the most, they may criticize and thereby embarrass the government.

But in some other directions, the Rajya Sabha has powers equal to those of the Lok Sabha and, in that respect, it cannot be termed as a weak chamber. These are:

1. A Bill of constitutional amendment requiring special majority (absolute majority of the whole House coupled with two-thirds majority of themembers, present and voting) for its adoption must be passed by boththe Houses. If there is disagreement between the two chambers in passing such a bill, joint session of the Parliament cannot be held. Thus the Rajya Sabha could show its teeth by rejecting the 24th Constitution Amendment Bill(seeking abolition of the privy purses and privileges of the former rulers of princely States) in 1970 and the 64th Constitution Amendment Bill (seeking reorganization of Panchayati Raj) and the 65th Constitution Amendment Bill (seeking restructuring of urban municipal boards)in 1989.
2. The Rajha Sabha has equal powers with Lok Sabha in matters like electingthe President and Vice-President, impeaching the President, judges of the Supreme Court and High Courts and other high officers, approving proclamation of emergency and extending its duration, considering the reports of various commissions and autonomous bodies, setting up martiallaw courts during national emergency for dealing with the offences committed by the civilians and indemnifying officers for their acts done in good faith, taking away on item from the purview of the Union Public Service Commission, and exercising control over delegated legislation.

But there are some areas in which the Rajya Sabha has special powers andthereby appears more important than the Lok Sabha.

1. Vide Art. 249, it may pass a resolution by its two-thirds majority so as to shift an item of the State List to the Union list or to the Concurrent List on the plea of its expediency in the national interest. Such a resolution shall remain in force for one year, but it may renew it again and again.
2. Vide Art. 312, it may pass a resolution by its two-thirds majority so as to propose to creation of an all-India public service to be regularized by alaw of Parliament in time to come.
3. It may initiate a move for the removal of the Vice- President. Such a resolution is to be passed by the Rajya Sabha by its absolute majority andthen agreed to by the Lok Sabha.
4. In case the Lok Sabha stands dissolved, the Rajya Sabha may permit extension of the time of emergency declared by the President.

It shows that the Rajya Sabha is neither a weak chamber like the British House of Lords, nor is it powerful chamber like the American Senate. It is expected to be a house of the seasoned and elderly leaders. It is true that the Rajya Sabha has failed in living like a house of angels, it

has certainly not been agathering of reactionary and raw elements. Though its members are inducted by indirect election in which State Assemblies have their part, it does not seem to have made the floor of the Council a battleground between Centre and States, a defence of States rights, an expression of the regional demands, that is justlikely to be heard in the other House.

5.5 LOK SABHA :

The Lok Sabha is the popular chamber having at the most 550 elected members (530 from the States and 20 from the Union Territories). The Presidentmay nominate at the most two members of the Anglo-Indian community in case he finds it not adequately represented therein. The members of this chamber areelected directly by the voters. The whole country is divided into territorialconstituencies in a manner that the ratio between the number of the representatives in a manner that the ratio between the number of the representatives and the size of the population is, as far as practicable, the same throughout the State.

A member of the Lok Sabha must be a citizen of India and that he mustbe above 25 years age. He should not be holding an office of profit, nor should he meet any disqualifications as already pointed out in the case of a member of the Rajya Sabha. The normal term of the House is of five years to be computed from the date of its first sitting. The President may dissolve this House at any time. In case Art. 352 (national emergency) is in force, the Parliament may make a law to extend the life of the Lok Sabha (as happened in 1976). Such alaw shall remain in force for one year, but it maybe readopted.

The constitution provides that the sessions of the Parliament should be held in a way that intervening period is of not more than six months. It means that the Parliament must meet at least twice a year. Both the Houses hold their session normally thrice a year known as the budget session, monsoon session, and winter session. In each House the quorum is one –tenth of its total membership. Any member may raise the issue of quorum. If there is no quorum,the Chairman/ Speaker may ring the quorum bell to ensure minimum attendance of the members of adjourn the sitting for some time.

The functions and powers of the Lok Sabha must be understood in thelight of what we have already said about the functions and powers of the Rajya Sabha. The Lok Sabha is known as the powerful chamber of the Indian Parliament for these reasons :

4. It has control over the government. The Council of Ministers is collectively responsible to the Lok Sabha. As such, the ministry may bethrown out in case this House passes a motion of censure or no- confidence, or makes a cut in the budget, or disapproves of the policy of the government. The members may put the ministers to grueling tests by asking questions, tabling motions (calling attention and adjournment), demanding half-hour discussion etc.
5. The Lok Sabha has control over the purse of the nation. A money bill (and so a budget) can be introduced in the Lok Sabha with therecommendation of the President and, when passed by it, it has to be passed by the Rajya Sabha within 14 days.

However, a comparative study of the functions and powers of the two Houses leads to this unmistable impression that the Lok Sabha is a powerful chamber as compared to the Rajya Sabha. There should be no doubt aboutRajya Sabha being the upper chamber and Lok Sabha being the lower chamberof the Parliament. However, the two chambers should not be designated as such with a mind to exalt one and denigrate the other that goes to intensify the bitter tradition of rivalry. What should prevail is the convention of harmony andcooperation between the two. Prime Minister Nehru well counseled on 6 May 1953 that we must not blindly follow the English practice in every way. As he said: Our guide must, therefore be our own Constitution which has clearly specified the functions of the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). To call either of these Houses an upper house or a loweris not correct. Each house has full authority to regulate its own procedure within the limits of the Constitution… That the Constitution treats the two Houses equally except in certain financial matters which are to be within the sole purview of the House of People.

No doubt, the Parliament is the pivot around which the whole structure of democratic government revolves. It may be lauded as nation in miniature. As a learned writer comments. Parliament of India, representing as it does all constitutionally organized shades of public opinion at the national level, occupiesa pre-eminent and central position in Indian Polity. Members of Parliament, as elected representatives of the people, ventilate the people's grievances and opinions on various issues, scrutinize the functioning of the government on the floor of the Houses of Parliament and enact laws. Parliament functions as the grand inquest and watchdog of the nation.

5.6 SPEAKER :

The office of the presiding officer of the Lok Sabha (called the Speaker) is of great

honour, dignity of authority. In the order of precedence, he is ranked seventh and is bracketed with the Chief Justice of India. His office is modeled on the office of the English Speaker with regard to which Prime Minister Nehru,while unveiling the portrait of Vitthalbhai J. Patel on March, 18, 1948, said these impressive words: I hope that those traditions will continue, because the position of the Speaker is not an individual's position or an honour done to an individual. The Speaker represents the House. He represents the dignity of the House and, because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's liberty and freedom. Therefore, it isright that it should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality.

The Speaker is elected by the House from amongst its members. He holdshis office until he ceases to be a member or he himself resigns his office, or he isremoved from his office by a resolution of the house passed by a majority of all the then members of the House. He continues is office notwithstanding the fact that the House has been dissolved as he vacates it immediately before the first meeting of the new House after general election. It is required that at least 14 day's notice should be given to the Speaker in case a motion of o-confidence is brought to remove him from office. It is also provided that the Speaker shall not preside over the House in case such a motion is under consideration, althoughhe will have the right to present himself in the House for saying anything in his defence. Thus, the normal term of a Speaker is that of five years. There is, however no restriction on his seeking another term or terms. The letter of his resignation must be addressed to the Deputy Speaker.

The Speaker occupies an office that carries both great dignity and high authority. The powers of the Speakers may be roughly classified into four parts for the sake of a convenient study with sub-heads like regulatory, supervisory and censuring, administrative, and special or miscellaneous.

1. The regulatory powers of the Speaker includes his authority as well as responsibility for conducting the business of the House in an orderlymanner. Thus, he maintains order and decorum in the House. He allots time for the debates and discussion and allows the members to express their views within the time allotted by him. He interprets the rules of the Constitution and of the Procedure for the guidance of the members. He puts matters for division and announces the result. In case of tie, he exercises his casting vote. It is within his powers to admit motions,resolutions and points of order and then make arrangements for discussion on them.

2. Allied with the regulatory powers of the Speaker are his supervisory and censuring powers. The Speaker is the head of the Parliamentary Committees. Some important committees like Rules Committee and Business Advisory Committee work under his chairmanship. He appoints the chairmen of various committees of the House and may issue

   instructions and decisions for their guidance. He may ask the Government to supply such information to the House or to its committees that is so essential in the public interest. He sees to it that no member speaks unparliamentary language, or he becomes unnecessarily argumentative. He may force a member to withdraw his indecent expressions or make amends, or he may order expunction of some words and phrases from therecords of the debates. He may issue warrants of arrest for brining an alleged offence of the privileges of the House and it is his function to implement the decision of the House with regard to the punishment given to a person for the breach of the privileges or contempt of the House.

3. The Speaker has some administrative powers as well. He keeps control over the Secretariat of the Lok Sabha. He makes provisions for theaccommodation and other amenities of life granted to the members of theHouse. He regulates the lobbies and galleries meant for the press and the public. It is his duty to make arrangements for the sittings of the House and its committees. He is the custodian of the honour of the House.

4. Finally, we come to the miscellaneous or special powers of the Speaker. He gives his certificate to a bill that is passed by the House. He alone can decide whether a bill is a money bill or not. He presides over the joint sessions of the Parliament. He can correct patent error in a bill after it hasbeen passed by the House, or make such other changes in the billconsequential on the amendment accepted by the House.

Such a long catalogue of the powers of the Speaker should be treated as widely illustrative but by no means exhaustive. A study of the powers of the Speaker, in practice, shows that he has not been able to gain that high level of dignity which is enjoyed by the English Speaker for the obvious reason that we have remained far from being able to develop the sound tradition of Speaker's being a non-party man. That is why there have been occasions (as in Dec, 1954)when a move for removing the Speaker from office was made, or that some angry members went to the final length of undermining the high office of the Speaker until they were forcibly taken out of the House by the watch and ward staff headed by the Marshal.

5.7 SUMMARY

From the above discussion makes it clear that the cabinet is indeed a formidable institution. It is the prime mover of political action and the core of the Indian political system. In normal times, the Parliament seems to have little will or initiative of its own. It is simply an instrument in the hands of the cabinet which endorses the decisions of the latter. The initiative in all important policy matters rests with the cabinet and the Parliament can only attempt to exercise the government.

5.8 KEY TERMS

Federal System: A political structure in which powers are divided between a central or national government and regional or state governments.

Division of Powers: Allocation of specific powers and responsibilities to different levels of government, defining their respective jurisdictions.

Constitutional Distribution: The explicit delineation of powers between the central and state governments as specified in the constitution.

Central Government: The national-level authority responsible for issues of nationwide significance, such as defense, foreign affairs, and monetary policy.

Autonomy: The degree of self-governance and independence enjoyed by state governments within the federal structure.

5.9 SELF ASSESSMENT QUESTIONS

1. What is Central Administration?
2. What is the Central Government Structure?
3. Discuss briefly the powers and functions of Prime Minister?
4. Describe the functions of the Prime Minister's Office?
5. Discuss the role of Cabinet Secretariat in India?
6. What is Cabinet Committees?

5.10 REFERENCES

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Block-2

Organs of Government and Federalism

Unit-6: The Executive

Unit-7: The Judiciary: Supreme Court

Unit-8: The Judiciary: High Court

Unit-9: Federalism

Unit-10: Federalism: Centre-State Relation

UNIT-6: THE EXECUTIVE

Structure

6.1 OBJECTIVES

After going through this unit, you will be able to know:

- Role of the President and Vice President
- To Analyse the Position of the President and Vice President
- Powers and functions of the President and Vice President
- Working and Election of the President and Vice President
- The impeachment procedure

6.2 INTRODUCTION

India is a democratic republic with a parliamentary form of government. The position of president was set up on January 26, 1950, when India became a republic after obtaining independence from Britain on August 15, 1947, when its constitution came into effect. The legislative assemblies of each of India's states and territories, as well as both chambers of the Indian Parliament, which were all chosen directly by the people, are used to elect the president indirectly. The Indian President is the nominal head of the state and he is also called the first citizen of India. He is a part of the Union Executive, provisions of which are dealt with in Articles 52-78 including articles related to the President (Article 52-62).

The vice president of India is the country's second-in-command to the president of India, who serves as the head of state of the Republic of India. The vice president has the second-highest constitutional position

after the president, is first in the line of succession to the President, and is ranked second on the precedence list. The vice president serves as the ex officio head of the Rajya Sabha and is a member of the Indian Parliament. Articles 63-73 deal with the qualifications, election, and removal of the Vice-President of India.

6.3 GOVERNMENT AT CENTRAL LEVEL:

Recalling the mind of the Drafting Committee, K.M. Munshi said that from the very beginning, it was decided that the Central Government should be basedon the English model." In more forceful words, Sardar Patel observed that it

would suit the condition of this country better to adopt the parliamentary systemof Constitution, the British type of Constitution with which we are familiar. The Government at the Centre is called the Union Government. The President is the Head of the State. There is a Vice- President to assist the President and to act asthe President during the absence of the latter for any reason. The Council of Ministers with the Prime Minister at the head is to aid and advise the President and is collectively responsible to the Lok Sabha. The indubitable fact that the Indian Constitution has adopted the Westminster model of government placesthe Head of the State (President) and the Head of the Government (Prime Minister) in the categories of, what Walter Bagehot said about his English systemof government, the dignified and the efficient executives respectively.

6.4 PRESIDENT :

The President is the Head of the Indian republic. He is elected for a termof five years and he may be re-elected any number of times. In order to be elected, he must possess three qualifications. First he must be a citizen of India. Second, he must have completed the age of 35 years. Last, he must possess all other qualifications prescribed for an elected member of the Lok Sabha and that he must not be holding an office of profit. He is elected by an electoral college consisting of the elected members of the Parliament and State Legislatures including the Legislative Assemblies of Pondichery and of the National Capital Territory of Delhi. In this election the value of votes is counted that is drawn according to a formula. In the States, the value of the votes of one MLA is drawnby dividing the population of the State (as given in the last census report) by thetotal number of elected MLAs and the quotient is further divided by 1,000. In case the remainder is more than 500, then is added to the value of votes. The total value of the votes of all elected MLAs of the country is divided by the total number of elected

MPs in order to determine the value of the votes of an MP. Again, in case the remainder is more than half of the denominator, then 1 is added to the value of votes. It is also provided that the election of the President shall be held in accordance with proportional representation with single transferable vote system. The ballot shall be secret.

The winner must secure more than 50 per cent of the votes polled. Incase a candidate manages to secure votes upto the figure of electoral quota, he

is declared elected. In case no candidate is able to get votes equal to or more than the figure of electoral quota (as happened in the election of 1969), the candidates having least number of votes is eliminated and his votes are transferred to other candidates according to second preference shown on the ballot papers. Naturally, the votes of other candidates are enhanced. If this step fails to enable to candidate to get votes upto the electoral quota, then acandidate having least number of votes is eliminated and his votes are transferred to other candidates according to second preference shown on his ballot papers, while the votes already transferred according to second preferenceare now transferred to other candidates according to third preference shown on the ballot papers. If a ballot paper does not indicate subsequent preference, it becomes invalid. This process goes on until a candidate manages to get votes upto the electoral quota, or only one candidate remains after eliminating all other candidates.

Term :

The President holds office for a period of five years from the date he takesthe oath in the presence of the Chief Justice of India whereby he swears in the name of God, or solemnly affirms, that he will faithfully execute his office or discharge his functions in a way so as to preserve, protect and defend the Constitution with the best of his ability and devote himself to the service and well-being of the people of India. He may resign his office before the expiry of his term for any reason. The letter of resignation must be addressed to the Vice-President. In the event of vacancy, the Vice- President shall act as the President and in case he is not available, then this opportunity shall be given to the Chief Justice of India and, in the event of his not being available, to any other judge ofthe Supreme Court according to the principle of seniority. Within next six monthsthe election of the new President must be held.

The President may be removed by the process of impeachment for violation of the Constitution. Any house of Parliament may initiate the proceedings of impeachment. A resolution to this effect must be signed by at least one- fourth member of the whole House and

the matter may be taken up for discussion after at least 14 days notice in writing. After debate such a

resolution must be passed by two-thirds majority of the total membership of the House. If so happens, then the same shall be taken up by other House of Parliament which may investigate the charges, or may cause them investigated by some other authority. It is at this stage that the President shall have the rightto appear personally or through his nominee for presenting his defence. In case the motion is passed by the House by two-thirds majority of its total membership, the President shall be removed forthwith from his office.

Functions and Powers:

The normal functions and powers of the President may be discussed underfive heads- executive, legislative judicial, financial and others.

Executive Power:

Art 52 says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officerssubordinate to him. The executive functions and powers of the President may be put as under:

All administration is conducted in his name; he makes rules for the conduct of government business and allocation of work among the Ministers.

He receives information of all important decisions of the Cabinet relating to the affairs of administration and proposals for legislation and he may refer any matter for the consideration or reconsideration of the Council of Ministers.

He appoints the Prime Minister, he appoints ministers on the advice of the Prime Minister. Besides, he makes a very large number of appointments as thoseof the Governors, ambassadors, Chief Justice and Judges of the Supreme Court, Chief Justices and Judges of the High Courts, Chairman and members of the Union Public Service Commission, Chairman and members of a Joint Public Service Commission, Attorney General of India, Chief Election Commissioner and Election Commissioners, Comptroller and Auditor- General of India, Chairman and members of the Statutory Commissions as those of Finance Commission, National Human Rights Commission, National Women'sCommission, National Commission for Scheduled Castes, National Commission

for Scheduled Tribes, National Commission for minorities etc. He accepts theirresignation also.

The administration of the Union Territories and Scheduled and Tribal Areasis done in his name.

He maintains foreign relations. For this purpose he appoints ambassadors and envoys for foreign countries and accepts the credentials of the ambassadors and envoys of foreign counties.

He is the Supreme Commander of the Defence Forces.

He approves rules and regulations for the working of the Supreme Court and other autonomous agencies like the Union Public Service Commission.

He sends directions and instructions to the State Governments that must be complied with.

Legislative Power:-

In the Legislative sphere, he performs a number of important functions as under:

He summons and prorogues the session of Parliament and may dissolve the Lok Sabha.

He nominates 12 members of the Rajya Sabha who are distinguished or well experienced in the field of art, literature, science and social service. He may nominate two members of the Anglo-Indian community in case it does not have its adequate representation in the Lok Sabha.

The first session of Parliament in a new year or a session held after the general election begins with his inaugural address.

A bill passed by the Parliament requires his assent. In case it is a non- money bill, or it is not a constitution amendment bill, he may give his assent, or withhold it, or return the bill for re-consideration of the Parliament.

Certain bills (as seeking alteration of the boundary lines of a State) are introduced in any House of Parliament with his recommendation.

In case the Parliament is not is session and some law is to be made without any loss of time, he may promulgate an ordinance having the force of law.

In case any House of Parliament is without a presiding officer, he may appoint a pro

term Speaker/ Chairman.

He causes presentation of the reports of various statutory bodies to the Parliament for consideration.

He may allow extension, modification or abrogation of any law in case of ports and aerodromes.

Certain kinds of bills (as those seeking nationalization of private property or likely to create a conflict with a law of the Centre) passed by the State Legislatures are subject to his absolute veto power.

Financial Power :

The President has some financial powers which may be put as under:

A money bill can be introduced in the Lok Sabha with his recommendation.

He keeps Control over the Contingency Fund of India. He may make advances out of it to meet unforeseen expenditure pending its authorization by the Parliament.

He causes presentation of the annual financial statement of the Government (budget) in the Parliament.

From time to time he sets up a Finance Commission for the distribution of the net proceeds of taxes between the Centre and the States and the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.

He may allow determination of the shares of States in the proceeds of income tax and of the amount of grants-in- aid in lieu of jute export duty to the States of Assam, West Bengal, Bihar and Orissa.

Judicial Power:

The judicial power of the President constitutes his prerogative of mercy.He may grant commutation of sentence, reprieve or pardon to a person held guilty by the highest court of the land in a matter where it comes under the executive authority of the Centre, or where it is a decision of the Court Martial,or where it is a sentence of death.

Miscellaneous Power:

Besides, the President performs some other functions as under:

He may refer any matter of public importance involving a question of law or fact to the Supreme Court for seeking its opinion.

He may make rules for the composition and working of the Union Public Service Commission.

He may issue directions for the progressive use of Hindi in the light of the recommendations of the Official Language Commission.

He may make rules for the administration and control of the Scheduledand Tribal Areas.

He may issue notification relating to the control of the Union Government over the administration of Jammu- Kashmir.

Emergency Powers:

Now we may have a brief study of the abnormal functions and powers of the President. These are his emergency powers specified in Part XVIII o the Constitution. These powers of the President have, indeed, a very sweeping effectand for that reason, critical comments about their nature range from one of the protagonist like Sri Alladi Krishnaswami Ayyar who held them as the very life- breath of the Constitution to that of a critic like H.V. Kamath who called it a charter of reaction and retrogression. This part of the constitution stipulates three kinds of emergency with different effects.

Art. 352 empowers the President to declare national emergency whenever he is satisfied that a serious situation has arisen or is likely to arise threatening the security of the country or any of its part by war, external aggression, or armed rebellion. Here the satisfaction of the President implies the satisfaction of his Council of Ministers the President also has the power to issue another notification so as to vary or revoke his earlier proclamation to this effect. Such a proclamation can be made on the written advice of the Cabinet. It shall remainin operation for one month. But the duration can be extended in case a resolution to this effect is passed by both the Houses of Parliament by special majority (absolute majority of the whole House and two-thirds majority of the members, present and voting). Such an extension may be for six months, butthe Parliament may go on extending it again and again. In case the Lok Sabha is

dissolved, the Rajya Sabha shall have the power to grant extension, but the timeextended by it shall not go beyond 30 days of the commencement of the first session of the New Lok Sabha, unless it is approved by the new House. Moreover, at least one-tenth members of the Lok Sabha may sign a resolution requesting the Speaker (if the House is in session) or to the President (if the House is not in session) to hold a special session for reconsidering the continuations of such an emergency. The House may revoke emergency by passing a resolution to this effect by simple majority.

In case Art, 352 is invoked, it shall have these effects:

The Parliament shall have the power to make a law on any item of the State List. Such a law made by the Parliament shall prevail and a law of the State, if already made, shall remain suspended to the extent of being repugnant to the law of the Centre. The law of the Centre shall prevail at the most for six months after the revocation of this emergency and then the suspended part of the State law would again be operative.

The Parliament shall have the power to make law so as to entrust more duties on the offices or public servants of the Union in order to implement such laws made in pursuance of its extended jurisdiction.

The Parliament shall also have the power to make a law so as to enhance the term of Lok Sabha beyond five years. It may do the same for extending the

tenure of the State legislatures. Thus, elections may be postponed. Such a law shall remain in force for one year at a time, but the Parliament may renew this law again and again. Elections must take place within six months of the revocation of such an emergency.

The executive power of the Union shall extend to the issuing of any directions or instructions to the State Governments as it seems necessary.

The President shall also have the power to issues a notification so as to suspend fundamental freedoms enshrined in Art. 19 and their enforcementprovided in Articles 32 and 226 of the Constitution. He shall also have the power to suspend the enforcement of Fundamental Rights except those of life and personal liberty provided in Articles 20 and 21 of the Constitution.

The President shall have the power to make necessary alteration in the distribution of revenues between the Union and the States.

Such an emergency was proclaimed in Oct, 1962 when China treacherously attacked India. It continued till January 1968 with the result that its invocation could not be done when we had a war with Pakistan in August – September 1965. It was invoked for the second time in December 1971 when Pakistan attack India. In June 1975 this provision was invoked again in the nameof grave danger to the internal security of India. Both proclamations ended in March, 1977.

Then there is the provision of emergency in a State vide Art-356 in the event of breakdown of constitutional machinery there. Either on the recommendation of the Governor of that State or on the basis of his own satisfaction (that really means the satisfaction of the Union Council of Ministers, the President may take over the administration of that State. He may dismissthe government of that State and may either dissolve the Vidhan Sabha or place it under suspended animation. In case the Vidhan Sabha is dissolved, fresh elections shall take place after the revocation of emergency, in case it is placed under suspended animation, the Vidhan Sabha may be revived or dissolved aftersome time. This arrangement is also known as the President's rule. It does not apply to the State of Jammu Kashmir.

A proclamation of emergency made under Art, 356 may remain in forcefor a period of two months. In case the Centre desires to extend this period, it may be done by a resolution of the Parliament passed in each House by simple majority. It is also provided that the period cannot be extended beyond six months in one instance and beyond three years in all. Besides, after giving two extensions, it is also required that further extension can be granted only when emergency is in force, or the Election Commission has given its view that elections cannot be held there due to uncontrollable circumstances. This point may be repeated here that in case the Lok Sabha stands dissolved, the Rajya Sabha shall pass a resolution for the extension of duration of emergency. But the extension so granted by the Rajya Sabha shall not go beyond 30 days of the commencement of the session of new Lok Sabha, unless the new House has passed a resolution to the same effect.

If Art, 356 is put into effect, it shall have these effects:

The President shall assume all functions of the State government and conduct its administration through his Governor or administrator who may be assisted by some advisers.

Since the Vidhan Sabha is non-existent, the Parliament of India may makea law on any item of the State List for this State and also pass its budget. As we have already seen, it should be repeated here that a law made by the Centre shall remain in force for six months at the most after the revocation of emergency. Moreover, any part of the State law being repugnant to such a lawof the Centre shall remain suspended so long as the law of the Centre is in force.

The President may make necessary or incidental or consequential change in the provisions of the Constitution relating to the administration of the State soas to give desirable effect to the object of his proclamation. This provision was, for the first time, invoked in 1951 in order to deal with the problem of Punjaband since then it has been invoked on a large number of occasions in the States of the Indian Union.

There is the provisions of financial emergency under Art. 360 of the Constitution. If the President is satisfied that a situation has arisen whereby thefinancial stability or credit of India or any part thereof has fallen in danger, he can issue a proclamation to this effect that may be varied or revoked by a subsequent proclamation. It is to remain in force for a period of two months. In case the President desires to extend its duration, it may be done by passing a resolution by both the House of Parliament by simple majority. Once approval is given by the Parliament, it continues until the government desires to revoke it. The same point should be repeated here that in case the Lok Sabha stands dissolved, the Rajya Sabha may grant extension of time. But the time so grantedby the Rajya Sabha shall not go beyond 30 days of the commencement of the session of the new Lok Sabha, unless the new Lok Sabha concurs with the decision of the Rajay Sabha. The proclamation of this kind of emergency shall have these effects.

The President shall have the power to lay down cannons of financial propriety (to be approved by the Parliament after some time) and to issue necessary directions to the States.

The President shall have the power to lay down principles in the light of which salaries and allowances of all public servants, including the judges of the Supreme Court and High Courts, may be reduced.

The money bills of the State governments shall be under the veto powerof the President.

These emergency powers of the President have been criticized in vehement terms. It is said that these provisions enable the federal government to acquire the strength of a unitary system whenever the exigencies of the situation so demand. Recalling the horror of Hitler's Germany, it is feared that these arrangements may create an opening whereby some power-drunk leader may do what was done by the Nazi Dictator before the second World War. Art. 356 in an instrument in the hands of the Centre whereby the existence of any State Government can be finished as per the pleasure of the Union government. If the Janata Government of Morarji Desai finished 9 Congress (I) governmentsin 1977 in a single stroke, the Congress (I) government of Mrs. Indira Gandhidid the same just three years after.

It shows that Art. 356 is abused in a very reckless manner for political reasons. The term breakdown of the constitutional machinery has nowhere been precisely defined and it may mean anything to the Union government bent upon sacking of State government by hook or by crook. In other words, the use of such power makes the President like a dictator and lays down the foundation of a totalitarian state in the country. While speaking in the Constituent Assembly, avocal member (H.V. Kamath) said that it will be a day of shame and sorrow when the President will make use of these powers having no parallel in any constitution of the democratic countries of the world. But the defenders of these provisions have expressed their own views. For instance, while contradicting the fear of the critics like Kamath, Mahavir Tyagi held this part of the Constitution asa safety value. As eternal vigilance is the price of liberty, he continued, it becomes the essential responsibility of the people also to see whether the President is really behaving like the highest symbol of democracy.

Actual Position:

In the end, we may briefly look into the issue whether the Indian President is a figure – head of the Indian republic having his counterpart in the British monarch, or he is endowed with some independent area of authority where he may, if he so likes or dares to act like a real executive having his counterpart in the President of the United States. Though a member of the Drafting Committee, K.M. Mushi brought out a monograph in 1963 in which he categorically affirmed: In adopting the relevant provisions, the Constituent Assembly did not understand that they were creating a powerless President. In 1969, V.V. Giri, the candidate for the Presidential office, gave a public statementthat he would not like to be a rubber stamp even of God. P.B. Mukherjee (formerjudge of the Calcutta High Court) stressed the point that the Indian President is an independent institution with independent authority and independentfunctions.

The contention that the President of India may act like a real executive is sustained by some arguments. First, he is endowed with vast authority covering all spheres of administration at the Centre and in the States. Second, he may create conditions where the Prime Minister and the Ministers, ditto his line as they can remain in office during his pleasure. Third, as Supreme Commander of

the Defence Forces, he may use his military power to establish his autocratic position. Last, he may violate the Constitution and yet create conditions that the provision of his impeachment may not be invoked. He may dissolve the Lok Sabha or prorogue the session of the Parliament in a bid to harass his opponents.

But all these arguments are without much weight. The 42nd Amendment of1976 has made it biding on him to act according to the advice of the Council of Ministers. The 44th Amendment of 1978 empowers him to return a matter for thereconsideration of the Council of Ministers once and he is bound to act according to the reconsidered advice of his ministers. Second, he cannot make use of his military powers in the fashion of a politically unwise head of the state like President Iskandar Mirza of Pakistan in view of the fact that all such decisions are to be taken by the National Defence Committee having Prime Minister, Defence Ministers, the Chiefs of Army, Navy and Air force, and Secretary of the Defence Ministry. Last, the President is under an oath to preserve, protect and defend the Constitution and, in the event of its violation, he may be removed by the process of impeachment.

The fact stands out that, as B.R. Ambedkar said, the President is the headof the State, but not of the Executive. The symbolic position of the President wasaffirmed by the Supreme Court in the case of Rai Saheb Ram Jawaya Kapur. V. State of Punjab (1955) in which it observed: The President has thus been madea formal or constitutional head of the executive and the real executive powers are vested in the ministers of the cabinet. Likewise, in the case of U.N. Rao, V. Indira Gandhi (1971), the Supreme Court reiterated that the Constituent Assembly did not choose the Presidential system of government. Much, however,depends upon the personality of the holders of this office. Luckily, so far the holders of this office have acted in a very sagacious manner with the result that no acrimony has concurred to vitiate equation of the President with the Prime Minister and his ministers. It is true that Prime Minister Nehru had some differences with President Rajendra Prasad, or Mrs. Indira Gandhi had some differences with President Radhakrishnan, or some differences between Prime Minister Rajiv

Gandhi and Zail Singh were publicly aired, but all these instances do not reinforce the contention of powerful presidency in our country.

The real position of the President has undergone a notable change in the present era of coalition politics. The implications of Art 74.(1) have become fluid and the President has got ample room to exercise his powers in discretion. Happily, the incumbents of this great office have established some healthy precedents that could not at all be taken as aberration in our parliamentary system of government. For instance, in 1996 President Shankar Dayal Sharma refused to sign the two ordinances that were prepared by the government of Narsimha Rao on the plea that with the declaration of the elections the caretakergovernment could not take up policy matters. (While one ordinance had soughtto provide reservations in public services to the Christian Dalits, the second one had sought to reduce the period of election canvassing from three to two weeks. He advised Prime Minister Rao to seek the resignation of the Himanchal Pradesh Governor (Sheela Kaul) who was found guilty by the Central Bureau of Investigation in a scam relating to the allotment of government flats in the capacity of Minister for Urban Development.

Similarly in 1997, President Narayanan returned the advice relating to the imposition of President's rule in Uttar Pradesh for the reconsideration of the Council of Ministers and he did it again in 1998 in the case of Bihar. On both the occasions he counseled that the Council of Ministers should render such anadvice after studying the whole case in the light of the Supreme Court's ruling inthe Bommai Case of 1994. Not only this, before appointing Vajpayee as Prime Minister in 1998 and again in 1999, he insisted that the parties supporting his government should specify their stand in writing and as such a letter from their chiefs should be submitted so as to offset any foreseeable uncertainty. He expressed his unhappiness at the appointment of National Constitution Review Commission on the plea that the Constitution had not failed us, rather we had failed it. Such well-thought steps taken by the constitutional head of the Indian republic were somehow misconstrued as the case of Presidential activism in our country.

Like the British monarch, the Indian President is expected to act as a friend, philosopher and guide of his government. "Instead of hardly remaining insensitive for long to mysterious sense of authority and power emanating from

the massive structure of the Rashtrapati Bhavan giving like that of a halo aroundthe head of a

god, and thus feeding his vanity and also an incipient hostility towards the real seat of power, he should invariably act in a way that he doesnot look like a magnificent cipher. The President of the Constituent Assembly, Dr. Rajendra Prasad hopefully visualized that in our country healthy conventions will grow that will make him a constitutional President in all matters. TheSupreme Court in the case of Shamasher Singh v. I.C. Agarwal (1974) well observed: "In short, the President, like the British King, has not merely been constitutionally romanticized but actually vested with a pervasive and persuasiverole.

6.5 PRIME MINISTER AND COUNCIL OF MINISTERS:

The Constituent Assembly came to the conclusion that the British system of government would be more suitable for our country in view of our familiarity with it. But one may feel surprised at the fact that while our Constitution has elaborate provisions about many things, the principles of the cabinet system of government have been inexhustively specified in Articles 74, 75 and 78. It shows that while some essential features have been reduced to writing, many things have been left to the established conventions. Art. 74 says : (1) there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordancewith such advice. Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

Then, Art. 75 says: (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The size of the Council of Minister cannot exceed 15 per cent of the strength of the Lok Sabha. A defector cannot be appointed as a minister untilhe is re-elected or the House of which he was a member is dissolved, whichever earlier. The Ministers shall hold office during the pleasure of the President. The Council of Ministers shall be collectively responsible to the House of People. A minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

Art. 78 says: It shall be the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration ofthe affairs of the Union and proposals for legislation to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for and if the

president so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

In case no party is in clear majority in the Lok Sabha, the President may study the situation and invite the leader of the largest party banking upon the support of other parties so as to be in a position of majority in the Lok Sabha. In1977 Moraji Desai was appointed as the Prime Minister, for the Janata Party had been able to establish its claim as the largest party. In 1989 this post was given to V.P. Singh of the Janata Dal as he could prove majority of the National Front (combination of Janata Dal, Congress(S), Telgu Desam, DMK and Assam Gana Parishad) supported from outside by the BJP and the two Communist Parties. The Janata Dal suffered a split in November 1990. A break-away wing under the leadership of Chandra Sekhar (called Janata Dal –Socialist) formed government with the support of Congress (I) led by Rajiv Gandhi. In case the Prime Minister resigns and there is a serious rift in the ranks of the majority party, thePresident may wait for some time and then on the basis of his own assessment may invite a leader to form the government who may prove his majority in the House and run a stable government. It happened in July 1979 when President Reddy invited Chaudhary Charan Singh to form the government.

The Prime Minister is the head of the Council of Ministers. He is appointedby the President by virtue of being the leader of the party having clear majority in the Lok Sabha. In case no party has absolute majority in the Lok Sabha, the President may invite the leader of the largest party to form the government. Nehru was appointed as the Prime Minister in 1952, 1957 and 1962 for being theleader of the Congress party having clear majority in the Lok Sabha. So was the case with Mrs. Gandhi who was the leader of the Congress party after the general elections of 1967, 1971 and 1979. Since the Congress (I) secured absolute majority in the elections of 1984, its leader (Rajiv Gandhi) wasappointed as the Prime Minister.

Functions and position:

The first and foremost function of the Prime Minister is to prepare the list of his ministers. He meets the President with this list and then Council of Ministers of the Cabinet rank, others are called Ministers of State, while ministers belonging to third rank are known

as Deputy Ministers. It is one of the discretionary powers of the Prime Minister to designate a minister as Deputy Prime Minister as Nehru did for Sardar Patel and Indira Gandhi for Morarji Desai.

Theoretically, the Prime Minister is primus inter pares (first among equals), in practice, the case is quite different. His pre-eminent position, like his British counterpart, is evident from these points:

He is the leader of the party in majority in the popular House of the Parliament.

He has the power of selecting other Ministers and also advising thePresident to dismiss any of them individually, or require any them of the resign. Virtually, the Ministers hold office during e pleasure of the Prime Minister.

The allocation of business amongst the Ministers is a function of the PrimeMinister. He can transfer a Minister from one Department to another.

He is the Chairman of the Cabinet, summons its meetings and presides over them.

He is in-charge of coordinating the policy of the Government and has accordingly a right of supervision over all the departments.

While the resignation of a Minister merely creates a vacancy, the resignation or death of the Prime Minister means end or the Council of Ministers.

The Prime Minister is a link between the President and the Cabinet.Though individual Ministers have the right of access to the President on matters concerning their own Departments, and all important communications, particularly relating to policy, can be made only through the Prime Minister.

The Prime Minister is the sole channel of communication between the President and the Ministers and between the Parliament and his ministers.

The Prime Minister is the chairman of many bodies as Inter-State Council, Planning Commission.

In India all these special powers belong to the Prime Minister in as much as the

conventions relating to Cabinet Government are, in application here.

The credit, or the discredit, for the Presidentialisation of Prime Minister's office goes to Indira Gandhi and her son (Rajiv) who managed the affairs of the Country with an arrogant temper and an authoritarian mentality. But the sycophancy and the pusillanimity of the ministers should be held equally responsible for the shriveling of the cabinet. As a critic says: The Cabinet form ofgovernment was undoubtedly twisted out of shape during the Premiership of Indira Gandhi, especially after the Congress split in 1969. During the emergency it was reduced to mockery. Rajiv Gandhi has not only restored the Cabinet Government, he has further undermined it. His cronies dominate the decision making process from outside the Cabinet, within the Cabinet ministers are afraidto speak out their mind. Cabinet meetings are not forums of serious discussionof policies, they are the occasions of the competitive adulation of the leader. Prime Minister Manmohan Singh also acts according to the direction of party President Mrs. Sonia Gandhi.

6.6 SUMMARY

From the above discussion makes it clear that the cabinet is indeed a formidable institution. It is the prime mover of political action and the core of the Indian political system. In normal times, the Parliament seems to have little will or initiative of its own. It is simply an instrument in the hands of the cabinet which endorses the decisions of the latter. The initiative in all important policy matters rests with the cabinet and the Parliament can only attempt to exercise the government.

6.7 KEY TERMS

We, the people of India: Emphasizes the democratic foundation of the Indian Constitution, indicating that the authority of the government is derived from the citizens.

Sovereign: Signifies the independence of the Indian state and its ability to govern without external interference.

Socialist: Reflects the commitment to achieving social and economic equality and promoting a just and equitable society.

Secular: Affirms the principle of religious neutrality in governance, ensuring equal treatment of all religions and the separation of religion from the state.

Democratic: Highlights the commitment to a representative and participatory form of government,

where power is derived from and exercised by the people.

Republic: Indicates that India is a sovereign state with an elected head of state, and it emphasizes the absence of a hereditary monarchy.

Justice, Liberty, Equality, and Fraternity: Core values and goals of the Indian Constitution, representing the commitment to ensuring fairness, individual freedom, equal treatment, and a sense of brotherhood among citizens.

6.8 QUESTIONS AND EXERCISES

1. What is Central Administration?
2. What is the Central Government Structure?
3. Discuss briefly the powers and functions of Prime Minister?
4. Describe the functions of the Prime Minister's Office?
5. Discuss the role of Cabinet Secretariat in India?
6. What is Cabinet Committees?

6.9 FURTHER READING

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UNIT-7: THE JUDICIARY: SUPREME COURT

Structure

7.1 OBJECTIVES

After going through this unit, you will be able to know:

- The Historical Development of the Legal System in India
- The Composition, Powers, and Functions of the Supreme Court in India
- The Power of Judicial Review of the Supreme Court
- The increasing power of the Supreme Court of India in the form of JudicialActivism and PIL
- The Present Position of the Supreme Court of India

7.2 INTRODUCTION

The judicial system of any country stands as one of the important organs of any state. The very idea of checks and balances as propounded by Montesquieu speaks about the three organs of the state namely – the executive, the Legislature, and the Judiciary, and how one can keep a check over the functioning of the other. No organ should override others' arena of jurisdiction and should function keeping in mind the constitutional principles of a particular state. In this context, the independence of the judiciary is of utmost importance. The independence of the judiciary is required in the wake of a federal polity whereby the powers and functions of the state are divided into two sets of government. And any conflict in this regard

can only be resolved only by an independent judiciary in place. The constitution makers also envisaged such a role for the Supreme Court of India (erstwhile Federal Court of India).

7.3 HISTORICAL BACKGROUND OF THE LEGAL SYSTEM IN INDIA

The Supreme Court of India is at the apex level of the judicial system and the final court of appeal in India. However, the very idea of the Supreme Court has a colonial lineage. It was through the Regulating Act of 1773, that the Supreme Court of Judicature at Calcutta was formed with full power and authority. In the years 1800 and 1823, the Supreme Courts of Madras and Bombay were established by King George III. However, these courts were replaced by various High Courts set up by the Indian High Courts Act 1861. The Government of India Act of 1935 set up a Federal Court of India which had the power to solve disputes between provinces and federal states. India got its independence in 1947 and the constitution came into being on 26th January 1950. The Federal Court became the Supreme Court of India and had its first sitting on 28th January 1950.

7.4 THE SUPREME COURT

The Supreme Court stands at the apex of the Indian judicial system. It consists of a Chief Justice and 25 other judges. The President appoints the Chief Justice of India after consulting the judges of the Supreme Court. He appoints the judges with the consultation of the Chief Justice of India.

A person to be appointed as a judge of the Supreme Court must possess two qualifications. First, he must be a citizen of India. Second, he must have served as a judge in a High Court for at least ten years, or must be a distinguished jurist in the view of the President. As a matter of practice, one of the judges must be a Muslim so as to ensure secular character of the Supreme judiciary.

The judges of the Supreme Court retire on completing the age of 65years. A judge may resign by addressing a letter to the President of India. It is also provided that a judge of the Supreme Court may be removed by theprocess of impeachment. For this purpose, the parliament may pass a special address by its absolute majority coupled with two-thirds majority of the members, present and voting, on charging a judge with proved misbehavior or incapacity. As per the Judges Inquiry Act, 1968 it is necessary that before the matter is taken up for discussion in any House of Parliament, it must be looked into by an inquiry committee consisting of the Chief Justice or a senior judge of the Supreme Court, Chief

Justice or a senior Judge of a High Court, and a distinguished jurist of the country.

The jurisdiction of the Supreme Court is of three kinds- original, appellate,and advisory.

Its original jurisdiction covers cases of constitutional law or fact between the Centre and the States, or between the States. Here it acts as an umpire between the Union and the States. The matters relating to election disputes of the President and Vice-President may be tried in the Supreme Court alone.

The appellate jurisdiction of the Supreme Court covers cases decided by the High Courts. The judgement of a High Court can be taken to the Supreme Court if the High Court certifies that the case is a fit one for appeal in Supreme Court constitutional cases an appeal shall lie to the Supreme Court against the judgment of a High Court if it is satisfied that the case involves a substantial point of law as to the interpretation of the Constitution. In criminal cases, it has to be seen whether the High Court has in appeal reversed the order of acquittal of an accused person delivered by a district court and sentenced him to death,or has withdrawn for trial before itself any case from any court subordinate to itsauthority and has in such a trial convicted the accused person and sentencedhim to death. It shows that a person cannot move the Supreme Court in appeal as a matter of right. The Court may issue prerogative writs for the protectionand enforcement of fundamental rights. Under Art. 136 the Supreme Court can allow special leave to appeal against the judgement of any court or tribunal inthe territory of India.

