M.A PUBLIC ADMINISTRATION

TITLE: Indian Administration

PAPER-III

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AUTHOR:

Dr. Padmalaya Mahapatra
Associate Professor and Head
Dept. of Public Administration,
Utkal University,
Vanivihar, Bhubaneswar.

Indian Administration

Unit- I

Evolution of Indian Administration: Ancient, Salient Features of Indian Constitution, Preamble, Federalism, Centre – State Relations (Administrative, Legislative and Financial).

Unit- II

1. Government at Central Level: President, Council of Ministers and Prime Minister, Parliament, Supreme court, Central Secretariat, Cabinet Secretariat, Prime Minister's Office.

2. Government at State Level : Governor, Council of Ministers and Chief Minister, State Legislative, High Court, Central Secretariat, Chief Secretariat.

Unit- III

Commissions in India : Union Public Services Commission, Planning Commission, National Development Council, Election Commission, Finance Commission, National Human Rights Commission, Administrative Reforms Commission, Redressal of Citizens

Grievences, Lokpal and Lokayukta.

Unit- IV

Board of Revenue: Composition and function**.**

Revenue Divisional Commissioner: role and Functions, District Administration, Role of Collector

Unit-1:

Evolution of Indian Administration: Ancient, Mediaeval and Modern, Preamble, Federalism, Centre- State Relations.

Structure

1. Learning Objectives:

This unit will deal with the evolution of Indian Administration from ancient period till the modern period. It will also discuss Preamble, Federal Structure of the constitution and Centre- State relations.

2. Introduction :

Every civilized society needs a good administrative system, and administration is as old as our ancient civilization. Public administration is essential for executing government orders and functions. The history of ancient Indian governmental system begins from the Vedic times and continues till the establishment of Mughal rule. In the evolutionary process of Indian administration numerous administrative organizations rose and fell, but its specialty of village- focused administration still continues. The present administration, assert many scholars, is a developed form of organization and function of the old administrative system that we find mentioned in Vedic, Buddhist and Jain Literature such as the Dharmashastras, Puranas, Ramayana, Mahabharata, Manu Smriti, Sukra Niti and Arthashastra).

In Vedic times the king was assisted in his functions by numerous officials. Both our epics, the Ramayana and the Mahabharata are replete with instances of administrative officers and their relevant departments. We find similar references in Manu Smriti and Sukra Niti. Kautilya's Arthashstra provides details of the offices of the state. During the reigns of Chandragupta and Ashoka, the administrative system was fully developed and Mauryan Administrative institutions were further developed during the Gupta period. However, the present administrative system in India was developed by the British Government. Historically, we may study Indian administration under the following heads.

Ancient Indian administration

Medieval period administration

British period administration

3. ANCIENT INDIAN ADMINISTRATION

The earliest reference to ancient Indian administration can be traced to the Indus Valley Civilization. The recent excavations at Harappa and Mohenjodaro show that the cities and well planned roads with a good drainage system and similar types of houses. It also followed a system of weights and measurements and a common script. This shows the existence of a large kingdom in the area.

3.1. The Vedic Period :

In the Rig Veda period, administrative units were known as kull, gram, vesh and nation. The Vedic king ruled with the help of popular bodies- the samiti and sabha. The word samiti means meeting together, i.e. an assembly. It was thought necessary that the king should attend the samiti. The sabha also acted as the national judicature. Thus, we learn from the Vedas that the national life and activities in the earliest times were expressed through popular assemblies and institutions. The main duty of the king was to defend the people. Under this administration, the head of the army was called senani and the head of the village was gramini. The king was assisted by many ministers, chief of whom was known as the purohit.

The Ramayana and Mahabharata are two ancient epics of our country. In the Ramayana period the form of Government was monarchical. The head of the administration was the king who looked after the welfare of the people. There were ministers and councilors to advise him. Monarchy was the form of government during the Mahabharata period. The king was responsible for the welfare of the people and there was a council of ministers and officers.

3.2. The Post- Vedic Period :

During the period of the Buddha, numerous republics and Mahajanpadas existed. Four big kingdoms of Magadha, Avanti, Vats and Kaushal also existed along with the republics. The actual power in the republics was in the hands of sabhas, which included both the elite as well as common people. The king was the head of

the republic and was elected for a fixed period. He was accountable for his action to the council or sabha.

The Arthashastra of Kautilya is an important source from which a lot can be known about the values, norms and beliefs pertaining to public administration in ancient India. According to Kautilya, "The king is the centre of the state. All officers of the state were appointed and removed directly or indirectly by the king, they acted according to his commands and were accountable for the exercise of their assigned functions. The administration of justice was carried out in the name of the king and sometimes he himself presided over the royal count of justice. It was he who gave effect to the judgement of law courts the exercised his prerogative of granting mercy in suitable cases. Although legislation was not among the powers entrusted to the king, yet royal edicts, at least insofar as they related to administrative business, had the force of law. He was the supreme commander of the military forces of the country, and not infrequently, he personally led the army on the battlefield. Kautilya places high importance to espionage and provides the method of selecting spies, their role in administration and the mode of their working in some detail. Kautilya was the prime Minister of Chandragupta Maurya. For the first time, it was Chandragupta who succeeded in bringing the entire country from Afghanistan to the Bay of Bengal and from the Himalayas to beyond the Vindhya Mountains under one direct authority.

In the Arthashastra, Kautilya mentions 18 high functionaries such as the yuvraj or the prince who was stated to succeed the king, the minister who was the supreme advisor, the purohit, who advised the king in governmental and religious matters and the senapati who was the head of the armed forces. These four persons were members of the council of ministers whom the king consulted on important matters. The other 14 were heads of the departments whom the king consulted on matters coming within their jurisdiction.

The empire was divided into provinces. The central executive controlled the home province, while the distant provinces were governed by governors appointed by the king. For administrative purpose the provinces were further subdivided into regions or districts for general administration, revenue collection and law and order. The regions were further sub-divided into villages and their heads were known as gopas who were equivalent to the present –day patwaris or lekhpals. The distant

provinces were kept in touch with the central government through the inspection staff who submitted periodic reports by means of a regular correspondence system. The Mauryan kings had a well-organized municipal government. The cities were divided into wards for the sake of better administration.

3.3. Administrative Structures :

The king was the most important element in administration. He exercised his executive authority through the central executive that consisted of mantris, amatyas and sachivas. The advice of the mantris was constantly sought and they were regarded as the most trusted advisors of the king and trustees of the public's interests. According to Kautilya's Arthashastra, the amatyas constituted a regular cadre of service from which higher officials such as chief priests, ministers and treasurers were recruited. The duties assigned to the amatyas included agricultural operations, fortification, territory welfare, collection of the royal dues and punishment of criminals. Sachivas, who may have been officials of a particulars cadre, helped the king in the discharge of his duties in various spheres more as executors of orders rather than as councilors. The mantris, amatyas and sachivas seems to have enjoyed positions in a descending order, respectively. Others who formed part of the king's entourage included parishadas or assembly men who were the helpers of the king, the arthakarins who were executive officers in charge of state business, and were generally five in number in the cabinet, and the dharmikas who were the judges or the interpreters of law. There were 18 other officers of the state known as tirthas who have been mentioned in the Mahabharata and the Ramayana; the mantri, or the chief councilor who used to offer secret advice to the king, purohit, the chief priest who advised on matters relating to succession, yuvraj, or the crown prince who preceded the senapati channupati or the commander –in-chief of the army who was ranked higher up in the arrangement and placement inside the army; dyarapala or the chamberlain; antarvesika or overseer of the harem who controlled the forces working inside the palace area; dravya samchayakrit or the chief steward concerned with financial administration; kritya krityeshu chartham viniyoia-kali or the chief executive officer who determined the transactions of public business, pradeshta or the chief judge for the administration of justice, nagardhyaksha or the city prefect, karyanirmanakrit or the chief engineer. Dharmadhyaksha or the President of the assembly, dandapala or the chief criminal

judge, durgapala or the warden of the forts; rashtrantapalaka or the warden of the marches, and atavipalka or the in-charge of forests.

The state was divided into provinces, which were further subdivided into divisions and districts. In the Maurya and Gupta empires the provincial governors, who are described as tatapadha-pargrahita, were directly appointed by the king and usually were members of the royal family. The district governors were appointed by the provincial governor. They had combined judicial and administrative functions to perform. The distinct administration representing the state ensured the safety of the royal interests as well as of those specified in the grants for religious and charitable purposes.