Under Art. 143 the President may refer any matter of law or a fact of considerable public importance for taking the opinion of the Court that is not binding, though it has great persuasive value. This is known as advisory jurisdiction of the Supreme Court.

7.5 THE POWERS AND FUNCTIONS OF THE SUPREME COURT OF INDIA

The powers and functions of the Supreme Court of India can mainly be divided into four parts –

Original Jurisdiction

Original Jurisdiction can again be divided into exclusive and concurrent jurisdiction. The court enjoys exclusive jurisdiction on the following grounds –

A. In case of any dispute between the Union and a state;
B. In case of any dispute between one state and another;
C. In case of disputes between a group of states and others.

The Supreme Court also has concurrent jurisdiction along with the High Courts of the states as far as the protection of human rights is concerned. The Supreme Court under Article 32 of the Indian Constitution and the High Courts under Article 226 of the Indian Constitution can issue various writs like Habeas Corpus, Mandamus, Quo Warranto, Certiorari, and Prohibition for ensuring the Fundamental Rights of thecitizens of India. The writ of Habeas Corpus is proposed to protect the individual from arbitrary detention. The writ of Mandamus is issued when a public official doesn't perform his allotted duty. Such a writ can be issued against any public body, corporation, inferior court, tribunal, or government for the same purpose. In the third scenario, the higher court can issue a prohibition writ against a lower court in case the latter over-step its jurisdiction. The writ of Certiorari is issued from a higher court to a lower court to restrict them from passing orders in a particular case that either doesn't fall in their jurisdiction or is an error of law. In that case, the lower court must have to transfer the case to the higher court. Quo-Warranto is used to prevent illegal usurpation of public office by an individual.

Appellate Jurisdiction

Apart from the original jurisdiction where the Supreme Court has the sole authority of jurisdiction, it is also the highest court of appeal and hears cases from the High Courts and other tribunals in the states. There are certain areas where it exercises its appellate jurisdiction –

a. It has jurisdiction regarding appeals involving the interpretation of the constitution whether, in criminal, civil, or other proceedings of a High Court as far as interpretation of Constitution is concerned (Art. 132);
b. It also has jurisdiction regarding appeals in civil proceedings of the High Court. Such cases are taken to the Supreme Court which involves a substantial question of law of general importance. It might also be the discretion of the High Court if it wants to take the case to the higher court.
c. The Supreme Court is also the final court of appeal as far as criminal cases are concerned. This also has three different grounds – i) When the High Court denies the acquittal of a particular person and declares him the convict and sentences him to death, then that person can address the Supreme Court; ii) If such a case comes from the lower court to the High Court, and the High Court has again convicted the person and sentences him to death, then very often jurisdiction of the Supreme Court is sought. iii) Third if the High Court thinks that the case is fit to be taken to the Supreme Court; iv) Apart from this, the Supreme Court also has certain special appellate jurisdiction. It has the power of granting special leave appeal from any judgment made by any subordinate court or tribunal.

Advisory Jurisdiction

The Advisory jurisdiction of the apex court is exercised if the honourable President of the country wants them to decide on cases that have tremendous public importance. Under article 143 of the Indian

Constitution, the President can exercise this advisory jurisdiction. The President may refer the question to the court for consideration and the court may after such hearing as it thinks fit, reports its opinion to the President. However, the views provided by the Supreme Court of India are not binding on the President and the court also takes up only certain cases under its power of advisory jurisdiction. The first case that came up to the jurisdiction of the Supreme Court was the Ra Delhi Laws Act Case which dealt with the issue of delegated legislation of the Parliament. The court has also decided on cases such as Cauvery Dispute Tribunal Case and looked into the dispute regarding the distribution of Cauvery river water between the states of Karnataka and Tamil Nadu. In another case Ismail Faruqui vs Union of India, the govt. decided to refer aspects of the disputes to the Supreme Court

for an opinion. They wanted the judiciary to decide whether there was a temple initially in the place where Babri Masjid was built. However, the Supreme Court avoided any sort of communal spark and restrained from giving any opinion.

Review Jurisdiction

The Supreme Court can also take up an earlier case decided by it for review. This gives it the scope of reviewing its judgments.

From the above account, it becomes clear that the Supreme Court in India has enormous powers to its credit. At times, it appears more powerful than its counterpart in the United States of America. But most of the time it depended on the Union Legislature and Executive which had imposed limitations on its functioning through various amendments. The period from 1947-1964 can be said to have witnessed a technocrat role in the judiciary. However, the dark period of the judiciary was yet to come and it surfaced in the early 1970s with over-arching powers of the executive specifically during the tenure of Mrs. Indira Gandhi. It was during that period, that the executive intervened in the functioning of the Supreme Court. This got reflected in the succession of Judge A. N. Ray (who happened to be a close aide of Mrs. Gandhi) to the post of the Chief Justice of India superseding senior judges like Justice Shelat, Justice Grover, and Justice Hegde (as CJI is appointed based on seniority, A.

N. Ray was the 4th in terms of seniority). This period is often termed a period of the tussle between the executive and judiciary and every judgment passed by the apex court met with a contradictory amendment from the executive. The following section will deal with it.

7.6 JUDICIAL REVIEW

It may be defined as the power of the court to look into the constitutional validity of an impugned law or executive action and hold it unconstitutional and, for that reason, unenforceable to the extent it is inconsistent with the fundamental laws of the land. It is an invention of Chief Justice Marshall of the American Supreme Court and now it has been

adopted in the constitutional systems of many countries like Canada, Australia, Germany, Japan and India. The reason behind it is that in a country having a written constitution the ordinary law must be subordinate to the higher (constitutional) laws of the land. No organ of government can transgress its areas of authority and in case it occurs in the form of a law made by the legislature or some other organ having authority delegated to it, or if some administrative action is taken in violation of the doctrine of competence, it may be challenged in the Court and then theCourt may declare it null and void to the extent of its being repugnant to the Constitution or due process of law. Such a unique function of the judiciary stemsfrom a feeling that a system based on a written constitution can hardly be effective in practice without an authoritative, independent and impartial arbiterof constitutional issues and also that it is necessary to restrain governmental organs from exercising powers which may not be sanctioned by the Constitution.

The source of the power of the judicial review is contained in Art. 13(2) of the Constitution. It says that "all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they areinconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. The State shall, not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of the clause, shall to the extent of the contravention, be void. Unless the context otherwise requires, the word law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the forceof law. It also includes laws in force or laws made by a Legislature or acompetent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Whether the word 'law' used in this Article means ordinary law or constitutional law, it is not clear. The Supreme Court in the leading case of Sankari Prasad v. Th Union of India (1951) and again in the case of Sajjan Singhvrs. The State of Rajasthan (1965) held the view that the world 'law' occurring inArt., 13meant ordinary law. But in the case of Golak Nath vrs. The State of Punjab (1967) it ruled that the word 'law' occurring in Art. 13 and in Art. 368 meant the same. As such, even a law of constitutional amendment could not be valid if it was inconsistent with Part III of the Constitution having fundamental rights. In this case the Supreme Court subscribed to the doctrine of prospective overruling as established in the American jurisprudence. It means that a law could remain in operation in spite of being

unconstitutional as much work had already been done and that could not be reversed, but in future no such law could be made. In order to demolish this barrier, the Twenty-fourth Constitution Amendment act came into being in 1971. It provides that the Parliament may amend any part of the Constitution if it deems proper or necessary.

The power of judicial review is vested in the High Courts and the SupremeCourt. As such an aggrieved party may challenge a law or any executive order on the ground of its being inconsistent with the provisions of the basic structure of the Constitution. It is true that our Courts cannot invoke the plea of due process of law as it is invoked by the American Supreme Court for the reason that they are specifically bound to follow procedure established by law. It appears that the judiciary is virtually under the sway of the legislature. However,this point should not be understood in a way to minimize the position of the judiciary. The Courts may also look into the fact that the procedure established by law is not a fraud on the Constitution. In the case of K Sadanand Bharati vrs. State of Kerala of Fundamental Rights Case (1973) the Supreme Court laid downthe doctrine of the basic structure of the Constitution. It is true that the Courtdid not clearly define the term basic framework or structure, but it is very clear that it could establish its powerful position vis-à-vis the power of the legislature. The judgement of the Court in this case may be regarded as our republic's greatest contribution to jurisprudence, and its underlying philosophy as of momentous significance for the survival of democracy in our country.

While exercising the power of judicial reviews, the Courts are guided by certain maxims. For instance, the point of competence is taken into consideration. The Court examines whether the law making or order- issuing authority has acted within its jurisdiction or not. It is also known as the doctrine of pith and substance. The court also distinguishes between the good and bad parts of an impugned law and, as such, it may declare only its bad part void. TheCourt may declare a law void in case it transgresses the authority of thelegislature or of the executive. For instance, the Supreme Court invalidated a decree of the President (1970) that derecognized all former rulers of the princelyStates and thereby made them ineligible for privy purses and privileges. The Court may also see whether a law or decree is bad in part and may then strike itdown as it invalidated some parts of the law whereby 14 banks were nationalized in 1969. In case the Parliament makes an amendment in theConstitution, or it makes a change in a law in rectification of a mistake for which the Court had invalidated a particular law, then the Court will not strike down an impugned law or administrative action. Moreover, the Court may change its viewfrom time to time in the light of new conditions or circumstances.

The position of the Courts with regard to the exercise of the power of judicial review, as it obtains in our country, is well evident from the observation of Justice S.K. Das in the case of A.K. Gopalan vrs. State of Madras (1950), In India the function of the judiciary is somewhat between the Courts in England and the United States. While, in the main, leaving our Parliament and state Legislatures supreme in their respective legislative fields, our Constitution has, by some of its Articles, put upon the Legislature certain specified limitations. Thepoint to be noted, however, is that in so far as there is any limitation on the legislative power, the Court must on a complaint being made to it, scrutinize andascertain whether such limitation has been transgressed and if there has been any transgression, the Court will courageously declare the law unconstitutional, for the Court is bound by its oath to uphold the Constitution. But outside the limitation imposed on the legislative powers, our Parliament and State Legislatures are supreme in their respective legislative fields and the Court has no authority to question the wisdom or policy of the law duly made by appropriate legislature. Our Constitution, unlike the English Constitution, recognizes the Court's supremacy over legislative authority, but such supremacyis a limited one, for it is confined to the field where the legislative power is circumscribed by limitations upon it by the Constitution itself.

The power of judicial review, as exercised by the Supreme Court and the High Courts, has been criticized as well as defended by the writers on constitutional law and politics. It is said that judicial review opens the flood- gates for more and more judicial debate signifying a lawyer's paradise. It leadsto judicial despotism that virtually results in a confrontation between the executive and the judicial departments of the State. It is also commented that judicial review becomes an effective instrument in the hands of the vested interests owing to the highly conservative attitude of the Courts. Further, the Courts, instead of giving stability to judicial thought, tamper it with their shifty stands as a result of which uncertainty prevails in the realm of law and justice. Above all, it elevates the position of the Courts to act like the powerful third chambers or the super-master of the legislature. As a learned writer remarks:

What is distinctive to the Indian experiment… is the fact that the Indian Supreme Court has functioned largely in an inapposite Westminster model of parliamentary democracy.

Independence of Judiciary :

We may now enumerate some provisions of the Constitution which ensure independence of the judges of the Supreme Court and the High Court's asunder:

1. Though made by the President on the advice of the Ministers, the appointment of the judges are regarded as constitutional, they are governed by specified high qualifications pertaining to the realm if law andjustice which a person must possess.
2. The judges are paid salary and allowances as determined by a law of the Parliament and, until it is done, as specified in Second Schedule of the Constitution.
3. It is also given that a judge may be removed on the charge of proved misbehavior or incapacity or both if the resolution of impeachment is passed by both the Houses of Parliament by special majority. The Judges Inquiry Act makes it binding that the matter must first be investigated bya high-powered inquiry committee. The process of impeachment of the judges is quite tedious.
4. Art. 220 puts restriction on private legal practice by a judge who retires from service in the Supreme Court. But a retired Chief Justice or a judgeof a High Court may do it in the Supreme Court or in any High Court excluding the High Court or High Courts where he had served in a permanent capacity.
5. The constitution and jurisdiction of the Supreme Court and the High Court's is a Union subject. As explained by Sri Alladi Krishnaswami Ayyar, the placement of the High Court's under the control of the Union in certainimportant matters had been done in order to keep them outside the rangeof provincial politics.
6. The conduct of the judges cannot be discussed in any State Legislature; it can be discussed in the Parliament only when a substantive motion for theremoval of a Judge is under consideration.

Judicial Activism :

The trend of judicial activism as it has developed over the recent years in our country should be taken as the assertion of the supremacy of the wise men over the system of laws. It is informed by this judicious maxim that, in thewords of Sri Fredrick Pollock, it is the duty to keep the rulers of law in harmony with the enlightened common sense of the nation. Law is said to be blind, butthe judges have the eyes to see it in its applied form so that the will of the state is not perverted by those who have no scruples in converting it into a highway robbery, or, in the words of St. Augustine, transforming this earth into a city of the ungodly. Law creates distinction between a condition of license as understood by Hobbes and a state of liberty as conceived by Hob house. It accepts the pattern of its justice the morality of the community whose conduct itassumes to regulate.

The roots of judicial activism may be traced in the role of the Supreme Court and the High Courts in exercising the power of judicial review as well as in making wider interpretations of the Constitutional provisions while entertaining public interest petitions and

trying them in an expeditious manner. By making a liberal interpretation of the rule of standing (locus standi) and, more than thatby making an expanding concept of the fundamental rights of the citizens in their view, the Courts have gone to the extent to looking into many areas as vires of telecom policy, allotment of official accommodation to the public servants, cause of the spread of an epidemic hazardous to human life, distribution of petrol dealerships and gas agencies, protection of theenvironment, involvement of politicians in any hawala transaction, any scam relating to animal fodder or Ayurvedic medicines etc. It all shows that the Courts have expanded their jurisdiction to any conceivable extent in the name of doing complete justice to the aggrieved party that moves them or to any pubic spiritedorganization that does the same for or on behalf of such a person or party. Such a role of the high judiciary has been regarded as active, even adventurous, which though widely appreciated by the common people, is not absolutelyimmune from its inherent weaknesses.

Certain eventualities may, however be conceived when the judiciary may have to over-step its normal jurisdiction and intervene in areas otherwise falling within the domain of the legislature.

a. When the legislature fails to discharge its responsibilities.
b. In case of hung legislature when the government it throws up is weak, insecure and busy only in the struggle for survival and therefore unable totake any decision which displeases any caste, community, or other group.
c. Those in power may be afraid of taking honest and hard decisions for fear of losing power and, for that reason, may have public issues referred to Courts as issues of law in order to make time and delay decisions or to pass on the odium of strong decision making to the Courts.
d. Where the legislature and the executive fail to protect the basic rights of the citizen like the right to lead to decent life, a healthy surrounding or to provide an honest, efficient and just system of laws and administration.
e. Where the Court of law is misused by a strong authoritarian parliamentaryparty government for ulterior motives as was sought to be done duringthe emergency aberration.
f. Sometimes, the Courts themselves knowing or unknowingly become victims of human, all too human, weaknesses of craze for populism, publicity, playing to the media and hogging the headlines.

Taking into consideration what the Courts have done so far, we may trace the cause and decipher some established maxims sustaining judicial activism in our country as under.

1. There arise situations when the people cry to justice. But when they find that the legislative

and the executive authorities do nothing for them, and, more than that, do for the worse, they perforce move the Courts. Insuch a sensitive situation, the Courts have to do justice in stead of askingthe aggrieved persons or parties or someone acting on their behalf to go elsewhere or to keep quiet.

2. When a matter comes before the Court, it carefully sees whether it falls within its jurisdiction or not. Hence, the learned judges dismiss a petition filed for the sake of luxurious or frivolous litigation, or if it is politically motivated. The Court has made it clear that it cannot go into policy matters relating to fiscal resources. But, short of that, it may go ahead indoing justice so as to give relief to the petitioner.
3. The judiciary scrupulously observes the rule of self- imposed limitations. While recognizing that it may exercise its jurisdiction in the matter it is guided by the norm of implementation. That is, while exercising itsjurisdiction, it also keeps it in its view that it has to ensure the implementation of its decisions as there is no sense in laying down a proposition that is incapable of operation at the ground level. The notablepoint in that the judges do not act like politicians under the cover of political considerations.
4. It is true that in the name of hearing a public interest petition, the Courtswould do their best as to render justice to the aggrieved party even by relaxing the rigours of procedure, their purpose is not to meddle with the jurisdiction of the legislative and executive authorities deliberately and indiscriminately.
5. Strong judicial orders in the exercise of contempt jurisdiction must not betaken as the instance of judicial activism. For instance, the SupremeCourt summoned the Speaker of the Manipur Legislative Assembly (R. Borababu Singh) for not implementing its orders of the payment ofsalaries and allowances to some members of the House who had wrongly been disqualified by him on the charge of committing the act of political defection.

The case of judicial activism has its positive and negative aspects. On the positive side, it may be affirmed that it has widely captured the public imagination as the only ray of hope piercing through the clouds of an otherwise overcast sky. The fairly swift and dramatic decisions of the Courts have highlighted not just the largest activist role that the judiciary appears to have assigned to itself but also the unresponsiveness of the legislature, the executive, the bureaucracy and the police to the crying needs to grievances of the common people.

On the negative side, it is said that judicial activism amounts to judicial excessivism or judicial adventurism inherent with the pernicious tendency of judicial despotism. A noted jurist of the country (N.A. Palkhivala) deprecated it

in the name of the violation of the celebrated principle of separation of powers inthat justice

given by a dictator should not be similarised with the justice of a democratic organization. The people, in his view, should know that even judiciary cannot transgress its limitations in a democratic set up. However, the trend of judicial activism should be evaluated in the light of this irrefutable fact that the law- makers are invariably handicapped by the limitations of human foresight.

7.7 SUMMARY

From the above discussion makes it clear that the cabinet is indeed a formidable institution. It is the prime mover of political action and the core of the Indian political system. In normal times, the Parliament seems to have little will or initiative of its own. It is simply an instrument in the hands of the cabinet which endorses the decisions of the latter. The initiative in all important policy matters rests with the cabinet and the Parliament can only attempt to exercise the government.

7.8 KEY TERMS

Federal System: A political structure in which powers are divided between a central or national government and regional or state governments.

Division of Powers: Allocation of specific powers and responsibilities to different levels of government, defining their respective jurisdictions.

Constitutional Distribution: The explicit delineation of powers between the central and state governments as specified in the constitution.

Central Government: The national-level authority responsible for issues of nationwide significance, such as defense, foreign affairs, and monetary policy.

Autonomy: The degree of self-governance and independence enjoyed by state governments within the federal structure.

7.9 QUESTIONS AND EXERCISES

1. What is Central Administration?
2. What is the Central Government Structure?
3. Discuss briefly the powers and functions of Prime Minister?
4. Describe the functions of the Prime Minister's Office?
5. Discuss the role of Cabinet Secretariat in India?
6. What is Cabinet Committees?

7.10 FURTHER READING

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UNIT-8: THE JUDICIARY: HIGH COURT

Structure

8,1 OBJECTIVES

After going through this unit, you will be able to know:

- The Composition of the High Court
- The Jurisdiction and Powers of the High Court
- The Position of the High Court

8.2 INTRODUCTION

THE HIGH COURTS:

The judiciary is an integral part of every federal system which inspires confidence of the federating units on the one hand and masses on the other. TheIndian Constitution provides for an integrated judicial system. At the apex is the Supreme Court of India whose decisions are applicable all over the country. In each State is a High Court, which exercises powers within the territorial jurisdiction of the State concerned.

The position of the High Court's under a federal constitution like that of India is substantially different from that of the State Courts under most other federations, notably that of the United States of America. In the latter, the High Courts in the constituent states are constituted under the state constitutions. As such, they do not in any way link themselves up

with the federal judicial system.The method of appointment and conditions of service of the judges of the State Courts as well as their respective jurisdictions vary from state to state. On the contrary, in India there is uniformity in all these matters and the Constitution lays down detailed provisions dealing with them. Neither the state executive nor the state legislature has any power to control the High Court or to alter the constitution or organization of the High Court. Whatever is permissible, short ofa constitutional amendment, is vested in parliament.

8.3 COMPOSITION :

A High Court consists of a Chief Justice and such other judges as the President may, from time to time, determine. Since the number of the judges of the State High Courts has not been fixed by the Constitution, it varies from courtto court.

Appointments of the Judges of the High Court shall be made by the President by warrant under his hand and seal. The President consults the Chief Justice of India and the Governor of the State and the Chief Justice of the High Court concerned in making the appointment. In case of the appointment of the Chief Justice of the High court, the President will consult the Chief Justice ofIndia and the Governor of the State concerned.

In view of a Presidential reference on July 23, 1998, in which the President of India sought apex courts views on whether the Chief Justice of India meant the individual or plural, in terms of his consultative power regarding theappointment in the High Courts.

In a landmark judgement of nine-judge bench of the Supreme Court makes the Chief Justice of India one among other judges in appointing colleagues.

For appointment in the High Courts, the Bench has ordered that the collegiums for appointment should consist with Chief Justice of India and his two senior most colleagues. They will elicit the opinions of the Chief Justice of the High Court and those of the Supreme Court Judges “who are conversant with theaffairs of the concerned High court”. The objective being to gain reliable information about the proposed appointee.

Qualifications of Judges:

A person shall not be qualified for appointment as Judge of High Court unless he is a citizen of India and has either held for at least ten years a judicial office in the territory of India or has for at least ten years been an advocate of High court in any state. In computing the ten-

year period for the purpose of appointment, experience as an advocate can be combined with that of a judicial officer.

Tenure :

A judge shall hold office till the attains the age of sixty –two years. However, he may resign his office by writing to the President. He can beremoved from his office by the President, in the manner provided for theremoval of a judge of the Supreme Court. A judge can be removed from his office before the expiry of his term on grounds of proved misbehaviour or incapacity. However, such an action can be taken by the President only if both the Houses of parliament pass a resolution by a two-thirds majority of the members present in each House, which should also be the majority of the total membership of the House, accusing the Judge with proved misbehavioour or incapacity. A person who has held office as a permanent judge of the High Court shall not plead or act in any court or before any authority in India except the Supreme Court and other High Courts.

Transfer of a Judge :

The President after consultation with the chief Justice of India, transfer a judge from one High Court to any other High court. When a judge has been or is to be transferred he shall during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a judge of the other High Court, be entitled to receive in addition to his salary compensatory allowance as may be determined by Parliament by law and, until so determined some compensatory allowance as the President may by order fix.

8.4 JURISDICTION OF HIGH COURTS :

The Constitution does not attempt detailed definitions and classification of the different type of jurisdiction of the High Courts as it has done in the case of the Supreme Court. This is mainly because most of the High Courts at the timeof the framing of the Constitution had been functioning with well defined jurisdictions whereas the Supreme Court was a newly created institution necessitating a clear definition of its powers and functions. Moreover, the High Courts were expected to maintain the same position that they originally had as the highest Courts in the States even after the inauguration of the Constitution.

Thus, the Constitution of India has not made any special provision relatingto the general jurisdiction of the High Court. Their jurisdiction is the same as it existed at the commencement

of the Constitution. Their civil and criminal jurisdictions are primarily governed by the two codes of civil and criminalprocedure. At present the High Courts of a state enjoys the following powers.

1. **Original :** The High Courts at the three Presidency towns of Calcutta, Bombay and Madras had an original jurisdiction, both Civil and Criminal, over cases arising within the respective Presidency towns. The original criminal jurisdiction of the High Courts has been completely taken awayby the Criminal Procedure Code, 1973. The original civil jurisdiction has been retained by the Courts in respect of actions of higher value of more than 2000/-.
2. **Appellate:** The appellate jurisdiction of the High Court is both civil and criminal. On the civil side, an appeal to the High Court is either a First Appeal or a Second Appeal. Appeals from the decisions of the District Judges and from those of Subordinate Judges in case of a higher value, lie direct to the High Court. On questions of fact as well as law when any court subordinate to the High Court decides an appeal from the decisionof an inferior court, a second appeal lies to the High Court from the decisions of the lower appellate court but only on question of law and procedure.

   The criminal appellate jurisdiction of the High Court extends to appeals from the decisions of a sessions Judge or an Additional Sessions Judge, where the sentence of imprisonment exceeds seven years andfrom the decisions of an Assistant sessions Judge, Metropolitan Magistrateor other Judicial Magistrates in certain specified cases other than petty cases.

3. **Power of Superintendence :** According to Article 277, every High Court has the power of superintendence over all courts and tribunals, except those dealing with the armed forces functioning within its territorial jurisdiction. In the exercise of this power the High court is authorized, (i) to call for returns from such courts, (ii) to frame general rules andprescribe forms for regulating the practice and proceedings of such courts, and (iii) to prescribe forms in which book entries and accounts shall be kept by the officers of any such courts. Interpreting the scope of this power, the Supreme Court said that all types of tribunals including the election tribunals operating within a state are subject to the superintendence of the High Courts and further, that the superintendence is both judicial and administrative.

4. **Control over Subordinate Courts:** As the head of the judiciary in the state, the High Court has got an administrative control over the subordinate judiciary in the state in respect of certain matters, besides itsappellate and supervisory jurisdiction over them. Article 228 empowers the

High Courts to transfer constitutional cases from lower courts. Thus, ifthe Court is satisfied that a case pending in one of its subordinate courts

involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall then withdraw the case and may either dispose of the case itself determine the constitutional question and then send the case back to the court wherefrom it was withdrawn.

5. **The Writ Jurisdiction of High Courts :** Every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including the Government within those territories, orders or writs including writs in the nature of habeas cropus, mandamus, prohibition, quo warrant and certiorari or any of them for enforcement of the fundamental rights guaranteed by the Constitution, and for any other purposes (Article 226). The power may also be exercised by any High court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arisesfor the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories. Thus, according to Article 32 (2) of the Constitution boththe Supreme Court and the High Courts have concurrent powers to issue such orders.

6. **Power to Appointment:** According to Article 229, the Chief Justice of the High Court is empowered to appoint officers and servants of theCourt. The Governor may in this respect require the Court to consult the Public Service Commission of the State. He also consults the High Courtin the appointment, posting, and promotion of district judges and along with the State Public Service Commission in appointing person to the judicial service of the state. The Chief Justice is also authorized to regulate the conditions of service of the staff subject to any law made by the state legislature in this respect. The power of the Chief Justice to appoint any member of the staff of the High Court also includes his powerto dismiss any such member from the service of the Court. The powers of posting and promotions and grant of leave to persons belonging to the judicial service is also vested in the High Court. The Constitution also

provides for charging all the administrative expenses of the High Court onthe Consolidated Funds of the State.

Parliament has passed the Administrative Tribunals Act, 1985, implementing Article 323A, under which the Centre has set up Central Administrative Tribunals with respect to service under Union. As a result, all Courts of law including the High Court shall cease to have any jurisdiction to entertain any litigation relating to the recruitment and other service matters relating to persons appointed to the public services of the Union, whether in its original or appellate jurisdiction. The Supreme Court has, however, been spared its

special leave jurisdiction of appeals from these Tribunals, under Article 136 of the Constitution.

8.5 POSITION OF HIGH COURTS:

High Courts of India have been given full freedom and independence in imparting justice to the people and ensure that executive and legislature shall in no way interfere in the day- to-day life of the people. As a Court of record the High Court has the power to punish those who are adjusted as guilty of contempt of court. All its decisions are binding and cannot be questioned in any Lower Court. As the Judiciary has a vital role in the working of the Constitution and in the maintenance of the balance between authority and liberty and as a safeguard against the abuse of power by the executive, its independence is secured by permanence of tenure and the conditions of service of the judges. It will be noted that the salaries of the Judges and of the staff of the High Courtare charged on the Consolidated Fund of the State.

The working of the State High Courts for more than five decades has brought tothe fore certain inherent defects which deserve our attention :

1. The process of justice is very costly and an average man cannot afford to bar the expense of court fees, lawyer's fee and other miscellaneousexpenses. The administration of justice if also quite dilatory. A person taking the case to the Court has to wait for many years before he can expect a verdict.
2. The rules of procedure followed in the Court are so complicated and complex that only a lawyer or a highly experienced litigant can understandthem.
3. Though the Constitution has provided for the appointment of the judges ofthe High Court on merit basis in fact the appointments are not always made on merit.
4. M.C. Setalvad, Chairman of the Law Commission observed in 1954 that appointments in the past had not been satisfactory because of executive interference with the recommendation made by the Chief Justice of the State". If the state ministry continues to have a powerful voice in the matter, in my opinion, in ten years time or so, when the last of the judgesappointed under the old system will have disappeared, the independence of the judiciary will disappear and High Courts will be filled with judges who owe their appointments to politicians.
5. The Constitution prohibits judges of the High Courts to hold office under the Government after their retirement and there have been a number of instances where the High Court Judges have been appointed as Governors, ambassadors, ministers and vice-chancellors.
6. The salaries offered to the High court Judges are not lucrative enough to attract those lawyers who

are having good practice. There areinnumerable instances where the invitations to become Judges of the HighCourts have been declined by many prominent lawyers.

7. The work of almost all the High Courts has been running in arrears. On December 31, 2000 the number of cases pending in the various High Courts was 3.4 million. What is worse there seems to be no possibility of the arrears getting reduced.

On May 24, 1949, Pandit Jawaharlal Nehru stated in the Constituent Assembly that our judges should be first rate men of the highest integrity who could stand up against the executive government and who ever may come in their way. But his standards are no longer in vogue. Judges who stand upagainst the executive are sought to be transferred to other states with the ostensible purpose of furthering national integration. Thus, in reality, the policyof transfer of Judges is calculated to accomplish disintegration of Judicial independence rather than national integration. Dealing with the case of Sankal Chand Sheth who was transferred during the Emergency. J. Chandrachud remarks. There are numerous other ways of achieving national integration more effectively than by transferring High Court judges from one High Court to another,… Considering the great inconvenience, hardship and possibly a slur which a transfer from one High Court to another involves, the better view would be to level the Judges untouched and take other measures to achieve that purpose.

On 18th March, 1981, the Law Minister issued a circular addressed to the Chief Minister of different states in which he requested them to obtain from all the additional judges of the High Court in the Sate their consent to be appointed as permanent judges in any other High Court in the country and the consent of those persons who have been or in the future are to be, proposed for appointment as judges. The letter also carried a request to obtain from the Additional Judges and the proposed appointees names of three High Courts inthe order of preference to which they would like to be appointed as judges or permanent judges as the case may be. It was added that the written consent and preferences of the Additional Judges and the preferences of the Additional Judges and the proposed appointees should be sent to the Law Minister within a fortnight of the receipt of the letter in Judges transfer Case the validity of the circular letter of the Union Law Ministers was challenged. A Seven- Judge Bench of the Court by 4-3 majority hold that the circular letter was valid and it did not affect the independence of Judiciary. According to Arun Shourie: In the transfer of Judges case on general principles, the Supreme Court has waxed eloquent buton specific it has given the Government enough to pummel the Judiciary into obedience.

Recommendations of the Sarkaria Commission :

There are two major problems in the area of appointment and transfer of Judges of High Courts. First, there have been endemic delays in filling upvacancies of Judges in the High Courts and this is one of the major factors contributing to the accumulation of arrears of case in these courts. The second isthat transfer of Judges against their consent from one High Court to another has a demoralizing effect on the higher judiciary, and compromises their capacity to administer justice without fear or favour.

The Union Government is of the view that the main reason of the delay in filling up the posts of judges in High Court is the unusually long time taken by the Chief Ministers to send their recommendations (in consultation with the concerned Governors) to the Government of India on proposals received by them from the Chief Justice of the High Courts. One State Government has, however, pointed out that the names sent by them, unanimously approved bythe Chief Justice, the Governor and the Chief Minister, were not approved for over two years. The Report of the Estimates Committee clearly shows that inordinate delays, sometimes extending to four years in filling vacancies of Judges have taken place. This is a matter of serious concern. Therefore, SarkariaCommission recommends for insertion in Article 217, a clause on these lines.

The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause(i) of the Article 217 and in orderto ensure that vacancies in the posts of Judges in the High Courts are promptly field in, these rules may prescribe a time- schedule within which the various functionaries having consultative role in the appointment of Judges under this Article, shall complete their part of the Process.

About the issue relating to the transfer of Judges from one High Court to another, the Union Government is of the view that recommendations of the Law Commission of having a convention according to which one-third Judges in each High Court should be from outside has been accepted and this decision is to be implemented gradually either by making initial appointments from outside the state or by effecting transfers.

The Supreme Courts has held that Article 222 cannot be construed to mean that for transfer of a Judge to another High Court, it is necessary to obtainhis consent as a matter of constitutional obligation. Even so, the Court significantly suggested.

By healthy convention normally the consent of the Judge concerned should be taken, not so much as a

constitutional necessity, but as a matter of courtesy. ….The Commission on Centre- State relations recommends: (1) The healthy convention that as a principle High Court Judges are not transferred excepting with their consent should continue to be observed, (ii) the advice given by the Chief Justice of India regarding a proposal to transfer a Judge, after taking into account the letters reaction and the difficulties, if any, should, as a rule of prudence, be invariably accepted by the President and seldom departed from.

8.6 SUMMARY

The Governor is the first citizen of the state and safeguards our constitution. However, in the Parliamentary democracy where the elected representative and legislature is supreme power the Governor is said to be a nominal head or titular head and the real executives constitute the Chief Minister and the Council of Ministers. However, a Governor is like the safety valve to maintain the unity, integrity and sovereignty of the nation. The framers of the Constitution have given India a robust meta law which will uphold constitutional values written in Part-III and Part-IV of the Constitution.

8.7 KEY TERMS

Governor: The constitutional head of a state in India. The Governor represents the President at the state level and is appointed by the President on the advice of the Prime Minister.

Head of State (State): The Governor serves as the ceremonial head of the state government, performing duties such as addressing the state legislature and presenting the government's policies.

Constitutional Powers: The Governor has certain constitutional powers, including the power to appoint the Chief Minister, dissolve the state legislative assembly, and give assent to bills passed by the state legislature.

Executive Authority: While the Governor's role is largely ceremonial, they exercise executive authority in matters such as the appointment of the Chief Minister and other state ministers.

Agent of the President: The Governor acts as the agent of the President at the state level, ensuring that the state government functions in accordance with the Constitution and laws of the country.

8.8 QUESTIONS AND EXERCISES

1. Explain Powers and Functions of the Governor of the State?
2. Write a short note on Council of Ministers.
3. Debate on Neutrality versus committed bureaucracy.
4. Why is planning needed for good governance? Enumerate with an example from state administration.
5. The student can go to an official web portal of the state public service commission and observe the activities,

functions of the same.

8.9 FURTHER READING

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UNIT-9: FEDERALISM

Structure

9.1 OBJECTIVES

After going through this unit, you will be able to know:

- The Meaning and Features of Federalism
- Distribution of Powers Between Center and State
- Dispute Resolution
- Federalism and Union Territories

9.2 INTRODUCTION

Federalism in India refers to the relationship between the Central Government and theState governments of India. The Constitution of India establishes the structure of the Indian government. Part XI of the Indian constitution specifies the distribution of legislative, administrative, and executive powers between the union government and the States of India. The legislative powers are categorized under a Union List, a State List, and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments, and powers shared among them.

This federalism is symmetrical in that the devolved powers of the constituent units are envisioned to be

the same. Historically, the state of Jammu and Kashmir was accorded a status different from other States owing to an explicitly temporary provision of the Indian Constitution namely Article 370 (which was revoked by the Parliament in 2019).Union territories are unitary types, directly governed by the Union government. Article 1 of the constitution stipulates two tier-governance withan additional local elected government. Delhi and Puducherry were accorded legislatures under Article 239AA and 239A, respectively.

9.3 FEATURES

- There are two or more levels (tiers) of government.
- Each level of government has its jurisdiction in matters of legislation, taxation, and administration even though they govern the same citizens.
- The powers and functions of each tier of government are specified and guaranteed by the Constitution.
- The Supreme Court has been given the power to settle disputes between state governments.

9.4 Federal System

Special Characteristics: Though the Constitution of India has adopted federal system, it has its peculiar characteristics which may be thus enumerated.

6. The Indian federal system, as established by the provisions of the Constitution, is territorial in the sense that it sets up a dual polity with the Union government at the Centre and the State governments at the periphery, each downed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. Thus, the Indian Union, is visualized by the President of the Constituent Assembly, Dr. Rajendra Prasad is indissoluble meaning thereby that, barring the cases of emergencies, the Centre and the States remain endowed with the areas of authority allotted to them.
7. Indian federalism is horizontal with a strong unitary bias. It implies that though there is the division of powers between the national and constituent governments, the position of the former is unmistakably stronger, perhaps the

   strongest, if we compare our federal system with such other systems of the world.
8. Indian Federal system is flexible in the sense that it can be easily converted into a unitary model

particularly in times of emergency. No constitutional amendment is required for this sake. A mere declaration signed by thePresident is enough to convert the basic structure of the Constitution to meet the imminent danger threatening the independence and territorial integrity of the country. Moreover, the process of constitutional amendment has been so designed that the ratificatory role of the States has been confined to the areasrelating to the federal framework alone. Thus, most of the provisions of the Constitution are amendable by the unilateral action of the Parliament.

9. Indian federal system is cooperative in the sense that it seeks the collaboration of both the Centre and the States in several matters of common interest. The National Development Council, Inter-State Council, Finance Commission, Zonal Councils etc. may be referred to in this connection. The working of these agencies shows that neither the Centre nor the States can impose their decisions on the other.

10. Last, Indian federal system has become of a Unitarian type because of the centralized party system. The role of the Congress, the BJP and other parties at the Centre vis-à-vis the States has been governed not by the formal constitutional provisions but by the role of the party under the towering leadership of its high Command. It is the supreme leadership of the party thattakes a decision about the selection of a Chief Minister, making or unmakingof the new ministries in the States, nomination or recall of the Governors, imposition or revocation of President's rule in a State and the like. Instead of pertaining to the formal federal framework, as obtaining in different countries of the world, it desires a process of bargaining between the Union and the State Governments in which experiment, cooperation and persuasion in place of conflict, competition and coercion are requisitioned both to testify the generally accepted norms and the usual procedural patterns of interaction between national and regional governments. That it, our constitutional systemstands on the premises of cooperative federalism what Morris-Jones calls bargaining federalism assuming the interdependence of national and regional governments of a federal union instead of granting them absoluteindependence in the allotted spheres so as to satisfy the requirements of a

classical federal mode. With the creation of a very strong Central Government,the Founding Fathers have sought to ensure that it would not necessarily result in weak provincial governments that are large administrative agencies for Central Policies.

9.5 LEGISLATIVE POWERS

The divisions of powers are defined by the constitution and the legislative powers are divided into three lists:

- Union List
- State List
- Concurrent list

- Other (Residuary) Subjects

Union List:

Union List consists of 100 items (earlier 97) on which the parliament has exclusive power to legislate. This includes defense, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping andnavigation, airways, posts and telegraphs, telephones, wireless and broadcasting,currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organization of the Supreme Court, High courts and union public service commission, income tax, customs and export duties, duties of excise, corporation tax, taxes on the capital value of assets, estate duty, and terminal taxes.

State List:

State List consists of 61 items (earlier 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make laws on these subjects. In certain circumstances, the parliament can make laws on subjects mentioned in the State List, but to do so the Rajya Sabha (Council of States) must pass a resolution with a two- thirds majority that it is expedient to legislate in the national interest.

Though states have exclusive powers to legislate about items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate

Concurrent List:

The concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list. The list mentions marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labor welfare, electricity, newspapers, books, and printing press NS stamp duties.

Other (residuary) subjects:

Subjects not mentioned in any of the three lists are known as residuary subjects. However, many provisions in the constitution outside these lists permit parliament or state Legislative assembly to legislate. Excluding the provisions of the constitution outside these lists per Article 245, the power to legislate on such subjects rests with the parliament exclusively per Article 248. Parliament shall legislate on residuary subjects following the Article 368 procedure as constitutional amendments.

In case the above lists are to be expanded or amended, the legislation should be done by the Parliament under its constituent power per Article 368 with ratification by the

majority of the states. Federalism is part of the basic structure of the Indian constitution which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court.

9.6 EXECUTIVE POWERS

The Union and States have independent executive staffs controlled by their respectivegovernments. In legislative and administrative matters, the union government cannot overrule the constitutional rights/powers of a state government except when the presidential rule is declared in a State. The Union must ensure that the government of every State is carried on following the provisions of the Constitution as per Article 355 and Article 256. The State governments cannot violate the Central laws in administrative matters. When a State violates the Constitution, a Presidential rule can be imposed under Article 356 and the President takes over the State's administration with *ex post facto* consent of the Parliament per Article 357.

9.7 FINANCIAL POWERS

Article 282 accords financial autonomy in spending financial resources available to the states for public purposes. Article 293 allows States to borrow without limit without consent from the Union government. However, the Union government can insist upon compliance with its loan terms when a state has outstanding loans chargedto the consolidated fund of India or a federally-guaranteed loan.

The President of India constitutes a Finance Commission every five years to recommend the devolution of Union revenues to State governments.

Under Article 360, the President can proclaim a financial emergency when the financial stability or credit of the nation or any part of its territory is threatened. However, no guidelines define "financial emergency" for the country or a state or union territory or a panchayat or a municipality, or a corporation.

An emergency like this must be approved by the Parliament within two months by a simple majority and has never been declared. A state of financial emergency remains in force indefinitely until revoked by the President. The President can reduce the salaries of all government officials, including judges of the supreme court and high courts, in cases of a financial emergency. All money bills passed by the state legislatures are submitted to the President for approval. He can direct the state to observe economic measures.

9.8 DISPUTE RESOLUTION

States can make agreements among themselves. When a dispute arises with otherstates or union

territories or the union government, the Supreme Court adjudicates per

Article 131. However, Article 262 excludes Supreme Court jurisdiction concerning the adjudication of disputes in the use, distribution, or control of interstate river waters.

Under Article 263 the President can establish an interstate council to coordinate/resolve disputes between states and the Union. States have their jurisdiction.

The recent experience of the successful implementation of indirect tax reforms in India shows that a dominant ruling party can adopt a concessionary approach to resolve disputes amicably, rather than attempting to over-awe the states or impose its will on the units. This has been called concessionary federalism.

9.9 UNION TERRITORIES

Article 1 (1) says that India is a Union of States as elaborated under Parts V (The Union) and VI (The States) of the Constitution. Article 1 (3) says territories of India constitute states, union territories, and other acquired territories. The concept of union territory was established by the Seventh Amendment.

9.10 ABERRATIONS

The state of Jammu and Kashmir had (until it was abolished by Union Government on 5 August 2019) a separate set of applicable laws under Article 370 a temporary article of the Constitution of India, read with Application to Jammu and Kashmir Order, 1954 (Appendix I and II). Only matters related to defense, foreign relations, and communications of Jammu and Kashmir were under the jurisdictionof the Union government. Laws enacted by the Parliament of India (including amendments to the constitution) applicable to the rest of India were not valid in Jammu and Kashmir unless ratified by its state assembly. The Government of India could declare a state of emergency in Jammu and Kashmir and impose Governor's rule under certain conditions. The state had its constitution other than the applicable Indian constitution. Part XII of the Jammu and Kashmir state constitution made provision to amend its constitution with a two-thirds majority by the state assembly. Part VI (The states) and Part XIV (Services) of the Indian constitution did not apply to Jammu and Kashmir per Article 152 and Article 308.

On 5 August 2019, the Government of India, by the powers vested in it by the Constitution of India, passed a motion to dissolve Article 370 of the Constitution of India for the state of Jammu and Kashmir and bifurcated the state into two Union Territories – Jammu and Kashmir, and Ladakh by introducing the Jammu and Kashmir Reorganization Act in the Parliament of India.

9.11 SUMMARY

he Preamble of a constitution is an introductory statement that encapsulates the fundamental principles, values, and objectives that guide the governance of a nation. It sets the tone for the constitutional framework, reflecting the aspirations and ideals of the people. In the context of the Indian Constitution, the Preamble begins with the phrase "We, the people of India," emphasizing the democratic nature of the governance. It declares the solemn resolve to secure justice, liberty, equality, and fraternity for all citizens. While not enforceable in a court of law, the Preamble serves as a guiding document for interpreting the Constitution's provisions, expressing the collective vision and goals of the nation.

A federal system of government is a political structure in which powers and responsibilities are divided and shared between a central or national government and regional or state governments. This division of powers is typically outlined in the constitution, specifying the areas over which each level of government has authority. The federal system aims to strike a balance between a strong central authority and the autonomy of subnational entities, promoting decentralized governance. In India, the Constitution establishes a quasi-federal system, often referred to as "cooperative federalism." Powers are delineated between the central government and the states through the Seventh Schedule. While states have autonomy in certain matters, the central government can assume more authority during specific situations, maintaining a cooperative balance in governance.

9.12 KEY TERMS

overeign: Signifies the independence of the Indian state and its ability to govern without external interference.

Socialist: Reflects the commitment to achieving social and economic equality and promoting a just and equitable society.

Secular: Affirms the principle of religious neutrality in governance, ensuring equal treatment of all religions and the separation of religion from the state.

Democratic: Highlights the commitment to a representative and participatory form of government, where power is derived from and exercised by the people.

Republic: Indicates that India is a sovereign state with an elected head of state, and it emphasizes the absence of a hereditary monarchy.

Justice, Liberty, Equality, and Fraternity: Core values and goals of the Indian Constitution, representing the commitment to ensuring fairness, individual freedom, equal treatment, and a sense of brotherhood among citizens.

9.13 QUESTIONS AND EXERCISES

1. What do you mean by Constitution?
2. Discuss the Philosophy of the Indian Constitution.
3. Outline the Objectives of the Indian Constitution.
4. Explain some basic features of the Indian Constitution.

9.14 FURTHER READING

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UNIT-10: FEDERALISM: CENTRE-STATE RELATION

Structure

10.1 OBJECTIVES

After going through this unit, you will be able to know:

- TheConstitutional Arrangements Between Centre-State Relations
- The Historical Overview of the Evolution of Centre-State Relations
- The Tensions Between Centre-State Relations
- Recent Trends in the Relations.

10. 2 INTRODUCTION

India is a culmination of diverse cultures, languages, and interests all of which have played a major role in shaping what the country is today. The concept of a 'region' based on language and culture is not alien to the country, but this 'region' has evolved from being a princely state to a British province, and finally into the modern-day state. At different times various rulers attempted to consolidate the dissipated fiefdoms into a single political entity under a central rule or a 'union' but have failed. This process of unification is a very important development in how the different regions of the country have interacted and forged a modern identity, building the country.

Independent India faced demands of greater autonomy and separation by modern-day states, the seeds for which were sown during the British period. In this context, the center-state relations acquire vital significance. Given the overbearing unitary features in the Indian constitution which clearly state that India is a union of states not a federation of states, the Indian state emerged to be 'quasi-federal' in structure. This setup has been a cause of strain between the powerful center and relatively weaker states. Since

coalition politics emerged, states have acquired a crucial role, through their regional parties to have a greater say in national decision-making. States today act not only as a pressure group but are at the forefront of trade, and business and increasingly play a major role in foreign policy. This chapter aims to explain the changing center-state relationship. The first section of the chapter gives a brief overview of the history of center-state relations followed by the constitutional arrangement between the two in the second. The third section highlights the tensions between the center and the states. The next section followed by it dwells upon the constitutional debates undertaken to analyze center-state relations and the final section gives a critical impression.

10.3 UNION –STATE RELATIONS :

A Study of the Union-State Relations covering legislative and administrative spheres as contained in Part XI and financial sphere as given in Part XII of the Constitution should be taken as a supplement to the study of the Indian federal system as given above. The distribution of powers between the Centre and thestates bears a clear testimony to the same stand that the Indian federal system as given above. The distribution of powers between the Centre and the States bears a clear testimony to the same stand that the Indian federal system subscribes to no classical doctrine, it has a character of its own which, though looking like a unique blending of the unitary and federal systems with a definite bias towards the latter, has been well designed to suit the purposes of a nascent democracy being run bythe people of a dynamic and progressive nation. In this part, we shall make a study of Union- State relations in the legislative, administrative and financial spheres so asto have knowledge of the operation of federal system in our country.

10.4 LEGISLATIVE RELATIONS :

As already pointed out, the Centre has the power to make law on any item of the Union List, while the States may do the same on any subject of the State List. The Concurrent List has been given to both. It means that both the Centre and the States, may make a law on a subject contained in the Concurrent List. In order to prevent conflict between the two, it has been provided that the law of the Centre shall prevail and the State law shall be inoperative to the extent it is inconsistent with the Union Law. Residuary subjects are also with the Centre. It has been clearly laid down that the law of the Centre shall prevail and the State law shall be inoperative to the extent of being repugnant to the Union law in the event of any conflict between the two.

What is very important in this direction, however, is that there are certain salutations in which the Centre may make a law on a subject of the State List. Theseare:

1. Art. 249 says that the Rajya Sabha may pass a resolution by the 2/3 majority of its members present and voting and thereby shift any item from the State List to the Union List or to the concurrent list on the plea, that it has assumednational importance. Such a resolution shall remain in effect for a period of one year, but the Rajya Sabha may extend its duration any number of times.
2. Art. 250 says that the Centre shall have the power to make law on a subjectto State List during the period of emergency.
3. Art. 252 says that the Parliament may make a law on any subject of the state List in case there is a request to this effect by two or more State Governments. Such a law shall prevail in the states being party to therequest, though, any other State may adopt it after passing a resolution tothis effect.
4. Art. 253 says that the Centre may make a law on any item of the State list in order to implement some international treaty or agreement.

In this Connection, it should be pointed out that a law made by the Centre ona subject of State List during the period of emergency shall come to an end whenthe President makes a notification to that effect. It shall cease to have effect after six months of the revocation of emergency at the most. In case of law is made bythe Centre on the basis of the special resolution of the Rajya Sabha, it shall some to an end at the most after 6 months of the termination of the period of the resolution. What will happen to a State Law already in existence in case a law of the Centre is enforced? The answer is that the law of the Centre shall come into effect immediately and the State laws shall remain suspended to the extent it is repugnant to the Central Law. It will, however, be revived when the law of the Centre ceases tohave its operation.

A critical examination of the distribution of legislative powers between the Union and the States leaves the dominant impression of a very strong Centre endowed with the built- in capacity to impose its will on the component units of the federation by means of its qualified legal sovereignty. The state legislatures have a very truncated area of authority and even that rump area has been further truncatedby virtue of serious inroads whereby the Parliament may make more and more encroachments upon the legislative jurisdiction of the States.

10.5 ADMINISTRATIVE RELATIONS:

The provisions of the Union-State administrative relations may be thusenumerated:

1. Art. 256 says that the Executive Power of the State shall be so exercised as toensure compliance with the laws made by the Parliament and any existing lawwhich apply in that State, and executive power of the Union shall extend to the giving of such directions to a State as may appear necessary to the Government of India.

2. Art.257 says that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Government of India.
3. Art. 258 says that the President may, with the consent of the government of aState, entrust either conditionally or unconditionally to that Government or its officers functions in relation to any matter to which the executive power of theUnion Extends.
4. Art. 260 says down that the Government of India may by an agreement with the government of any territory not being a part of the territory of India undertake any executive, legislative or judicial functions vested in the government of such territory.
5. Art. 261 provide that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
6. Art. 262 says that the Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of the waters in any inter-state river or valley.
7. Art. 263 empowers the President to appoint an Inter-State Council for inquiring into and advising upon disputes which may have arisen between States, investigating and discussing subjects in which some or all of theStates, including the Union Government, have a common interest and make recommendations for a better coordination between the Centre and the States.

What we have said about the nature of legislative relations, so here it shouldbe repeated that the Centre has a very dominant position so much so that the autonomy of the States is seriously truncated. The States are bound to carry out faithfully all directives issued by the Centre. They cannot take any step that conflicts with the policy of the Centre. The Governor is on the spot to exercise an effective check when he finds that the State Government is taking to a course that might create a situation of confrontation with the Centre. Above all, there is the provisionof State emergency under Art. 356 whereby a State government may be sacked for any reason that the Centre may interpret as breakdown of constitutional machinery there.

10.6 FINANCIAL RELATIONS:

The essential points of Union-State financial relations may be thus summarized:

There are certain taxes which shall be levied and collected by the States and thereby become the sources of State revenues. There are land revenue, taxes on agricultural income, estate duty and tax on buildings, excise on opium and alcoholic goods etc.

There are certain taxes which shall be levied and collected by the Union but assigned to the

States. These are taxes on railway fares and freights, passengersand goods, and taxes on newspapers and advertisement given therein etc.

There are certain taxes levied by the Union and collected and appropriated by the States. These are: stamp duties, excise on medicine and toilet preparation, etc.

There are certain taxes which shall be levied and collected by the Union but which may be distributed between the Union and the States. These are taxes on income other than agricultural, duties of excise other than those on medicinal and toilet preparations etc.

There are certain taxes which shall be levied and collected and appropriatedby the Government of India alone. These are railways, revenues earned fromrailways, post and telegraph, wireless and broadcasting, foreign exchange, etc.

The President may make alternation in the distribution of the revenues earnedfrom income tax between the Centre and the States.

The Centre has the power to grant loans and grants-in-aid to the State Governments for the welfare of Scheduled Castes and Scheduled Tribes. It may grant special subsidy to the States of Assam, Bihar, Orissa and West Bengal in lieuof income from the export duty on jute.

The Centre may impose service tax which may be collected and appropriated by both the Centre and the States.

The Union government is empowered to borrow money on the security of the consolidated fund of India subject to the limitations laid down by an act of Parliament. No State government can raise loan without the sanction of the Union government.

Art.280 empowers the President to appoint a Finance Commission after every five years, or whenever he deems necessary, to make recommendations regarding the distribution of the net proceeds of tax between the Centre and the states on the principles which should govern the giving of grants-in-aid to the State out of the Consolidated Fund of India and the like.

UNION STATE RELATIONS

Legislative

1. Union List with the Centre.
2. Concurrent List with both the Centre and the States, with overriding authority of the former.
3. State list with States but under Parliament's power of legislation in these cases:
   (i) After Rajya Sabha passes a specialresolution.
   (ii) Emergencies
   (iii) Request of two or more State legislatures
   (iv) Implementation of any international treaty of convention
4. Supreme of Union law over state law in the event of conflict between the two, and
5. Residuary powers with the Centre,

Administrative

1. Executive power of theStates to be used in conformity with Union laws
2. Executive Power of the States not to impede or prejudice the Union administration.
3. President's power todelegate or entrust additional powers to State governments with their consent.
4. Union Government's power to take executive legislative or judicial functions of some foreign country by an agreement.
5. Full faith and credit to be given throughout the country to pubic acts, records and judicial proceedings of the Union and the States.

6. Parliament's power tomake rules for the adjudication of inter-state river water disputes.
7. President's power to create inter-state council.

1. Certain taxes to be levied and collected by the Union whose proceeds may be distributed between the Union and the States.
2. Certain taxes to becollected and levied by the States and thereby formingpart of State revenues.
3. Certain taxes to be levied and collected by the Union but assigned to the States.
4. Certain taxes to be levied by the Union but collected and appropriated by the States.
5. Certain taxes to be levied and collected by the Union whose proceeds may be distributed between the Union and the States.
6. President's power todistribute the proceeds of the income tax between the Centre and States.
7. Giving of grant-in-aid by the Centre to the States with special grants to some states in lieu of export dutyon jute.
8. Centre's power to impose service tax to be collected and appropriated by it and by the States.
9. Centre's power to borrowmoney on the Consolidatedfund of India.
10. Appointment of Finance Commission by thePresident.

Financial

As we have seen in the case of legislative and administrative relations, so here the same line of critical examination should be restressed that the strong position of the centre has reduced the States governments with limited power and are bound to bank upon the charitable assistance of the Centre. Several Central agencies like the University Grants Commission and Central Welfare Board and, above all, the Planning Commission may act in a way so as to influence radically the working of State governments by means of giving them grants-in-aid with virtual strings attached to them. It is also noticeable that, external affairs being a concern of the Centre, all foreign assistance whetherfrom some international agency is accruable to the states through the Centre.

Thus, an advocate of federation may say that though component units of the Indian federal system, the State governments have quite often found their hands tied up because of the lack of resources at their disposal entrusted tothem by the Union Government. Often the State governments have foundthemselves left with very little discretion in matters of changing the composition of their budgets. The element of politics may have its own role of play. The Centre may replenish some and starve some other States just for the sake of political considerations. Above all, there is the provision of financial emergency under Art. 360 of the Constitution whereby the fiscal autonomy of the Statesmay be finished altogether. Keeping such a contingency in view, Pandit Hridaynath Kunzru had feared that it would lead to the financial autocracy of the Centre.

A study of Union-State relations in three important directions shows that while the Centre stands like a colossus, the States have a very limited area of authority. Thus, Prof. K.V. Rao calls it a model of centralized federalism. It is dueto this that from time to time several state governments have expressed their deep resentment and demanded more autonomy. The DMK Government of TamilNadu appointed a Commission under P.V. Rajamanner in 1970 which submitteda detailed report in regard to the devolution of powers for the sake of more autonomy to the States. The Centre, however, did not honour it. The Union Government has also turned down all proposals for suitable amendments in the Constitution with regard to Union- State relations on the plea that the existing arrangements are adequate. The Sarkaria Commission Report (1978) says that the present arrangement is quite satisfactory and, hence, any more devolutionof powers in favour of the States is unwarranted.

A study of the constitutional provisions, as made out in the preceding sections, illustrates that there are two opinions with regard to the nature of our political system hinging on the point of Union- State relations. The one extreme view is that it is highly un-federal or unitary in view of the heavy dependence of the units at the mercy of the Centre. Such an assessment of the Indian constitutional system is hardly convincing. Equally unconvincing is the other view of designating India as extremely federal as done by Prof. Paul H. Appleby. Instead of giving to either of the extremes, one should take a moderate viewand then subscribe to the observation of Prof. Ivor Jennings that India is a federation with a strong centralizing tendency. Or, as another foreign writer like Selig Harrison says: "The Indian Constitution along with setting up a strong Centre, guarantees built-in concessions to the federal Principle. The nature of the Indian federal principle should be studied in the light of the five peculiar characteristics which we have pointed out in the beginning of our study. We should remember that the Supreme Court of India in the Fundamental Rights (Kesavanand Bharati) Case of 1973 enunciated the doctrine of the basic framework of the Constitution and included federalism therein. The fact shouldbe borne in mind that in spite of federalism, the national interest ought to be paramount.

10.7 SUMMARY

A federal system of government is a political structure in which powers and responsibilities are divided and shared between a central or national government and regional or state governments. This division of powers is typically outlined in the constitution, specifying the areas over which each level of government has authority. The federal system aims to strike a balance between a strong central authority and the autonomy of subnational entities, promoting decentralized governance. In India, the Constitution establishes a quasi-federal system, often referred to as "cooperative federalism." Powers are delineated between the central government and the states through the Seventh Schedule. While states have autonomy in certain matters, the central government can assume more authority during specific situations, maintaining a cooperative balance in governance.

10.8 KEY TERMS

overeign: Signifies the independence of the Indian state and its ability to govern without external interference.

Socialist: Reflects the commitment to achieving social and economic equality and promoting a just and equitable society.

Secular: Affirms the principle of religious neutrality in governance, ensuring equal treatment of all religions and the separation of religion from the state.

Democratic: Highlights the commitment to a representative and participatory form of government, where power is derived from and exercised by the people.

Republic: Indicates that India is a sovereign state with an elected head of state, and it emphasizes the absence of a hereditary monarchy.

Justice, Liberty, Equality, and Fraternity: Core values and goals of the Indian Constitution, representing the commitment to ensuring fairness, individual freedom, equal treatment, and a sense of brotherhood among citizens.

10.9 QUESTIONS AND EXERCISES

1. What do you mean by Constitution?
2. Discuss the Philosophy of the Indian Constitution.

3. Outline the Objectives of the Indian Constitution.

4. Explain some basic features of the Indian Constitution.

10.10 FURTHER READING

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Block-3
Federalism and Decentralization

Unit-11: Federalism: Issues and Challenges

Unit-12: Recent Trends in Indian Federalism

Unit-13: Panchayati Raj Institution: Composition

Unit-14: Powers and Functions of Gram Panchayat, Panchayat Samiti, Zilla Parishad

Unit-15: Municipalities

Unit-16: Power and Function of Municipal Corporation, Municipal Council, and Notified Area Council

UNIT-11: FEDERALISM: ISSUES AND CHALLENGES

Structure

11.1 OBJECTIVES

After going through this unit, you will be able to know:

- The meaning and concept of federalism;
- Federalism in India
- The issues that are related to federalism in India and
- Should India keep its federal system of governance?

11.2 INTRODUCTION

A federal system of government was established in India as outlined by the Government of India Act, 1935. With the passage of this law, the diarchy established by the GOI Act 1919 was abolished, and a Federation of India was established consisting of the provinces of British India and part or all of the Princely states. Federalism is a system of governance in which numerous units share the sovereign authority of political power. In common usage, this type of government is sometimes referred to as a "federation" or "federal state." These divisions are the federal, state, and local governments, or panchayats. The center is also known as Union. The component units of the union are called variously

as states (in the United States of America), Cantons (in Switzerland), and Prouinee (in Canada). Republics (in the former Union of 2 Soviet Socialist Republics). The word "federal" means "contractual." A federal union is a contractual union. A federal state is a state brought into being through a contractual union of sovereign states. The union of non- sovereign states by conquest cannot be called a federal union.

11.3 FEDERALISM IN INDIA

India's federalism and American federalism share several characteristics. The terms "federation" and "federal union" are not used anywhere in the Constitution of India, unlike the Constitution of the United States, which is the oldest federation. There are two political systems in each nation—one for the Central Union government and the other for the state governments. However, there are two key distinctions between them. A person in the USA has two nationalities. One of the states in which he or she resides, as well as U.S.A. citizenship. India does not recognize dual citizenship. Indian citizenship is the sole citizenship available to people. The state in which a person resides does not have distinct citizenship. In addition, each state in USA has its constitution. However, they are just tangentially connected. In India, the entire nation is governed by a single constitution.

For Indian federalism, India is referred to as a "Union of states" in Article 1 of the Indian Constitution. Ambedkar claimed that the federation in India was not the consequence of an agreement amongst different states to join a Federation, therefore in India the term Union is used. As previously stated, the devolution of authority, not an agreement, is what led to India's federation. This in no way grants a state the authority to leave India. However, the Constitution's system of power-sharing gives it a federal character. The founders of the Constitution gave this federal character primarily for two reasons:

1. When a state's territory is as huge as India, a federal state is more efficient than a unitary one,and

2. When various segments of a state's people reside in a distinct territorial concentration, as in India, a federal state is more effective than a unitary one.

11.4 THE INDIAN FEDERATION'S STRUCTURE

The Indian Constitution is written and comparatively rigid. A majority of state legislatures must agree to change several constitutional provisions. The Constitution divides power between the Union and the

states. The Indian Supreme Court has original jurisdiction to resolve conflicts involving:

- A state or collection of states and the union
- One state and another state or a group of other states and
- One group of states and another group of states.

Territories of the States

The United States is described as an indestructible union of indestructible states. The United States cannot be combined, divided, or changed in size; yet, they may not secede from the union. But in India, a law passed by the parliament can change a state's border.

In the Indian Constitution Article 3 stipulates:

- Parliament has the authority to divide areas into new states or union territories by severing them from existing states and union territories.
- To combine two or more states, territories, or both,
- To merge portions of states and Union territories to create new states or Union territories.
- Split a state or a Union territory into two or more states or/and Union territories.

The opinions of the concerned state legislatures must be considered beforehand. However, they are not always required to be respected.

11.5 GOVERNMENTAL STRUCTURE AND POWER DISTRIBUTION

The governments of the Union and the states are distinct and both are based on parliamentary systems. Governor is the top official at the state level, where as to the President is the head of India at the national level. The Governors of the states are however appointed by the President (i.e., the Union Government), even though the President is indirectly elected by the people. Their respective Councils of Ministers provide advice to the President and Governors alike. However, India does not strictly divide its public services. Union and state officials form the administration of both Union and states. State civil services exist. However, there are All-India Services as well, whose employees work for both the state and the union governments. But thereis integration in the Indian judicial system and the Indian Supreme Court

is in charge of it which also serves as a federal court.

The Seventh Schedule of the Indian Constitution establishes a complex allocation of legislative authority between the Union and state governments. The executive and legislative branches of the central and state governments coexist. The Union List, the

State List, and the Concurrent List are the three lists that include the authority of the central and state governments.

The List I, the Union List, contains 97 subjects which have national importance and lists the authorities of the Union government. List II, the State List, contains 66 subjects on which state legislatures can make laws. On the subjects of the concurrent list, List III, includes the powers that the Union and state governments can legislate simultaneously. This mentions 52 different topics. The Union owns the residual powers that are not included in any of these lists. However, this division is subject to the following three restrictions:

I. The Union's law will take precedence over a state's law when they both address the same concurrent list issue.

II. The Parliament will have the authority to enact legislation on a matter that is on the state list if the Council of States or Rajya Sabha determines by resolution that it is of national interest.

III. The Parliament may pass laws on any matter of state concern when an emergency declaration is in effect. Six months after the proclamation lapse is in effect, the statute will no longer be in effect. All subjects pertaining to interstate rivers and river valleys, defence, security, external affairs, communication, currency, banking, and insurance are under the jurisdiction of the centre.

11.6 SALIENT FEATURES OF INDIAN FEDERALISM

The union-type federal polity presupposes the essential balancing of two inherent tendencies, namely, unionization and regionalization. The unionization process allows Indian federalism to assume unitarian features (popularly referred to as centralized federalism) when there is a perceived threat (internal or external) to the maintenance of national unity, integrity, and territorial sovereignty of India on the one hand, and the maintenance of constitutional-political order in the states on the other.

However, the union's prerogative of perception and definition of "threat" is not absolute. This is subject to review by the Apex Court. This has become clear from the Supreme Court's ruling in the S.R. Bommai case. It is only in abnormal times (as the spirit of theEmergency Provision suggests) that Indian federalism assumes the characteristics of a unitarian polity. However more than this, the unionization process constitutionally bestows upon the union government the added responsibility of securing balanced economic growth and social change across the regions and social segments through means and measures of mixed economies and state-regulated welfare planning. In this endeavor, the constitution envisages the role of the states as coordinating partners with the union government. Beyond this, the unionization process has no more political meaning and relevance.

Along with the unionization principles, the constitution of India also recognizes "regionalism and regionalization' as valid principles of nation-building and state formation. Scrutiny of the constitutional provisions reveals that the constitution of India acknowledges and recommends the formation of a multilevel or multilayered federation with multiple modes of power distribution. The multilayered federation may consist of a union, the states, the sub-state institutional arrangements like regional development autonomous councils, and the units of local self-government at the lower levels. While the union and the state constitute the federal superstructure, the remaining two constitute the federal substructure. Each level has constitutionally specified federal functions, which they perform almost independently of each other. However, the superstructure exercises certain fiscal and political control over the substructures. Developmental funds to the substructure are released by the two superstructures. Many of the decisions of the regional councils are subjected to approval by the concerned states.

The constitution of India promotes both the symmetrical and asymmetrical distribution of competence. This variegated system first lays down the general principle of power distribution, having symmetrical application to all states of the union. Then, there is provision for special distribution of competence and power- sharing arrangements between the union and the select states. There are many provisions, like Article 370, 371, 371A-H, and the fifth and sixth schedules, which allow for a special type of union-state relations. To put it succinctly, these provisions restrict the application of many union laws; delimit the territorial extent of the application of the 6 parliamentary acts having to bear upon the law-making power of parliament and the concerned state legislatures; and, bestow upon the office of Governor with special powers and responsibility in some states like Arunachal Pradesh, Sikkim, Assam, Manipur, Nagaland, Jammu & Kashmir, Maharashtra, and Gujarat. If we closely examine the above-mentioned constitutional provisions, it appears that federalism in India has been fine-tuned to accommodate ethnic

diversity and ethnic demands like the application of customary law in the administration of civil and criminal justice, etc. It is for reasons of accommodating ethnic features in the formation of polities that the constitution permits ethnic self-governance through specially created institutions like autonomous regional or district councils. A few dozen such councils exist in the northeast regions and other parts of India. These councils seek to protect and promote indigenous identity and development.

At the fourth level, there exist the units of local self-governance. With the passage of the 73rd and 74th Constitution Amendment Acts, the Constitution of India further federalizes its powers and authorities at the village and municipal levels. The Panchayati Raj Institutions (PRIs) are mainly developmental in functioning. Constituted through direct election, the Panchayats and municipal bodies are expected to: (i) build the infrastructure of development like roads, transport, etc.; (ii) build and maintain community assets; (iii) promote agricultural development through management and control of minor irrigation and water management; soil conservation and land improvement; (iii) promote social forestry and animal husbandry, dairy and poultry; (iv) promote the development of village industry; and (v) manage and control education and health at the local level. In a nutshell, PRIs are institutions that empower people for self-government. From the federal point of view, the relationship between PRIs, the state, and the centre exists on a one-to-one basis. While many of the developmental schemes of the center are implemented by the panchayats Panchayats without any interference from the state, the state government allocates a certain percentage of its development plans and budget to the panchayats.

11.7 THE MEANING AND IMPLICATION OF THE WORD 'UNION'

Article 1 of the Indian Constitution declares India as the Union of States. Thereby it implies the indestructibility of the union and the unity of India. By implication, no 7 unit possesses the right to secede. It is the sole prerogative of the union to form the states by way of division, merger, and alteration of the, existing internal boundaries of India. The union also possesses the right to admit any new territory to the union of India. Today India consists of 29 states and seven union territories. By and large, the Union of India has reorganized its units on the four structural principles of state formation. These principles, as laid down by the States Reorganisation Commission (1955) include

(i) Preservation and strengthening of the unity and security of India;

(ii) Linguistic and cultural homogeneity;

(iii) Financial, economic and administrative considerations; and

(iv) successful working of the national plan. As far as possible, the Union of India has attempted to reorganize its units on the relative congruence of their "identity boundary' and "administrative boundary'. Language, culture, and ecology have a decisive impact on the ongoing process of reorganization. Though the union has the sole prerogative of state formation, it does so only based on a resolution passed by the Legislative Assembly of the affected states.

Another implication of the word "union" is that Indian federalism is not compacted federalism between two preexisting sovereign entities. The union has come out in existence only through the unified will of the people of India, nourished during the national movement. This is probably the reason that the Upper Chamber (Rajya Sabha), expected to represent the interests of the units of the federation. It does not have symmetrical (equal) representation. Its composition is based on the proportionality of population size. According to the population size, each state has been allocated the respective number of seats in the Rajya Sabha. Thus, while Uttar Pradesh has got 31 seats, the smaller states like Manipur, Goa, etc., have been allocated only one seat.

11.8 FEDERAL STRUCTURE OF INDIA AND THE ISSUES THAT CHALLENGE

Federalism is a form of government in which a central authority and its constituent political units share power. Federalism in India is distinct from the kind of Federalism used in nations like the United States of America. The Indian system of federalism is known as a quasi-federal system because it includes key components of both a federation and a union. The phrases "federation sui generis" or "federation of its kind" would be more appropriate. Article 1 of the Constitution of India states that "India, that is Bharat, shall be a union of states." The federal union of India was not created as a result of the states joining together. Instead, a unitary system was transformed into a federal one. It is a compromise between two conflicting factors, such as the autonomy enjoyed by states within the constitutionally prescribed limits (State List) and the requirement for a strong central government in the context of the nation's unity and integrity (Union List).

The most important element of contemporary constitutionalism is federalism. Unity in diversity, devolution of authority, and decentralization of administration are the three main pillars of Indian

federalism. Despite the great diversity in the socio- cultural and economic domains, the state pursues the objective of common welfare through federalism.
The following are some of the issues that challenge Indian Federalism:

1. Regional identity

Regional identity is regarded as one of the major obstacles to India's federalism. Federalism performs best as a representative democracy when it reduces the concentration of power distribution between the federal government and the states. India's pluralistic culture contributes to a variety of aspects, including regionalism. People from the far northeastern part sometimes feel as though they are a long way from Delhi, and those who have lived in larger states in the south of the country sometimes feel forgotten. Despite India's history of successful federal administration over the years since independence, regionalism or love for one's locality still arises in various regions of the nation.

More people have recently voiced their support for the creation of more states, particularly since Telangana's creation in 2014. Recent requests like the formation of Gorkhaland from West Bengal and the four-fold separation of Uttar Pradesh are examples of extreme regionalism that endanger India's federal system reviving the movements for Gorkhaland, Bodoland, and KarbiAnglong. Apart from the recent calls for a separate Vidarbha State in Maharashtra, Harit Pradesh, and Poorvanchal in Uttar Pradesh, there are other recent aspirations. The center will be more held captive by state parties on issues of importance to the nation as the number of states increases.

2. Separation of Powers

In India, unlike in the United States and Australia, the constitution's seventh schedule contains three lists that determine how power is distributed between the centre and states . Both the Union list and the State list specifically list the powers of the Central and State respectively, while the Concurrent list lists subjects on which powers powers that are shared by both sets of governments. The central government is given the remaining powers i.e. residuary powers.

The main idea behind the division of powers is that everything that is largely local or regional, such as education, public health, police, and local administration, is given to regional governments, while

everything national in nature, like defence, foreign affairs, railways, and currency etc are is given to the central government. The Concurrent List is designated for those issues that call for participation from the center and states, such as criminal law, forestry, and economic, and social planning etc. The Centre, however, takes precedence over the States in disputes involving legislation on any of the topics listed in the Concurrent List.

The main cause of concern among the states has been the centralization of power that is implied by Article 200 (the Governor's reservation of State Bills for the President's consideration). The emergency provisions under Articles 352, 356, and 360, and the States' obligation to comply with the Centre's executive authority under Articles 256 and 257. The federalism of India is thus endangered by centralization.

3. Fiscal Federalism is not implemented

While the Indian Constitution explicitly grants the Centre greater taxing authority, it also establishes an institutional structure — the Finance Commission — to determine the States' proportion of Central tax revenues to address this imbalance.The President is empowered to constitute a finance commission according to Article 280.

The Finance Commission is expected to address both the vertical imbalance between the Center and the States as well as the horizontal imbalance between states when deciding on the devolution of taxes and the provisions of grants.

Currently, the States get funds from the Planning Commission (NITI Aayog) and the Central Ministries as well as around 40% of all Center revenue (tax and non-tax).
The revenue earnings of the Centre and the States have not yet changed much despite the 80th Amendment's expansion of the shared pool to include all central taxes.
Uneven development occurs across the nation as a result of the asymmetrical distribution of revenue and the resource shortage at the periphery. Many states worry that the Taxation will undermine India's fiscal federalism. The numerous levies have been incorporated into a single tax, the collection of which will thereafter be distributed to the states according to a specified ratio. More financial sovereignty in India is demanded by many Indian states.

4. Inequality in Unit Representation

Most federations around the world have turned to constitutional mechanisms like equal representation of units or states in the Second Chamber and state ratification of all constitutional amendments to prevent the predominant influence of larger units over smaller units in a federation.

There is no such requirement for equal state participation in the RajyaSabha, the Second Chamber, nor do the states have any significant influence over the Constitution's periodic modifications in India.

5. centralized authority of amendment power

The authority to alter the Federal Constitution in a normal federation is shared between the union and its parts. According to Article 368 as well as other provisions, the Centre in India has the authority to change the constitution. The states in the Indian Union have essentially no control in this key area of governance, even though ratification from half of the states is requested in some limited cases.

6. Governor's Office

The office of a governor in each state of India has long been a contentious topic since it can occasionally jeopardize the federal nature of the Indian Union. There have been bitter arguments and contrasting viewpoints in the nation on the Centre's apparent arbitrariness in abusing such constitutional office.

A strange incident in India's constitutional history was the imposition of President's Rule in Arunachal Pradesh in January 2016 despite the presence of an elected administration in the State. On July 13, the Supreme Court declared the Governor's decision to be unconstitutional and ordered the restoration of the Congress in power in Arunachal Pradesh.

The overt backing provided by the Central Government for the Governor in this crucial matter says a lot about the quasi-federal structure of India's serious shortcomings. The Central Government frequently abuses the authority granted to it by Article 356 throughout the nations. As a result, centralized forces have been strengthened, and the constituent states are no longer supportive of the federal nature of Indian politics.

7 Single Citizenship and a single Constitution

Under the Indian Constitution, which differs from the US Constitution, no state has the right to determine its constitution.

In contrast to other federal constitutions throughout the world, single citizenship is introduced in the Indian Constitution. Its foundation is the notion of "one nation, one citizenship." Regardless of the state in which they reside, everyone in India is a citizen. The States do not grant a unique status as a State citizen.

8. Judicial Integration and All India Services

One characteristic of the Indian federation is its integrated judiciary. In India, the Supreme Court is the top court and other courts are subject to it, in contrast to usual federations. The States lack specialized autonomous courts handling just state affairs. Additionally, India has integrated systems for elections, accounting, and auditing.

Numerous states view the Central Services and All Indian Services as being anti- federal. However, given the nature and extent of administration in India, such services are crucial since they give governance a distinctively Indian character. These services are intended to help the Union Government manage its affairs.

9. Planning in the Center

The Seventh Schedule to the Constitution, which contains the Concurrent List, defines economic and social planning, but the Union Government has unrestricted control over regional and national planning in India. The states are considered weak and meek by central planning, which is done through the Planning Commission of India, which has since been replaced by the Center-appointed NITI Aayog, a large majority of legislative authority for the Union, the states' financial dependence on the mercy of the Center, and their administrative inferiority. The States merely fill in the text's empty planning-related gaps. In India, there isn't a separate planning commission for several states. Additionally, it makes state unhappiness worse and weakens the country's federal spirit's ability to operate effectively.

10. Language Barriers

The Constitution's federalist concepts are sometimes hampered by the diversity of languages in India. In India, 22 languages are recognized by the constitution. Additionally, there are hundreds of dialects spoken throughout the nation. When the biggest unit of a federation tries to impose its language on others, conflict emerges. The conflict over India's official language is still a major concern. There is a serious linguistic problem in India as a result of the southern states' rejection of Hindi as an official language.

11. Conflict with Religion

India is an example of the religious diversity that can sometimes lead to conflict that weakens the federation. However, theological differences do not have to constantly exist. Religion need not lead to inequalities in a federation as long as there is appropriate acceptance on the behalf of the populace and a sincere secularism agenda on the part of the government.

12. External Factors

A federation faces obstacles due to external causes as well. The intervention of neighboring nations is the cause of the tension in India's North Eastern States. India's territorial integrity is in danger due to China's claim to a piece of Arunachal Pradesh's territory along the LAC. Disruptive pressures are generated in India by the Tamil problem in Sri Lanka. The claimed Pakistani involvement in the former Khalistan movement also had a role in diminishing the Indian federation.

11.9 SHOULD INDIA KEEP ITS FEDERAL SYSTEM OF GOVERNANCE?

The most effective form of government for a large and diverse nation like India is federalism. Through different structural mechanisms of "shared rule," it aims to make it easier for two sets of identities to work together on social and political issues.

However, due to the aforementioned factors, center-state relations and state autonomy have emerged as the fundamental problems with Indian federalism. In 1983, the Sarkaria Commission was established by the union government to study and assess how Indian Federalism operated. But many of the Commission's recommendations still need to be effectively carried out.

A few of the recommendations given by this commission were also adopted by the Union administration in a very straightforward manner. This demonstrates that despite the claim that our constitution is federal, the federal government's excessive power renders it incapable of successfully addressing socio-economic issues and fostering national unity. As a result, reformulating Indian Federalism to increase its effectiveness and foster center-state relations is acceptable.

11.10 SUMMARY

It is expected that after reading this, one can distinguish between the different kinds of administrative systems. The union in India is the outcome of the transfer of authority from the federal government to the states. There are tensions between the union and the state since the state borders are not defined. Overall, one has explained the fundamental characteristics of the federal and unitary political systems, as well as their patterns and tendencies. Furthermore, one can comprehend many problems that present a threat to India's federal system. Federalism is the primary component of modern constitutionalism. The three basic foundations of Indian federalism are unity in diversity, devolution of power, and decentralization of administration. The State pursues the goal of common welfare through federalism despite the significant variation in the socio-cultural and economic spheres.

11..11 EXERCISES

1. How does federalism work?
2. What is mentioned in Article 1 of the Indian Constitution?
3. Describe the division of authority between the central and the states.
4. Describe the key elements of Indian federalism.
5. Describe the word "Union" and its implications.
6. Write a note on the functioning of India's federal structure.
7. What are the problems that Indian federalism faces?

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UNIT-12: RECENT TRENDS IN INDIAN FEDERALISM

Structure

12.1 OBJECTIVES

After going through this unit, you will be able to know:

- Explain the recent trends in Indian federalism.
- Explain why the states demand greater state autonomy.
- About the special status of Jammu & Kashmir
- Explain Article-356
- Explain the appointment of the Governor, the multi-party system,party dominance, and many more

12.2 INTRODUCTION

Based on the concentration and distribution of powers a government may be classified under two categories one is unitary and the other one is federal. In political science, an association of several states

is called a federal nation and the concept is 32 called federalism. Earlier federalism was called an empire because of no written constitution.

In a unitary system, the powers are vested in the hands of the central government but in the case of a federal state, the powers are distributed between the center and the states. The federal form of government is considered more effective and more democratic than that of the unitary government.

The Indian democratic form of government explains the federal form of government and it explains details about the distribution of powers between the centers and state instead of that there are problems and imbalances found in federalism. Therefore, the government of India must adopt a new and developed federal form of government.

The new federal form of the government must bring some development in the field of center-state relations in other words; the country must develop cooperative federalism

12.3 RECENT TRENDS IN INDIAN FEDERALISM

The central government and the state government derived their powers from the constitution. Thus, the federal form of government is based on the doctrine of the supremacy of the constitution. The constitution of India explains a pattern, which creates a central authority more powerful to maintain political integrity. Center government also, provides some autonomous powers to the state for social and economic development.

No doubt, the Union government provides some powers and subjects to the state government under which the state government can make laws but at the same time as compared to the state government, the union government contains more powers and subjects. Therefore the new trends of federalism demand for decentralization of powers and more autonomy.

In the case of the Indian federation is not true but a union-centric one. In a federal form of government, both the center and state derive their powers from the constitution of India and the constitution of India derives its powers from the people. Powers are distributed between the center and state govt. under three lists that are: -

Union list, State list, and Concurrent list but the central government takes decisions on major issues and the state always obeys the orders and direction of the central government. The central government has separate subject matters and the state government has separate on which they can make laws but in case of any disputes and emergency arises center laws prevails over the state laws. During the period of Nehru to Mrs. Gandhi India have a quasi-federal government because they have one party dominance system at the center and they work for their party interest rather than the national interest.

In the congress era or till 1967 the union government dominated all other state governments but in the year 1967, the general election brings a tremendous change in 33 Indian politics. One-party dominance comes to an end. Federalism or the center state got a new turn and direction. In the year 1967, various political parties other than congress came into power at both the center and states new political parties to run the government. The new political parties in the states wanted federal relations in a constitutional framework, before the 1967 federal system, was centralized but after that, the regional parties raised their voices against the union government. Political parties like Akali dal and DravidaMunnetraKajagham demand more state autonomy and this entire struggle brings a new direction to the Indian federal system.

The center state relation was going to get a new direction and the mid-term polls in 1971 once again give a sad back to the Indian federal system once again, the congress government emerged at center and state. During this period various regional political parties also emerged and they demand greater state autonomy and more funds.

The Indian government appointed the Sarkaria Commission to suggest center-state relations but the government failed to implement the suggestion of the Sarkaria Commission.

12.4 DEMANDS FOR GREATER STATE AUTONOMY

India is the largest democratic country in the world having the largest written constitution along with that India has a unique feature called a federal form of government. The constitution of India adopted a federal form of government and provides more powers to the center as a comparison to the state because the framers of the Indian constitution want unity and integrity among people and the state.

After independence, the Congress party comes to power both at the center as well as at the state therefore within one-party dominance system coordination arises between the center and state. But in the year 1967 when the non-congress party comes to power in many states, they demand greater state autonomy and financial allocation. Some of the states like West Bengal, Tamil Nadu, Kerala& Punjab demand administrative, financial & legislative powers whereas some other states demand greater financial autonomy. Some of the political parties demand more state autonomy like the DMK government in Tamil Nadu. The DMK government says that the center can only interfere and makes laws in matters related to defense, foreign policy, communication, currency, coinage, etc. the Akali dal in West Bengal have also the same demand.

12.5 DEMAND OF JAMMU & KASHMIR FOR GREATER STATE AUTONOMY

Jammu & Kashmir is a state in India located in the northern part of the Indian subcontinent and a part of the larger region of Kashmir, which has been the subject of dispute between India and Pakistan, and China since 1947. After Akali dal and DravidaMunnetraKazhagam the Jammu and Kashmir National Conference (JKNC) government on June 26, 2000, had approved the resolution of state autonomy, but this resolution was opposed by the BJP government.

Jammu and Kashmir government demanded state autonomy but the BJP government rejected it and say that giving autonomous powers to the Jammu and Kashmir government is not the solution to the problems. The BJP government wants unity, integrity, peace, and development in the country therefore finally on 5th August 2019, home minister Amit Shah introduce a bill in the Rajya Sabha to convert the autonomous status of Jammu and Kashmir (Art-370) into two separate union territories namely Jammu and Kashmir and Ladakh.

The present age is an age of globalization and international competition; therefore, the central government should become more powerful. The framers of the Indian constitution from its very beginning provide more powers to the center because if states will be given more powers then regionalism develops and national progress will hamper. The only solution to the problem of center-state relations is cooperative federalism.

12.6 DEMANDS FOR SMALLER STATE

India is a federal country but nowhere in the constitution of India, it is written that India is a federal

country. Art-1 of the Indian constitution says that “India that is Bharat shall be a union of states” the constitution of India uses the word „Union‟ instead of “Federation” to maintain unity in diversity (language, race, caste, sex, etc.). In India, there is diversity in religion, and in India; politics is based on religion, region, and language. These factors led to the demand for small and new states. Presently each oversize state demands separate state boundaries. Chhattisgarh,
Uttaranchal, and Jharkhand are some examples of new bifurcated states. Presently the number of states has gone up to 29 and union territories to 9 (before 5th August 2019 there are 7 union territories, Jammu & Kashmir and Ladhak are two new union territories) but this process is by no means over various states still demanding for bifurcation.

12.7 USE OF ARTICLE- 356

The constitution of India is the largest written constitution in the world which contains 395 Articles and 22 parts. Among that 22 parts, part XVIII of the Indian constitution deals with Emergency provisions. The constitution of India explains three types of emergencies Art- 352 for National emergencies, Art- 356 for State Emergency (known as President Rules), and Art- 360 deals with Financial Emergency.

Among all other emergencies Article- 356 is a controversial one, the ruling party at the center misused State Emergency because of their party interest. For example, if the state government did not belong to the same ruling political party at the center then the central government shows its monopoly and shows step-motherly behavior towards those states. Just like the congress government without any concrete reason impose the president to rule on the states for their party interest.

12.8APPOINTMENT OF GOVERNOR

Each state of India has a Governor who works as the executive head of the state, under Article- 153 part – VI of the Indian constitution says that “There shall be a government for each state” and Article- 155 says that the “Governor of the state shall be appointed by the president by a warrant under his hand and seal”. The governor of a state act as a bridge between the center and state relation. The center and state oppose each other on the issue of the selection of governors. While appointing the governor the President takes into consideration the views of the chief minister of the concerned state, but the wishes of the state government are bypassed also. However, now the governor has become more active due to

the increased participation of regional political parties at the center.