The village (gram) was the smallest unit of the administration. The leader of the village, known as the headman, was the keystone of the village constitution. These villages were considered to be the hub of the administration. The village administration was run by the village council (panchayat). The panchayat as endowed with executive as well as judicial powers. The village officers had to maintain law and order and protect the life and property of the villagers.

The city formed a separate administrative unit headed by the governor (nagarika purapala). It had its own city council (adhishthana dhiarana). The city council was divided into committees. These were functional bodies and the council in its cooperative capacity managed general local affairs such as finance, sanitation, water supply, etc. village autonomy and city autonomy were the seminal principles of ancient administration in India. Democracy did not have an exotic growth in India, and before the advent of British or Mughal rule, the stress was on self- governing institutions and cooperative life. During the Gupta period, the local administrative units had an efficient set –up with official and non-official units working together in harmony and unions.

3.4. Medieval Administration :

This can be divided into three categories of administration according to the periods of different regimes such as (a) Rajput period administration (b) Sultanate period administration, and (c) Mughal period administration.

3.4.1. Rajput Period Administration :

The main form of government during this period was monarchical and for the assistance of the king there was a council of ministers. The state was divided into smaller units, the biggest of which was prant. In brief,

Rajput government was an amalgam of militarism, feudalism and divine- right monarchy. The chief aim of the rulers was acquisitions of military glory rather than promotion of public weal. The rulers, therefore, evoked respect but not affection or gratitude. Civil and military appointments generally went to the Brahmins and the Kshatriyas. This made the rest of the people apathetic towards political affairs. By abstaining from interference in local administration, they helped to develop initiative, efficient and self reliance among the local population.

The Rajput rulers, instead of counteracting the danger from the north-west by presenting a united front, continued fighting among themselves and in some cases, perhaps, even welcomed an attack by the Muslims, provided it was directed against some of their rivals. Thus, within a short span of a few years, the greater part of northern India passed into the hands of the Muslims.

3.4.2. Sultanate Period Administration:

The Sultanate period (1206-1525) starts with the defeat of the Rajput king, Prithviraj Chauhan, at the hands of Muhammad of Ghor from Afghanistan or Shaahabuddin Ghori in 1192, and his provincial governor, Qutubuddin Aibek, who occupied the Delhi throne in 1206 as the Sultan. The Sultanate period lasted till the defeat of its last Afghan King, Ibrahim Lodhi, in 1526 in the first battle of Panipat at the hands of the Mughal dynasty founder, king Babar. The important rulers of the Sultanate period were Illtutmish, Balban, Alauddin Khilji and Muhammad Bin Tughlak. They included the Slave (1206-1290); Khilji (1290-1320; Tughlak (1320-1414); Saiyyad (1414- 1451); and Lodhi (1451-1526) dynasties.

The Sultanate administration was basically military in nature; its rulers obeyed the principles and tenets of Islam and applied those in letter and spirit in their administration. They tried to adopt themselves as best as possible to Islamic injunctions, theology and law, and none of them divorced religion from administration and politics. The Sultanate, in a broader sense, could be described as a junior member of the Islamic Commonwealth of Nations. The power and position of the sultan was supreme and he was vested with political, legal and military powers.

He was also responsible for judicial administration. He took advice from his advisors but was not bound by it. Below the sultan was the wazir who was the head of the entire administration and had many other officers such as the naib-wazir, the accountant- general (Munshrif- mumalik), the auditor- general (Mustauf- mumalik), nazir (superintendent) waqufi (inspector), and several others to help him. Next to the wazir was the head of the military department and there were two civil dewans. One looked after religious matters, holy institutions and scholars, etc., and the other looked after correspondence. For administrative purposes the state was divided into prants. The head of the prant established various departments for administration. The prants were divided into shikos, whose head was known as shikdar. The shikos were divided into sarkars, sarkars into parganas and parganas into villages. Pargana was under the shiqqadar who had to look after executive affairs and land revenue. At the pargana level there were other officials such as amil. or the collector of revenue who dealt in central as well as provincial revenue, diwan, fotahdar or the local treasurer, daroga or the superintendent of accounts, amin or the surveyor, kanungo, munshif, thanadar, patwari, etc. The diwan in sarkar was the executive head of the pargana. City administration was run by a centralized bureaucracy, but the villages had some sort of self-rule. The defence of the country was manned by a standing army maintained by the centre, while the contribution of the walis and vassals in men and resources was equally available. Espionage and the postal system, confined to the royal main alone, had developed considerably and wayside stations were set up. In short, this later phase of administration of the Delhi Sultanate was an experiment in administering the vast territory comprising heterogeneous elements that were communal and feudal and always posed danger to the central authority.

3.5. Mughal Period Administration :

The Mughal rule in the country was established by Babar, the founder of the Mughal dynasty, after he had won the historical battle of Panipat in 1526. But in December, 1530, only after four years Babar died and his eldest son, Humayun, the heir apparent became the king. Humayun had to face a lot of difficulty in retaining his kingdom initially. He could recover his kingdom after continuous battle, but died soon in 1556 and was succeeded by his young son, Akbar, who ascended the Mughal throne after his victory in the second battle of Panipat in 1556. Akbar was the real founder of the Mughal dynasty. The first four Mughal emperors were good rulers and

this dynasty flourished under Akbar, Jahangir, Shah Jahan and Aurangzeb, Aurangzeb died in 1770 and the Mughal Empire disintegrated thereafter. The later Mughal emperors were not very powerful and finally the British East India Company emerged victorious. The last Mughal king, Bahadur Shah Zafar, was dethroned and exiled by the British in 1858.

The Mughal administrative system was a military rule by nature and was centralized by despotism. To the Muslim portion of the population, the sovereign was the head of both the religion and the state, and therefore, he undertook socialist functions for them. But he followed a policy of minimum individualist interference towards his non-Muslim subjects, i.e. he contended himself with discharging only police duties and the collection of revenue. The socialistic activity, in its broadest sense of a modern state, was left to the community, society or caste brotherhood to follow, and the student of Indian administration had to tolerate this in silence. Thus, the aim of the government was extremely limited and materialistic, almost to the point of being sordid.

The Mughal emperor was the head of the administration and had no cabinet but there were secretaries working as ministers. He used to keep his ministers and nobles at a distance and there was no sharing of authority. Moreover, he was not bound to consult his ministers on all matters. The authority of the king was beyond the checks of the ministers and wazirs. Thus, the Mughal rule was monarchical and the whole administration moved around him. He took pains to im0part justice and provided judicial administrative machinery to administer justice.

There were different departments at the centre and the most important were as follows:

1. The exchequer and revenue were under the wazir or the high diwan (diwan-i-ala).
2. The imperial household was under the Khan-i-saman or the high steward.
3. The military pay and accounts office was under the mir-i-batisi.
4. Cannon law, civil and criminal was under the Chief quazi.
5. Religious endowments and charities were under thechief sadar.
6. Censorship of public morals was under the muhtasib.
7. The artillery was under the mir-i-atish or darogha-itopkhana.

8. Information and intelligence were under the daroga-i-dak-chauki.

Besides these, there were other officials, namely, the mirbabri or the revenue secretary, mirbarr or the superintendent of forests, qurbegi or the lord standard bearer, bakt-begi or the superintendent of the royal stud, mushrif or the chief admiral and officer of harbours, nazir-i-buyutad or the superintendent of imperial workshops, mustafi or the auditor- general, awarjab nawis or the superintendent of daily expenditure at our court, Khawan salar or the superintendent of royal kitchen and mir-arz or the officer who presents petitions before the king.

The title of wazir meant the prime minister in the Mughal empire and his office received all revenue papers and returns and despatches from the provinces and the filed armies. He also acted as the representative of the king on ceremonial occasions. He wrote letters by orders in his own person though under the emperor's directions. Payment, except to the filed army and the workmen of the state factories, was made through his department only. Some of the famous wazirs were also masters of Persian prose and they acted as secretaries in drafting royal letters to foreign rulers on behalf of their masters.