12.9 EMERGENCE OF MULTI-PARTY SYSTEM

Political parties are of three types that are: One party or mono-party system, two parties or bi-party system, and a multi-party system. India has a multi-party system but a one-party dominance system prevailed in India from independence to 1967. The Congress party dominates all other parties in India. But the general election of 1967 changes the political scenario of India. The one-party dominance system was replaced by the multi-party system. Many regional parties emerged and started to compete at the national level, which changes the federal relationship between the center and the state.

12.10 TREND TOWARD COALITION GOVERNMENT

The constitution of India explains a parliamentary form of government in which multiple political parties cooperate and reduce the dominance of any one party. After the independence Indian National Congress,the single largest political party was controlling both the center and states but the 1967 general election changed the political scenario, congress fails to form the government in half of the states. Coalition politics started in India and party dominance comes to an end. Various regional political parties like Akali dal in Punjab, and DMK in Tamil Nadu raised their voice for state autonomy. The coalition government not only emerged at the states but also at the central level, for the first time Janata party in the year 1977-79 a noncongress party formeda coalition government at the center.

12.11 SUMMARY

From this above discussion we can sum up the concept of recent trends in Indian federalism as follows: 36 In federalism authority is divided between the center and states. The allocation of powers and authority between the center and state may vary. Maintaining unity in diversity and safeguarding the country are two main objectives, therefore the Constitution of India provides powers to both the government but that powers are not equally distributed. In comparison to the state government, the union government has more powers that are why Indian federalism is quasi-federal by nature. Sometimes the central government imposes its will on the state government and also they misuse Art-365. Therefore the states demand greater state autonomy and financial autonomy. But giving more powers to the state government or financial autonomy is not the solution for national development. The country needs cooperative federalism for development.

12.12 EXERCISES

1. Why do the states demand greater autonomy?
2. What is Article-365?
3. Why are the states demanding bifurcation?
4. How a governor is appointed?
5. What is coalition politics?
6. Explain what are the recent trends in Indian federalism?

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UNIT-13: PANCHAYATI RAJ INSTITUTION: COMPOSITION

Structure

13.1 OBJECTIVES

After going through this unit, you will be able to know:

- Learn about the formation of the rural local government in India
- Know about the role of British colonial administration in bringingmodern rural local governance in India

13.2 INTRODUCTION

he Panchayati Raj System is another name for the rural self- government in India. It has a historical presence in India. The main roleof the Panchayati Raj has been to provide a better avenue for local participation in democratic development of the country. It has been proved beyond doubt that it is the best way to establish democratic decentralization. Unlike the urban local government, rural local government has been found even in ancient Indian societies. When British first introduced the concept of local self-government they did itonly for urban areas. It was only in the twentieth century that any modern institution of rural local government was established. The national leadership, including Mahatma Gandhi and Nehru, were vocal supportersof the idea of Panchayati Raj. Once India got independence in 1947 and our constitution was implemented, Panchayati Raj became a

constitutional entity. Article 40 of the Indian Constitution asked the stateto implement the values of Panchayati Raj in India as soon as possible.

13.3 PANCHAYATI RAJ INSTITUTIONS

The institution of Panchayati Raj has been seminal to nearly all forms of political administration that large parts of India have witnessed throughout history, spanning several millennia. Panchayats are units of local government involving various administrative and financial functions. The idea of Panchayati Raj forms a basic tenet of the Gandhian philosophy that considers village Panchayats as the units of self- government. During the colonial period, a few notable British authorities like Lord Mayo and Lord Ripon emphasized the role of Panchayats for efficient local administration. Therefore, Lord Ripon is known as the Father of Local Self Government in India.

Lord Ripon made a remarkable contribution to the development of Local Governmentin India. In 1882, he abandoned the existing system of local government by the officially nominated people and put forward a new system of decentralization. According to his local self-government plan, the local boards were split into smaller units to achieve greater efficiency. He also introduced an election system for the localboards to ensure popular participation.

Soon after independence, the task of strengthening the Panchayati Raj system fell on the Indian Government. It was clear to the leaders of our country that India, a country of a large number of villages, had to strengthen village Panchayats to strengthen democracy. Mahatma Gandhi who strongly believed and advocated for Gram Swaraj pleaded for the transfer of power to the rural masses. According to him, the villages should be able to govern themselves through elected Panchayats to become self-sufficient. But surprisingly enough, the draft Constitution prepared in 1948 had no place for Panchayati Raj Institutions. Gandhi severely criticized this and called for immediate attention. Eventually, Panchayati Raj institutions found a place in the Directive Principles of the State Policy.

13.4 EVOLUTION OF RURAL SELF-GOVERNMENT ININDIA

The history of rural local government in India is very old. It has been found that people in the ancient times too were governed by some kindof rural government. This was known as Panchayat, which literally meantthe assembly of five people. This assembly of five people had various

administrative and judicial powers at that time. This system of Panchayats remained the same throughout the ages in India, despitevarious developments at the central level. It was only during the transition from the Mughal to the British rule that these local Panchayats became dysfunctional (Aslam 2007: 10). During the British rule the need for rural local self-government was not realized till 1870s. Most of the initiatives undertaken by the British rulers regarding the local governmentwere restricted to urban areas and to the areas of tax collection. The first real initiative for the establishment of any kind of rural local government in India was taken by Lord Ripon's administration. In 1882,Lord Ripon, acting on the report submitted by the Famine Commissionin 1880, adopted a resolution of local self-government in India. The Famine Commission had recognized the absence of local bodies as the main hindrance in the effective distribution of relief materials to theaffected regions and population. On the basis of this resolution in 1885,The Local Bodies Act was passed by the British Parliament.

In the 1909 report of the Royal Commission on decentralization, itwas accepted that it is desirable to have effective decentralization of power in order to associate people with local tasks and village affairs. Itrecommended the establishment of village Panchayats for the first time (Aslam 2007: 13). However, both these recommendations by Lord Ripon and by the Royal Commission on decentralization remained only on paper, when it came to their implementation in the rural areas. The British government relied only on the district boards that were establishedunder the Local Bodies Act of 1885, for the management of rural areas.In it, local government outside the towns was based on the district boardwith subordinate bodies for sub-divisions (in Madras, Bengal and Biharand Orissa) or Talukas and Tehsils (in Bombay and the central provinces). In the united provinces, Tehsil boards, after trial, were abolished asuseless, while in the Punjab they had continued in a fewdistricts only. Assam had adhered throughout to sub-divisional boardsonly, with no coordinating body for the whole district. All over India, therewere supposed to be 199 district and 537 subordinate boards, having jurisdiction over 215000000 people. Since the British India comprisedof 804,965 square miles, it was obvious that, in terms of area, the chargeof a district board was considerable (Wheeler 1917: 157).

The chairman of the district board, however selected (i.e., whetherby right ex-officio, nomination or election), was the collector or deputycommissioner. In the larger majority of sub-district boards, the chairmanwas usually an official (either the sub-divisional officer or Tehsildar). The main duties of rural boards comprise: the maintenance and improvement of roads and other communications, education (especiallyin its primary stages), the upkeep and maintenance of medical institutions,

vaccination, sanitation, veterinary work, construction and maintenance of markets and rest houses and the charge of pounds and ferries. They might also be called upon to devote their funds to famine relief and to cope with plague and other special epidemics. Thebackbone of the revenue of rural boards was a cess upon agriculturalland, which was levied, over and above the land revenue, at a rate which usually did not exceed 6 per cent on the annual rent value. However in recent years, grants by government, particularly for education and sanitation, had formed the most important item on the receipt side, both in terms of direct contributions and through allocation to the boards of the total proceeds of the land cess, which were previously subjectedto noticeable deductions in favour of the government for different purposes. Therefore in later years, the resources of rural boards had been materially expanded, though in some instances these bodies havescarcely realized the possibilities of beneficial activity afforded by thisnew-found affluence.

Meanwhile in its 1909 Lahore session, the Congress adopted a resolution urging the government to take early steps to elect local bodiesfrom village Panchayats, upwards with elected non-official chairman. However, the government did not take it seriously at that time and thisremained on paper only. The first major reform in local self-governmentwas taken as part of the Montagu-Chelmsford Reforms of 1919. Localself-government was transferred to elected members of the provincial councils under the proposed scheme of dyarchy. The idea behind this was to make the local bodies more and more representative and establish a popular control over them. There were various provincial acts adopted by different provinces in order to establish the rural localgovernments, after the 1919 reforms. Examples of these were: Bihar and Orissa Village Administration Act of 1920, Punjab Village PanchayatAct of 1935 and Jaipur Village Panchayat Act of 1948. Most of these laws covered some selected areas and did not have universal presenceand authority, even within a state. Their functions were also very limited.The whole idea of creating a local self-government was to make it representative. However, most of these rural local bodies remained unrepresentative and their officers were nominated by the state governments. Their financial powers were also limited and they were dependent on the state government.

In post-independent India the opportunity to fulfill the dream of Gandhi to establish a strong Panchayati Raj system was utilized due tovarious reasons. According to Gandhi, Panchayats would be central agencies of the government in his scheme of things. Many other national leaders too concurred with the idea during the freedom struggle. However, after the independence it was not taken up with that enthusiasm. The constitution of 1950 made local self-government a state subject

and it was only in Article 40 of the Indian constitution, which comes under the Directive Principles of State Policy and thereforehad no legal relevance. It was stated that the state shall organize village Panchayats and endow them with such powers that may enable themto function as units of self-government. According to George Mathew, this was a sad commentary on India's national commitment to democratic decentralization (1995: 4). It has been variously criticized by various scholars as the betrayal of Gandhi's and India's historical legacy. The governments in most of the states at that time and even central government at the time were occupied with the economic and social development of the country and therefore did not take Article 40very seriously. Because of this, only few states like Rajasthan in 1953did take some interest in establishing Panchayati Raj.

By the middle of 1960 there were only ten states which took initiatives in establishing some type of rural self-government or Panchayats. However in all these ten states, the shape, formal legal status and rights of these Panchayats were so different that it was notpossible to make any objective assessment of the working of these bodies. Meanwhile, the government of India tried to initiate a communitydevelopment programme, as an alternative to the local self-government,starting from 1952. Most of the objectives of this community developmentprogramme did not materialize due to the lack of the people's participation. In 1957, the government of India formed a team for the study of community projects and national extension services, under the leadership of Balvantray Mehta. The report submitted by the Balvantray Mehta Committee as it is popularity known, prescribed the establishment of effective decentralization of power to the Panchayats and other local bodies. It observed that without popular participation and devolution of power to the Panchayats, any community developmentprogramme will not be successful. The findings and recommendationsof the committees can be summarized into three broader headings:

1. The community development programme would not be successfuluntil power is decentralized to the local bodies. The negligenceof Panchayats as an effective tool of development has led to thefailure of the programme.
2. The local bodies in rural areas should have full control over the development schemes implementation.
3. The government at various state and central levels should restricttheir activities to supervision and supply of additional finance.

The Balvantray Committee recommended a three-tire system of ruralllocal government: village

Panchayats at the lowest level, Panchayat Samiti at the block or intermediary level and the Zila Parishad at the district level. The committee recommended block level committees of elected representatives. According to the Balvantray Mehta committee report, the block level Panchayat Samiti should be given most of the responsibilities and power as it would be the most effective body of rural local development. It argued in favour of genuine transfer of powers to these bodies. According to the report, they should be provided with adequate finances and all development programmes should be channelled through these bodies. The committee also recommended that the Zila Parishad should only have an advisory role and it should not interfere in the day-to-day functioning of the Panchayat Samiti or Village Panchayat.

The basis of these recommendations and findings was the growing realization among the high officials and political elite in India, which said that any development is not possible without popular participation in the development schemes and only decentralization can bring people close to these schemes. The participation of local communities and population is a must in order to enact any effective development policy and therefore it was wise to involve people at the grassroot level in their own development. We can conclude that the first genuine Panchayati Raj institution in India came into force in 1959 when the recommendations of the Balvantray Mehta Committee were accepted. The government of India accepted two basic objectives of the rural self-government. These objectives were as follows:

1. Democratic decentralization at every effective level
2. Increase in the local participation in all the measures taken by the government, for the development of people.

Based on the Balvantray Mehta Committee's recommendations, the states of Rajasthan and Andhra Pradesh first took the initiatives to establish new Panchayati Raj institutions. On 2nd October 1959, at Nagaur district in Rajasthan, the Indian Prime Minister, Jawaharlal Nehru, inaugurated the first Panchayat in India, under the new Panchayati Raj system. By the end of the year, all the other states had passed the Panchayat Acts and subsequently Panchayats were set up in all the parts of the country. At that time, on an average every Panchayat covered around 2400 people in two or three villages (Aslam 2007: 21). Despite this promising beginning, most of the newly established Panchayats soon became dysfunctional by the middle of 1960s. Most of the state governments refused to conduct elections for these bodies and provide them adequate funds. The

result was a decline in the popularity of theseinstitutions in India, in the coming decade.

The reasons of this decline was mainly lack of uniformity in the structure of the Panchayati Raj institutions, changes in the priority in the development programmes, lack of the clarity about the extend of their powers and responsibilities, lack of enthusiasm among the bureaucratic machinery to part with their powers and share them withelected representatives at the Panchayat levels and failure of the stateleadership to share the power with their local representatives. Due to these problems, most of the state governments did not provide enoughfunds to these institutions. Due to lack of funds, most of the programmes undertaken by these bodies remained unfulfilled. Meanwhile, there wasa change in the central government. The new Janata Party governmentformed a committee headed by Ashok Mehta, in order to have a freshlook at the Panchayati Raj System, in 1977. The committee also recognized the central role of rural areas in every future development inIndia and therefore, it was decided that the Panchayati Raj system shouldbe at the centre of all initiatives undertaken by the governments. According to the committee, there are five main reasons of the failuresof the Panchayati Raj System in India. These are as follows:

1. Most of the states have kept the Panchayats out of most of theprogrammes of development
2. Bureaucracy at various levels did not show enough enthusiasmin including Panchayati Raj institutions in development programmes mainly due to their unwillingness to work under the elected representatives and share their powers.
3. There had been a lack of conceptual clarity regarding the conceptof Panchayati Raj itself and also regarding its nature, extent of powers and status.
4. Most of the Panchayati Raj institutions have faced discriminationby the state governments. They were not given enough resourcesand attention by state governments.
5. Due to above reasons, most of the Panchayati Raj Institutions had failed to perform their basic duties, which led to mass disillusionment among the people at various levels with the working of theseinstitutions.

After going through the reasons for the failures of the Panchayati RajInstitutions in the country, the Ashok Mehta Committee recommended that intermediate level districts should be considered as the first pointof decentralization. It also recommended the establishment of MandalPanchayats below the district levels, over every population of 15000 to20000 people. It also suggested that most of the functions of the Panchayat Samitis should be given to Mandal Panchayats and Panchayat Samiti

should be converted into non-statutory executive committees of Zila Parishads. People should be involved with the MandalPanchayats through various village committees. These village committees would look after all the municipal and welfare functionsin the area.

According to the recommendations of the Ashok Mehta Committee,elections for the Panchayati Raj system should be held on a party basisand it should be conducted by the state election officers. It envisioned a greater role of an expert committee, based in the Zila Parishads to help in devising economic plans at the district level. A Zila Parishad shouldhave six kinds of members: presidents of various Panchayat Samitis (will be ex-officio members), nominees of bigger municipalities, nominees of district level cooperatives federations, two women who get the highest number of votes in the Zila Parishad elections and two co-opted members (one who is specially interested in rural development and the other, drawn from university teachers). According to the Ashok Mehta Committee, all the development functions related to a particulardistrict should be placed under the Zila Parishad. Mandal Panchayats would be responsible for the implementation of most of the programmesassigned by the Zila Parishad.

Hence, unlike the Balvantray Mehta Committee, the Ashok MehtaCommittee recommended a two-tier Panchayati Raj System in India. This did not agree with the provision of a previous committee that an intermediary level of Panchayati Raj System, namely block level, shouldbe at the central level of decentralization and instead, it suggested themaking of the Zila Parishad as the prime object of decentralization, below the state level. Mandal Panchayat was considered as a link between various village Panchayats and various rural and urban localgovernments. It did not recognize any importance of Gram Sabha or village Panchayat. This committee also suggested the provision of social audit of the programmes from an independent body at every level, to check the right implementation of the programmes undertaken for the development of scheduled castes and scheduled tribes. Similarly, afterthe Balvantray Mehta Committee report, various state governments passed new laws of rural local government on the basis of the Ashok Mehta Committee's recommendations, for example, Andhra Pradesh,West Bengal and Karnataka. However, soon in 1979, at a chief minister's conference in New Delhi, the recommendations of Ashok Mehta Committee were rejected and the three-tier system suggested by the Balvantray Mehta committees was retained.

Nevertheless, the problems of rural local self-government persisted.In order to review the working of the rural development and poverty alleviation schemes in 1985, the Planning Commission of India formeda committee under the leadership of G. V. K. Rao. The mandate of thecommittee was

to recommend appropriate structural mechanism to ensure that these programmes and schemes are implemented effectively. The committee also examined the working of the Panchayati Raj institutions and their relationship with the administration. Accordingto the G. V. K. Rao Committee most of the states have not implementedthe policy of decentralization satisfactorily. They have left the PanchayatiRaj institutions without adequate power and responsibility and thereforeit recommended a significant level of decentralization, at the district level. According to the committee;

1. There should be regular elections for all the Panchayati Raj institutions and they should be activated wherever they are not ina working mode.
2. The development of rural areas should not be taken in isolationand it should be based on a comprehensive view of development.
3. District or Zila Parishads should be given a central role in the activities of rural development, planning and management. All theprogrammes should be implemented at the district level.
4. Rest of the institutions under the Panchayati Raj should also beincluded in an effective and prominent way in the management, planning and execution of the rural development programmes.
5. Planning should also be transformed to a district level. Zila Parishad should have various committees. Members for these committees should be elected from the Zila Parishad, in accordance to the system of proportional representation.
6. There is a need to make maximum popular participation possible in the development programmes, in order for them to be successful.
7. There should be a provision of adequate power and financial resources to the local level.
8. There should be a block development officer who should be given a central role in the development of the area.

Most of the state governments were not holding elections for PanchayatiRaj institutions by that time. The excuse was the lack of funds and resources. They were also not willing to impart their powers to these local bodies and this made making them defunct. All the committees suggested the importance of elections as did the G. V. K. Rao Committee. Still most of the states did not take it seriously. On the basis of this report, a new committee was formed by the government of India in 1986, under the leadership of L M Singhvi. The main task ofthe committee was to suggest ways for

the revitalization of the Panchayati Raj institutions. The committee prepared a concept paperon the subject. This committee tried to link the Panchayati Raj with the concept of *Purna Swaraj* or Gandhi's *Gram Swaraj* and considered it as the basic unit of self-government.

The committee criticised the prevalent view regarding these institutions as convenient tools of administrative programmes and agency of development. According to the committee this view has beenthe main reason for the negligence and disrespect of these institutionstill now. The committee considered the view as harmful for the real development of democracy in the country. Article 40 of the Indian Constitution meant to give the Panchayati Raj institutions the proud place of the units of local self-government. Therefore, it was wrong tointerpret them as agencies of development only. In the view of the committee, the Gram Sabha can be an embodiment of direct democracyin the country and therefore, it should be given due importance and respect. The L M Singhvi Committee recommended following:

1. There should be regular and consistent elections for all the Panchayati Raj institutions at the end of every term. All measuresshould be taken to conduct fair, free and regular elections for these bodies. If necessary, the responsibility for these electionsshould be given to the election commission of India which can arrange a mechanism for Panchayatelections.
2. No Panchayati Raj institutions should be allowed to be suspendedfor more than six or seven months. It means, in any circumstancethe elections for these institutions should be held within six monthafter the term of the previous body ends.
3. Local self-government should be a constitutional body and thereshould be a new chapter dealing with these institutions in the constitution.
4. Panchayati Raj institutions should be considered and made as the third tier of government in the constitution.
5. There should be a Panchayati Raj judicial tribunal in every state.This will adjudicate all the controversies regarding elections, suspensions, super sessions, dissolutions and other matters relating to the working of Panchayati Raj institutions.
6. The commission recommended the need to have a regular andadequate provision for finance to all these institutions. The centralfinance commissions should make special provisions for this.
7. There should be no participation of political parties in the Panchayat elections.

8. There should be Nayaya Panchayats at every Panchayat or for agroup of Panchayats. These bodies will have powers of conciliationand mediation along with the powers of adjudication.
9. At every level there should be proper training for voters, representatives, officers and others who are involved in the functioning of the Panchayats.
10. There should legislation in the parliament incorporating all theserecommendations.

In the aftermath of the recommendation of L M Singhvi Commission, there was a huge debate regarding these. In 1988 when the famous Sarkaria Commission on centre-state relationship submitted its report, it too emphasised on the need of having regular elections for local self-government and it also recommended the formation of state finance commissions in order to solve the problems of distribution of financesbetween state and local governments. These and various other committees led by P K Thungan (1988) and V N Gadgil (1989) also recommended the recognition of Panchayati Raj institutions in the constitution. The latter committee also recommended a five-year termfor Panchayati Raj institutions and reservation for scheduled castes, scheduled tribes and women in these institutions. These recommendations became the part and parcel of the 73rd and 74th Amendments acts of the Indian Constitution in 1992. These amendments have established the present structure of the PanchayatiRaj system in India.

13.5 REVIEW OF THE WORKING OF THE CONSTITUTIONAL PROVISIONS FOR DECENTRALIZATION (PANCHAYATS)

In its review of the working of Panchayati Raj in India, the National Commission to Review the Working of the Constitution (NCRWC) hasraised several issues affecting the Panchayat system in India.

1. Irregular Elections

The mandate of the Constitution for holding regular elections to the Panchayats is clear and unambiguous. Clause (1) of article 243E stipulates that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of the saidarticle stipulates that election to constitute a Panchayat should be completed before the expiry of its duration as specified in clause (1). Thus, the Constitution provides for completion of the election just beforethe 5-year term of the previous

Panchayat ends, so that transition to the newly constituted Panchayat can be a smooth process.

"It is a sad commentary on our respect for Constitutional norms and practices that State after State is being allowed to defy with impunity"the mandate to hold Panchayat elections on time (Mathew, 2001).

Almost all the States, except West Bengal, Tripura and Rajasthan, areguilty in this respect. For example, Bihar took 8 years' time after the 73rd Constitution Amendment legislation was passed to announce itsfirst Panchayat elections in April 2001. Similarly, the States of Tamil Nadu, Kerala and Karnataka delayed their first election. When the five-year term of Panchayat was complete, postponement took place in Assam and Madhya Pradesh. Madhya Pradesh held the second electionin January 2000, but Assam's election remains due since October 1997.In Orissa, the State Government dissolved all the elected Panchayatsbefore expiry of their term, but failed to hold elections within six months as stipulated in the Constitution. Gujarat postponed its gram Panchayatelections that were scheduled to be held in May-June 2000. Punjab hasheld up elections to the intermediate level and district level Panchayatsince September 1999. The election to all the three-tiers of Panchayatin Andhra Pradesh was due in July 2000. Despite directives from the High Court and then from the Supreme Court, elections were not held.In Orissa and Uttar Pradesh, Panchayat elections were held after theCourt intervened and gave direction. In the case of Andhra Pradesh, even direction of the Supreme Court failed to produce result.

The view that the Constitutional provisions with regard to the holdingof Panchayat election are unambiguous and mandatory in nature hasbeen vindicated by several judicial pronouncements.

2. Strengthening State Election Commission

One of the compelling reasons for making Panchayats and municipalitiesconstitutional was to ensure regularity of election to these bodies. Theobjective does not seem to have been realised fully because of the stubborn resistance from a large number of States. By refusing to perform their Constitutional duty, the defaulting States have denied thepeople of their democratic right to elect their Panchayat representatives.This shows that legal instrument alone may not always guarantee realisation of the democratic rights. They have to be earned through various forms of 'public-action' in which people themselves have to playactive role. Nevertheless, it is worthwhile to examine if further reformsin the provisions of law could improve the situation.

One can have no dispute with the provisions contained in article 243E. It is clear and the

mandatory nature of these provisions has beenreconfirmed by judicial pronouncements. In the light of the experienceof last few years, it may however be fruitful to consider if there is scopeto introduce reform in the provisions of article 243K. This article providesfor the appointment of State Election Commissioner (SEC) for "superintendence, direction and control of the preparation of electoralrolls for, and the conduct of, all elections to the Panchayats." (Similarprovisions exist in article 243ZA for municipal elections). These powersare comprehensive and wide and they enable the SEC to conduct polls in free and impartial manner. However, clause (4) of article 243K empowers the State Legislatures to frame laws to regulate "all mattersrelating to, or in connection with, elections to the Panchayats". Once such law is there, SEC can exercise his inherent powers, subject to the provisions of such laws. Election rules/Acts of many States have armed the State Governments with powers relating to many vital electionmatters, such as, issuance of election notification, delimitation of constituencies, reservation of seats, rotation of reserved seats, etc. When holding of election gets delayed because of non-completion of such works on time, SEC remains helpless.

There is no inherent problem with article 243K relating to electionsto the Panchayats or article 243ZA relating to elections to the Municipalities.

3. Functional Domain

Ever since the coming into force of the 73rd Constitution amendment, controversies have been raised about the kind of functions the Panchayats should discharge and powers and authority they should possess to perform the functions assigned to them. The root of such controversies lies in the rather vague nature of article 243G. The saidarticle reads as under:-

"Subject to the provisions of this Constitution, the Legislature of aState may, by law, endow the Panchayats with such powers and authorityas may be necessary to enable them to function as institutions of self- government and such law may contain provisions for the devolution ofpowers and responsibilities upon Panchayats at the appropriate level,subject to such conditions as may be specified therein, with respect to:

(a) The preparation of plans for economic development and social justice;

(b) The implementation of schemes for economic development andsocial justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

This article along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does also probably indicate, as some observers assert, the nature of power and

authoritythat the Panchayat should be endowed with. But the provisions do notgo to the extent of specifying the 'functions', 'powers' and 'authority'. That task is left to the respective State Legislatures. Most of the StateLegislatures in their turn have interpreted the provisions in a way thatseem to be in contravention with the basic principles of democratic decentralization.

4. Institution of Self-Government

The Constitution has not elaborated the concept of 'self-government'.In order to derive the meaning and the implications of the concept, onehas to take into consideration the context in which the expression hasbeen used either in article 243G or in article 40. Viewed from that context,the term,' self-government' must have two major attributes. Firstly, it isa Government by the people, that is to say, it is a Government which isdemocratically elected by the people. Secondly, an institution of self-government is, by its very nature, autonomous. This means that it is empowered to function without any outside interference. To be more explicit, within the boundary of the specific functions devolved upon it, an institution of self-government will have powers and authority to take decisions independently. Autonomy however is an elusive concept in aState where there are governments at multiple levels. Here Governmentat any particular level enjoys only partial autonomy. Accordingly, the functional autonomy of Panchayats has also to be partial. How much autonomy Panchayats should enjoy is, however, a matter of judgmentas well as policy. The Constitution empowers the respective State Legislatures to adopt their individual policies in this regard based upontheir own judgment of practical situation. But, they have to ensure thatdevolution of functions becomes as complete as possible and does not get reduced to a situation where Panchayats enjoy only such 'power' and 'authority' as may enable them to function merely as *agents* of theState Government. That clearly is not the intention of the Constitution,as it hurts the basic principles of democratic decentralization. What Part IX of the Constitution intends to bring about is 'devolution' type of democratic decentralization and not the 'deconcentration' or 'delegation'type of administrative decentralization under which the superior decision-making body retains various control including the power of withdrawing the power and authority given to a lower body for administrative convenience.

5. Functions of Panchayats

The question as to whether the Panchayats are for development purposeonly or for the wider purpose of governance is being debated for quitesometime. The notion that the Panchayats are for development purpose only was popularized by the Balvantray Mehta committee of 1957. Thesame view was

endorsed by theAsoka Mehta Committee of 1978. Allthe policies of Government on Panchayati Raj from the 50's onwardsalso reflect such a view.

Nevertheless, there has always been an alternative school of thoughtrepresented by such eminent persons as Jayaprakash Narayan and
E.M.S Namboodiripad. They held the view that the Panchayati Raj institutions should be considered as governments of local areas and therefore no distinction should be made between the so called 'developmental' and 'regulatory' functions of the State, while assigningfunctions to them. For a clear exposition of this view, it will be worthwhileto refer to the classic dissenting note of Namboodiripad in the Asoka Mehta committee report. " I cannot …think of Panchayati Raj institutions"observed Namboodiripad in his dissenting note, "as anything other than the integral parts of the country's administration with no difference between what are called the 'developmental' and 'regulatory' functions.What is required is that, while certain definite fields of administration like defence, foreign affairs, currency, communications, etc., should rest with the centre, all the rest should be transferred to the States andfrom there to the districts and lower levels of *elected administrative bodies*". (GOI, 1978:163, emphasis added).

The above observation is a bold statement in favour of democraticdecentralization under which the local self-government institutions willhave a distinct role to play in the country's governance along with the Governments of the States and the Centre. Hence, in assigning functions to the governments at the three levels, the totality of government functions have to be considered and then division of powers and functions between them has to be made on the basis of the principle of subsidiary. Under such a situation what is required to be considered iswhat functions can be done best at what level. Whatever function canbe discharged at a lower level without loss of efficiency should not beunnecessarily usurped by the government at the higher level. This is the essence of the idea of decentralization voiced by Namboodiripad orJayaprakash Narayan. Hence, the question of drawing distinction between the developmental and regulatory functions for the purpose of devolution of functions to Panchayats has no place in such conceptualization. This view about the role of the Panchayati Raj Institutions (PRIs) shared by many today and has found systematic expression in the literature on Panchayati Raj.

How does article 243G stand against this? From a plain reading ofthe provisions of this article, particularly those in clauses (a) and (b) read with the Eleventh Schedule, it would appear that the Constitutionreserves only developmental functions for the Panchayats. In Mukarji(1993) and

Mukarji and Bandopadhyay (1993), however, we find a different view. According to the latter, that portion of article 243G whichdirects the State Legislatures to endow, by law, the Panchayats "with such powers and authority as may be necessary to enable them to function as institutions of self-government" has overriding force over the rest of the portions of the said article. Accordingly, they observe asfollows:

"Our own view is that it is entirely within the competence of the State Legislatures to decide what powers and authority the Panchayatsshould have in order that they function as credible institutions of self- government. This was the Constitutional position all along; the Amendment served to reaffirm it. The introduction of the developmentmotif in the Amendment, perhaps, limits the competence of the legislatures only in the sense of indicating the minimum that each State Legislature should transfer to the Panchayats. There is, in other words,a floor but no ceiling. How far above the floor a particular State may gois a question of policy for that State, bearing in mind that the Panchayatsfrom now on are (1) Constitutional bodies and (2) institutions of self- government."

Whether harmonious construction of article 243G leads to the above view is a matter of debate. As the later discussion would show,at least the conformity Acts of various State Legislatures do not subscribeto this view.

6. The Conformity Acts

By and large, none of the conformity Acts has tried to grapple with theconcept of self-government. In fact, excepting the mandatory provisionsof the Constitution, these Acts have nothing new to offer. We may examine Acts of a few States to illustrate the point.

Under the Gujarat Panchayat Act, the duties of village, Taluka andDistrict Panchayats have been elaborated in three separate schedules.The list of functions as detailed in these schedules may appear to be impressive, but adequate provision for fund and staff has not been madein order to enable them to carry out the duties. Panchayats receive funds for departmentally determined specific projects. As a result, thePRIs function largely as agents of State Government. Their functional autonomy is highly restricted.

In Maharashtra or Tamil Nadu, there has been no attempt whatsoever, to alter the pattern of distribution of functions to the Panchayati Raj bodies. There is no reflection of the 11th Schedule in assigning functions to the Panchayats. What is more, the MaharashtraPanchayat Act empowers the State Government to 'omit any entry'or add and amend any such entry, by an executive order, from the

scheduleof the Act that contains list of functions devolved to the PRIs. In the Rajasthan Act, a number of functions have been assigned to all the tiers of Panchayat, but the same Act confers power to the State Government to take away any such function.

Uttar Pradesh had made much noise on the issue of decentralization. The State had appointed an Administrative Reformsand Decentralization Commission. The Commission after studying the activities and functions listed in the 11th Schedule, identified thirty twodepartments of the State Government whose activities/functions couldbe shared with the gram Panchayats, Kshetra Samitis and Zila Panchayats. To examine the feasibility of these recommendations, theState Government appointed a committee of officials. After receiving the report of this committee in 1997, the Government had issued ordersto twenty-eight departments for transferring some of their functions to the PRIs. But such transfer of functions has no operational significance,since all important decisions are taken as before by the respective departments.

In Orissa, the gram Panchayats have been assigned with impressive functions/activities of 43 odd items under obligatory and discretionary lists. But there is no provision for fund or staff to enable them to discharge such functions, thus making their statutory functionaldomain practically useless. Powers and functions of Orissa's PanchayatSamiti remain unaltered since the sixties and the 11th Schedule does not seem to have any impact upon them. The Gram Panchayats and Panchayat Samitis of the state have no power to prepare plans for theirown areas, even though this right is constitutionally given to all such institutions.

In Andhra Pradesh also, the gram Panchayats and the Mandal Parishads are not required to plan for 'economic development' and socialjustice'. All the tiers of Panchayat have been assigned with large numberof functions. But none of them has financial or administrative resourcesunder their control to execute them. The Mandal Parishad has no controlover the staff of Development blocks, and the Zila Parishad has no control over the DRDA which controls huge fund under various povertyalleviation programme.

West Bengal which claims to have a highly developed PanchayatiRaj system has shown little respect for devolution type of decentralizationfollowing the Constitution amendment. Even though the State's conformity Act recognizes each Panchayat to be a 'unit of self- government', it keeps its earlier scheme of distribution of power unaltered. The Act provides impressive lists of functions which Panchayats may discharge, but does not make provisions either of untied fund or of staff.

By executive orders the State Government allows the Panchayats to share implementation responsibilities of some of itsprojects/ schemes/ functions. Thus the Panchayats of the State have to remain satisfied with only 'agency functions' which are, of course, substantial, but are incapable of exercising autonomy in its own functionaldomain as given by the statute.

Karnataka, Madhya Pradesh and Kerala are the States where someattempts have been made to ensure the growth of Panchayats as self-governing institutions. In 1997, Karnataka had amended substantiallyits original conformity Act of 1993. The amendments expressed explicitcommitment for developing Panchayats 'as units of self-government',eliminated bureaucratic control over elected bodies, gave powers of delimitation of constituencies to the State election commission, madeprovisions for establishing a State Panchayat council with chief ministeras chairperson and all the Adhyakshas of Zila Parishads as membersto act as a forum for discussing matters relating to the functioning of Panchayats. Substantial staff and resources also are being transferredto the Panchayats. But, the situation cannot be called as satisfactory.Funds come to the PR bodies in tied form for the purpose of administering departmental schemes. Untied funds are not substantialand the Panchayats have little scope to launch programmes based upon their own initiative. They also have no effective administrative control over the Government staff transferred to them and they do nothave their own cadres. Hence, despite some laudable attempts,Panchayats of the State perform mainly agency functions.

The original conformity Act of Madhya Pradesh only referred to theState Government's power of entrusting functions to the Panchayats interms of the provisions contained in article 243G read with 11th Schedule.But, like before, the Act also provided that the State Government hadthe right to withdraw functions already assigned to the Panchayats. Anamendment made in 1996 reaffirmed the position and provided that thePanchayats at different levels should have such power and authority as may be necessary to enable them to function as institutions of self-government in relation to the matters listed in the 11th Schedule. It alsoprovided that the Panchayats should have the power to select employees necessary for implementation of the assigned functions. But such provisions were in the nature of general statement and could not be made operational in the absence of the statutory provisions that would entrust the PRIs with specific powers and authority. Since the Panchayat Act by itself was insufficient to carry forward the project of decentralization, the State Government has issued from time to time aseries of executive orders for delegation of powers. As the matter standsnow, responsibility for programmes/activities of seventeen departmentshas been transferred to the Panchayats along with

staff and resources. Despite these efforts, Panchayats remain only implementing agencies of the schemes conceived by the State or Central Government. They receive funds which are mostly tied to specific schemes. The staff continues to remain with the Government even where full responsibilities of any function or activity have been stated to be transferred to the Panchayats. Even in respect of taking major decisions on implementation, the district bureaucracy retains control. By far the greatest distortion in the process of decentralization has been made bymaking a State Minister the Chairperson of district planning committeeand naming it as district Government. The concept of district Government as developed in M.P is a direct assault on the authority ofthe Zila Parishad.

Kerala appears to be the only State where a systematic and sincereeffort is on since 1996 to carry forward the process of decentralizationin its totality. Kerala's Panchayat Act as amended in 1999 is probablythe best attempt to define the functional areas of different tiers of PRIsas precisely as possible, the objective being to reduce their agency role and expand their autonomous-actor's role. The Act has eliminated direct control of Panchayats by bureaucracy and reduced drastically Government control over them.

7. Devolution of Function

From a brief survey of the conformity Acts of different States, certain general conclusions can be drawn. Firstly, most States have shown lack of political will to decentralize. Taking advantage of the non- mandatory nature of article 243G in its operative part, as distinguishedfrom its conceptual part relating to the idea of 'self-government', mostStates have chosen to keep the functional domain of Panchayats unaltered. Even the mention of the 11th Schedule functions in many State Acts does not alter the character of the functions assigned to them.

Secondly, the post-Constitution-amendment-Panchayats areoperating, like before, within the framework of what may be called 'permissive functional domain'. That is to say, the State Legislatures donot carve out an exclusive functional area for the Panchayats, but merelypermit them to work within the functional domain of the State, subject tosuch conditions as it may deem fit to impose. Excepting some municipalfunctions which are invariably given to the gram Panchayats, for all other so-called developmental functions assigned to the different tiers of Panchayat, there are specific line departments of State Governmentor parastatal bodies like DRDA. They handle these functions. They haveaccess to necessary resources as also staff for the discharge of the functions. Mere statutory authority to undertake functions already beingperformed by the State Government is no guarantee that

those would, indeed, be taken up by the PRIs, unless they have adequate funds and personnel to discharge them. Since these resources are not made available to them, the lists of various functions that every Panchayat Act religiously provides, remain sterile. What the 73rd Constitution amendment intended is 'exclusive' and not 'permissive' functional domain, backed up by resources for the Panchayats. That has not happened.

Even in the States which have shown political will to decentralize, devolution has not gone beyond the implementation responsibility of the schemes/projects conceived by the State or Central Government.As a result, Panchayats have not blossomed into institution of self- government. Instead they have become one of the implementing armsof theState Government.

Lastly, all the States, except to a certain extent, Kerala, have chosento assign functions not through the statute, but by delegated legislationin the form of rules or executive orders. The task of assigning functionsto the Panchayats was given to the State Legislatures, but the same seems to have been usurped by the State Government. The Constitution failed to guarantee assignment of a set of exclusive functions for the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the policies of the regime that controls the Government of a State.

8. Need for Constitutional Reforms

The State Legislatures, it is clear, have denied autonomy to the Panchayats. This is contrary to the expectations of those who held theview that the 73rd amendment has constitutionalized "three strata of governance of the country: the Union, the States and the Panchayats."(Mukarji and Bandyopadhyay, 1993:6).

The concept of a third stratum of governance at the district level and below was voiced initially by Nirmal Mukarji (1986, 1993). Today,there are many who subscribe to the view that the Panchayati Raj institutions should be treated as governments for the respective localareas at the sub-state level, just as the State Government is the Government for the State and the Union Government for the whole country. They also hold that by making provision for enabling the Panchayats to function as 'institutions of self government', article 243Ghas practically introduced the 'third stratum' in the country's federal structure. (Arora, 1995).

Practically, all the State Legislatures/Governments, except perhapsthat of Kerala, has rejected this view. On the contrary, their vision of Panchayat, like before, has been one of 'local authority' that will enjoysuch kind of delegated power and authority as may be given to them bythe State Acts

or rules and executive orders made thereunder. Again, such powers and authority could be exercised by the Panchayats, subject to such limitations and control, including bureaucratic control,as the State Government would like to prescribe. *What is singularly absent in the State Acts is the concept of 'autonomy' of Panchayats which is at the centre stage of conceptualization of the institution as thethird stratum of governance. Also missing in the State Acts is the ideathat Panchayats can be relied upon not only for developmental functions,but also for regulatory functions of the State*.

It seems that in the Constitution itself there are sources from which the State Legislatures/ Governments have derived their own understanding about the nature of self-government that Panchayat (or municipality) represents. In article 243G itself (as also in 243W in the case of municipalities), there are provisions for specifying 'conditions' while devolving power and responsibilities to the Panchayats (and municipalities). There is no check upon the State Legislatures in specifying 'conditions' upon the functions to be assigned to the Panchayats or municipalities. The power seems to be absolute, unlessthe provisions in the same articles regarding empowerment of Panchayats (and municipalities) for enabling them to function as institutions of self-government are considered to be possessing an overriding force. Clearly, this is a source of confusion. Another source of confusion arises from entry 5 of Seventh Schedule of the Constitution.Here, three terms have been used interchangeably, namely, 'local government', 'local self government' and 'local authorities'. Accordingto the illustrations given, Panchayats or municipalities under this entrystand in the same footing as an Improvement Trust or any other localauthority as defined in the General Clauses Act, 1897.

Thus, we are now faced with two types of conceptualization of Panchayats and municipalities. Both of them draw their strength fromthe Constitution. One type of conceptualization leads us to envision these institutions as constituting the third stratum of governance. Another takes us to the opposite extreme under which the Panchayats (and municipalities), subject to the Constitutional guarantee of their permanent existence, composition, election etc, are no more than a local authority as understood under the General clauses Act. *The Constitution has to categorically express the status of the 'institution ofself government' as mentioned in article 243G or 243W*.

9. Financial Domain

As an institution of self-government, the Panchayat should have adequate fiscal capacity as well as

substantial fiscal autonomy. The fiscal capacity may be defined as the capability of the Panchayat to raise financial resources commensurate with the functions assigned to it. In other words, the functions assigned to a Panchayat institutionmust match with the financial resources it is capable of raising from various sources including grants from the State Government. Fiscal autonomy, on the other hand, is the extent of independence the Panchayat has in raising and spending financial resources. This means that its dependence on the discretionary funding from the higher level Government for the discharge of its 'core functions' should be minimum,and on the other hand, it should not be unduly bound by the conditionsof 'tied' grants coming from the State Government.

It was noted earlier that decentralization of governmental functionsfrom the State to the local bodies has not taken place in the manner intended by the Constitution. Barring one or two, no State has made serious efforts in transferring functions, powers and responsibilities tothe PRIs. This is also reflected in the expenditure decentralization ratio (EDR) which represents local government expenditure as percentageof State Governmentexpenditure.

An exercise was done by Oommen (2000) to measure tax-revenue decentralization ratio, indicating percentage of local government tax revenue to total State Government tax revenue. It was found that out of12 major States the tax revenue of local bodies (PRIs and urban localbodies) in 9 States constituted less than five per cent of the total tax revenue of State Government. In two other States, the ratio was higher,but less than 10 per cent. This indicates that the local bodies have notbeen given sufficient tax assignments to raise revenue locally.

In eight out of 12 major States, the GPs can meet not more than 12per cent of their revenue expenditure from internal sources. When it comes to the case of all the three tiers taken together, the figure sharplygoes down to below 10 per cent in 9 States and at or below 5 per centin at least 6 States. An immediate impact of this is the lack of autonomyof the PRIs to finance from its own funds, the maintenance expensesof the core services, that is to say, water supply, street lighting, sanitationand roads. Expenditure on core services as a percentage of total revenue expenditure is low in all the States and below even one percentin a number of States. Similarly, very small portion of internally collectedrevenue is spent on core services.

To sum up, the following conclusions can be drawn from the abovediscussion.

· The extent of fiscal decentralization through the empowerment of the PRIs has been very little.

- The fiscal autonomy of the PRIs is far from adequate, because they cannot balance their revenue budget (not to speak of creatinga surplus), by using their own fiscal powers.
- The PRIs are principally grant-fed and their dependence upon the State Government even for carrying out their routine functionsis quite heavy.
- Among the three-tiers of Panchayats, the gram Panchayats arecomparatively in a better position. This is so, because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources.

10. Tax Assignments

Article 243H is in the nature of an enabling provision that gives authorityto the State Legislature to authorise the Panchayats in respect of levy,collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat institution to regulariseand control inflow and outflow of financial resources. In effect, this articleprovides nothing new, but only reconfirms and institutionalises the practices that were in existence even prior to the enactment of the Constitution (73rd Amendment) Act, 1992. In other words, like before, the prerogative to decide what taxes, duties, fees and tolls to be leviedunder legislation made under entries in the State List of the Seventh Schedule to the Constitution should be assigned to the Panchayat andin what manner lies with the State Legislature. The Constitution also permits the Legislatures of the States to put such 'conditions and limits' as they deems proper, before assigning specific fiscal powers. The said article also authorises the State Legislature to enact laws for enabling the State Government to give grant-in-aid to the Panchayatsfrom the Consolidated Fund of the State.

What is significant is that the Constitution does not specifically earmark some of the fiscal powers of the State List either exclusivelyfor the local government or under State-local concurrent jurisdiction.

11. Transfer and Grant-in-Aid

By far, the most novel provisions that brought the local government institutions in the scheme of fiscal federalism are contained in articles243-I (for Panchayats) and 243Y (for Municipalities). They envisage thesetting up of State Finance Commission (SFC) as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter after

expiration of every fifth year in every State for reviewing the financial status of the Panchayats/ municipalities and for recommending measures to improve the same by restructuring, if necessary, the State-local fiscal relationship.

In making these provisions, it was rightly assumed that the financialviability of the rural and urban local bodies cannot be ensured only byassigning tax, duties, tolls and fees, for by their nature, they are less elastic and less buoyant. Transfer from the States' revenue as well as grants-in-aid would thus be necessary to supplement the finances of the PRIs and the municipalities. It is through such mechanism that thevertical imbalance and horizontal imbalance can be corrected in a federalpolity. (The former refers to the mismatch between the revenue earning power and functional responsibilities of a unit of Government and thelatter refers to the unequal development of areas falling under the jurisdiction of different governmental units). Accordingly, these provisionsprovide to States "a unique opportunity to redesign the existing fiscal system that is coherent and flexible enough to meet the rapidly changinglocal needs and responsibilities." (Mathur, 2000: 360).

Experience shows that some corrective measures are necessaryto make the institutional mechanism of SFC more effective and purposeful. These have been brought into focus by the Eleventh Finance Commission as well as by some others. Some of the measures recommended relate to changes necessary in the State Panchayat laws. In some cases, executive interventions would be necessary. But, there are few areas where more fundamental changes involving Constitutional amendment seem to be called for.

Decentralized and Participatory Planning: The ConstitutionalScheme

Preparation of plans seems to be the original function of Panchayats (and Municipalities). If this is so, implementation of schemes arising out of such plans should also fall in that category, even though it is notexplicitly mentioned in clause (a) of article 243G. Such inference is logical since planning becomes merely a 'wish list' and, therefore, a useless exercise, unless it can be implemented. It cannot be the intention of the Constitution to entrust the Panchayats with a useless exercise. The subject of implementation is brought in clause (b). Doesthe provision in this clause mean that the Panchayats are entitled to implement only such schemes (of the State Government) as may be entrusted to them? In that case, the Panchayat's role will be restrictedto that of an agent of State Government only, so far as implementationof development schemes is concerned. But, that certainly is not the intention. The Constitution has certainly given to the Panchayats implementation responsibility of both types of schemes - schemes originally conceived by the Panchayats in the process of preparation ofplan as well

as schemes of the State Government implementation of which may be decentralised. Sub clause (ii) of clause (c) of article 243W is more explicit and refers to both 'original' and 'agency' functions of municipalities. Thus, article 243G read with the Eleventh Scheduleprovides that (a) the Panchayats will make plans for economic development and social justice, (b) implement schemes and perform other functions arising out of that plan, and (iii) implement schemes as may be entrusted by the State Government to execute.

It seems that by decentralising the developmental functions, the Constitution seeks to correct two types of weaknesses of the country'smacro-level development planning. One relates to the mismatch between growth and equity resulting into unjust treatment to the weakersections of the people. The other is related to the absence of inter- sectoral coordination for pursuing a common goal. The Panchayat- municipality system is expected to contribute towards removal of bothof these types of weaknesses.

In the mandate given to the Panchayats and the municipalities, the concern for social justice is noteworthy. 'Economic development and social justice' has been set as the goal of their development plans. Read conjunctively, the mandate is to pursue the growth and the equityobjectives simultaneously. How to make it happen at the micro-level ofPanchayats and municipalities, when, with all the resources at their command, the macro-level planners have failed to achieve this? The chances of promoting social justice brighten only when the victims of social injustice are themselves enabled to participate directly in the planning process. Participation of the weaker sections of people becomes easier at the micro-level of Panchayats/municipalities. But, even at these levels, the marginalised people may find it difficult to register their voice. Hence, the Constitution has provided for safeguards.Firstly, the gram sabha in the case of gram Panchayats and ward committees in the case of municipalities have been given Constitutionalrecognition and the State Legislatures have been empowered (and, perhaps, also advised) to devolve power and functions to them. Secondly,the Constitution has provided for reservation of seats and posts of chairpersons for women and members of SC and ST people, so that they can have access to the power-structure of the local government institutions. Thus, the Constitution intends to usher in a regime of participatory planning at different levels of Panchayats as well as at themunicipalities to remove the hiatus between development and social justice which unfortunately has taken place in India's top-down planningprocess.

By mandating the Panchayats to perform planning functions the Constitution has also tried to ensure institutionalisation of the conceptof 'area plan' at the micro-level which will form building blocks of the macro-level planning at the State or national level. The 'area plans' areholistic plans for given areas and

they cut across the identities of individualsectors. Such plan aims at horizontal coordination of different sectorsin order to pursue a common goal. This goal as determined by the Constitution is economic development with social justice. It is evidentthat along with the participatory nature of planning process, the Constitution also aims at 'area plans' for optimum inter-sectoral coordination. Both of these objectives are meant to remedy the shortcomings of the country's macro-level plans.

A question may arise as to whether planning at each of the threelevels simultaneously will lead to duplication of efforts, since area of aPanchayat Samiti overlaps with that of a gram Panchayat and similarly the jurisdiction of Zila Parishad overlaps with that of Panchayat Samiti. If the principle of subsidiary is applied also in the planning function, thedanger of duplication may be avoided. Thus, a plan prepared at the level of Panchayat Samiti would be consolidated plans of all gram Panchayats under it plus some additional features which can be conceived/performed only at that level. These additional features mayconsist of (a) interventions that cover more than one G.P.; (b) projectsthat require technical expertise of superior level not available at GP, andlast, but not least, (c) intervention that requires an over-all view of anarea larger than that of GP (for example, developing market facilities). The last point is important, because as planning area expands from village-level plan to gram Panchayat plan, gram Panchayat plan to Panchayat Samiti plan, Panchayat Samiti plan to Zila Parishad plan, localist view has to gradually make space for taking a wider view. Thisis the way how peoples' perceptions and local needs or aspirations canbe integrated withthe technical requirements of plan through participatory multi-level planning process. It is felt that the intention of the Constitutionis to institutionalise this process.

In construing the provisions relating to the planning function contained in article 243G in the manner shown above, certain inferenceshad to be drawn. But, such inferences, as will be seen, are quite logicaland harmonious, if the various provisions relating to people's participationin decision-making through gram sabha, reservations for women andmembers of SCs/STs in Panchayats, assignment of planning function to the Panchayats, inter-linkage with different tiers of Panchayats, Constitution of State Finance Commission and inclusion of Panchayats/municipalities in the terms of reference of the Federal Finance Commission - all are considered together. There is a definite pattern and this pattern has to be kept in mind for logical and harmonious construction of article 243G and 243W. Unfortunately, no State other than the State of Kerala has shown 'political will' to translate this Constitutional scheme into reality. They have taken refuge under the non-mandatory and, at times, vague nature of the provisions in which the Constitution has expressed its scheme of decentralization of development functions.

Institutional mechanism for rural–urban integration

Only significant role that may be played by DPC in the existing frameworkof PRI-municipality system is one of rural-urban integration in the preparation of district plan. The Panchayats are for rural areas and themunicipalities for urban areas. This institutional arrangement may workat the micro-level of village and town. But when it comes to the level ofa district, the distinction disappears. A plan for the whole district has tocombine both rural and urban areas. In Indian context, district is considered as meso-level, but there are many districts in the country,the population of which may be more than that of a small sovereign State. Planning technique applicable at the micro-level of village or smalltown will not suit planning exercise for the whole district. Many functionsthat towns perform as seats of industry, trade and commerce, provider of services, higher education, communication, etc. have to be taken into consideration, even while a district plan aims at economic and socialsector development of the rural areas. Similarly, planning for urban areas has to take into consideration the situation of the rural hinterlandthey serve. In article 243ZD (3) (a) (i), the Constitution recognizes thisproblem and gives the direction that in preparing development plan forthe whole district, the DPC should give due regard to the "matters of common interest between the Panchayats and the municipalities".

Since the Zila Parishad which has a district-wise coverage caters only to the rural areas, necessity of DPC has arisen.

The problems with an institution like that of DPC have been discussed earlier and it has been shown that its position is, rather, incongruous with the pattern of decentralization sought to be institutionalised through the PRI-municipality system. Its role in coordination, particularly in the matter of rural-urban integration in thedistrict plan, is recognized. But, for this, an institution like DPC is not absolutely essential. This task can be performed at the level of Zila Parishad by expanding its jurisdiction to the whole district. It may be conceived as the institution of self government for both rural and urbanareas of a district. In that case, ZP's members would be elected by thepeople of the entire district-rural as well as urban. Under such a scheme,rural-urban distinction among local government institutions will remainfor individual municipalities andthe Panchayats upto the intermediatelevel. At the district level, this distinction will disappear and the local government institution at that level will represent rural as well as the urban people.

If the jurisdiction of Zila Parishad covers the entire district, the mandate of preparing the district plan may be given to it. This plan willbe an integrated plan for the district as a whole combining both rural and urban areas.

There will still be a need for a body like DPC. Firstly, experts' advicehas to be made available to the elected representatives of ZP in orderto enable them to make sound judgement on developmental policies and programmes. Secondly, involvement of State Government officialswill be necessary in the preparation of district plan, because, even afterdecentralization, the line departments will have to retain with themselvessome functions to be executed fully or partially within a district. Theserelate mostly to the projects spread over more than one district or whichrequire expertise and organizational strength of high degree or whichhave implications for the State as a whole. DPC may be formed with experts, Government officials and activists/social workers, but it shouldbe constituted by the Zila Parishad in accordance with guidelines in theState Act. Its tasks will be (i) to prepare draft district plan after consolidation of the individual plans of gram Panchayats, Panchayat Samitis and municipalities for consideration of the ZP, (ii) to assist thePanchayats and municipalities to prepare their plans, (iii) to coordinatedistrict planning exercise with that of the State Government. The detailsof the constitution of DPC may be left with the respective States. Theremay be an enabling provision in the Constitution. MPs and MLAs of thedistrict may be associated with the DPC.

Gram Sabha

The significance of the concept of Gram Sabha as a body of all adult people of the village does not seem to have been fully grasped. It, therefore, receives a casual treatment in the State Acts.

The gram sabha is not conceived as an organization that is requiredto perform certain tasks in order to realise specific goals. It is a forum for registering 'voice' of individual citizens in the process of decision- making on matters that affect their lives. Here lies its uniqueness. Ourdemocracy — like democracies of all large countries — is based on the principle of representative government. Gram Sabha is the only forum where people can take part in 'direct democracy'. It can be usedby the people for collective-thinking and over-seeing as well as participating in the activities of gram Panchayat. In a more practical sense, it may conduct social audit of gram Panchayat, take collectivedecisions on village-level plans and collaborate with gram Panchayatin implementing its programmes. A vibrant gram sabha has the potentiality of realising the vision of participatory governance at least atthe level of the village.

Article 243A stipulates that "gram sabha may exercise such powersand perform such functions at the village level as the Legislature of aState may by law provide". The State Legislatures have, by and large, provided it with only a peripheral role. In most of the State Acts, the jurisdiction of the gram sabha

covers the following:

- To consider matters relating to the annual administration report, the annual statement of accounts, the budget, the report on development works, etc. of the gram Panchayat;
- To discharge such functions as raising voluntary contribution, promoting unity and harmony in the village, adult education, identification of beneficiaries, etc.

Some States are experimenting with the idea of giving wider powers and functions. An amendment of Madhya Pradesh Panchayat Act which came into force on 26th January, 2001 has given a range of functions tothe gram sabha. To discharge these functions, there shall be eight standing and other *ad hoc* committees. Kerala has involved gram sabhain its people's plan campaign. West Bengal is considering introductionof a model of participatory planning under which the *gram sansads* (roughly wards of gram Panchayat) will play a substantial role in preparing gram Panchayat's plan. The gram sabhas of Orissa and Rajasthan have been given power to approve the GP's plan and budget.

Barring exceptions, the gram sabha in most States is treated as arecommendatory body. Common people naturally do not find interest inattending its meetings. In many States, the gram sabha meetings arenot held regularly. Since they are given only the power to recommendand no power to approve what the gram Panchayat seeks to do, the Sarpanchs are under no compulsion to treat gram sabha seriously. Either the meeting would not be called or their recommendations wouldbe ignored.

Experience of the last eight years of the post 73rd Constitution amendment phase shows that gram sabha is yet to emerge as a forumwhere common people can participate in the process of collective decision-making. A major reason for this is, of course, the nature of power-relations that operate in rural society under which large sectionsof people remain in a disadvantaged position because of their lower social or economic status. At the same time, the political empowermentthat a forum like gram sabha confers to the ordinary men and womencan go a long way in removing caste, gender and class barriers that stand in the way of their participation in the process of collective decision-making. For this to happen, the gram sabha itself has to be made powerful. It has to play a vital role in the functioning of gram Panchayat.It should not be reduced to a decorative forum to make recommendations only. It has to be given substantial authority to influence the functioning of gram Panchayat effectively.

Since the practical situation differs from State to State, it is not possible to make Constitutional provisions on the specific functions and powers that should be given to the gram sabha, but *the Constitutionshould explicitly indicate its intention to allow the Gram Sabha to playsubstantive role in*

the functioning of gram Panchayat.

Personnel System

An institution of self-government must have its clearly demarcated fieldof activities, free from outside interference, financial capacity and autonomy to perform these activities, as also the power to recruit andcontrol the officers and other employees required for managing its functions. Staff is a collective term for resources that an organization must possess to perform its day to day activities and execute its decisions. Access to and command over the human resources is therefore an essential element to measure the kind of autonomy that an institution of self-government enjoys. Judged from this point, the Panchayats present a disquieting picture. It is necessary to note that Part IX and Part IXA of the Constitution are totally silent about this vitalaspect of institutional autonomy. Failure to address the human resourceissue has definitely affected the growth of Panchayats as self-governinginstitution.

There are three varieties of personnel system for the local government institutions in India namely: (i) separate; (ii) unified; and (iii)integrated. Under the separate system, each local government unit hasfull control over matters concerning recruitment, control and disciplineof its staff. Under the unified system, State-wise or region-wide commoncadres of some or all categories of staff of local government are constituted. Such cadres are fully managed by the State Governments.In the integrated system, the State Government employees and the local government employees come from the common cadre managed by the State Government. It is only in separate system that the local government institution has total control over its staff. In the other two systems, it has no power to recruit or to dismiss its staff and even in the day-to-day management; its power to control personnel is severelylimited in the unified system and negligible under the integrated system.

Ideally, a self-government should have a separate personnel system.It is significant that even the local self-government institutions with limitedpowers that came into existence in the wake of Ripon Resolution of 1872, namely the Municipalities, District Boards and Union Boards, enjoyed practically full powers in respect of recruitment, control and discipline of their staff. The present day municipalities are, by and large,continuing that tradition, even though their autonomy in respect of personnel management has been seriously circumscribed by their dependence, in most States, on the State Governments which are paying staff salaries and allowances. The PRIs, on the other hand, haveto depend upon the Government officials for staff support, whatever may be the organizational arrangement – unified or integrated. In someStates, the Panchayats have been given power to create posts or to recruit their own staff upto a

certain level. But in the absence of financialsolvency this power remains grossly under utilised or non-utilised. Beforewe take up the issue of reforms in PRIs' personnel system, it will be worthwhile to take stock the situation as it obtains in different States.

An Overview of Panchayat's Personnel Structure in Different States

In West Bengal's gram Panchayat, there is a Secretary and a Job Assistant, both of whom are recruited, trained and controlled by the State Government. They enjoy government pay scales and their salariesare paid by the Government. The Panchayat Samiti does not have separate staff excepting one clerk who is also appointed by the StateGovernment. The rest are staff of Block Development Officer drawing salaries from the State Government. The services of none of the staffincluding that of the BDO have been transferred to the Samiti. They remain full-fledged Government staff. In Zila Parishad, the CEO is thecollector who hardly finds time to the work of the Parishad. There is anAdditional Executive Officer, but he also is not a full-time officer, as heholds the *ex-officio* position as Additional District Magistrate. There areone Secretary, one Executive Engineer and one Accounts Officer all ofwhom come from the State Government cadres of different departments. There is some staff including one district engineer and a few engineeringofficers, as also some other subordinate staff who belong to the Zila Parishad, but all vital matters in respect of them like creation of posts,fixation of pay and allowances, etc. are controlled by the State Government. Thus in matters concerning personnel, West Bengal's PRIs are totally dependent on the State Government.

In Orissa, the situation is highly unsatisfactory. Here Zila Parishadis practically non-functional for lack of staff. Law provides that the staffof DRDA would work for Zila Parishad, but they prefer to take orders from the Collector rather than from the chairperson of Zila Parishad. InPanchayat Samiti, there are a number of Government officials includingthe teachers. But, the Samiti has no administrative control over such staff. They are controlled by the respective departments to which theybelong. The gram Panchayat has not been given any Government staff.Subject to the approval of the district bureaucracy and/or the Directorateof Panchayat, the gram Panchayats may recruit their Secretary and other staff. But since, they have to meet full or at least 50 per cent of thestaff salary, the GPs are unable to recruit full-time quality staff. In a study it was noticed that GPs were paying their secretaries consolidatedpay of a little over ` 1000 per month. What service can be expected from such poorly paid staff? (ISS, 1998).

In Karnataka, the Panchayats have no power of recruitment, transferand discipline over their staff. In this State, the Zila Parishads and Taluka Panchayats are packed by the State Government officials. This

results in dual loyalties and needless friction in the day-to-day working of Panchayats. Only gram Panchayat have power to recruit their own employees, provided their salaries are paid from their own resources. Own resources being insufficient, this power remains grossly underutilised.

For the gram Panchayats of Andhra Pradesh there are executive officers who are State Government employees. In most cases, one Executive Officer serves 3-4 gram Panchayats. Gram Panchayats havepower to recruit their staff, subject to various bureaucratic controls. But, because of financial weakness, they cannot pay adequate salariesto attract competent and full time staff. A study showed that a gram Panchayat was paying its own staff salaries ranging between ` 500 and ` 1500 per month. (ISS, 1998). At Mandal Parishad – the intermediate level Panchayat – there is one Mandal Development Officer,one Engineering Officer and one Education Officer. All are Governmentservants. The staff of various development departments like agriculture,industry, veterinary, cooperation, etc are outside the Mandal Parishad.The Zila Parishad has considerable organizational capacity, particularlyin respect of engineering personnel all of whom including the Chief Executive Officer are Government officers. There is, however, conspicuous absence in Zila Parishad of the staff of various development departments.

Maharashtra has the distinction to create 'district service' (technical and general) of respective Zila Parishads. The staff belonging to classIII and class IV categories in different levels of Panchayat belong to such service which is controlled by the Zila Parishad, subject to the rules framed by the State Government. All other members of staff are Government employees deputed to the Panchayats at different levels.Village Development Officer (erstwhile *gram sevak*) who act as Secretary to gram Panchayat is recruited by Zila Parishad and belongsto the district service. In introducing the concept of Zila Parishad cadresas early as the sixties, Maharashtra broke new grounds and opened up exciting possibilities of building up Panchayat bureaucracy in a mannerdifferent from its counterparts in the Union and the State Governments.But this did not happen. A powerful bureaucracy at Zila Parishad level consisting of Government officials and headed by a senior IAS officer concentrated all administrative powers, leaving elected representativeswith little control over their staff. Hence, even after working with the system of Zila Parishad cadres for more than three decades, workingrelationship between the officials and elected representatives has notyet developed. There is a sense of distrust among the elected representatives. They feel that "decisions are thrust upon them by officials under the guise of laws and rules. As the power of recruitment,promotion, transfer and control over day-to-day work lie with theCEO. [Chief Executive Officer of Zila Parishad], the elected representatives feel

powerless." (ISS, 2000: 194).

As in other States, the Chief Executives of Zila Parishad and theJanpad Panchayats (the intermediate level Panchayat) of Madhya Pradesh are Government officers. There is no separate cadre of Panchayat service in the State. The gram Panchayat secretaries (excepta few gram sahayaks recruited earlier by the Government) are appointedby the gram Panchayat on a small monthly remuneration. Power andresponsibilities of some functions of several departments of the StateGovernment are stated to have been transferred to the PRIs, but the staff attached to them continues to remain with the Government. TheGovernment is reluctant to transfer any staff to the Panchayats due tolikely resistance from them (ISS, 2000: 178).

13.6 SUMMARY

- Panchayats had been there in India since very ancient times. They had been a form of rural government. In modern time theywere reintroduced by the British administration in the late 1880s.
- However, the introduction of Panchayats by the British government was more of a revenue-generating body than a self-government institution.
- Our national leaders, including Mahatma Gandhi were very big supporters of the Panchayats.
- In the aftermath of independence, however, our government failed to implement a universal Panchayati system in India due to various reasons.
- It was only after 1992, that the 73rd and 74th Amendment acts introduced the real Panchayati Raj system in India. It is the third tier of the Indian Government and it has a three-tier system, Gram Sabha or Gram Panchayat, being the most important link between Panchayat and thepeople.

13.7 KEY TERMS

Decentralization: A social process in which population and industry moves from urban centres to outlying districts

Panchayati Raj: Arural political system mainly in India, Pakistan and Nepal, which literally means an assembly of five wise and respected elders, chosen and accepted by the village community

13.8 QUESTIONS AND EXERCISES

1. What was the first rural self-government body introduced by theBritish?
2. Which Article of Indian Constitution was related to theestablishment of Panchayats before the 73rd Amendment?
3. When was the L.M. Singhvi Committee formed?
4. What was the main recommendation of Sarkaria Commission related to the Panchayats?
5. Which part of the constitution carries the provisions of 73rd Amendment Act?

13.9 FURTHER READING

Sirsikar, V.M. (1966), *Economic and Political Weekly*. Mumbai. Aslam M. (2007), *Panchayati Raj in India.* New Delhi: National Book Trust.

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Unit-14: Powers and Functions of Gram Panchayat, Panchayat Samiti, Zilla Parishad

Structure

14.1 OBJECTIVES

After going through this unit, you will be able to know:

- Explain the evolution of local government since independence
- Discuss the basic structure of Panchayati Raj institutions, theirfunctions and their sources of finance
- Understand the working of state financecommission

14.2 INTRODUCTION

In addition to the fact that it had the support of the national leadership,it also had a historical presence in India and was also mentioned in theconstitution. Panchayati Raj in its true sense could not become realityin India till the 73rd Amendment was made in the Indian Constitution, in1992. Panchayati Raj institutions constitute the third layer of governmentin India, linking the people of India directly to the constitution and democracy. After the 73rd Amendment, it has got various powers andresponsibilities and therefore its study has become very important. The devolution of power in the constitution, to the rural bodies, has createda great enthusiasm among the people for

participating in the working ofdemocracy. Panchayati Raj institutions have not only become a sourceof greater economic development but they have also become a greatsource and means of providing social justice in India.

14.3 STRUCTURE, FUNCTION AND SOURCES OF FINANCE OF THE RURAL LOCALGOVERNMENTIN INDIA

The basic structure, function and financial provisions for the rural localself-government or Panchayati Raj in India has been described in detailin Part 9 of the Indian Constitution (Article 243 and from 243 A to 243O). According to the constitutional provisions, the structure, term, responsibilities and finances for Panchayats would be broadly definedby these articles. State governments are free to allocate additional rightsand duties to these bodies. They are also free to make provisions of reservation for other deprived sections in the Panchayats. The detailsof these sections are dealt with in Unit 5.

14.4 GRAM PANCHAYATS

The Gram Sabha is a meeting of all adults who live in the area coveredby a Panchayat. Anyone who is 18 years old or more and who has theright to vote is a member of the Gram Sabha. Every village Panchayatis divided into various local units or smaller areas. Each area elects arepresentative who is known as the member for the Gram Panchayat.All members of the Gram Sabha also elect a Sarpanch who is the Panchayat president. The members and the Sarpanch form the Gram Panchayat. The Gram Panchayat is elected for five years. Every GramPanchayat has a secretary, who is also the secretary of the Gram Sabha.This person is not an elected person but is appointed by the government.The secretary is responsible for calling a meeting of the Gram Sabhaand Gram Panchayat and keeping a record of the proceedings.

The Gram Sabha is the key factor in making the Gram Panchayatplay its role and be responsible. It is the place where all plans for the work of the Gram Panchayat are placed before the people. The GramSabha prevents the Panchayat from doing wrong things like misusing money or favouring certain people. It plays an important role in keepingan eye on the elected representatives and in making them responsibleto the persons who elected them. Some of the main responsibilities ofthe Gram Panchayat are: construction and maintenance of water resources, roads, drainage, school buildings and other common property resources. Levying and collecting local taxes and executing government

schemes related to generating employment in the village.

The main sources of funds for the Gram Panchayat are in the formof local taxes that are collected from houses and village markets and government funds released for various schemes of development andsocial justice. These funds are received through various departments.Donations for community works and fees are one major source of theincome of the Gram Panchayats.

Structure

Gram Panchayats are at the lowest level of Panchayat Raj institutions (PRIs), whose legal authority is the 73rd Constitutional Amendment of 1992, which is concerned with rural local governments.[8]

Panchayat at District (or apex) Level

Panchayat at Intermediate Level

Panchayat at Base Level

The Gram Panchayat is divided into wards and each ward is represented by a Ward Member or Commissioner, also referred to as a Panch or Panchayat Member, who is directly elected by the villagers. The Panchayat is chaired by the president of the village, known as a Sarpanch. The term of the elected representatives is five years. The Secretary of the Panchayat is a non-elected representative, appointed by the state government, to oversee Panchayat activities.

Meetings

According to Section. 6 (3) of the *Andhra Pradesh Panchayat Raj Act of 1994*, the state's gram sabha has to conduct a meeting at least twice a year.

Election

A Gram panchayat's term of office is five years. Every five years elections take place in the village. All people over the age of 18 who are residents of the territory of that village's Gram panchayat can vote. For women's empowerment and to encourage the participation of women in the democratic process, the government of India has set some restrictions on Gram panchayat elections, reserving one-third of the seats for women, as well as reserving seats for scheduled castes and tribes.

14.5 POWERS AND FUNCTIONS OF GRAM PANCHAYAT

The role and subsequent function of the degree of authority vary at every level of statehood. While the

powers of the central and the state varies, in all villages and rural areas, the gram panchayat regulations are the most important authority. The laws and rules for the rural population are framed by this legislative body. The people who are part of the gram panchayat are expected to respect the rules as well as other socialand political projects. As a result, the establishment of numerous programmes under the auspices of this legitimate authority is intended to defend the rights of the villages while also assisting in their substantial development. On that topic, let us take a look at some of the gram panchayat's responsibilities.

The key powers and functions of the gram panchayat:

The gram panchayat is the only governing body in a given village district. As a result,before any rules or restrictions are imposed on the people, the panchayat's certification must be sought. Because the panchayat is made up of the village's elders,the following are some of the panchayat's key powers and functions:

The most important factor lies in the developmental programs that are implemented upon the people and initiated under the best conditions. The schemes under the panchayat help the poor villagers in several ways.

The identification of several beneficiaries and offering the value of schemes to them. The Gram Panchayat can help to deliver these schemes and make it all the more possible to grant options to every village family.

The main function of the gram panchayat is to reflect on the support of the villagers. This refers to all financial cases related to funds as well as a property transfers.

The condition of voluntary labor is also present within the function of the gram panchayat.

The better-known functions of the gram panchayat aim to alleviate poverty by serving the poor masses. It aims at restoring the laws of the land and making it possible for the villagers to receive equal pay for their work.

The main head of the village also lays equal stress on the education of the villagers. Since employment is one of the biggest factors of concern, the schemes issued by the panchayat help to create job opportunities as well.

Matters related to meetings are also controlled under the leadership of the grampanchayat.

Who Is the Sarpanch and What Are His Basic Powers?

The gram panchayat works under its leader who is known as the sarpanch. He is the main person who has to reside in every meeting of the panchayat. The gram sabha chooses the sarpanch and bestows some legal powers on him. Therefore, some of the most critical ones are as follows:

The foremost right of the sarpanch is to look into the ways of women's education and deal with inequalities that prevail among the lower sections of the villagers.

The sarpanch must organize meetings in the village, and must duly address and adjourn them every single time. The Sarpanch must be present in all meetings and even consider the taxes of theland. Steps to improve the well-being of society must be initiated on his part only.

All suggestions as given by the sarpanch of the gram panchayat are final. This must be accepted and approved by the individuals and even duly followed. Anyindividual who fails to follow the laws of the land can receive severe punishments as well.

The sarpanch is like the chairperson and individuals can pose any questions to him. The sarpanch must also answer it truly.

The sarpanch must actively pass the laws of the village and ensure that there will be growth sustenance and future security. A threat to the village is a complete threat to the sarpanch as well.

All actions issued under the sarpanch of the gram panchayat are reversible onlyif the actions are causing negativity in the village.

Thus, apart from the sarpanch, the gram panchayat also comprises the deputy secretary. Financial matters mostly pass through the orders of the secretary and are later on approved by the sarpanch! The panchayat offers a complete holistic view of rural life!

14.6 PANCHAYAT SAMITI

It is the second tier of the rural local self-government under the Panchayati Raj system. According to the ministry of the Panchayati Raj, there are 6312 Panchayat Samitis in India today. It works at the block level. In a Panchayat Samiti, all the heads of the Gram Panchayatsin the area are ex-officio members. All state council members who residein the block and are not in the ministry, all the elected representativesfrom the region provided they are not ministers and three members, elected by each Gram Sabha in the region, are also parts of the Panchayat Samiti. The block development officer, appointed by the government, is the ex-officio executive head of the Panchayat Samiti. Members of the Samiti elect their head, called the chairman, from amongthemselves. The chairman presides over the meetings. The term of the Samiti is five years. The Samiti is generally divided

into various sub-committees or departments that are headed by members of the Samiti. Some of the most important departments are finance and general administration.

The main function of the Panchayat Samiti is to execute the plansmade by the Zila Parishad. It is the real implementation agency in all matters. It generally runs schools, water supply, sanitation, communication and other facilities and it also executes special programs for the development of scheduled castes, scheduled tribes and other deprived sections of the society in the area. It runs special hostels forthe children from these sections. It grants permissions or has the rightto revoke the permissions for a particular trade. The Panchayat Samitiregulates the common market places in the region and provides grantsto schools and other public welfare institutions. It has the right to grantfunds for the schemes and programs initiated by the Gram Panchayatsand it monitors their functioning. Every development work under the area is coordinated by the Panchayat Samiti.

The main sources of income of the Panchayat Samiti are the annualgrants provided by the state governments, Zila Parishads and other local authorities, government or private loans mobilized by the Samiti, levies, taxes and fines collected from the area, fees for different services and from registration of vehicles and licenses and shops and market places, etc.

Composition

Typically, a taluka panchayat is composed of elected members of the area: the block development officer, members of the state's legislative assembly, members of parliament belonging to that area, otherwise unrepresented groups (Scheduled Castes, Scheduled Tribes, and women), associate members (such as a farmer, a representative of the cooperative societies and one from the agricultural marketing services sector) and the elected members of that panchayat block (tehsil) on the ZilaParishad (district board).

The Samiti is elected for five years and is headed by a chairman and deputy chairman elected by the members of the Panchayat Samiti. One sarpanch samiti supervises the other grampanchayats. It acts as a coordinating body between the district panchayat and grampanchayat.

Composition of Mandal Parishads

A coterminous Mandal Parishad is constituted for each revenue Mandal. A Mandal Parishad is composed of:

- Mandal Parishad territorial constituency members.
- Members of the state legislative assembly have jurisdiction over the Mandal.
- Members of the House of the People have jurisdiction over the Mandal.
- Members of the Council of States

(India) Council of States who are voters

in the Mandal.

- One co-opted member, belonging to minorities.

Mandal Parishad territorial constituency (MPTC) members are directly elected by the voters, whereas the Mandal president is elected by the MPTC members. The membersare elected for a term of five years. The election to MPTCs is done on a party basis. The elections are conducted by the state election commission.

The *sarpanch* isa permanent invitee to the Mandal Parishad meetings.

Departments

The most common departments found in a Panchayat Samiti are:

- Administration
- Finance
- Public works (especially water and roads)
- Agriculture
- Health
- Education teacher list
- Social welfare
- Information technology
- Women & child development
- *Panchayat raj* (*mandalprajaparishad*)

Each department in a panchayat Samiti has its officer. Most often these are state government employees acting as extension officers, but occasionally in more revenue-rich panchayat Samiti, they may be local employees. A government- appointed Block Development Officer (BDO) is the supervisor of the extension officers and executive officer of the Panchayat Samiti and becomes, in effect, its administrative chief.

Functions

The panchayat Samiti collects all the prospective plans prepared at the Gram Panchayat level and processes them for funding and implementation by evaluating

them from the angles of financial constraints, social welfare, and area development. Italso identifies and prioritizes the issues that should be addressed at the block level.

Sources of Income

The income of the panchayat Samiti comes from:

- land and water use taxes, professional taxes, liquor taxes, and others
- income-generating programs
- grants-in-aid and loans from the state government and the local ZilaParishad
- voluntary contributions

For many Panchayat Samiti, the main source of income is state aid. For others, the traditional taxing function provides the bulk of revenues. Tax revenues are often shared between the Gram Panchayats and the Panchayat Samiti.

14.7 ZILA PARISHAD

According to the Ministry of Panchayati Raj there are a total 584 Zila Parishads in India, in both, states and union territories. The highest numbers of Zila Parishads are in the state of Utter Pradesh (72). Zila Parishad is the highest local government body in the Panchayati Raj system. It is formed at the district level. It mainly looks after the administration of all the Panchayats of the district. Its office is locatedat the district headquarters. Members of the Zila Parishad are electedfrom the district on the basis of adult franchise, for a term of five years.Zila Parishad has minimum of 50 and maximum of 75 members. Thereare seats reserved for scheduled castes, scheduled tribes, backwardclasses and women. The chairmen of all Panchayat Samitis become members of the Zila Parishad. The Parishad is headed by a president and a vice-president, elected from the members of the Zila Parishad. The Chief Executive Officer (CEO), who is an IAS officer, heads the administrative machinery of the Zila Parishad. The CEO supervises the divisions of the Parishad and executes its development schemes.

The main functions of the Zila Parishad are to supervise the workingof the Panchayat Samiti and coordinate between rural and urban localself-governments in the district. It does provide essential services andfacilities to the rural population through Panchayat Samiti. It is the mainplanning and executive body for all development programs for the district. It has the responsibility to help in the

improvement of the agriculture in the district. Therefore it supplies improved seeds to farmers.It also informs them of new techniques of farming and gives them adequate training. It has the responsibility to undertake construction ofsmall-scale irrigation projects and percolation tanks. Recently, it has taken the responsibility of maintaining common property resources suchas pastures and grazing lands. Though Gram Panchayat or PanchayatSamiti has the main responsibility of maintaining primary educational institutions, even Zila Parishad does set up and runs schools in certainvillages. It executes programs for adult literacy in the district or supervises these programs undertaken by other bodies. In certain areasit runs libraries too. Zila Parishad runs primary health centres and hospitals in different villages. It has the responsibility to maintain the basic sanitation in the district and therefore, it runs the programs of cleanliness and health awareness. It also runs mobile hospitals for remote hamlets. It carries various vaccination drives against epidemicsand family welfare campaigns. Zila Parishad constructs and maintainssmall bridges and roads connecting villages in the district. It is responsiblefor the execution of plans for the development of the scheduled castesand tribes in the district and runs shelter homes and hostels for tribal and schedule caste children andstudents.

The main source of the income for the Zila Parishad is the collectionof taxes on various facilities and services that it provides to the local residents, such as, supply of water, sanitation, roads, irrigation projects,etc. It collects taxes from commercial activities happening within its jurisdiction such as common market places, fair, exhibition and so on.According to the 73rd constitutional amendment, it has the right to getfixed annual grant from the state government in proportion with the landrevenue and money for works and schemes assigned to it.

Composition

The chairmen of all the Panchayat Samitis under the district are the ex officio members of ZilaParishad. The Parishad is headed by a president and a vicepresident. The deputy chief executive officer from the General Administration Department at the district level is the ex-officio secretary of ZilaParishad.The chief executive officer, who is an IAS officer or senior state service officer, heads the administrative setup of the ZilaParishad. He/ She supervises the divisions of the Parishad and is assisted by deputy CEOs and other officials at district- and block- level officers.

Administrative Structure

The chief executive officer (CEO), who is a civil servant under IAS or State Administrative Service cadre, heads the administrative machinery of the ZilaParishad. He is also nominated by the

government. He may also be a district magistrate in some states. The CEO supervises the divisions of the Parishad and executes its development schemes

Meeting of the ZillaParishad.

Every ZillaParishad shall hold meetings at least once every three months, at such time and at such place within the local limits of the district concerned as the ZillaParishad may fix at the immediately preceding meeting: Provided that the first meeting of a newly constituted ZillaParishad shall be held at such time and such place within the local limits of the district concerned, as the prescribed authority may fix: Provided further that the Adhyaksha when required in writing by one-fifth of the members of the ZillaParishad to call a meeting he shall do so within ten days, failing which the aforesaid members may call a meeting after giving intimation to the prescribed authority and seven clear days notice to the Adhyaksha and the other members of the ZillaParishad. One-third of the total number of members of the ZillaParishad shall form a quorum for transacting the business at the meeting of the ZillaParishad. All questions coming before the ZillaParishad shall be decided, by a majority of votes and in case of equality of votes, the Adhyaksha of the member presiding shall have a casting vote. Every meeting shall be presided over by the Adhyaksha or if he is absent by the Up-Adhyaksha and if both the Adhyaksha and the Up-Adhyaksha are absent or if the Adhyaksha is absent and there is no Up-Adhyaksha the members present shall elect one from among them to preside over the meeting.

Functions and powers of ZillaParishad.

Any transfer of a subject to the ZillaParishad shall be with the approval of the Government from time to time.Subject to the condition and exceptions as the Government may, from time to time, impose, it shall be the function of the ZillaParishad to prepare plans for economic development and social justice of the District, and to ensure the coordinated implementation of such plans in respect of matters including those mentioned below, namely--:

Agriculture And Agricultural Extension:

Promotion of measures to increase agricultural production and to popularise the use of improved agricultural implements and the adoption of improved agricultural practices;

(i) Establishment and maintenance of godowns;

(ii) Conducting agricultural fairs and exhibitions;

(iii) Training of farmers;

(iv) Land improvement and soil conservation; and

(v) Promotion of agricultural extension works.

1. Irrigation Groundwater Resources And Watershed Development:

(i) Construction, renovation, and maintenance of minor irrigation works and lift irrigation;

(ii) Providing for the timely and equitable distribution, and full use of water under irrigation schemes under the control of the ZillaParishad;

(iii) Development of groundwater resources;

(iv) Installation of community pump sets; and

(v) Watershed development programme.

2. Horticulture:

(i) promotion of rural parks and gardens;

(ii) promotion of cultivation of fruits and vegetables; and

(iii) promotion of farms.

3. Statistics:

(i) publication of statistical and other information relating to activities of Gram Panchayats and ZillaParishads;

(ii) co-ordination and use of statistics and other information required for the activities of the Gram Panchayats and ZillaParishads; and

(iii) periodical supervision and evaluation of projects and programmes entrusted to the Gram Panchayats and ZillaParishads.

4. Distribution of Essential Commodities.

5. Soil Conservation and Land Reforms:

(i) Soil conservation measures;

(ii) Land reclamation and land development works; and

(iii) Promotethe implementation of land reforms and land consolidation.

6. Marketing:

(i) Development of regulated markets and marketing yards; and

(ii) Grading and quality control of agriculture products.

7. Social Forestry:

(i) organizethe campaign for tree planting; and

(ii) planting and maintenance of trees.

8. Animal Husbandry And Dairying:

(i) Improvement of breed of cows and pigs;

(ii) Promotion of poultry farms, duck farms, and goat farms;

(iii) Promotion of fodder development programs;

(iv) Promotion of dairy farming, poultry, and piggery; and

(v) Prevention of epidemics and contagious diseases.

9. Minor Forest Produce, Fuel,And Fodder:

(i) Promotion of social and farm forestry, fuel plantation, and fodder development;

(ii) Management of minor forest produce of the forests raised in community lands; and

(iii) Development of wasteland.

10. Fisheries:

(i) Promotion of fish seed production and distribution;

(ii) Development of pisciculture in private and community tanks;

(iii) Development of inland fisheries;

(iv) Promotion of fish curing and drying;

(v) Assistance to traditional fishing;

(vi) organizing fish marketing co-operatives; and

(vii) Welfare schemes for the uplift and development of fishermen.

11. Household Industries:

(including food processing):

(i) Identification of traditional skills in the locality and promotion of household industries;

(ii) organization of training programme for craftsmen and artisans;

(iii) Liaison to tap bank credit for household industries;

(iv) popularising and marketing of finished products; and

(v) organizing khadi, handloom, handicraft and village, and cottage industries.

12. Rural Roads And Inland Waterways:

(i) Construction and maintenance of roads other than National, State Highways and other District roads;

(ii) Bridges and culverts coming under roads falling in item (i);

(iii) Construction and maintenance of office buildings of the ZillaParishad;

(iv) Identification of major link roads connecting markets, educational institutions, health centers; and

(v) organizing voluntary surrender of lands for new roads and the widening of existing roads.

13. Health And Hygiene:

(i) Implementation of immunization and vaccination programme;

(ii) Health education activities in hospitals, primary health centers, and dispensaries;

(iii) Maternity and child health service activities;

(iv) Family welfare activities;

(v) organizing health camps with Gram Panchayats; and

(vi) Measures against environmental pollution.

14. Rural Housing:

(i) Identification of houseless families;

(ii) Implementation of house-building programmes in the district; and

(iii) popularising low-cost housing.

15. Education:

(i) Promotion of educational activities including the establishment and maintenance of primary and secondary schools;

(ii) Planning of programmes for Adult Education and Library facilities;

(iii) Propagation of technical training and vocational education; and

(iv) Extension work for the propagation of Science and Technology to rural areas.

16. Social Welfare And Welfare Of Weaker Sections And Handicapped Persons:

(i) Promotion of social welfare programme and social welfare activities with emphasis on handicapped and mentally retarded persons;

(ii) organizing nursery schools, balwadies, night schools, and libraries to eradicate illiteracy and impart general education; and

(iii) organizing co-operative societies of Scheduled Castes and Scheduled Tribes.

17. Poverty Alleviation Programmes:

Planning, supervision monitoring, and implementation of poverty alleviation programmes.

18. Drinking Water:

(i) Construction, repair, and maintenance of drinking water wells, tanks, and ponds;

(ii) Prevention and control of water pollution.

19. Rural Electrification:

(i) Promote extension of electricity to unelectrified areas;

(ii) Help in the prevention of illegal tapping of electricity; and

(iii) Help in the recovery and collection of electricity dues.

20. Non-Conventional Energy Sources:

(i) Promotion and development of non-conventional energy scheme; and

(ii) Propagation of efficient energy devices.

21. Social Reform Activities:

(i) Promotion of women's organization and welfare;

(ii) Promotion of children's organization and welfare;

(iii) organize cultural and recreational activities;

(iv) Encouragement of sports and games and construction of rural stadia;

(v) Promotion of thrift and savings through:--

(a) Promotion of saving habits;

(b) Small savings campaign;

(c) Fight against spurious money lending practices and rural indebtedness.

(4) In addition, the ZillaParishad may-

(a) Manage or maintain any work of public utility or any institution vested in it or under its control and management;

(b) Acquire and maintain village hats and markets;

(c) Make grants to Gram Panchayats;

(d) Adopt measures for the relief of people in distress;

(e) Co-ordinate and integrate the development plans and schemes prepared by Gram Panchayats in the district;

(f) Examine and sanction the budget estimates of Gram Panchayat in the district;

(g) Undertake or execute any scheme extending to the whole or part of the district; and

(h) take over the maintenance and control of any rural bridge, tank, ghat, well, channel, or drain, belonging to a private owner or any other authority on such terms as may be agreed upon.

(5) The ZillaParishads of two or more adjacent districts may jointly undertake and execute any development scheme on such terms and conditions as may be mutually agreed upon:

Provided that the Government may, by notification and subject to such conditions as it may impose, transfer additional functions to the ZillaParishad.

General Powers of ZillaParishad.

(1) Subject to the general or special orders of the Government, the ZillaParishad may-

-Incur expenditure on education or medical relief outside its jurisdiction;

(a) Provide for carrying out any work or measure likely to promote health, safety, education, comfort, convenience, or social or economic or cultural well-being of the inhabitants of the district;

(b) contribute to the association of All India, State or Inter-State level concerned with the promotion of local government and for holding the exhibition, seminars, and conferences within the district related to the activities of Gram Panchayat and ZillaParishad; and

(c) Render financial or other assistance to any person for carrying in the district any activity which is related to any of its functions.

(2) The ZillaParishad shall have powers to do all acts necessary for or incidental to the carrying out of the functions entrusted or delegated to it and, in particular, and without prejudice to the foregoing powers to exercise all powers specified under this Act.

Standing Committees.

(1) The ZillaParishad shall have the following Standing Committees, namely:--

(a) General Standing Committee;

(b) Finance, Audit, and Planning Committee;

(c) Social Justice Committee;

(d) Education and Health Committee;

(e) Agriculture and Industries Committee; and

(f) Works Committee.

(2) Each Standing Committee shall consist of several members not exceeding five including the Chairman elected by the members of ZillaParishad from amongst the elected members.

(3) The Adhyaksha shall be the *ex officio* member and Chairman of the General Standing Committee and the Finance, Audit, and Planning Committee. The Up- Adhyaksha shall be the *ex officio* member and Chairman of the Social Justice Committee. The other Standing Committee shall elect the Chairman from among their members.

(4) No member of the ZillaParishad shall be eligible to serve not more than two Standing Committees.

(5) The Chief Executive Officer shall be the *ex officio* Secretary of the General Standing Committee and the Finance, Audit, and Planning Committee and he shall nominate one of the Deputy Secretaries as *ex officio* Secretary for each of the remaining Standing Committees. The Chief Executive Officer shall be entitled to attend the meetings of all the Standing Committees.

ZillaParishad Fund.

(1) For every ZillaParishad there shall be constituted a ZillaParishad Fund bearing the name of the ZillaParishad and there shall be placed to the credit thereof:--

(a) contributions and grants, if any, made by the Central or the State Government including such part of land revenue collected in the State as may be determined by the Government;

(b) Contributions and grants, if any, made by a Gram Panchayat or any other local authority;

(c) Loans, if any, granted by the Central or State Government or raised by the ZillaParishad on the security of its assets;

(d) The proceeds of road-cess and public works-cess levied in the district;

(e) All receipts on account of tolls, rates, and fees levied by the ZillaParishad;

(f) all receipts in respect of any schools, hospitals, dispensaries, buildings, institutions, or works, vested in, constructed by, or placed under the control and management of the ZillaParishad;

(g) All sums received as gift or contribution and all income from any trust or endowment made in favor of ZillaParishad;

(h) Such fines or penalties imposed and realized under the provisions of this Act or of the bye-laws made thereunder, as may be, prescribed; and

(i) All other sums received by or on behalf of the ZillaParishad.

(2) Every ZillaParishad shall set apart and apply annually such sum as may be required to meet the cost of its administration including the payment of salary, allowances, provident fund, and gratuity to the officers and employees. The overall expenditure on establishment shall not exceed one-third of the total expenditure.

(3) Every ZillaParishad shall have the power to spend such sums as it thinks fit for carrying out the purpose of this Act.

(4) The ZillaParishad Fund shall be vested in the ZillaParishad and the amount standing to the credit of the fund shall be kept in such custody or invested in such manner as the Government may, from time to time, direct.

Taxation.

(1) Subject to such maximum rates as the Government prescribe, a ZillaParishad may--

(a) levy tolls on persons, vehicles, or animals or any class of them at any tollbar established by it on any road other than kutcha road or any bridge vested in it or under its management;

(b) Levy tolls in respect for any ferry established by it or under its management;

(c) Levy road cess and public works cess; Levy the following fees and rates, namely:--

(i) Fees on the registration of boats or vehicles;

(ii) a fee for providing sanitary facilities at such places or pilgrimage, fairs, and meals within its jurisdiction as may be specified by the Government by notification;

(iii) A fee for a license for fair or mela;

(iv) A lighting rate where arrangement for the lighting of public streets and places is made by the ZillaParishad within its jurisdiction; and

(v) Water rate, where arrangement for the supply of water for drinking, irrigation, or any other purpose is made by the ZillaParishad within its jurisdiction.

(2) The ZillaParishad shall not undertake registration of any vehicle or levy fee thereof and shall not provide sanitary arrangements at places of worship or pilgrimage, fairs and meals within its jurisdiction or levy fee thereof if such vehicle has already been registered by any other authority under any law for the time being in force or if such provision for sanitary arrangement has already been made by any other local authority.

(3) The scales of tolls, fees, or rates and the terms and conditions for the imposition thereof shall be such as may be provided by regulation. Such regulation may provide for exemption from all or any of the tolls, fees, or rates in any class of cases.

State Finance Commission

In the Balwantrai Mehta Commission there was a provision of the formation of the state finance commission in order to strengthen the financial health of the local self-governments. The Sarkaria Commission on the centre-state relations too pointed out its need. The main motive of all these recommendations was to deal with the chronic dependenceof Panchayats on the state governments for funds, which made themdysfunctional. This is because most of the state governments do not release adequate funds to the Panchayati Raj Institutions due to variousreasons. The economic independence of Panchayats is the first condition of their better functioning. Keeping this in mind the 73rd and74th Amendments have had provisions for the state finance commissionin every state, which will suggest ways for the distribution of financesbetween state and local bodies.

According to Article 243 I, the governor of the state shall constitutea finance commission, once in every five years for the review of the financial position of the Panchayats and to make recommendations tothe governor of the principles of the distribution of income from differentsources, between the state and the Panchayats. This commission willalso recommend the ways of division of responsibilities for the collectionof various taxes between the two. It will also decide the amount of thegrant to the Panchayats from the state-consolidated funds. The state legislature can passed a law providing the structure and qualification ofthis body. The state finance commission is therefore a replica of the central finance commission.

14.8 SUMMARY

- Zila Parishad is the top-level local government body at the district level.

- It oversees the functioning of Panchayat Samitis and Gram Panchayats within the district.
- Members of the Zila Parishad are elected by the Panchayat Samiti members and the district's Members of Legislative Assembly (MLAs) and Members of Parliament (MPs).
- The Zila Parishad is responsible for planning and implementing development programs in the district, including education, health, infrastructure, and social welfare.
- Panchayat Samiti is the middle-tier local government body at the block level.
- It acts as a link between the Zila Parishad and the Gram Panchayats.
- Members of the Panchayat Samiti are elected by the Sarpanches (village heads) of the Gram Panchayats within the block.
- The Panchayat Samiti is responsible for coordinating and supervising the work of the Gram Panchayats, and it also implements various development programs at the block level.
- ram Panchayat is the lowest-level local government body, representing a village or a group of villages.
- The Sarpanch, or village head, is elected by the villagers to lead the Gram Panchayat.
- Gram Panchayats are responsible for the administration and development of their respective areas, including maintenance of infrastructure, provision of basic services, and execution of local development projects.
- Gram Panchayats also play a role in maintaining law and order in the village.

14.9 KEY TERMS

- **Taluka:** An administrative unit in rural India, equivalent to a town
- **Tehsil:** A sub-division of a district
- **Panchayat Samiti:** A local government body at the Tehsil or Talukalevel in India
- **Bureaucracy:** A system of government in which most of the important decisions are made by state officials rather than by elected representatives
- **Zila Parishad:** A local government body at the district level in India
- **Gram Panchayat:** Local governments at the village or small townlevel in India

14.10 QUESTIONS AND EXERCISES

1. Describe the evolution of rural self-government in India.
2. What were the recommendations of the G.V.K. Rao Committeeto empower Panchayati Raj institutions?
3. Explain the structure, function and sources of finance of the rurallocal government inIndia.
4. Give a detailed account of the various sections of rural localgovernment in India.

14.11 FURTHER READING

Aslam M. (2007), *Panchayati Raj in India.* New Delhi: National Book Trust.

Aslam M. (2005), *Local Self-Government in India—A Retrospect and Prospect in Federal India—A Design for Good Governance.* NewDelhi: Manak Publications.

Maheshwari S.R. (1976), *Local Government in India*. New Delhi: OrientLongman.

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Unit-15: Municipalities

Structure

15.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Learn about the evolution of urban government in India
- Explain the significance of the urban local self-government in India
- Discuss the reasons for its introduction by the British government

15.2 INTRODUCTION

During the period of their domination in developing countries, the colonial governments developed several statutory institutions. The urban localself-government is the most significant among them. Ever since the establishment of the Madras (now Chennai) Municipal Corporation inIndia, there has been an increase in the number of municipal bodies tomanage the towns and cities. In this unit, you will learn about the evolution and structure of urban local self-government in India, urban local government of India after its independence, the functions, power and authority of municipal corporations and councils, various district planningcommittees of India, etc.

15.3 EVOLUTION OF URBAN GOVERNMENT IN INDIA

In India, the idea of local government connotes more than the mere local management of matters of local interest as has been studied in the last unit. When British government first planned to introduce the idea of local government in India the motive was to basically introducea local administrative system which will work in collaboration between‘the association of natives and Europeans to a greater extent than heretofore in the administration of local affairs’ (Wheeler 1917: 153). The then British government thought local administration also as an instrument of education of the people. According to wheeler, ‘It is not,primarily, with a view to improvement in administration that this measure(i.e. the extension of local self-government) is put forward and supported.It is chiefly desirable as an instrument of political and popular education’(Government of India document as quoted in Wheeler Ibid). Therefore,it was a stated object of British rule in India to train the people in the conduct of their own concerns through the introduction of local government.

It has been variously stated by scholars that in India, the idea of local government is not new and it has very old history. According to Maheshwari, ‘the institutions of local government have flourished in Indiasince time immemorial’ (1971: 10). However, when we talk about the modern form of local government in India and particularly about the urban government, it is recognized beyond fail that this is a British creation. Even Maheshwari concurs, ‘Although local government existedin India in ancient times, in its present structure and style of functioning,it owes existence to the British rule in India’ (Ibid: 13). . Wheeler quotes Imperial Gazetteer to show the impression that Indian local governmentinstitutions had on the imperial scholars. According to this Gazetteer,‘while the Hindus had for many ages a system of village self- government, neither they nor the Mughal conquerors succeeded in evolving a local administration such as that which grew up in Europe.Neither the customary rule of the Indian village communities nor the regulations of the industrial castes, which in some respects resemblemediaeval trade guilds, ever grew into a true municipal system; and the accounts which have reached us of the method of town government inHindu and Muslim period of rule show the authority vested not in a representative body of inhabitants, but in the police officers, tax gatherers and other officials of the Sovereign’ (Wheeler 1917: 153). The introduction of local government was motivated by interests of the British. They first saw it as an instrument to ease central and provincialfinances and thus to sub serve imperial needs. A municipal corporationwas first set up in 1687 in Madras. It was based on the model of Britishlocal institutions prevalent at that time. Its

main purpose was to levy different taxes. According to Maheshwari, 'the municipal corporation was set up because the East India Company believed that the people would willingly pay five shillings for the public good, being taxed by themselves, than six pence raised by their despotic power' (Ibid: 14). In 1726, owing the opposition from the local population for excessive taxation the municipal corporation in Madras was replaced by mayor's court. This reduced its administrative role and increased its judicial powers.

The persistence of Sir Josiah Child, who was the governor of Madras during that time, resulted in the establishment of a municipal government, based on the English pattern of governance. This was directed at resolving the difficult problems pertaining to the conservancy of that town. The consequences of this were that in 1687, the East India Company was granted the authority to establish a corporation and mayor's court in Madras, through a charter. This authority was given to the East India Company by James II, King of England. The establishment of this new civil government took place with complete support from the mayor, Aldermen and Burgesses, who had the power to impose taxes for constructing a building to be used for meeting and performances, a prison and a school with houses for its staff. These taxes were also utilized for the development of other works of public utility and civic services and for paying the salaries to members of the municipal staff, including the teachers. The mayor and aldermen introduced a court of record for running trials of civil and criminal cases. The attractive characteristics of municipal operations were very similar to those in London and on significant occasions, the mayor would carry with him, two staffs of silver, a layer of gold, for decoration, which was not more than three and a half feet long. The robes worn by him and the aldermen comprised of scarlet serge gowns. They travelled on expensively decorated horses that were decked with different types of ornamental trinkets. However, despite all the flamboyance related to the situation and occasion, there was a firm opposition from the people against the direct taxes that were levied. Hence, it was not possible to carry out the work related to the new corporation till the mayor granted the permission to impose taxes for building up funds to carry out the related development work. Subsequent to this, in the year 1796, a mayor's court with alderman and without burgesses was introduced by a Royal Charter. Similar courts were established in each of the three presidency cities of Calcutta, Madras and Bombay. However, the target of these courts was to put into effect judicial, rather than administrative operations. Long after this, the Charter Act of 1793 made the first statutory enactment of real municipal administration. The British parliament approved and agreed to pass this Act as soon as

the EastIndia Company took charge of the political responsibilities in India. Through this Act, a governor-general of India was appointed and wasgiven the power to appoint justices to keep up peace in the presidencycities. Along with their judicial responsibilities, they had the authority to raise funds by gaining access of lands and houses in the towns for scavenging, watching and maintaining the streets. Approximately fiftyyears later (in the period of 1850-53) the municipal constitutions of thethree presidency cities were created and a restricted edition of the elective principle was set up. However, soon after this, in the year 1856,a policy that looked like a reaction to this, was introduced and operationsof the municipality were limited to a body corporate of three nominatedand salaried members. It is an amusing fact that since the year 1793,the practice of raising money for municipal related development work has been done through lotteries. In Calcutta, the money thus raised was used to reconstruct the Town Improvement Committee, which wasappointed by Lord Wellesly, in the year 1803.

The income earned from these lotteries was commendable. It wasused to carry out various public related works and services. The popularity of this method was endorsed by the creation of a lottery committee in the year 1817. For 20 years this committee was involvedin work related to utility and development till, the public opinion in Englandwent strongly against this method of provision of funds for municipal purposes. This resulted in the end of the committee in the year 1836.

One of the most prominent evidence of the use of these funds was TheTown Hall of Calcutta. This was one of the great works of public service,built during those years with the help of the funds collected through lotteries. The system of municipal administration was restructured afterthe Council's Act was legislated in the year 1861. This restructuring took place through provincial legislatures which were then put into function and since then, there were augmented differences in the historyof the growth and development of municipal affairs in each of the threepresidency cities.

Through locally legislative procedures, in the years 1872, 1876 and1878, Bombay, Calcutta and Madras, respectively adopted the systemof electing representatives by the ratepayers for the first time. However,one cannot suppose that any system, even remotely resembling a complete local self-government was granted to them through those Acts. Almost fifty years later, the government framed policies that wereoriented to exercise a stringent and unreasonable control over these municipalities through official chairmen and other different set-ups thatwere calculated to deprive them of real popular control. With the help ofdifferent methods, some even positively retrograde in character, those

three municipalities have finally obtained more or less developed realself-government. Practical autonomy was achieved by the Corporationof Calcutta (III of 1993) and also by those of Bombay (III of 1888) andMadras, (IV of 1919), although the extent of acceptance was not that much.

Beyond presidency towns, there were no efforts directed to establishmunicipalities, prior to the year 1842. The first province to experiencethe attempt made by this act was Bengal. This was far in advance of the times. Due to these factors, it was not successful in impressing thepublic mind. Just one town introduced this and when it was time to realize the tax, the entire town not only refused to pay, but it actually prosecuted the collector for trespassing, when he tried to levy it. In 1850, one more attempt was made by an Act for the whole of British India. This was a more lenient Act, but its success was higher, as thisAct levied taxes indirectly. The application of this Act was widely carried out in the then North West Province and in Bombay. It was feebly appliedin Bengal and Madras, which were the areas that had beensubjectedto other municipalefforts.

Subsequently, the report of the Royal Army Sanitary Commissionwas published in 1863 and prime focus was given to the requirementsof municipal measures in the county territories, (*Mofassils*). Between the years, 1864 and 1868, Acts for Bengal, Madras, Punjab and North-West Provinces were passed. After incorporating changes, the Act of1850, was adopted in Bombay and the central provinces and the PunjabAct was adopted by *Oudh*. In the following series of acts a very large number of municipalities were created. There have been a number ofcases where zeal overcame caution and unimportant rural geographies were loaded with municipalities that were later withdrawn. The Acts forBengal, Northwest Provinces and Punjab made the elective principle permissible, but in almost all places the commissioners were nominated. Though from the point of view of local self-government theseacts did not achieve much success, still they were definitely of great help in improving the conditions of sanitation in many countries and cities.

Two important steps that were adopted by the great viceroys, i.e.,Lord Mayo and Lord Ripon, in the years that followed, were highly motivating to local self-government in India. The system of provincial finance was introduced by the resolution of Lord Mayo's Government.This resolution clearly aimed at giving opportunities for the development of self-government and also for the association of Indians and Europeans in taking a large share in the administration of local affairs. To carry out this advantageous policy, new acts were passed for almostevery province and they also got extended to Burma. The Acts gave abroader spectrum to the sphere of municipal usefulness and also enhanced the principle of election. The elective principle, however, couldnot be successfully

introduced in any province with the exception of the central provinces. This was due to the objections raised by the people themselves. Approximately ten years later, in 1881-82, the governmentof Lord Ripon issued orders which resulted in further encouraging thedevelopment of local self-government. Like a true statesman, he showeda keen interest in the matter, as it was his belief that local self-governmentwas a means of popular and political education.

The success of this would have been many times more if the bureaucracy that was handling the actual organization had not been short-sighted and had been more like that of a statesman. However, Acts that were implemented in 1883-84, greatly changed the constitutionof the municipal bodies and also gave them more power and responsibilities. It was decided for a wide extension to be given tothe elective system and some towns to be provided with elected chairmeninstead of executive officials. Lord Rippon made another major alteration,which was freeing the municipalities from the burden of paying the costsof the town police on which they had no control. To replace such costs,the support of the municipalities was sought for education, medical aidand local public works and at the same time, some parts of the provincialrevenues were allocated to local self-government, with proportionate liability. It is not easy to thoroughly examine the growth of municipal constitution in the different provinces of India.

The municipal government was vested in a body corporate and itcomprised of members, some of whom were elected by the ratepayersand others were nominated by the government. Within the Acts, therewas a chairman of the municipality and in advanced provinces he wasusually an elected member of the body. The municipal funds and properties were vested in these bodies. A sizeable part of the work was carried out in the form of committees. It was common to have electionsevery three years and the rules for elections were framed by the respective provincial governments. It was mandatory for voters to havea certain property or status qualification. The elections in larger bodieswere held in general by wards or classes of the community, or both. The enfranchisement of women was rather an exception than a rule, but the popularity of it was being gradually accepted. The history of government control over the municipalities was not a pleasing scene.

Although, it was the policy of Lord Ripon to replace external controlwith internal interference in municipal issues, still the desire of the bureaucracy to exercise perpetual control on these local bodies was very prominent. This adverse situation upset the growth of genuine localself-government for about a third of a century after Lord Ripon's time.Nevertheless, this control was widely brought into effect by the districtmagistrate and the divisional commissioner. Ever since the reforms were introduced,

the final control now came to the minister who was incharge of local self-government in different provinces. He was selectedfrom the elected members of the provincial legislative councils. Special control was exercised over finance and important appointments and the government had to sanction the annual budget. The area of operationof the municipalities was gradually widening and it became either mandatory or discretionary to divide their duties, which were now very elaborate. Every municipality was called upon to fulfil their duties as according to their means. The Acts and by-laws framed by them providedthem with various powers to enforce demands related to sanitation or prevention of adulteration in food, etc. by imposing fines and penalizingthe offenders. Although, the municipalities in British India were not thatstrong in terms of numbers, their improvement in terms of effectivenessand constitutional progress was commendable, till 1920s.

The 1793 Charter Act made local government in India a statutorybody for the first time. It established municipal administration in threepresidency towns of Madras, Calcutta and Bombay. The highest authority in these municipal administrations was called justices of peacewhich was entitled to levy taxes in exchange to the provisions of basicsanitation, security and transport facilities in the towns. This act was further extended to other smaller towns in Bengal in 1842. According tothe 1842 Bengal Act, town committees could be formed on the requestof two third householder of a town for the services quoted above. It hasbeen noted that none of the towns in India opted for this provision. In 1863 when Royal Army Sanitary Commission expressed its concern about the filthy condition of Indian towns different acts were passed tocreate municipal corporations in different parts of India. In these acts provincial administrations were empowered to create these corporationsin order to provide basic sanitation, lighting and water facilities in all thetowns of the country (Maheshwari 1971).

In 1870 Lord Mayo, the then viceroy of India, proposed a resolutioncalling for decentralization of authority in Indian administration and establishing a local self-government system in India with the active cooperation of natives. According to the resolution, its operation in itsfull meaning and integrity 'will afford opportunities for the development of self-government, for strengthening municipal institutions and for theassociation of natives and Europeans to a greater extent than here-to-fore in the administration of affairs' (as quoted in Maheshwari 1971: 15). Therefore we can conclude that till 1870s most of the initiatives taken in the field of local government in India were motivated by the objective of increasing the revenue from towns or providing basic minimum facilities to the growing urban population in India. Most of theselocal governments were dominated by the British and almost all of themwere nominated bodies. These features of the local government

in Indiaestablish the fact that till 1870s it was unrepresentative. Role of Indianswas very limited and they were totally dependent on the British officersand administrators.

The rise of the national consciousness among the people in the late 1870s was very obvious for the British rulers in India. The successorof Lord Mayo Lord Rippon was a liberal. He was more willing to accommodate the Indian views in the administration and therefore hetried to pacify the rising Indian aspirations through various administrative and political reforms. One of his most important contributions in Indianpolitical development was the introduction of the idea of local self- government in 1882. His idea of local self-government for India was tomake it as an instrument of popular and political education (Maheshwari1971: 16). According to Rippon's proposals, most of the local bodies should have elected non-government members, the should not controlthese bodies directly, these local bodies should be given adequate financial autonomy, the officials concerned with local issues should becontrolled by these local bodies and it should be left for provincial government to decide what should be the exact nature and context ofthe working of these local bodies.

These proposals were very strong and far-reaching. However, mostof these proposals could not be implemented due to the strong objections by the bureaucracy at that time. Nevertheless, in some provinces someof the provisions of Rippon's resolution were implemented. For example,it laid the foundation for the local self-government Acts in Bombay of 1901, Bengal of 1884, Madras of 1920, Punjab of 1911, United Provincesof 1916, Central Provinces of 1922 and Burma of 1898. Despite the fact that most of these provincial regulations for local self-governmentwere modified according to the time and context, they were all basedon the broader principles laid down by Lord Rippon. Government of India established a Royal Commission on decentralisation in 1906. Thiscommission submitted a report in 1909 in which the idea of local self-government for both rural and urban areas was accepted and it acceptedmost of the provisions of the Rippon's resolution. According to the recommendations of the Royal Commission, there should be majorityof elected members in the local bodies, every municipality should elect its own president, the district magistrate should however remain the head of the district local board and municipalities should be given enoughfinancial rights in order to make them financially independent. Government should also provide certain grants to these local bodies for certain important projects. The bodies should have control over localofficers. They should be autonomous to a possible extent. However, these local bodies should take prior permission for any selling and buyingfor their land. These local municipalities should be given the primary

responsibility to provide primary education. They should also provide secondary education. In 1918, the government of India issued a resolution re-affirming the objective of local self-government in India. According to the resolution the main purpose of the local self- government in India was to train the people in the management of theirown local affairs and the political education. It further warned that thepolitical education must take precedence on consideration of departmental efficiency. This resolution largely reiterated the principlesprescribed by the Royal Commission upon decentralisation.

Till now local self-government in India presents three forms: that ofmunicipalities dealing with the affairs of towns; that of rural boards concerned with the improvement of non-urban tracts; and that of villagesin which authorities of various kinds in varying degrees regulate the business of the smallest administrative unit As might be expected, theneeds of the presidency towns of Madras, Bombay and Calcutta first obtruded themselves upon the notice of the East India Company and attempts were made to adapt to them the machinery of corporations, mayors, aldermen and justices of the peace. But outside these townsmunicipal legislation of a general character was not attempted till 1850,or on any extensive scale till the 'sixties. In rural areas local administrationwas of later and slower growth. For practical purposes it was not until1870 that the delegation of definite financial resources and responsibilities by the Imperial to the provincial governments renderedpossible and encouraged the development of local taxation to be devotedto local needs under the management of those immediately interested,but even then it was not until the orders of Lord Ripon's Government in1881-2 that Acts of 1883-4, in the case of municipalities and of 1883-5in that of rural boards, established the systems which, in their main outlines, have continued to the present day.

Since 1880s there has been much legislation of an amending character, but the framework on the whole has remained unchanged.In judging of results, therefore, it is essential to remember that local self-government in India is not an indigenous nor even a long tried institution. In the first decade of twentieth century, municipalities in Indiawere very small. Only around 5 per cent of the population of India wasliving in some kinds of town, compared with 78 per cent in England and Wales at that time. More than half of this urban population of India wasfound in towns containing upwards of twenty thousand inhabitants; aboutone-fifth in towns with from ten to twenty thousand and the same proportion in those from five to ten thousand; the remainder, about one-fifth, lived in towns with less than five thousand (Wheeler 1917: 155).

At the outset, with the laudable intention of extending local management, municipalities were erected in localities which were nottruly urban. The supervision of the business of these towns

was entrusted to 9,753 councillors (the significance of the figure lies in its comparison with the total population), of whom 51 per cent were elected.Out of these 10000 odd councillors 81 per cent were non-officials and88 per cent were Indians by 1910. On the other hand, it is only in Madras, Bengal, the united provinces, Bihar and Orissa and the Central Provinces that elected members were in a majority, while the two backward provinces of the North-West Frontier and Baluchistan had no elective system and in Burma it was rudimentary. The electoral franchise was very limited and the percentage of electors to the aggregate municipal population was low. In all the municipalities, the performance depended upon the personality of their chairman. Most ofthese chairmen were elected (67%).

The functions of Indian municipalities after the recommendationsof the Royal commission comprised the usual services essential for the health and convenience of town dwellers. They covered theconstruction and upkeep of roads and public buildings, the lighting andwatering of roads, medical relief, vaccination, sanitation, drainage, water supply, measures against epidemics and education. To meet these responsibilities their resources were by no means as extensive as mightbe desired. It may be said that British India was divided for administrativepurposes into revenue districts, sub-divisions and within them the smaller units of *Talukas* and *Tehsils*. The efforts towards the establishment of local self-government had by the 1910s resulted in the creation of an appreciable number of local bodies, the total, however,being still small in comparison with the population of the country. In thepersonnel of these bodies the Indian non-official element predominatesand while, judged by the Western test of popular election, it was only partially representative, yet it included a fair selection from the educatedland holding and professional classes.

According of Wheeler this condition was due to the fact that in theranks of only these sections of the Indian society, at that stage of Indiandevelopment, administrative ability was most likely to be found (1917:158). The functions entrusted to these bodies covered as wide a fieldas was desirable and expedient at that time and afforded ample scopefor useful and important work, but the funds at their disposal, especiallyin the case of municipalities and even in that of rural boards, looking tothe area to be covered, did not suffice for the general initiation of expensive improvements. Due to the lack of funds administration hadto be conducted on simple and economical lines, compatible with theincome available. Whereas in the West the practice was rather to estimate the cost of the necessary municipal services and then to fix the rates on a scale adequate to meet the expenditure involved, the Indian method was, taking the total sum likely to be produced by the prevailing modes of taxation, to arrange

expenditure to the extent onlyof which the anticipated revenue will permit. In the smaller municipalities the biggest problem had always been the dearth of local revenues, theirinflexibility and the difficulty of formulating other forms of taxation. Thetentative reason for this was the weak economic state of the country, since the per capita income was extremely low. This weak an economywas endorsed by the fact that a sizeable population were not even ableto have a one full meal a day. Another significant reason for this that isstill existent throughout the country is the lack of feelings and concerntowards every form of public life. Beyond doubt, this came into affect because of apparent ignorance and illiteracy. Just 12 per cent of the males and 2 per cent of the females were educated. Extreme poverty and deplorable ignorance, emergence of strong and nasty associations,etc., were strong enough to reinstate the appalling lack of sympathy fora long time to come. The third prominent problem that existed, consistedin the fact that even literate Indians belonging to the upper-class wereusually not willing to help address the problem, related to the trouble,expense and inconveniences of election. In this connection the biggestproblem arose from the fact that the superior classes of Indians, on thewhole, harboured a strong ill-feeling for door-to-door canvassing, simplybecause it was regarded as disparaging to ones self-respect to go aboutto solicit for votes, especially to the lowerclasses.

Another important class of difficulty arose from the fact that the sense of responsibility in public affairs was not allowed to develop because of the policy of the government to grow adequately. Unwarranted meddling with the executive of the public bodies and inappropriate leniency in the issues related to evaluation and realizationof taxes were the deplorable highlights of this class. In addition to this,there are other problems that may emerge as a result of ignorance ofthe laws of public health and absence of the power to make intelligentanticipations of public requirements. This list of problems, nevertheless,cannot be closed without the mention of the most prominent problem that very often arises from extreme levels of communal feelings and even most un-justifiable and protracted litigation over elections (Mallik1929). Various scholars at that time suggested ways to improve the working of local self-government in India.

According to Mallik, the remedy was to carry out programmes of large-scale education. So far, it was quite evident, considering the figuresthat only 5 per cent of the revenues of the government were spent oneducation. The basic components of such education programmes should be directed at resolving of problems related to sanitation, publichealth cooperation and civic sense. Children and the youth should betaught about important ideas and conceptions and a few of the principlesof election and public life. It was unfortunate that there was absolutelyno consideration for public

property and there was gross misuse of public funds. Private agencies and organizations had a very strong influence on matters that affected the public. This was coupled with the effects of personal likes and dislikes. To resolve these problems, it wasimportant to consider a stringent system of public audit and supervisionof these local self-government bodies. It was also necessary to base the direction of education towards the basics of civic life. This would work as a certain and only effective remedy, more importantly againstthe mindset of forming groups and communal hatred. To counter suchproblems, it is important to reconstruct the whole organization must berebuilt from village unions towards with larger electorates, with gradually lessening inner control and interference. The local bodies should be empowered with more authority and power to manage their expensesand exercise the function of reorganizing funds.

A higher level of authority should be given to municipalities and boards so that they can impose taxes for sufficing their requirements.The rise of taxes is always faced by a strong public opposition. However,this can be reduced by gaining the confidence of the general public before levying such taxes. One can be absolutely sure that the extremepoverty of the people as a whole was the main cause of this problem and it was very difficult to suggest any remedy in that direction. One more critical measure in this direction was the establishing of provincialtraining institutions for those who have been newly employed in variousdepartments of the local self-government. Such trainings should includepractical sessions and the creation of a distinct provincial service for them, with attractive prospects of promotion to executive offices. Although such problems exist, the present system of local self- government was increasing in terms of popularity day by day. The institutions were regularly attracting the intellectual people of the countryand the higher class of citizens.

Based on these and other suggestions the government of India in 1919 accepted the Montesquieu Chelmsford reforms. The pressure created by the rising aspirations of the people of India for their independence also played a very crucial role. The acceptance of the principle of dyarchy gave greater responsibilities to the local governmentswith more autonomy. The Government of India Act 1919 abolished theneed of having a civil servant as the head of the municipal bodies. It also provided the scope of appointing elected heads for the local districtboards. This and reforms in 1935 Government of India Act led to the more and more democratization of the local bodies. People from urbanareas had more and more powers to elect their representatives in thelocal bodies. Nevertheless, most of these bodies had very limited franchise based on education and wealth. The

government of India afterindependence had the responsibility to improve this condition.

15.4 URBAN LOCAL GOVERNMENT IN INDIA AFTER INDEPENDENCE

After independence first major reforms in the local self-government wereinitiated in 1948. The then local self-government minister D.P. Mishrainitiated a reform in provinces where he abolished the duel structure of local self-government one district administration and another local government with its rural and urban local governments. This initiativeextended the sphere of activity of the district board to the whole of thedistrict administration and making the district collector the chief executiveofficer of the district board and the district staff as its own. This reformdivided the powers into four classes of I II III and IV which ranged fromfull powers to the district boards to the advisory powers. In all the casesdistrict board were to be taken into the confidence. This scheme thoughhad advantages of district boards having full sovereignty on certain matters and having full control over the staff mate with severe criticismat the central levels. It was called as Central provinces and Berar LocalGovernment Act1948.

This scheme took *Tehsil* as the basic unit of government and therefore considered to be the closest scheme till time which took it tothe people. It was also known as *Janpada* scheme. After the adoptionof the new constitution the reforms in the rural local self-government got tremendous attention unlike the urban local self-government. Sincelocal government was a subjected of state list central government didnot took much notice to it till the third five year plan. In the Third Five Year Plan (1961-66) it was accepted that 'in the next phase of planning,as many towns and cities as possible, at any rate those with a populationof one lakh or more, should come into the scheme of planning in an organic way; each state mobilizing its own resources and helping to create conditions for a better life for its citizens' (Planning Commission,as quoted in Maheshwari 1971: 26). Till 1968 the central governmenthad appointed several committees in order to bring reforms in the urbanlocal government. Some of these committees were; Local Finance Enquiry Committee 1951, Committee on the Training of Municipal Employees 1963, Committee of Ministers on Augmentation of Financial Resources of Urban Local Bodies 1963, Rural-Urban Relationship Committee 1966 and Committee on the Services Conditions of MunicipalEmployees 1968. As we can see most of these committees were formedonly after the 1960s showing very clearly that it was only then the centralgovernment realized the need to improve the condition of local self- government in India.

Since local government falls under the purview of state governmentsthere are some variations in

their nomenclature and structure. Every state has separate departments for urban and rural local self-government as has the centre. Most of the urban local self-governmentsin all the states however have similar structure which we will see below.This chapter will deal with the structure and power of the urban local self-government till the 1992 amendment. As after that we have seensignificant changes in the power and structure of these bodies.

Till very recently urban local government constituted the charge ofthe Ministry of Works and Housing. Historically local government in Indiahad its beginning in an urge to improve local sanitation and hence has continued as the responsibility of the Ministry of Health. The Ministry of Health was looking after both urban and rural local government until 1958 when the latter was separated from it and came under the chargeof the Ministry of Community Development. In January 1966 apart of local government, namely urban development, was renamed the Ministryof Works and Housing, which was again renamed in 1967 as the Ministryof Works, Housing and Urban Development. Again in the same year the subject of urban development was transferred back to the Ministryof Health which carried a rather longish name, the Ministry of Health, Family Planning and Works, Housing and Urban Development.

In 1973 the subject of urban local government was retransferred tothe Ministry of Works and Housing. The Ministry deals with the followingsubjects and organizations in the sphere of local government: Collectionand collation of information with regard to the urban local governmentin the states, Central Council of Local Self-Government, Town and Country Planning Organization, Urban Community Development, Improvement Trusts, Training of Municipal Government Personnel, All-India Mayors' Conference and Advising the Ministry of Home Affairs onmatters relating to local governments in the union territories. The nameof the Ministry was changed to Ministry of Urban Development in September, 1985 in recognition of the importance of urban issues. Withthe creation of a separate Department of Urban Employment & PovertyAlleviation on 8th March, 1995, the Ministry came to be known as theMinistry of Urban Affairs & Employment. The Ministry had two Departments: Department of Urban Development & Department of Urban Employment & Poverty Alleviation. The two Departments wereagain merged on 9th April, 1999 and in consequence thereto, the name has also been restored to 'The Ministry of Urban Development'. This Ministry was bifurcated into two Ministries viz. (i) 'Ministry of Urban Development' and (ii) 'Ministry of Urban Employment and Poverty Alleviation' with effect from 16.10.1999. These two Ministries were againmerged into one Ministry on 27.5.2000 and named as

'Ministry of UrbanDevelopment and Poverty Alleviation' with two Departments. They are (i) Department of Urban Development and (ii) Department of Urban Employment and Poverty Alleviation. From 27-5-2004, the Ministry hasagain been bifurcated into two ministries viz.: (i) Ministry of Urban Development and (ii) Ministry of Urban Employment and Poverty Alleviation (Now Known as Ministry of Housing and Urban Poverty Alleviation).

The central Council of Local self-government, which was createdin 1954, was a coordination body between the different state ministriesof local government and central Ministry of Health. Till 1958 it was concerned with both rural and urban local governments. After that it was only concerned with the urban local self-government. This Counciluse to organize annual meetings of Mayors, State Ministers of Town and Country planning, Housing Minister's Conferences etc. These meetings were organized to evolve a greater uniformity and coordination of urban local government institutions and bodies.

Urban local government till 1992 was the responsibility of the Department of Local self-government in the states. At the state level anumber of departments deal with subjects which are the direct concernof the urban government. In addition to the Department of Local self- government, the functional departments in the secretariat administer the various components of urban development. Thus water supply, drainage and sewerage, road construction, land acquisition and development, housing and slum clearance, etc. are being dealt with byrespective functional departments. As is to be expected under such afragmentary arrangement, the urban affairs do not get viewed as oneintegrated function. Consequently there is a haphazard and piecemealdevelopment bearing an imprint of lack of coordination. It is, therefore,not unusual to find the dwelling houses in a town fully completed yet remaining unoccupied for, say, want of electricity of water supply or even both. This is an avoidable waste. Urban local self-government needs grater coordination between its different bodies. The structure ofthe urban local self-government is very complex.

15.5 SUMMARY

- Municipal Corporation is the topmost of urban local government. Unlike rural government, urban local government in India is not hierarchical. Municipal corporations are usually found in big cities.
- All the municipal areas are divided into wards which are generally electoral constituencies. These municipal corporations in all the states, except for the state of West Bengal, consist of Corporation

Council, the Mayor, the commissioner and a number of Standing Committees.

- The post of the mayor is the highest post in a municipal corporation and generally he is elected for one year term from the councilors elected from different wards.
- In the smaller towns and cities municipalities or municipal councils manage their civic affairs collectively through the municipal board and committees.

15.6 KEY TERMS

- Municipal Corporation: It is the topmost of urban local government for large urban area.
- Mayor: It is the highest post in a municipal corporation.
- Municipal council: It is the urban local government for smaller urban area.

15.7 QUESTIONS AND EXERCISES

1. Where was the first urban local government established in Indiaand when?
2. When was the first election for urban local government held inIndia?
3. When did Royal Commission on Decentralization formed?

15.8 FURTHER READING

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Unit-16: Power and Function of Municipal Corporation, Municipal Council, and Notified Area Council

Structure

16.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Know the changes that have affected the urban local governmentin India after independence
- Explain the structure of urban local self-government in India
- Get an overview of the function of the system of urban local self-government in India, in detail

16.2 INTRODUCTION

According to 2011 census, the urban population in India is now above 30 crores. It is around 30 per cent of its total population. This population is growing at the pace of 2.4 per cent every year. This meansout of every 3 Indian 1 is living in urban areas. This creates a great needof a functioning urban planning and administration. The people in urbanareas need basic facilities like public transport,

roads, water supply, electricity, health facilities and several such services. The role of the urban local government in India is therefore very crucial. Growing urbanpopulation is a sign of overall shift in the basic economic structure of the society. It shows that economy is changing from an agrarian to industrial or even post-industrial phase. Rising population in urban areasand rise of big and small cities and towns have increased the numberof local government bodies in country as well. Today India has more than twenty seven million plus cities and more than 4378 different urban areas. There are 109 municipal corporation cities, 1432 municipal councils and 2100 city rural bodies (they are some kind of notified areacommittees and so on). The definition of an urban area is based on theguidelines issued during the 1961 census. According to this census anurban area is one which has a minimum of 5000 population and not less than 400 per square meter population density. The area should also have at least three fourth of its male working population being engaged in a non-agricultural occupations (Maheshwari 1971: 157).

16.3 STRUCTURE OF THE URBAN LOCALSELF-GOVERNMENT IN INDIA

As has been mentioned above the structure of urban local self- government is very complex and varies according to the state. Most ofthe states in India have adopted different structures of these urban bodies. Nevertheless, there is a minimum structural uniformity which we are going to study here.

Municipal governance in India was first introduced in 1687. It wasin this year that the Madras Municipal Corporation was constituted. This was followed by the development of the Calcutta Municipal Corporationand the Bombay Municipal Corporation in 1726. Another important decision in this field was taken in 1850, when the Government of Indiapassed the Improvements in Towns Act creating a system of councillors.The Act gave the councillors the administrative authority. In 1870, Lord Mayo passed a Resolution of for local self government, establishing the system of city municipalities. This Resolution also called for the introduction of an elected president to lead them. Other significant developments that followed the 1870 resolution were as follows:

- In 1882, the outline and structure of municipal governance in Indiawas created by Lord Ripon's Resolution of Local Self- Government, introducing a two-tier system of governance for enhancing governance efficiency through decentralization of functions.
- On the basis of the 1918 Montague-Chelmsford Report, The Government of India Act 1919,

based on the basis of the 1918 Montague–Chelmsford Report, introduced the system of 'Dyarchy'. In this system, the power-sharing arrangements between the state and the local bodies varied. However, it adheredto the same organizational pattern.

- The District Municipalities Act of 1920 changed the Municipal Councils into elected bodies and gave them the authority to release their ownbudgets.
- Under the Government of India Act 1935, the local governmentwas brought within the purview of the state or provincial government. The local government was also granted additionalpowers.

16.4 Municipal Corporations and Councils: Composition,Functions and Finance

Municipal Corporation is the topmost of urban local government. Unlikerural government, urban local government in India is not hierarchical.Municipal corporations are usually found in big cities. Large populationcreates complex civil problems and therefore to solve these problemswe need municipal corporations. In different states of India generally municipal corporations are created by special statute in the state legislations and these corporations are directly controlled by the state governments. All the municipal corporations consist of elected representatives of the people and some state elected officials. All themunicipal areas are divided into wards which are generally electoral constituencies. These municipal corporations in all the states, exceptfor the state of West Bengal, consist of Corporation Council, the Mayor,the commissioner and a number of Standing Committees.

The post of the mayor is the highest post in a municipal corporationand generally he is elected for one year term from the councilors electedfrom different wards. The mayor chairs the meetings of the council. Most of the administrative powers are however with the Commissionerwho is generally appointed by the state government and is an Indian Administrative Service cadre. Different standing committees are made to deal with a particular issue and these standing committees deal withtheir own issues. Some of the most important standing committees are related to the budget and finance and establishment and personneletc. The state of West Bengal has a slightly different set up. It has a system of Mayor in Council. Once the mayor is elected he recommendsthe name of the other members in the council and they form a cabinetlike structure. Each of the members of the Mayor's council is responsible for one particular subject and commissioner unlike in other states is under the council and follows the decisions taken by the mayor's council.

In the smaller towns and cities municipalities or municipal councils manage their civic affairs collectively through the municipal board andcommittees. In all the municipal bodies sub-committees are created todeal with the subjects like water supply, sanitation and public works. Unlike in the big cities municipalities head is called chairman and he/she is elected for one year term from among the elected members of the municipality. Just like in municipal corporations the chairman's postis there to chair the meetings of the council. Real administrative powersare with executive officer appointed by the state government. In someof the states like Kerala and Tamil Nadu most of the officers appointed for the duties in the municipalities are given separate charges for a particular are like health and sanitation. In most of these local bodies the lower level staff is appointed from the local population.

Most of the municipalities or municipal corporations have two basicfunctions; legislative and executive. All the elected members of the council in all these bodies are considered as the legislators and they collectively debate and deliberate over the policies and planning aboutthe area. They have the right to approve the budget for the body and deciding on the subjects of taxation and provisions of services in the area. The council held different officials and committees accountable.The executive jobs in the municipal corporation and councils are doneby the state appointed officers or municipal commissioner and local officers. Most of the works of the municipal corporations and councilsare divided into two parts; obligatory and discretionary. Obligatory worksare related to the basic sanitation and services in the cities such as supply of water, maintenance of roads etc. Discretionary functions, suchas the building of houses for the poor and organizing the events are subject to the availability of funds and other resources.

It is up to state governments to decide the extent and subjects oftaxation by the municipal corporations and councils. However, in mostof the states it has been generally fond that municipal corporations orcouncils collect housing taxes and several user charges along with thecollections from the special services such as organization of an event.In general their source of income is divided into three parts; Taxes, Fees and Fines and earning from its enterprises such as market placesand other such resources. Municipal Corporation and Municipal councilsput taxes on property and charge for their services. They are also provided with one time grants from the state governments. After the 74th amendment, as we will study them later, there is a provision of the establishment of finance commission after every five years through which state has to allocate funds to these local bodies.

Constitution of municipalities

Act 243-Q provides for the establishment of the following three types ofmunicipal corporations in urbanareas:

1. A Nagar Panchayat for a transitional area, that is to say, an areaundergoing transition from a rural area to an urban area
2. A municipal council for smaller urban area
3. A municipal corporation for a larger urban area

In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' refers to such an area as the governor may possess with regard to the population of the area, the density of the population in thatarea, the revenue generated for local administration, the percentage ofemployment in non-agricultural activities, the economic or such otherfactors as he may consider fit, etc. A municipality means an institutionof self government constituted under Act-243a.

Composition of municipalities

Article 243-R provides that all the seats in a municipality shall be filledby the persons chosen by direct elections from territorial constituencies in the municipal area. For this purpose, each municipal area is dividedinto territorial constituencies to be known as wards.

Constitution and composition of wards committees

Article 243-S provides for the constitution of wards committees comprising of one or more wards, within the territorial area of a municipality having a population of three lakhs or more.

The legislature of the state may make provisions with respect to:

1. The composition and the territorial area of a wards committee
2. The manner in which the seats in a wards committee shall be filled

A member of a municipality constituting a ward within the territorial areaof the wards committee shall be a member of that committee. Where awards committee consists of one ward, the member representing thatward in the municipality shall be the chairperson of the committee.

Where a wards committee consists of two or more wards, one ofmembers representing such wards in the municipality elected by the members of the wards committee shall be the chairperson

of that committee [clause (4)].Nothing in this Article shall stop the legislatureof a state from making provisions for the constitution of committees inaddition to the wards committees [(Clause (5)].

Reservation of seats in municipalities

Article 243-T has made the provision for the reservation of seats for themembers of scheduled castes and scheduled tribes in every municipality. The member ad seats reserved for them shall be in same proportion to the total numbers of seats to be filled by directed electionin that municipality.

Out of the total numbers of seats reserved under clause (1), 113seats shall be reserved for the women belonging to SC and ST. The office of chairpersons in the municipalities shall be reserved for SC, STand women in such manner as the legislature of a state may by law provide.

Reservation of seats for backward class of citizens

Under clause (b), the legislature is empowered to make provisions forreservations of seats in any municipality of office chairpersons in the municipalities in favour of backward class of citizens. All kinds of reservation of seats shall cease to have effect on the expiration of theperiod specified in Act 334 that is (upto 50 years from the commencement of the constitution).

Duration of municipalities

Article 243-U provides that every municipality, unless sooner dissolvedunder any law for the time being, shall exist for 5 years from the date appointed for its first meeting. No amendment of any law for the time being shall have the effect of causing dissolution of a municipality, at any level, till the expiration of its normal duration of 5 years.

Election

An election conducted for the municipality shall be completed before the expiration of its duration and before the expiration of a period of 6months from the date of its dissolution in case it had been dissolved earlier.

Disqualifications for membership

Article 243-V states that a person shall be disqualified for being chosenas and for being a member of the municipality under the following conditions:

1. If he is so disqualified by or under any law for the time being forthe purposes of elections to the legislature of the state concerned
2. If he is so disqualified by or under any law made by the legislatureof the state

However, a person shall not be disqualified on the ground that he is less than 25 years of age or if he has attained the age of 21 years. Thus, a person who is already 21 years old is eligible for being chosenas a member of a municipality.

Power, authority and responsibilities of municipalities

Under Article 243-W, the legislature of a state, subject to the provisionsof this constitution, is directed by law to endow:

1. The municipalities with such powers and authority as may be necessary to enable them to function as institution of self government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to:
   (i) The preparation of plans for economic, political socialdevelopment
   (ii) The performance of function and implementation of programmers and schemes as per law

   The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matter listedin the twelfth schedule.

16.5 Types of Administrative Structures for the CityGovernance

It is held in literature that four major types of administration structurescould be found in the context of cities with respect to the division of responsibilities (Pinto 2000) which are discussed briefly as under:

4. Weak Mayor-Council Structure
5. Strong Mayor CouncilStructure
6. Commission System
7. Council – Manager System

1. The Weak Mayor Council Structure

The Weak Mayor Council Structure is one of the first types of administrative structure of modern industrial era as shown in figure

2.1. In this structure, the Mayor can suggest legislation and is empowered with policy making functions while administrative functionsare vested in a Council through an elaborate committee system. Boththe Mayor and Council as well as local officials are elected. This bringsin both the political legitimacy and the scope for professional performance.

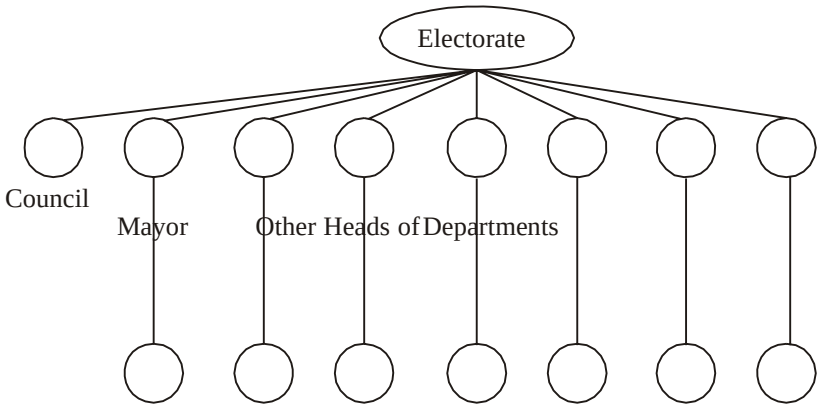


Fig. 2.1 *The Weak Mayor-Council Structure*

2. The Strong Mayor Council Structure

This has similarity to the earlier structure but in this case, the Mayor and the Council are directly elected. Here, the Mayor commands supreme control over the administration and goes synonymous with presidential form of political governance. The Mayor is powerful as hecombines political as well as administrative leadership and the Councilbecomes an examining body of his/her actions, policies and programmes . An alternative of this model is the Mayor-Manager or Mayor-Chief Administrative Officer type, under which the Mayor appoints an officerto assist him in the

administration of departments. The Manager/ Chief Administrative Officer is the chief of the department heads.

3. The Commission System

This type of administrative structure as shown in figure 2.3 was borneout of the experience of city of Galveston, Texas, USA. A commission isgiven the responsibility of city affairs with the Commissioners acting asfull-time paid administrators and legislators. It works competently in asmall city, but is not considered appropriate for large cities, given the weaknesses of inability to cope with pressures as well as complexitiesin development andadministration.

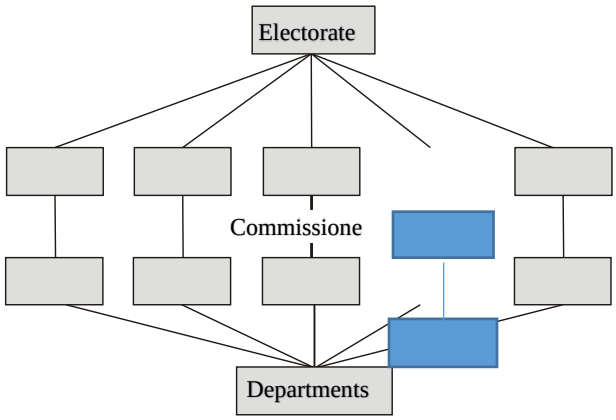
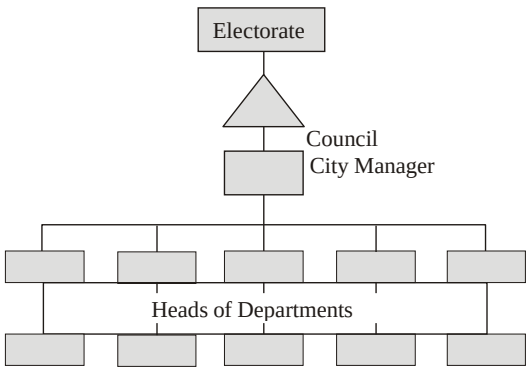


Fig. 2.3 *The Commission system*

1. The Council-Manager System

The Council-Manager System (figure 2.4) makes the elected Council responsible for policy making as well as administration, under a professional manager, who is responsible to the council. The Manager is appointed by the Council and serves during his tenure with the electedbody being the deliberative, reviewing, annulling and monitoring body.



Departments

Fig. 2.4 *The Council Manager System*

The above models present the different structures for the administration of urban areas, which particularly find support in the case of cities uptoa certain size of population and area. The choice of the model is ascertained to a great extent by the historical past of political values and preferences. These structures are guided by some amount of inputsof representatives of citizens, intelligentsia and professionals in shapingthe outcomes.

But, much of the outcomes on city space are a result of the interactions of administrative structure, organization, principles, valuesand efficiency. In practice, there are not many types of administrativestructures found in India. Mumbai, Delhi and Chennai are the three majormetropolitan cities in India which are following a Commissioner led administrative system with the Council as the political wing. Many othercities in India are also following this system except Kolkata, which hasadopted Mayor in Council administration system.

The Commissioner led administrative system started by Mumbai is based on the principle of division of functions into (a) policy and regulation functions delegated to the deliberative wing of elected councilors and (b) administration and executive powers to the Commissioner and the heads of departments. This design led to severalconflicts although it appeared to be convincing. The Mayor Council System in Kolkata seems to be working fine but yet it has to face the test of political clashes. Mumbai has had Mayor Council system for a very short period and reverted to the Commissioner led city administration. Delhi and Chennai also have more or less similar administrative structures like that of Mumbai.

With the population accumulating in urban areas outside the limitsof the municipality, the physical and functional associations become important at the metropolitan region level and so do the establishmentand governance of metropolitan authorities. Metropolitan urban governance has to implement the existing models of urban governance in agreement with the metropolitan spatial structure and also form coordinating institutional mechanisms for both planning and service delivery in place. The Indian models of metropolitan urban governancehave been discussed in detail below.

16.6 Indian Models of Metropolitan Urban Governance

Let us discuss some important models of metropolitan urban governance in India.

1. Kolkata Metropolitan Development Authority Constitution

Kolkata Metropolitan Development Authority (KMDA), originally formed under a Presidential Ordinance in 1970, is currently the statutory planning and development authority for the Kolkata Metropolitan Area(KMA) under the provision of the West Bengal Town and Country (Planning & Development) Act, 1979. KMA is the oldest and second largest metropolis in India that now extends over 1,854 sq km area witha population of more than million; it has 41 contiguous urban local bodiesand 100 odd rural local bodies. KMA has always demonstrated a multitude of developmental challenges and yet has shown some innovations. Kolkata Metropolitan Planning Committee (KMPC) in West Bengal, constituted on 19th October, 2001 under Metropolitan PlanningCommittee Act 1994, has been the first Metropolitan Planning Committee (MPC) in India following the 74th Constitutional Amendment Act, 1992.KMDA is the Technical Secretariat to KMPC, being the first of its kind inIndia, composed under West Bengal Metropolitan Planning CommitteeAct, 1994.

Profile

Kolkata City, with 41 adjoining urban local bodies and 100 or so rural local bodies, has some of the planning interventions and physical infrastructure development cut across the boundaries of local bodies.Such a planning exercise required a metropolitan wide planning bodyto administer it. The state government passed the West Bengal Metropolitan Planning Committee Act, 1994 for the purpose of decentralized spatial and socio-economic planning in Kolkata. The Actprovided for the constitution of Kolkata Metropolitan Planning Committee (KMPC) in order to prepare the draft development plan for the metropolitan area as a whole by combining the development plans ofits constituent municipalities and village councils.

In the Kolkata Metropolitan Area (KMA), two-thirds of the committeeis elected from among the elected members of the 41 Municipalities and around 100 Chairpersons of the village councils. Another one-thirdof the committee is comprised of nominated representatives of the Government of India, the state government and the organizations andinstitutions relating to urban development and infrastructure. After theenactment of the Act, it took seven years for the KMPC to be formed and start operating. The KMPC is made up of 60 members which includes 40 elected and 20 nominated members. KMDA has been confirmed as the Secretariat of KMPC and the Secretary of KMDA hasbeen appointed as the Secretary of the KMPC.

Functions

The KMPC gives a participatory and democratic platform for metropolitanplanning which till now was the realm for experts and administrators only. West Bengal's attempt is praiseworthy as it has tried to include representatives of every area in KMPC, which will deal with crucial matters such as formulation of metropolitan vision, capital investmentand metropolitan level advocacy. The Kolkata MPC is responsible forpreparing: (a) Perspective plan (25 years) (b) Draft Development Plan(Five yearly) (c) Annual Plan for Implementation.

Structure

The structure representing the administration and governance of KMAis outlined in figure 2.5.

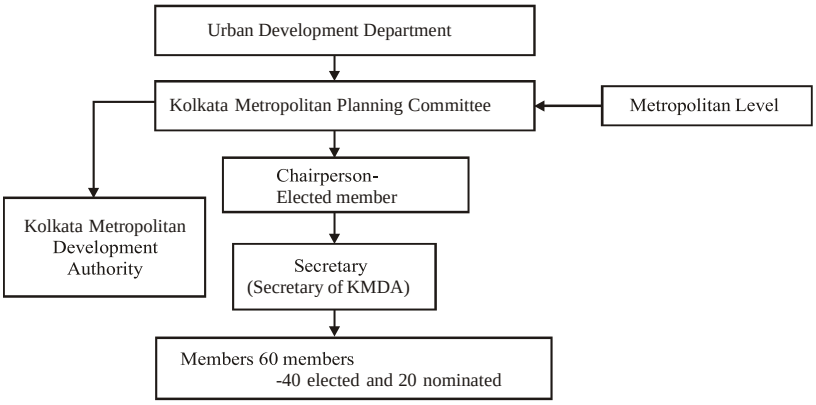


Fig. 2.5 *Structure of Administration of Kolkata Metropolitan Area*

1. Mumbai Metropolitan Region Development Authority(MMRDA) Constitution

The Mumbai Metropolitan Region Development Authority (MMRDA) wasestablished on 26 January 1975 (earlier known as Bombay MetropolitanRegion Development Authority) under the Bombay Metropolitan RegionDevelopment Authority Act, 1974 by the Government of Maharashtra.The MMRDA is an apex body responsible for planning and coordinating all development activities (including the provisioning of major physical infrastructure) in Mumbai Metropolitan Region (MMR). It vigorously worksin coordination with the local (Bombay) and State governments, and other quasi-government agencies.

Jurisdiction and mandate

The MMR jurisdiction spreads over 4355 sq km covering the city of Greater Mumbai and its hinterland comprising mostly parts of Thane and Raigadh districts. It contains:

(i) five municipal corporations

(ii) fifteen municipal councils

(iii) several *gaothans*/villages

The MMRDA plays the central role in steering the development of regionin the form of:

- preparing perspective development plan for the regionencompassing all major aspects
- modulating the development of the region through zoning anddevelopment controls
- supporting the development of the region through infrastructurecreation, expansion and strengthening
- organizing the development activities of all organizations relatedwith development or management of any aspect or sub-region

Organization and governing principles

The organization/structure of MMRDA comprises three bodies:

- The highest policy making body is the Authority consisting of 17members and is chaired by the Minister for Urban Development,Government of Maharashtra
- The Executive Committee provides technical guidance and supervision. It contains 6 state government members and threeexpert members, and is chaired by the Chief Secretary of the state government
- The Metropolitan Commissioner is appointed by the state government and heads the office of the MMRDA which includes6 functional divisions with their own divisional chiefs

MMRDA is regarded as an apex institution responsible for planning andadministering the city and its environment. It functions on the followingguiding principles:

- It identifies the distinction between policy-making and policy-execution
- It assigns the policy-making function to the council and policy-execution to a single individual. i.e., the commissioner

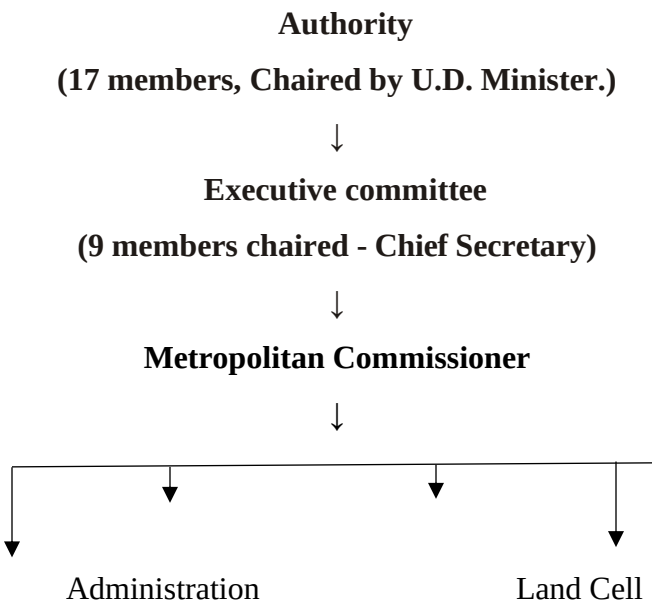
- It makes the commissioner more or less independent of the Corporation though the two have to work in close cooperation

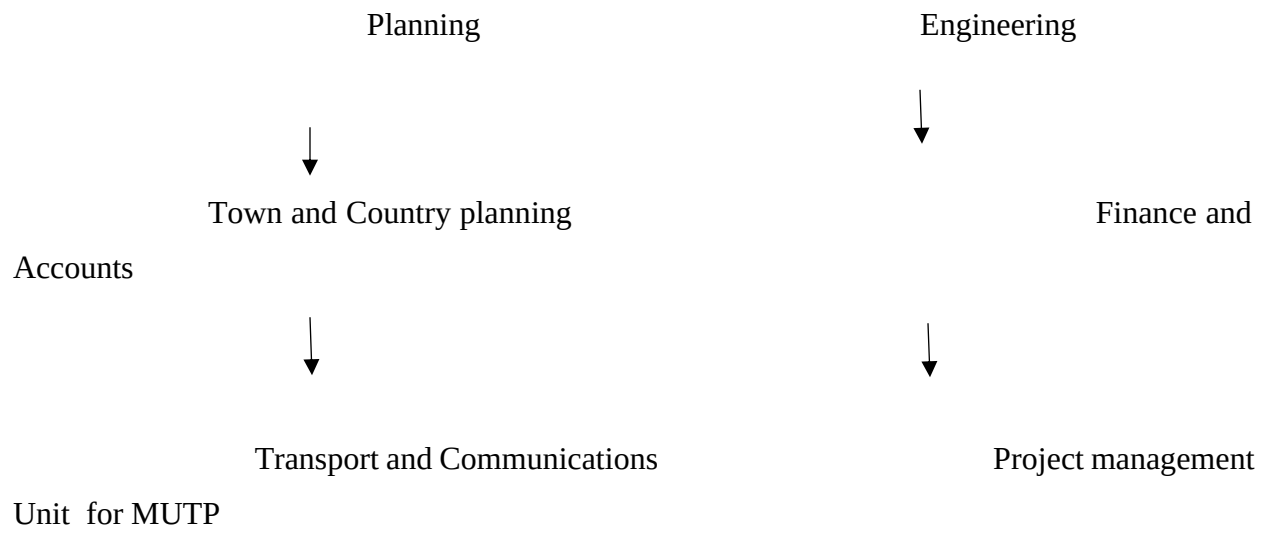
Strategy and funding

MMRDA aims to attain the goal of a balanced development of the regionthrough the followingstrategies:

- Preparation of perspective plans
- Pro motion of alternative growth centres
- Strengthening of infrastructure facilities
- Provision of developmentfinance

The MMRDA, for the purpose of implementing these strategies, preparesplans, formulates policies and programmes and helps in directing investments in the region. In particular, it envisages, promotes and supervises the key projects for developing new growth centres and boosting improvement in sectors like transport, housing, water supply and environment in the region. It also reproduces information pertainingto socio-economic profile of households, patterns of economic development and transport through surveys and commences projectsthat give a regional overview in the strategic areas. Additionally, if a project is of specific importance, the MMRDA takes up the responsibilityfor its implementation. One such project undertaken by it is developingthe Bandra-Kurla Complex.





The MMRDA has generated a master plan for developments in the regiontill the year 2011. It has also undertaken some of the major infrastructurecreation/ expansion projects with the financial assistance of external agencies. A huge chunk of its revenue comes from the disposal of landin the Bandra-Kurla complex. It regulates a reserve fund for financinginfrastructure projects and also provides loan facilities for such projects.

MMRDA also decided to prepare a Comprehensive Transport Strategy for the entire metropolitan region in order to emphasize its investments in infrastructure projects and improve the metropolitan transport.

An important aspect of the MMRDA is that it not only functions as ametropolitan planning agency but also embarks on development projectseither independently on its own or in association with other concerning organizations. It seeks funding support from state government, multilateral agencies and development agencies. It has been executingthe mega projects to develop physical infrastructure, transport and commercial or recreational activities with the supportof agencies.

3. Bangalore Metropolitan Regional Development Authority

Bangalore Metropolitan Region Development Authority (BMRDA) is aself-governing body formed by the Government of Karnataka under the BMRDA Act 1985 for the purpose of planning, coordinating and supervising the proper and orderly development of the areas within theBangalore Metropolitan Region (BMR) which consists of Bangalore urban district, Bangalore rural district and

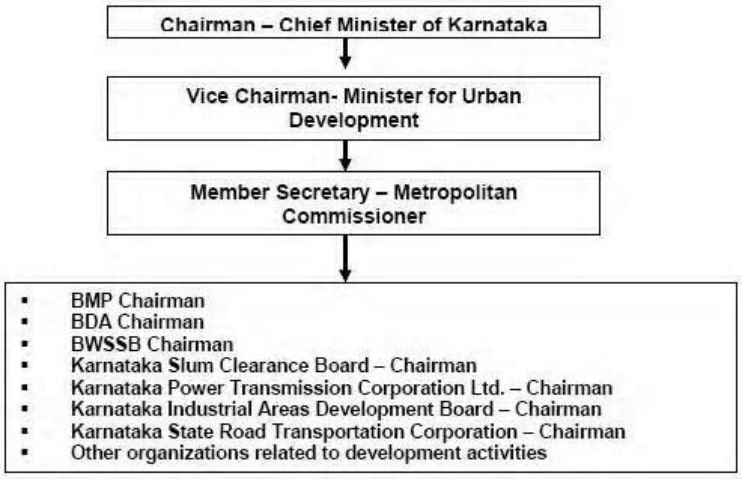
Malur taluk of Kolar district.

Structure

The Chief Minister heads the BMRDA as Chairman and the Minister of Urban Development functions as Vice-Chairman and the other members are the Chairmen of various development agencies in Bangalore, senior officers and heads of departments. The member secretary is the Metropolitan Commissioner. BMRDA contributes primarily in the evolution of urban development polices in the Bangalore Metropolitan Region (BMR) and it acts as an umbrella organization for the planning authorities setup in the region (see figure 2.7 for structure).

BMRDA is responsible to coordinate the activities of various concerned bodies such as Bangalore Mahanagar Palika, Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the Karnataka Power Transmission Corporation Ltd., the Karnataka Industrial Areas Development Board, the Karnataka State Road Transportation Corporation and such other bodies as or connected with developmental activities in BMR.

The entire Bangalore Metropolitan Region (BMR), as per the structure plan, is divided into five Area Planning Zones (APZ) and six Interstitial Zones (IZ). The proposed APZs are Bangalore – Bidadi, Bangalore – Nelamangala, Bangalore – Devanahalli, Bangalore – Whitefield, Hoskote, Bangalore – Anekal, Sarjapur – Hosur.



2. Chennai Metropolitan Development Authority

Constitution and jurisdiction

The Chennai Metropolitan Development Authority (CMDA) is a statutorybody set up under Town & Country Planning Act 1971. In 2001, the population of the city of Chennai had crossed 42 lakhs and it becameone of the megacities in India. The city's population is expected to reachthe 48 lakh mark in 2011.

The Chennai Metropolitan Area includes the city and its adjoining urbanized area covering 1177 sq km. The Chennai City, 8 Municipalities, 10 Panchayat Unions come under its purview. These challenges must be overcome through the policy of Metropolitan Development of Chennai and appropriate solutions must be found. The CMDA, in its effort, to transform the policies of Government into reality has recommended a number of measures to improve traffic and transportation, to create infrastructure and to upgrade existing civic services.

Function and structure

The function of CMDA is to supervise the overall planning and coordination in CMA and it is dedicated to deliver services to the citizens.The structure of CMA (shown in figure 2.8) consists of the Chairman (political head), Vice Chairman, Member Secretary and CEO (all of thembeing in civil service) and a Board of Directors comprising departments,municipal corporations, parastatals and elected representatives.

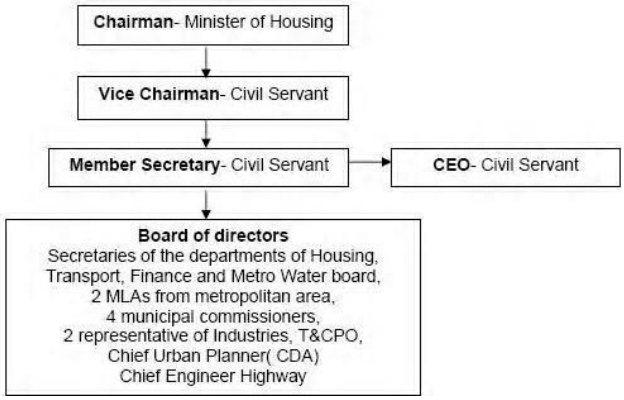


Fig. 2.8 ***Structure of CMDA, Chennai***

16.7 SUMMARY

- The modern advent of the idea of local self-government in Indiawas due to the needs of the British Government.
- Personalities like Lord Rippon played a very important role in theestablishment of the elected urban local government in India.
- The Acts of 1919 and 1935 were important millstones in the history of the urban local self-government in India.
- After independence we have seen the rise in the urban populationin India which has necessitated the reforms in the urban local government.

16.8 KEY TERMS

- **Presidency towns:** Provinces of British India, that were the administrative units of the territories of India under the tenancy orthe sovereignty of either the English East India Company or the British Crown
- **Viceroys:** A ruler exercising authority in a colony on behalf of asovereign
- **Mayor:** The elected head of a city, town, or other municipality

16.9 QUESTIONS AND EXERCISES

1. When did Royal Commission on Decentralization formed?
2. When urban local government was made a state subject in India?
3. Who heads the municipal corporations?

16.10 FURTHER READING

Wheeler, H. (1917), Local Self-Government in India, *Journal of theSociety of Comparative Legislation*, 17 (1/2): 153-164.
Garg, Subhash Chandra, Mobilising Urban Infrastructure Finance in Indiain a Responsible Fiscal Framework,
http://siteresources.worldbank.org/INTMF/Resources/339747-1105651852282/Garg.pdf

Block-4
Indian Government and Politics: Basics

UNIT-17: NATION BUILDING: MEANING & MECHANISMS

Structure

17.1: OBJECTIVES

After going through this unit, you will be able to know:

- The meaning, definition and factors of Nation Building
- Historical, Pre-Modern view of Nation Building
- Modern, Nationalist & Imaginist view of Nation Building

17.2: INTRODUCTION

Nation-building is one of the important aspect of a Nation. It is a process of uniting the people of the state into a well-functioning, good governing, well-dignified and unified nation. It builds in the state through the state of power with the political, social, economic, and cultural institutions. It inculcates the emotional unity of the people. It creates an enthusiasm among the people to participate in the process of modernization, development and socio-economic reconstruction of a nation. It creates a spirit of nationalism among the

people of a nation. It always tries to unite the free people to give their efforts to develop a new egalitarian society with the high altitude of social, economic, political and emotional development in the era of Modernization, Liberalization, Privatization and Globalization. It is a great challenge before each Nationto build the nation on the basis of identity, formation, culture etc. Nation Building refersthe phase that is 'How to construct and restructure the identity of a Nation by using the power of the state'. Nation the word binds all the people in the single thread not only to form a state but also to find the process by which the nation states came into existence. Nation builders are those members of a state who take the initiative to develop the national community through government programmes, including military conscription and national content mass schooling. Nation-building can involve the use of propagandaor major infrastructure development to foster social harmony and economic growth.

Nation Building is a process of building the following:

a. State Building
b. People Building
c. Democracy Building
d. Citizen Building
e. Economy Building
f. Social Building
g. Government Building

It is a process which focusses on the Nation States as well as true Nation States; people as well as well- organized, well defined and well- focused people; society as well as democratic and developed society and so on. It not only tends the people of a nation but also emphasizes on the legitimate role of the political system in fulfilling the demandsand need of the people. It also stretches the power of the political systems by making them autonomous bodies. It implies the arrangement of a large number of individualsfrom the middle and lower classes linked to regional centers and leading social groups,by channel of social

communications and economic intercourse. It involves the blend of integration of masses and the elite class.

Nation Building refers to a process of exercising the people in to a nation committed to all old-fashioned, indigenous allegiances, arrangements and power systems to one overriding loyalty to the nation, the motherland and to the authority of the state. All want to see their nation stand prosperous and proud. The question is ‘how is it going to happen?’ Building a nation may not mean to develop ‘infrastructure and material’ by the government for people in order to improve trade and technology or to encourage arts and culture to flourish using government funds etc. Nation Building is something humanistic development along with all these materialistic progress. Building a nation is certainly not by members of the ruling party in Government 'learning new technologies' by going on foreign trips. All these are products of the peculiar brand of socialism that we have followed in our country since Independence. From the individualistic ground of none is blamed or cursed for the development of a nation. Let's not blame Pandit Jawaharlal Nehru entirely for this state, a great wave of acceptance sweeped across the country when Nehru announced his 'Five Year Plans' and other incentives for industry, agriculture and trade. People were ready for progress, they didn't care in which form it came, they didn't care from whose pockets the money flowed. It is that altruist morality that has landed us here today. From the ground of a businessman, the Nation Building is something individualistic. The central question is ‘What does a 'man of business' do in this country today? By this, it broadly refers to anyone who has something creative to offer. Such men of business today are too busy to see all this, they are busy waiting to jump off theiroffice balcony, twist their necks, crawl on their bellies and lick boots to get 'documents passed' or 'projects cleared'. They are willing to 'pay' bribes, run errands, wait years 'for the next government to come' to get things going. Our businessmen are willing to work under any system as long as they are free to make a little profit. They are willing to listento environmentalists, charlatans, soothsayers, yoga therapists, hi-tech consultancy agencies about matters of business policy. They are ready to shake hands with the worst of their enemies to gain political pull. They are willing to sponsor civic amenities likeroad blocks, dividers, traffic signals, pavements and are willing to forego the costs, satisfied with their logo being brandished on these 'civic amenities'.

17.3: DEFINITION OF NATION BUILDING

Nation Building is process of developing a developed nation through collective, united and systematized efforts. Modern nation- building refers to the efforts taken by the newly independent nations, to redefine the populace of territories that had been carvedout by colonial powers or empires without regard to ethnic, religious, or other boundaries Nation-building includes the creation of national equipment such as flags, anthems, national days, national stadiums, national airlines, national languages, and national myths. At a deeper level, national identity needed to be deliberately constructed by molding different ethnic groups into a nation, especially since in many newly established states colonial practices of divide and rule had resulted in ethnically heterogeneous populations.

"Nation Building and Nation formation is the broad process through which Nations come into being. Nation-building wishes at the association of the people within the state and tries to bring a politically stable and practicable state with a long existence".
Paul James

"Nation Building and Legitimate authority in modern national states are connected to popular rule, to majorities. Nation-building is the process through which these majorities are constructed". **Harris Mylonas**

"Nation Building is broad spectrum and wide ranging process, which begins after the creation of a nation state so as to make it viable, cohesive, and well-organized, authomous and widely acceptable entity". **Myron Weiner**

"A nation is not defined by its borders or the boundaries of its land mass Rather, a nation is defined by adverse people who have been unified by a cause and a value system andwho are committed to a vision for the type of society they wish to live in and give to the future generations to come." **Fela Durotoye**

"A nation that craves for development and a stronger union should carry everyone along irrespective of language, colour, race, creed, ethnic diversity, religion, cultural values or sexual orientation. In essence, the country in question should practice an equitable distribution of wealth, equal opportunities and procrustean development where every individual will see each other as equal more so where no ethnic, race or group of persons should see the country as patrimony or 'born to rule syndrome**."** **Lucas Anuforo**

"No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women."

Muhammad Ali Jinnah

"And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever." **Thomas Jefferson**

17.4: MECHANISMS OF NATION BUILDING

The mechanisms of nation building are the indicators for judging the progress of the process of nation building in a state. The vital mechanisms of Nation Building are

(a) **Support of the people**- Nation Building is made through the constant and enthusiastic provision of the people to the community, the administration and the power holders.

(b) **Leader**- A Nation is built under the vigilant guidance of the leader. A committed,devoted and dedicated national leader is only able to build a vibrant nation.

(b) **Goals and Co-operation of the people**- Nation building is meant for achieving the national's goals, objectives and cooperation and coordination among the peoples of the nation.

(c) **Respect for national symbols**- Nation building teaches the peoples of the nation to respect for their nationals symbols like National Flag, National Anthem, etc.

(d) **Territorial Integrity**- Nation building is based on the principle of territorial integration not only among the states but among the nation-states.

(e) **National priority and National identity**- Identity is the national priority of a nation. A nation aims to preserve national identity, unity and integrity. So national identity isa major component of a nation.

(f) **Public literacy and freedom**- Nation Building aims to establish a high level of public literacy and freedom from orthodoxism, radicalism, parochialism and conventionalism etc.

(g) **Instrument of Nation building** - The qualities and commitments of intellectual elite of the society towards the goals adopted by the nation, the existence of the class of academic elites free from cast, communal and religious barriers always acting as a biginstrument of nation building.

(h) **Role of the fourth pillar of Democracy**- Mass media is the fourth pillar of democracy which is very alert, active and an effective instrument of political socialization, modernization and development.

(i) **Nation Building as discipline**- Nation Building is a process and consistent march towards economic growth, political development and social justice. It works as a discipline in the nation.

(j) **Nation Building as a process of development-** Nation Building aims in bringing development of national participants, developed and civic political culture. Development consistently goes on like nation building.

(k) **Effective state controlled mechanism –** A nation is built with the development of effective, efficient and systematic state control mechanisms. A nation can be better constructed with better constructive mechanisms.

(l) **National integration-** The thing which binds the people of a nation in one thread, one nation is the national integration. It is an emotional and psychological feeling which binds the people of a nation in one bond and tends towards development of a nation.A high level national integration builds a strong and united Nation.

17.5: NATION BUILDING: A HISTORICAL OVERVIEW

The word 'nation- building' originated into craze among traditionally oriented political scientists in the 1950s and 1960s. Its main protagonists incorporates the leaders of the American academic community like Karl Deutsch, Charles Tilly, and Reinhard Bendix. Ernest Renan's famous question 'what is a nation?' in his lecture at Sorbonne in 1887, marks the beginning of the academic debate on nations and nationalism, which continues to thisday. Nation-building philosophy was predominantly used to describe the processes of national integration and consolidation that led up to the establishment of the modern nation state as distinct from various form of traditional states, such as feudal and dynastic states, church states, empires, etc. "Nation-building" is an architectural representation which, strictly speaking, implies the existence of consciously acting agents such as architects, engineers, carpenters, and the like. For the political scientists, the word covers not only conscious strategies initiated by state leaders but also unplanned societal change. The 'nation-building' is for political science what "industrialization" is to social economy, an indispensable tool for detecting, describing and analyzing the instruction of historical and sociological dynamics that have produced the modern state. The traditional, pre-modern state was made up of isolated communities with parochial cultures at the "bottom" of

society anda distant, and aloof, state structure at “the top,” largely content with collecting taxes and keeping order. Through nation-building these two spheres were brought into more intimate contact with each other. Members of the local communities were drawn upwards into the larger society through education and political participation. The state authorities, in turn, expanded their demands and obligations towards the members of society by offering a wide array of services and in-tegrative social networks. The subjects of the monarch were gradually and imperceptibly turned into citizens of the nation-state. Substate cultures and loyalties either vanished or lost their political importance, superseded by loyalties toward the larger entity, the state. Oyvind Osterud, in the concept of ‘nation-building’, said political science is what ‘industrialization' is to social economy: an indispensable tool for detecting, describing and analyzing the macro historical and sociological dynamics that have produced the modern state.

17.6: NATION BUILDING: TRADITIONAL VIEW

The traditional, pre-modern state was made up of isolated communities with parochial cultures at the ‘bottom’ of society and a distant, and aloof, state structure at ‘the top, largely content with collecting taxes and keeping order. Through nation-building these two spheres were brought into more intimate contact with each other. Members of the local communities were drawn upwards into the larger society through education and political participation. The state authorities, in turn, expanded their demands and obligations towards the members of society by offering a wide array of services and integrative social networks. The subjects of the monarch were gradually and imperceptibly turned into citizens of the nation-state. Sub- state cultures and loyalties either vanished or lost their political importance, superseded by loyalties toward the larger entity, the state. Stein Rokkan‘s model saw nation-building as consisting of four analytically distinct aspects. In Western Europe these as-pects had usually followed each other in more or less the same order. Subsequently, they could be regarded not only as aspects but also as phases of nation-building.

The first phase ensued in economic and cultural unification at the elitist level. The second phase brought ever larger sectors of the masses into the system through conscription into the

army, enrollment in compulsory schools, etc. The burgeoning mass media created channels for direct contact between the central elites and periphery populations and generated widespread feelings of identity with the political system at large. In the third phase, the subject masses were brought into active participation in the workings of the territorial political system. Finally, in the last stage the administrative apparatus of the state expanded. Public welfare services were established and nation-wide policies for the equalization of economic conditions were designed. In the oldest nation-states of Europe, along the Atlantic rim, the earliest stage of these processes commenced in the Middle Ages and lasted until the French Revolution. While it is impossible to pin-point exactly when the entire nation-building process was completed, it certainly went on for several centuries. In the ideal variant, each consecutive phase set in only after the previous one had run its course. This ensured the lowest possible level of social upheavals and disruptions, Rokkan believed. In the mid-1970s, discussions on nation-building took a new turn. In a seminal article pointedly titled "Nation-building or Nation-destroying".

Walker Connor launched a blistering attack on the school of thought associated with Karl Deutsch and his students. Connor noted that the nation-building literature was preoccupied with social cleavages of various kinds between burghers and peasants, nobles and commoners, elites and masses but virtually or totally ignored ethnic diversity. This Connor regarded as an inexcusable sin of omission, since, according to his computation, only 9 percent of the states of the world could be regarded as ethnically homogeneous. Since "nation-building" in the Deutschland tradition meant assimila-tion into the larger society and the eradication of ethnic pecu-liarities, Connor believed that in world history it had produced more nation-destroying than nation-building. However, the effi-ciency of active engineeringin nation-building, he held, had generally been greatly exaggerated. Very often it was counter-productive, regularly producing a backlash of ethnic revival-ism. Complete assimilation of ethnic minorities had largely failed all over the world, even in that alleged stronghold of consum-mate nation-building, Western Europe, Connor maintained.

'The reason behind the fundamental flaws of nation-building theory Connor found in the terminological confusion caused by the diverse usages of the word 'nation'. As he pointed out, this term sometimes is used with reference to cultural groups and peoples, while at other times it describes political entities I.e. states, cf. expressions such as "United Nations" and

“International Politics.” Even more misleading, he felt, was the tendency to use the term ‘Nation’ to describe the total population of a particular state without regard for its ethnic composition’.

From the ethnic groups the term “nation” discards all objective cultural markers as vali identity demarcations for these units. Neither common language, common religion, nor any other, shared cultural reservoir within a group qualified as a genuine sign of nation hood. Any such attempt to objectivize the nation was to mistake the cultural manifestations of a nation for its essence. The true nature of the ethnos was in all and every case the sense of common ancestry shared by its members. The nation is the ultimate extended family. To be sure, hardly ever could a common origin of the members of the nation be proven. In fact, very often it can be established that a nation stems from diverse ethnic sources. The belief in a common genetic origin can therefore usually be shown to be pure myth. Nonetheless, adherence to this myth has remained a sine qua non for every nation.

Later theoreticians developed Connor’s understanding in two different directions. The “modernists” such as Benedict Anderson, Tom Nairn, Ernest Gellner and Eric Hobsbawm strongly underlined the myth aspect of the nation. In a celebrated book title, Benedict Anderson coined the expression “imagined communities” to describe modern nations. The nation is a product of imagination in the sense that the members of the community do not know each other personally and can only imagine themselves to be in communion with each other. Subsequently, Anderson distanced himself from Gellner and Hobsbawm who took the “imagination” metaphor one step further, interpreting it in the direction of “invention” and “fabrication.” The nation should not be defined as “false consciousness” Anderson insisted. Definitions like that would imply that there are such things as “true communities” which can be juxtaposed to “artificial” nations. “In fact, all communities larger than primordial villagesof face-to-face contact (and per-haps even these) are imagined”. At the same time, Anthony Smith, Rasma Karklins and others developed Connor’s themes further in another direction, strongly emphasizing the ethnic aspect of the nation. While agreeing with the modernists that “nations” as we know them are recent phenom-ena, Smith insisted that they have a long prehistory, evolving out of ethnic cores. Of the conglomerate of ethnic groups

existing in earlier ages, some developed into would be nations aspiring for nationhood and a state of their own, with a few eventually acquiring it. Why do some groups succeed while others fail? Often this must be explained as a result of historical contingencies, a con-fluence of felicitous circumstances but it may also be due to the active efforts of determined nationalists, the Nation-builders.

Smith and his disciples retained but reemployed the term "nation-building" introduced by the earlier, modernist school of thought. In accordance with their "neo-primordialist" under-standing of all modern nations as products of age-old ethnic building material they heavily underlined the cultural, symbolic, (ethnic) and myth-making aspects of nation-building".

Even for the most recently created states, ethnic homogeneity and cultural unity are paramount considerations. Even where their societies are genuinely "plural" and there is an ideological commitment to pluralism and cul-tural toleration, the elites of the new states find them-selves compelled, by their own ideals and the logic of the ethnic situation, to forge new myths and symbols of their emergent nations and a new "political culture" of anti-colonialism and the post-colonialism i.e. African or Asian state.

17.7: NATION BUILDING: MODERN VIEW

There are three main schools of thought regarding the Nation Building such as nationalist, modernist and Imaginist.

(a)The Nationalist school of thought

Nation is the soul and the spiritual principle of the Nationalist school of thought. It is a moral consciousness. Nineteenth-century scholars like Renan who also believed in the ancient times of the nation and interpreted its rise merely as a collective process of becoming awareof one's nationality. This and similar views basically represent the nationalist school, that is, the history of nations written by nationalists. The method applied by the nationalist school essentially is to look at visible manifestations and characteristics of nations and to

extrapolate some kind of general definition from them. To count and accumulate so called objective claiming popular identification with them would be the second. The long-winded argument between the proponents of the state's nation and the kulturnation with all its overtones of Franco-German antagonism shows the ultimate futility of such an approach because neither concept can be applied universally. Moreover, there will always be communities or political entities meeting all 'objective' criteria without being a nation and vice versa.

(b) The Modernist School of thought

The characters of the modernist school, in contrast, have enthusiastically disputed the nationalist assertion of the antiquity of the nation. Ernest Gellner's famous words of nationalism creating nations and not vice versa, is a direct response to the nationalist conception of nations as having always existed and only recently having occupied a more prominent place in the minds of the inhabitants of Europe. In fact, Gellner and others have claimed that the rise of nations and nationalism has been the 'logical' consequence of a transition from one social order to another-from agrarian to industrial society. The need of modern industrial societies for increasing cultural unity in order to reach a high level of workforce mobility is at the heart of the modernist perspective. This cultural unity was, according to the modernist school, provided by nationalism which, in turn, has been propagated by the economic elite in order to stabilize the new social order beneficial to their interests. All this has led Gellner to claim that nationalism is not awakening of nations to self-consciousness: it invents nations where they do not exist.' It is important to note that this view rests in large part on the assumption that nationalism was a response to modernity.

(c) The imaginist school of thought-

The imaginist school of thought is most prominently characterized by the very influential work of Benedict Anderson. The central argument here is that nations like any other large communities are imagined since 'the members of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of eachlives the image of their communion.' What has been called a 'spiritual principle' by the

nationalist school and is represented by the modernists almost like a political plot of the economically dominant classes, is taken a step further here. Nations only exist through an act of the imagination. From there, Anderson goes on to say that, therefore, nations should be distinguished not by their supposed spuriousness or legitimacy 'but by the style in which they are fictional.'

17.8: SUMMARY

Nation-building efforts is often multifaceted and contingent upon various factors such as historical context, socio-economic conditions, political stability, and cultural dynamics. However, some overarching principles and considerations can be drawn.

Firstly, sustainable nation-building requires a holistic approach that addresses not only the establishment of political institutions but also the promotion of social cohesion, economic development, and the rule of law. This entails fostering inclusive governance structures that accommodate diverse perspectives and ensure equal participation and representation for all segments of society.

Secondly, effective nation-building necessitates a long-term commitment from both domestic stakeholders and international partners. It involves investing in education, healthcare, infrastructure, and other essential services to uplift communities and enhance their quality of life. Additionally, building institutional capacity and promoting transparency and accountability are crucial for fostering trust in government institutions.

Furthermore, nation-building efforts must prioritize reconciliation and healing in post-conflict or divided societies. This often involves acknowledging past injustices, promoting dialogue and understanding among different ethnic or religious groups, and implementing measures to address grievances and promote social integration.

Moreover, successful nation-building requires a nuanced understanding of local contexts and cultures. It entails engaging with local communities, respecting indigenous knowledge and practices, and empowering grassroots initiatives that contribute to the overall development of the nation.

It can be said while nation-building is a complex and challenging process, it is essential for fostering stability, prosperity, and peace in diverse societies. By embracing inclusive governance, investing in social and economic development, promoting reconciliation, and respecting local cultures, nations can lay the foundation for a brighter and more sustainable future for all their citizens.

17.9: KEY TERMS

- **Governance**: The processes and structures through which authority is exercised and decisions are made within a society. Effective governance is crucial for nation-building as it ensures stability, legitimacy, and accountability.
- **Rule of Law**: The principle that all individuals and institutions are subject to and accountable to law. Establishing the rule of law is essential for promoting justice, protecting human rights, and fostering trust in government institutions.
- **Infrastructure Development**: Building or improving physical structures and facilities such as roads, bridges, schools, hospitals, and utilities. Infrastructure development is vital for economic growth, social development, and enhancing the quality of life for citizens.
- **Education and Literacy**: Investing in education systems to provide access to quality education and promote literacy among the population. Education plays a crucial role in empowering individuals, fostering critical thinking, and building human capital necessary for national development.

17.10: SELF ASSESSMENT QUESTIONS

- What is Nation Building? Discuss its features.
- Discuss various mechanisms of nation building?
- Discuss various views of nation building.

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UNIT-18: NATION BUILDING: AS A RECENT PHENOMENA

Structure

18.1: OBJECTIVES

After going through this unit, you will be able to know:

- Difference between nation and state
- War and nation building
- Various aspects of effective nation building

18.2: INTRODUCTION

The goal of nation building should not be to impose common identities on deeply divided peoples but to organize states that can administer their territories and allow people to live together despite differences. while organizing such a state within the old internationally recognized borders does not seem possible, the international community should admit that nation building may require the disintegration of old states and the formation of new nation states. Taking a look at how the political map of the world has changed in every centurysince the collapse of the Roman Empire-that should be proof enough that nation building has been around for quite a while. Molding a glance at the 19th and 20th centuries will revealthat the types of nation building with the most lasting impact on the modern world are nationalism, colonialism, and post-World War II reconstruction. Nationalism gave rise to most European countries that exist today. The theory was that each

nation, embodying a shared community of culture and blood, was entitled to its own state. (In reality, though, few beyond the intellectual and political elite shared a common identity.) This brand of nationalism led to the reunification of Italy in 1861 and Germany in 1871 and to the breakup of Austria-Hungary in 1918. This process of nation building was successful where governments were relatively capable, where powerful states decided to make room for new entrants, and where the population of new states was not deeply divided. Germany had a capable government and succeeded so well in forging a common identity that the entireworld eventually paid for it. Yugoslavia, by contrast, failed in its efforts, and the international community is still sorting out the mess.

The Colonial powers formed dozens of new states as they conquered vast bandages of territory, interfered with old political and leadership structures, and eventually replaced them with new countries and governments. Most of today's collapsed states, such as Somalia or Afghanistan, are a product of colonial nation building. The greater the difference between the precolonial political entities , and what the colonial powers tried to impose, the higher the rate of failure. Many European countries, such as France and Spain, grudgingly have recognized the existence of regional cultures. In the United States, the notion of the melting pot has been debunked, particularly as a new wave of immigrants from the developing world has shunned outright assimilation by forming a mosaic of hyphenated Americans. And contrary to the mythology inherited from 19th-century Europe, historical evidence revealsthat the common identity, or sense of nationhood, that exists in many countries did not precede the state but was forged by it through the imposition of a common language and culture in schools. The Gaul’s were not France's ancestors until history textbooks decided so. The transformation of West Germany and Japan into democratic states following World WarII is the most successful nation-building exercise ever undertaken from the outside. Unfortunately, this process took place under circumstances unlikely to be repeated elsewhere. Although defeated and destroyed, these countries had strong state traditions and competent government personnel. West Germany and Japan were nation-states in the literal sense of the term-they were ethnic and cultural communities as well as political states, and they were occupied by the U.S. military, a situation that precluded choices other than the democratic state.

18.3: WAR AND NATION BUILDING

The most successful nations, including the United States and the countries of Europe, were built by struggle and war. These countries accomplished statehood because they developed the administrative capacity to mobilize resources and to abstract the revenue they needed to fight wars. Some countries have been created not by their own efforts but by decisions made by the international community. The Balkans offer unfortunate examples of states cobbled together from pieces of defunct empires. Many African countries exist because colonial powers chose to grant them independence. The British Empire created most modern states in the Middle East by carving up the territory of the defeated Ottoman Empire. The Palestinian state, if it becomes a reality, will be another example of a state that owes its existence to an international decision. Such countries have been called quasi states-entities that exist legally because they are recognized internationally but that hardly function as states in practice because they do not have governments capable of controlling their territory. Some quasi states succeed in retrofitting a functioning country into the legalistic shell. The state of Israel, for example, was formed because of an international decision, and Israel immediately demonstrated its staying power by waging a successful war to defend its existence. But many quasi states fail and then become collapsed states.

However, today, war is not an acceptable means of state building. Instead, nation building must be a consensual, spiritual and democratic process. But such a process is not effective against adversaries who are not democratic, who have weapons, and who are determined to use them. The world should not be fooled into thinking that it is possible to build stateswithout coercion. If the international community is unwilling to allow states to be rebuilt by wars, it must provide the military muscle in the form of a sufficiently strong peacekeeping force. In this case, military power is a essential constituent of state building.

18.4: NATION AND STATE

A Nation is an association of states with different entities, culture, religion, politics and economics. The major question is that ‘How a nation comes to be associated with a certain territory’, and how the corresponding states depends upon a complex of factors, often on accidents of history, including the accident of leadership. The process is well

demonstratedin the case of our own nation, India. Parenthetically an examination of the process might help in overcoming the fixation from which many in this country suffer as a result of partition.

Reminding ourselves that until the experience of British rule we were never a nation, in the modern sense of the term. Unquestionably, there was an indescribable unity in which our ancestors shared. There was even the territorial concept of the land of Bharat, Bharat -varsha, which was bounded in the north by the Himalayas and in the south by the seas. But that sense of unity so eloquently spoken by Rabindranath was not a nationalistic sentiment but a spiritual and cultural sentiment that was based upon a common outlook on life, 'unity of spirit' as Tagore called it, and a common pattern of social living. It was only when British rule was established over the entire length and breadth of the country that India was united politically under one government. That political unity was, however, imposed from aboveand did not in itself constitute nationhood. It was in the process of opposition to this imposed rule that Indian nationalism took its birth. The most interesting point that might be raised here is whether the reaction to British rule would have been the same, that is to say nationalistic in the modern sense, if Great Britain had not been transformed meanwhile into a nation. Is it not reasonable to suppose that if Elizabethan England, for instance, had conquered the whole of India, opposition to it-successful? Otherwise -would have followedthe traditional dynastic pattern than the modern nationalistic one.

18.5: ASPECTS OF EFFECTIVE NATION BUILDING

A successful nation-building has the following aspects:

Nation, Nationalism and democracy: Democracy is the powerful force behind all successful nations. Successful nations are defined as democratically constituted nations. In terms of theory, nationalism does not require a particular form of government, although there is always a strong element of at least implicit popular sovereignty involved in any nation- building process. It could, therefore, be argued that democracy is the natural form of government for nations, and that, indeed, nationalism and democracy depend on each other.

Elite and Elite consent: The elite and their consent are the motivating force behind the nation building. Specified the fundamental role of the elite in any nation-building process, the question of consensus focuses on this particular group. Through it may appear to be easier to reach a sufficient degree of consensus among a relatively small and well educated number of individuals rather than across a population of millions, this does not haveto be the case. Most members of any given elite represent vested interests, regions or professions and reaching an agreement is by no means a foregone conclusion.

The most important requirement for nationalism to spread to the wider elite and non-elite parts of the population is met by one of the central tenets of nationalism itself that is the nation of popular sovereignty and fundamental equality. Any elite adopting a national identity may have had their own interests in mind but it would have been impossible to advance those interests without referring to a larger collective body, the nation, atthe same time. Nationalist elites entered into their conflictive with traditional divinely ordained monarchies in the name of the people. References to the nation served a double purpose: to legitimize their own involvement and their desire for political power vis-à-vis the ancient regime and the populace at the same time.

Incorporate the existing institution: The most crucial responsibilities of nation builders is to incorporate existing institutions and traditions in the institutional make-up of the nation according to what importance they might have in the new national narrative. This is an open-ended process since any institutional structure might reinforce or change the national identity in one or another direction and could well be reformed or abolished as a consequence of the process it has triggered in the first place. This, in turn, may not only lead to political instability but to a decrease in social coherence and even to fundamental conflicts about the content of the national narrative and questions of national identity. It is important to keep in mind that in a national context, all public institutions take on an additional, symbolic meaning: not only are they supposed to perform certain political, social or economic functions but they also form the visible surface of the nation. The historical record would suggest that it can be helpful to remove predominantly symbolic institutions from the political fray as much as possible in order to preserve their meaningfulness beyond political

partisanship.

18.6: SUMMARY

Nation- building refers to the building or constituting a national identity of the state. Nation Power is main motivating force behind it. Nation building can incorporate the use of information or major infrastructure development to substitute social coordination, co-operation and financial growth. The academic debate on nations and nationalism continues to this date from Ernest Renan's famous question 'What is the nation?' in his lecture at Sorbonnein 1887. Nation building is an architectural metaphor. A nation is consisted of various attributes. The attributes are important for the construction of a good nation. Nationhood is very important for the nation. It is the basic idea on which a nation persists Rajni Kothari describes a nature of nation building process in free India as "the center periphery model". By this statement he tried to describe the socio, economic, political development and modernization process in India. Nation Building is one of highest aspirations, if not the highest of the Indian people to become an integrated and strong nation. The ingredients of Nation Building are Well defined and well-functioning constitution, Achievements of National goals and objectives, Capability to bring peaceful and constitutional means of political change, unity and diversity, Communication and Infrastructure, development of economy, Safeguards to the minorities and weaker sections of the society, settlement of crisis. A nation might have its state and well-defined territory and yet lack the substance of nationality. Successful nations are defined as democratically constitute nations. Indian nationalism grew up as reaction to aggressive British nationalism. Nation building is a process of constituting the unity and strength of a nation. Its starts after the nation have earned independence. Nation Building is a process of State Building, People Building, Democracy Building, Citizen Building, Economy Building, Social Building, and Government Building. Nation-building is one of the important aspect of a Nation. It is a process of uniting the people of the state into a well-functioning, good governing, well-dignified and unified nation. It builds in the state through the state of power with the political, social, economic, and cultural institutions. Nation Building inculcates the emotional unity of the people. It creates an enthusiasm among the people to participate in the process of modernization, development and socio-economic reconstruction of a nation. Nation

Building creates a spirit of nationalism among the people of a nation.

18.7: KEY TERMS

- **Social Cohesion**: Fostering a sense of unity, inclusivity, and shared identity among diverse populations within a nation. Social cohesion initiatives aim to mitigate social divisions, promote tolerance, and build social capital necessary for nation-building.
- **Civic Engagement and Participation**: Encouraging active participation of citizens in decision-making processes, community development, and governance. Civic engagement initiatives seek to strengthen democratic institutions, promote civic responsibility, and enhance political legitimacy.
- **Security Sector Reform (SSR)**: Restructuring and professionalizing security forces, including the military, police, and judiciary, to ensure their effectiveness, accountability, and respect for human rights. SSR is essential for maintaining peace, stability, and the rule of law.
- **Transitional Justice**: Addressing past human rights abuses, injustices, and conflicts through mechanisms such as truth commissions, prosecutions, reparations, and institutional reforms. Transitional justice processes aim to promote reconciliation, accountability, and healing in post-conflict societies.
- **Cultural Heritage Preservation**: Safeguarding and promoting the cultural heritage, traditions, and identities of diverse communities within a nation. Cultural heritage preservation contributes to national identity, social cohesion, and sustainable development.

18.8: SELF ASSESSMENT QUESTIONS

- Write an essay on war and nation building.
- What are the similarities and differences between nation and state.
- Discuss various aspects of effective nation building.
- What is nation building? Discuss its causes of failure.

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UNIT-19: THE PROCESS OF NATION BUILDING IN INDIA: AN OVERVIEW

Structure

19.1: OBJECTIVES

After going through this unit, you will be able to know:

- Various ingredients of Nation Building
- About India and its Nationhood
- Important attributes of Nationhood

19.2: INTRODUCTION

The process of nation building in India, can be traced from her time of independence. By 26th day of November 1949 the constituent assembly completed the drafting of constitution offree India. The main objective of the constituent assembly was to achieve the sovereign, democratic and republic of India. The constitution was formed to bring justice,

liberty, equality, fraternity, unity, integrity in India. The Constitution of India defined India as Bharat and a union of states, with single uniform citizenship, common unified electorate, duly and freely elected representative government, a federal polity with emphasis upon a strong center, a secular state providing to all its citizens without any discrimination of caste, colour, creed, religion, place of birth, sex, etc. The constitution of India in Part-III, Fundamental Rights, grants and guarantees to all the citizens equal justice, liberty, equality, etc. The main aim of the nation-building is the creation of a national history. A successful nationalization of the past would meet two key requirements of both nationalism and modernity. The national histories always attempt to prove the uniqueness of the nation. The great national histories of the 19th century present the political order of the day as the result of a great national struggle, thus strengthening the legitimacy of the regiment the time in nationalist terms. It is no doubt that the Indian nationalism grew up as a reaction against the aggressive British nationalism. But unfortunately it was not strong enough to seam together psychologically all the people of India into one nationality. The result was that almost on the eve of independence there arose a new concept of nationality which challenges the older one. The two nation theory was undoubtedly doomed and ill-founded, because if the history on national's origin and growth proves anything it is that religion alone never determines nationality.

Rajni Kothari describes a nature of nation building process in free India as "the center periphery model". By this statement he tried to describe the socio, economic, political development and modernization process in India. He stated that "the whole process in India is supposed to have started with the establishment of a constitutional and political centre which, through its creative activity in the management of political institutions, has penetrated into society at various levels. Thus, instead of being determined by economic factors both the elite and political institutions are creative forces which bring about the integration of diversities and pluralities in national life in the spirit of tolerance."

Nation building is a process of constructing the unity of a nation. It starts after the nation has got independence. India became independent after a long struggle against British Empire in 1947. That struggle resulted in the rise of a batch of leaders committed to the freedom and welfare of the nation. This welfare rested in the economic, educational and cultural development and achievement of national harmony. Indian was the poor nation at the time

of independence. It had gone through a series of communal riots during the British period that resulted in the partition of India. There were other differences of language and caste. All these needed a concerted effort to solve. India started with making a constitution ensuring rule of law and democracy on the basis of universal adult franchise. Every person in India entered the domain of the government which had so far only ruled them. The difference between thestate and citizen were eliminated. With the proclamation of the constitution of India, the Planning Commission was established to guide the developmental activities of the country.In the first five-year plans there was a great improvement of agriculture through irrigationand establishment of heavy industries in the country. There was also a great change in the transport and communication particularly in backward regions of the country. Strong effortsat spreading education from the primary to the post-graduate level were taken up after a number of commissions of enquiry made their recommendations. Especial efforts were taken for the development of scientific and technological knowledge. Indian Institute of Technology (IIT) were set up first at Kharagpur, then at Kanpur and then in other important centers. A University Grant Commission (UGC) was entrusted with the spread of highereducation in the country.

There were different developmental measures taken during the period. The government tried to reduce poverty by adopting various measures especially among the Backward Class of People. The Scheduled Castes and the Scheduled Tribes got particular attention and commission was set up for the welfare of Scheduled castes and scheduled tribes. In 1955, a State Reorganization Commission was set up to rationalized the state territories with reference to economic and administrative convenience. Accordingly in 1956, the State Reorganizations Act was passed. But the process did not stop there. It is continuing till today. This reorganization has a bearing on the linguistic division in the country. The autonomy of provinces largely based on languages is meant for balance growth of the linguistic communities. In 1961, the National Integration Council was set up primarily to control communal flare ups. The Commission consisted of union ministers, state chief ministers and representatives of major political parties. It does not have any executive powerin its own. Communal conflicts are treated as law and order problems. The recommendations of the council have bearing upon the maintenance of

law and order. Once, nations were forged through "blood and iron." Today, the world seeks to build them through conflict resolution, multilateral aid, and free elections. But this more civilized approach has not yielded many successes. For nation building to work, some harsh compromises ar necessary-including military coercion and the recognition that democracy is not always a realistic goal.

An arrangement of aspects conspired and India was partitioned. But the two nation theory did not have an unqualified victory. It had proclaimed that the Hindus and Muslim were two distinct nations which must live separately in their own sovereign nations-states. But in the event of partitioned, vast number of people belonging to these so called nations were left behind on either side. In clearheaded completion the partition of India would appear to have been a clumsy device which settled nothing and satisfied none. If we add to that the holocaust, the misery and suffering, the moral degradation and debasement which followed it one cannot but be appalled at the historic folly. It demonstrates how a turn of history can be responsible for the delamination 'national' territory and how there is nothing immutable or sacrosanct about it. It is quite conceivable that partition could have been avoided even withthe consent of all concerned, and where mere are two nations today there might have been only one. The role of events of history in giving rise to nations might be appreciated even better if we consider what might have been the situation if Britain or any other foreign nations had never established its rule over India and forcibly unified the country. The Mughal Empire, which in case never extended to the whole of India, was breaking up.

Taking the above measures one may go through different question such as, can it be said with any assurance that there would have been toady a single national state in India, orat any rate not more than two? Those who talk sentimentally about undivided India might give India serious thought to this question and also not forget the fact that the political divisions and the struggle for power of those days rarely followed religious or communal lines. True, there did not exist a degree of cultural 'unity' in Hindu society at that time. There was also, it is true a discernable process a foot towards a cultural synthesis between the Hindu and the Muslim ways of life. But the history of Western Europe has shown that cultural unity does not necessarily lead, to a single national state. So, while it is difficult tosay with any assurance what would have happened if then British had not brought the

wholeof India under one government? It is a sobering experience to realize that undivided India would have been perhaps one of the lesser possibilities. This thought should bring those who even eat our hearts over partition and consider it their patriotic duty to undo it.

19.3: INGREDIENTS OF NATION BUILDING IN INDIA

There are various ingredients of nation building in India. Among them some are discussed below.

19.3.1 Well defined and well-functioning constitution:

The constitution of India was successfully formulated, adopted and enacted on 26th day of November 1949. It was also the test of the time. Our constitutional makersmade it so successfully, that taking different good provisions of the different constitutions of the world, it has successfully established with well-functioning structure. Structurally it has been well designed and functionally it was workable to control the then situation of the country.

19.3.2: Achievement of national goals and objectives:

Our constitutional makers try to make India a welfare state. In order to make itwelfare they were agreed to accept the goals of democracy, secularism, socialism, socio-economic development of the society, equality, liberty, fraternity, cultural diversity, dignity of the country and unity and integrity of the nation. To make it successful the constitutional makers also adopts the mixed economy model of development in the country where both the private and public sector runs side by side.It is also described in the Part-IV of the constitution of India under the heading of Directive Principle of State Policy (DPSP). These goals are also discussed in the preamble of the constitution of India. As the development of a welfare state commitsto secure for all its people social, economic and political justice, the preamble of the constitution of India directs towards the fulfillment of these commitments.

19.3.3: Capability to bring peaceful and constitutional means of political change:

The constitution of India has declared India as a sovereign, socialist, secular, democratic and a republic state. These principles are very necessary to bring about peaceful political changes in the country through constitutional means. From the time of independence a constitution of India has developed the ability to remain free from the rebellions and insurgencies. Over the years with all sorts of ups and downs the constitution of India has maintained a balance and established itself with a peaceful political life.

19.3.4: Unity in Diversity:

India is a land of immense diversities. It is multi-lingual, multi-religious, multi- cultural and multi-regional country. With all sorts of diversities, the country has maintained unity and integrity. There is unity amidst diversity. There is a slogan ofone state, one nation and one country. With all the past aggressions like Chinese Aggression 1962, Indo-Pak war 1965 and 1971, Kargil war of 1999, Terrorist attackon India parliament 26/11, etc. the country has raised her head maintaining its unity and integrity from the great Himalayas to the Kanyakumari. Despite all the crisis, political decay, chaos, instability changes and challenges, the country has remained its unity, integrity and nation hood.

19.3.5: Communication and Infrastructure:

The development of a country reflects from her communication and infrastructure. These are the yardsticks of the process of development of a country. The more the communication development, the more the progress of the nation;the more the infrastructural facility, the more the economic growth. Subsequently, the country is developed with high level of communication and developed infrastructure facility. The basic infrastructures deals with roads, power generation, communication systemof the country, satellites, aircrafts, ships, electronic gadgets, semiconductors, computers, automobiles, railway, airways, waterway, ports, textiles, steels, nuclear technology, etc. In India, the development of all these infrastructures has been successfully going on.

19.3.6: Development of Economy:

In India the economic development is going on through five years plans. From the very beginning it has focused on agriculture as 70% of the people in India were depending on it. Agriculture is regarded as the backbone of Indian Gross Domestic Product (GDP). Indian economy is guided by three sectors such as, Primary sector deals with agriculture and agro-based industries, Secondary sector deals with various types of industries and the Tertiary sector deals with the service sector of the country. The development of Indian economy depends upon four factors of production such as, Land, Labour, Capital and Organization. In the modern time the fifth and the mostvital factor of production is the latest technology, which contributes more to thegrowth of GDP. Subsequently India has been accompanying the people towards the economic development with both public and private sector. There is a consistentgrowth of 5% in economic growth rate in India.

19.3.7: Safeguards to the minorities and weaker sections of the society:

The 5th Scheduled of the Constitution of India provides safeguards to the minorities and weaker sections of Indian society. It has implemented several privileges to the weaker and down trodden section of the society. Part-IV of the constitution of India i.e. DPSP also deals with the upliftment of the Scheduled caste, Scheduled tribe and other backward classes of tribal areas in the process of socio-economic reconstruction and development. The Mandal Commission has also recommended for increased reservation for the backward classes under the chairmanship of B. P. Mandal. Socio- economic upliftment including women empowerment is an important factor in Indian democracy.

19.3.8: Settlement of crisis:

As India is multi-ferrous country, there arises various obstacles and negative forces in the path of nation building. The hindrances in the way of nation building in India are Regionalism, Communalism, Casteism, Politicization, Religious differences, Political defection, etc. Several cases in India are Ram Janmabhumi vs Babrimasjid issue, Gujrat roit, terrorism issues like 26/11, parliament attack etc. When we want to builda strong and vibrant nation, we have to over throw all these hindrances from the mind of the people. In order to overthrow them there needs a strong mindset and political settlement.

19.4: INDIA AND ITS NATIONHOOD

India is land of immense diversities. It is a multi-lingual, multi-religious, multi-regional country. It is not the situation of today. It is there from the time of immemorial. One cannotsay exactly at which point of view the nation is created and in which dimension it has been united. There are several questions may be asked regarding its nationhood and nation building. The question of nation-building has been much to the fore ever since India got Independence. It is one of highest aspirations, if not the highest of the Indian people to become an integrated and strong nation. There is a strong feeling in the country that our very future as a people would be brought into question if this task of nation-building was not appropriately and speedily contented.

Nationhood is very important for the nation. It is the basic idea on which a nation persists. Thus it is important to have a close look at the phenomenon of nationhood. It has been foundto be extremely difficult to define precisely what a nation is, what is the behavior of a nation, what should be the importance of the nationhood, in which ground the nation can be betterwith the nationhood etc. The most important question is what the base of a nation is. Taking all this questions one may focus with the genesis and development of the word nation and nationhood. The word has a long history and its meaning has undergone a considerable process of evolution. Originally 'nation' meant a backward tribe, (civilized peoples, as of Greece and Rome, called themselves gens or populous). At the beginning of the Middle Age, the word nation was used in Germany and France to designate the higher ruling class in opposition to the people. In former times the chieftain of an Irish clan was called captain of his nation. 'The meaning of the word gradually evolved in western usage and came generally to refer to a free, self-governing people or a people constituted as a state. In the long historyof our country there is no word or concept found to correspond with the modern concept of nationality. The long history of the word the nation in its modern sense is comparatively of recent origin.

Subsequently, some of the elementary traits of nationality, writes Hertz, may be as old as humanity, but the 'more complicated phenomena have gradually arisen at different times. 'While it is not possible to state definitely when nationality as we know it today was born, it would not be wrong to say that the second half of the 18th century saw its first beginnings.The 19th was par excellence the century of nationalism. The scene of this new developmentin human history was Western Europe. Why should it has been so is not very clear? For the present let it suffice to point out that it was not as if human society had to reach a 'higher' stage of civilization to give birth to the modern nation. To quote Hertz again, India, China and the Islamic peoples brought forth great and comparatively homogenous civilizations, but the ideas, In Europe nationality was alien to them before they were permeated by Europe itself,' Hertz goes on to say, 'ancient Greece or medieval Italy and Germany possessed very high civilization while there was hardly any national solidarity between the different peoples into which each was divided. A high level of civilization was even adverse to national unityon a wide scale. Athens, Florence and Nuremberg were

proud of the splendor of their own achievements and looked down upon their backward kinsmen in other cities. History shows that the progress of civilization was often accompanied by a dwindling of national thoughts.'

19.5: THREE IMPORTANT ATTRIBUTES OF NATIONHOOD

A nation is consisted of various attributes. The attributes are important for the construction ofa good nation. It would be helpful to keep in mind that to be a nation does not necessarilymean to be terribly civilized. While civilization is an end desirable in itself, nationalism can only be a means to an end. Scholars have distinguished between legal and social or political nationhood or nationality. The first is the objective and the second the subjective aspect of nationalism. Legally considered, a nation usually has the following three essential attributes:

(a) Well-defined territory that it calls its own;

(b) Political unity represented by a common state to which all citizens owe allegiance;

(c) Recognition by other nations, and by international law, as a distinct, sovereign nation. A legally defined nation might well be composed of a number of nations which in some respects consider themselves distinct from one another but yet accept willingly a common state.

With the characteristics of nationhood, one may inspire with all the phenomena of the nation. Only legal nationality is not enough. A nation might have its state and well- defined territory and yet lack the substance of nationality. That substance is denned as national consciousnessor national sentiment'. 'Without a sufficient measure of this consciousness,' says Hertz,'there is no nation.' When we speak of national integration in our own country, we mean precisely the development of this very consciousness of nationality.

Subsequently, this consciousness or sentiment is an exceedingly elusive thing, and whether or not a specific people possess it in sufficient degree is very difficult to determine. It is a

product of varied historical experience, which is seldom the same for every nation. It is therefore difficult to generalize and lay down prescriptions on how to develop national consciousness. It would be interesting to quote here from Hertz two views of two distinguished Europeans on the question. Jonh stuart mill, saw the essence of nationality inthe mutual sympathy of its adherents and in their desire to be united, under a government of their own, produced through a community of history and politics and through feelings ofpride and shame, joy and grief connected with experiences of the past.' According to Ernest Renan, the great French philosopher and author of the famous Life of Jesus, it is not race, religion, language, state, civilization or economic interests that make a nation. The national idea is founded on a heroic past, great men, and true glory. Common experience leads to the formation of a community of will. More than anything else it is common grief that binds a nation together, more than triumphs. It made in the past and on willingness to make further ones in the future. The existence of a nation resembles a plebiscite repeated every day.

19.6: SUMMARY

A nation is not defined by its borders or the boundaries of its land mass Rather, a nation is defined by adverse people who have been unified by a cause and a value system and who are committed to a vision for the type of society they wish to live in and give to the future generations to come. A nation that craves for development and a stronger union should carry everyone along irrespective of language, colour, race, creed, ethnic diversity, religion, cultural values or sexual orientation. In essence, the country in question should practice an equitable distribution of wealth, equal opportunities and procrustean development where every individual will see each other as equal more so where no ethnic, race or group of persons should see the country as patrimony or 'born to rule syndrome. No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties arethe gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect

that God is just; that his justice cannot sleep forever. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality. American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe.

19.7: KEY TERMS

- **Education and Literacy**: Investing in education systems to provide access to quality education and promote literacy among the population. Education plays a crucial role in empowering individuals, fostering critical thinking, and building human capital necessary for national development.

- **Economic Development**: Promoting sustainable economic growth, job creation, and poverty reduction. Economic development initiatives focus on diversifying the economy, attracting investments, and improving productivity to enhance the standard of living for citizens.

- **Social Cohesion**: Fostering a sense of unity, inclusivity, and shared identity among diverse populations within a nation. Social cohesion initiatives aim to mitigate social divisions, promote tolerance, and build social capital necessary for nation-building.

- **Civic Engagement and Participation**: Encouraging active participation of citizens in decision-making processes, community development, and governance. Civic engagement initiatives seek to strengthen democratic institutions, promote civic responsibility, and enhance political legitimacy.

19.8: SELF ASSESSMENT QUESTIONS

- Discuss various ingredients of the nation building.
- What is unit in diversity? Discuss it in Indian context.

- Write an essay on India and its nationhood.
- Discuss various attributes of nationhood.

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UNIT-20: CULTURAL PERSPECTIVE OF NATION BUILDING IN INDIA

Structure

20.1: OBJECTIVES

After going through this unit, you will be able to know:

- Causes of the failure of the Nation Building in India
- Hindrances on the way of Nation Building in India
- Role of United Nations in the Nation Building

20.2: INTRODUCTION

The process of nation building has a long run history. It has shaped its formation from its long historical traditions .In principle, all nation building process are cultural interventions as the center established a particular identity on the periphery or in other words, the elites creates a national identity for the rest of the population. In addition, there has always been a certain measure of foreignness in nationalism. In Russia the contribution of enlightenment thought and later German idealism have been crucial. The same applies to Arab nationalism in which the German notion of the Kulturnation played a prominent part. Ever since the endof the Cold war, intervention have occurred in cases of humanitarian disasters, such as genocide or 'ethnic cleansing', famine, civil war, in response to a war of aggression on a third party or a perceived military threat to the international community. Politically, nations in the grip of civil war or expediting genocide may present good reasons for intervention. If such an intervention occurs, the intervening powers inherit the causes of

crisis and will haveto address them. There is, of course a multitude of possible reasons for a process of national disintegration leading to unrest or even civil war. The underlying cause of such a development, however, can be a profound disagreement about national identity.

20.3: STEPS OF FAILURE OF NATION-BUILDING IN INDIA

The causes of the failure of Nation building in are as follows

(1) Frequent amendments in the constitution made its operational failure.

(2) Lack of political stability and development.

(3) Increase in political violence, electoral violence, political corruption

(4) Lack of conflict resolution measures

(5) Problem in implementing all the good measures of democracy in India

(6) Poverty, illiteracy, unemployment, ignorance, casteism, factionalism, regionalism,linguism etc.

(7) Politics and personality cult

(8) Groupism and political defection

(9) Lack of mature unity

(10) Aggression, war, and external interferences

(11) Decreasing level of emotional integration

(12) Weak infrastructure and large based infrastructure in the country due to its large size

(13) Lack of development in industrial sector

(14) National income remains low

(15) Low GNP and GDP in India

(16) Over-population, less-productivity, mass poverty and fall in industrial production

(17) Frequent strikes and Labour problems

(18) Socio-economic imbalance

(19) The benefits have failed to reach at all the sections of the society

(20) The reservation policies vs. anti-reservations leads communal riots

(21) Vote bank politics and corruption in politics

(22) Miss use of power in politics

(23) Red tapism

However, all these failures reflect the weakness of the process of nation building inIndia. In spite of all these problems, India is yet to undertake the challenging task of connecting Indians into a fully united, resilient, vigorous, dynamic and establishednation.

20.4: HINDRANCES OF NATION-BUILDING IN INDIA

There are various hindrances in the process of nation building in India. These are

1. Ever growing and rapidly expanding population in India
2. Large section of India's population continues to live below poverty line
3. There is vicious circle of poverty
4. Sloe and inadequate economic growth
5. Regional imbalance
6. Uneven economic development
7. Huge gap between rich and poor
8. Unemployment and underemployment
9. Provincial inequalities
10. Inadequate technological development
11. Communalism, regionalism and secessionism

12. Centre-state conflict
13. Inter-state dispute
14. Lack of healthy work culture
15. Terrorism
16. Illiteracy, ignorance and poverty
17. The unhealthy and biotic role of political parties
18. The existence of factionalism and personality cult

All these are the major hindrances of the nation building. The need of the hour is tofight these pron and corns with all effort and challenge.

20.5: UNITED NATIONS: THE ROLE OF NATION BUILDING

The United Nations Organization (UNO) has created after the Second World War on 24th October, 1945. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality.

Taking an example of the United States of America, one may focus on the George Bush's, former American president, administration. The Policy of the United States , ever since September 11, 2001 and the subsequent war on terrorism which promoting democracy has reimbursed forcefully to the foreign policy agenda of the United States. Although bringing about democratic change has been a foreign policy goal ever since President Wilson, and has been employed during the Cold War by different presidents with different emphases, one official reason for its renewed rise to prominence is the belief that a lack of democracy is conducive to the growth of Islamic extremism and the rise of terrorist networks threatening the United States. Before taking office as Secretary of State, Condoleezza Rice set out the foreign policy program following from these convictions: "In these momentous times, American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats

to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedomand democracy throughout the globe. That is the mission that President Bush has set for America in the world – and the great mission of American diplomacy today. This approach is imbued by a specific perspective on nation-building and state-building shared by many US policy makers and analysts. In his influential work on state-building, for example, Francis Fukuyama points out that the process of nation-building in the American understanding reflects their own 'National Experience' in which the United States constitution is seen as the starting point and frame of reference of a national history and common identity. Accordingly, many Americans see their state and their nation as essentially coterminous and both originating from the Declaration of Independence and the 1787 constitution. Applying these findings to foreign policy, he continues: "for Americans, their Declaration of Independence and the Constitution are not just the basis of a legal-political order on the North American continent; they are the embodiment of universal values and have significance for humankind that goes well beyond the borders of the United States. It isa belief in democracy, liberty, dignity of every life and the rights of every individual uniting Americans of all backgrounds, all faiths, and all colors. They provide us a common cause inall times, a rallying point in difficult times, and a source of hope to men and women across the globe who cherish freedom and work to advance freedom cause. And in these extra- ordinary times, it is the duty of all of legislatures, diplomats, civil servants and citizens to uphold and advance the values that are the core of the American identity, and that have lifted the lives of millions around the world." What is remarkable here is the democracy as form of government, as a value-system and, therefore, as an identity. By promoting democracy in this fashion, the distinction between state-building and nation-building is largely ignored. It also becomes apparent that this approach rests on the assumption that erecting democratic institutions in the course of a state-building process leading to a democratic society united bya democratic collective identity.

Given the nature of the US involvement in establishing democratic institutions and Nation Building process in Iraq, however, the question arises whether and in which guise democracy can be a reasonable as a foreign policy goal. Especially, when a truly democratic process may produce results bottomless to the other foreign policy interests of

the United States. There is the danger that trying to harmonize divergent policy aims might lead to 'Semantic Democracy', leading not only to renewed mid-term instability but damaging and de- legitimizing the concept of modern democracy it-self. Considering the current policy of the United States the shady sides of the "failed states"- doctrine become apparent. As already mentioned the doctrine is susceptible to an instrumentalization for hegemonic power politics, disguised as the propagation of democracy and liberal values and legitimated with referenceto a sloppy rhetoric of "failed states". To assume such an instrumentalization is not only influenced by the vagueness of the criteria of the doctrine, but is also a result of the fact that, until now, there is little work on the genealogy of this oratory. Its origins as well as the underlying political and historical aspects are anything but clear. The questions how it is linked to the promotion of the last superpower's interests and what are the reasons for the emergence of this doctrine in the political and legal discourse still remain largely unanswered when the question of Nation Building arises. The role of UNO still revolves around this question. An analysis of the question in which the doctrine is used can at least ascertain that there is a predominance of western authors in defining the content of the "failed states and Nation Building" doctrine. It is true that the term is used in non-western countries, too, but "the term, insofar as used in the Southern Tier, seems to imply a wider legal and von Bog dandy et al., State-Building, Nation-Building moral responsibility on the governing bodies of the Northern Tier for colonialism's consequences: it is becoming a rallying call for African action. The Policy of the United Nations, a much more cautious approach is pursued by the United Nations with regard to the promotion of democracy and Nation Building. It still appears to be common sense that the specific role of the United Nations as a universal institution and as global institution prevents political or ideological partiality. Given that the United Nations are primarily meant to safeguard international peace and security, this approach was carefully adhered to until the end of the cold war. The United Nations were meant to stay impartial precisely to ensure the neutrality of a forum for the major challengers. Yet, with the end of the major east-west conflict, North- South dialogue and establishment of hegemonic power by the super powers, some tendencies seem to point at notwithstanding restrained adjustment of this policy towards the promotion of democracy, nationalism and nation Building. This does not mean that the United Nations policy has loosened to only the promotion of democracy and nation building

as a new primary goal, the question rather seems to be, how this orientation towards nation building and democratization can be incorporated in the overall framework of United Nations policies.

20.6: SUMMARY

No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties arethe gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality. American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe.

20.7: KEY TERMS

- **Ethnic/Religious Conflict**: This refers to tensions and conflicts arising from differences in ethnicity, religion, or cultural identity within a nation. Examples include sectarian violence, ethnic cleansing, or discrimination based on religious or ethnic grounds.

- **Political Instability**: Political instability encompasses factors such as frequent changes in government, weak governance structures, corruption, or lack of political consensus. It can hinder nation-building by impeding the implementation of policies

and reforms essential for development.

- **Economic Challenges**: Economic hindrances include poverty, unemployment, unequal distribution of wealth, and economic dependence on foreign aid or resources. Economic instability can lead to social unrest and undermine efforts towards nation-building.

- **Historical Grievances**: Historical grievances such as unresolved conflicts, injustices, or colonial legacies can fuel resentment among different groups within a nation, hindering efforts to foster national unity and reconciliation.

- **External Interference**: External interference refers to interventions by foreign powers or neighboring states that undermine a nation's sovereignty, stability, or developmental efforts. This interference can take the form of military interventions, economic coercion, or support for separatist movements.

- **Weak Institutions**: Weak institutions, including ineffective judicial systems, inadequate law enforcement, and lack of administrative capacity, can hinder nation-building by impeding the delivery of essential services, enforcing the rule of law, and ensuring accountability.

- **Social Fragmentation**: Social fragmentation occurs when divisions based on factors such as class, ethnicity, religion, or ideology undermine social cohesion and trust. This can lead to polarization, marginalization of certain groups, and difficulties in building consensus around national goals.

- **Geographical Challenges**: Geographical challenges such as rugged terrain, lack of infrastructure, or vulnerability to natural disasters can impede nation-building efforts by hindering economic development, access to education and healthcare, and the delivery of public services.

- **Cultural Barriers**: Cultural barriers encompass differences in language, customs, traditions, and values that can hinder efforts to forge a common national identity and promote social cohesion. Cultural diversity can enrich a nation, but it can also pose

challenges in fostering unity and inclusivity.

20.8: SELF ASSESSMENT QUESTIONS

- What is Nation Building, Nationalism, Nationhood and Nationality.
- Discuss the role of UNO in Nation Building.
- Define Nation Building? Discuss its hindrances.
- Critically examine the cultural perspective of Nation Building in India.

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