At the provincial level, the upper level administration was an exact replica of the central administration. Provincial and district administrations were based on the suba and sarkar as unit, their heads being respectively called subedars and fauzdars who were assisted by diwans and the amalguzars, respectively. During the declining days of Mughal rule, the sarkar appeared to have been replaced by a larger administrative unit called chakla. Below the sarkar appeared to have been replaced by a larger administrative unit called the chakla. Below the sarkar was the pargana, which was headed by the shiqqadar. Decentralization was necessary for a big empire like that of the Mughals who had not disturbed the local set–up under muqaddams and chaudharies. Administration of the border areas was under fauzdars, while that of port areas was under the mutsaddi. The head of the police in the metropolis was known as the kotwal. Judicial administration was handled with the help of the qazis and sardars. Revenue administration and military organization were the main pillars holding up the structure of the state. Assessment and collection of revenue were controlled from the centre and officers had to account the details for all receipts.

The important and Herculean task of imperial administration was carried out largely by the officers in charge of the administrative units at the lower level. In doing so, they had indeed behind them the sanction of the imperial government and the provincial administration. But the safety of the empire and its peaceful and efficient administration, to a greater extent, depended on the ability and vigilance of the lower administrative machinery. The chief officers of the localities like those placed at the heads of province belonged to a corps delite, the mansabdars. The mansab was a commission, which was held by the officers of the emperor. It was a hierarchical system that comprised the mansabdars ranging from those commanding twenty horsemen to those commanding five thousand horsemen. Between these two there were innumerable grades and officers rose from grade to grade, both according to merit and favour. Another feature of the system was the fusion between civil and military functions.

According to J.N. Sarkar, there owned historian on the Mughal period, The Mughal system at one time spread over practically all the civilized and organized parts of India. Now it is dead in our times. Traces of it still survive. But the new has been built upon the old our present has its roots in our past.

3.6. British Period Administration :

The present administrative system in India was evolved during the East India Company's rule in the country. This period is divided into two parts for study purposes. First, East India Company's rule up to 1857 and second, British government rule from 1858 upto 1947. The East India Company came to India solely for business purposes, but later took over the government of the country. Finally, the company rule ended in 1858 and the government was taken over by the British Crown. These are some of the very important evolutionary steps in the administrative history of India. After the death of Aurangzeb in 1707, the Mughal empire began to disintegrate and the Central administration became paralysed. The minor rulers, who earlier had accepted the suzerainty of Mughal emperors, started fighting among themselves. The East India Company took advantage of this situation and established its hold over several parts of the country. The battle of Plassey in 1757 paved the way for the real authority to come into the hands of the company.

In the year 1765, the East India Company secured the diwani rights of Bengal, Bihar and Orissa, but it did not change the administration of these provinces and mainly continued the administrative system of Mughals. However, the British wanted to reduce the exploitation of the people of these provinces by the zamindars and other intermediaries. Therefore they established rapport with the people through their own officers and this led to the establishment in stages of the modern system of district administration. In 1772 they appointed supervisors in big district, who were later nominated as collectors. The board of directors of the Company in 1786 directed the governor- general- in-council under women Hastings to place all the districts under collectors. These collectors were responsible for collection of land revenue, dispensation of civil justice and magisterial work, etc. This office is most significant even today. In the year 1829, divisional commissioners were appointed in Bengal to supervise the administration of a group of districts and this marked the beginning of the divisional commissioner system of administration, which is in vogue in states at present. Four years after receiving the diwani, whose conferment did not ipso facto make the company a sovereign authority in Bengal, Bihar and Orissa but led the way to the exercise of such authority. The company did not make any move in respect of organizing the government, which was now in a state of virtual collapse. But from 1769 onwards, the company started making experiments in this regard. At first, these proved to be not only ineffectual but almost disastrous. By 1786, however, the company appeared to have groped its way into the right direction. But even then further experiments had to be made to make the structure efficient and well-organized and the administration stable and strong. Though the Company had control over some of the Indian provinces, the administration was unstable and feeble. The result was the enactment of various Acts by the British government.

For the purpose of study of the evolution of the Indian administrative system during this period, we shall divide it into the following two periods.

Administrative system before 1858
Administrative system after 1858 till 1947.

The year 1773 was a landmark in the growth of Indian administration. Before 1773 there was no central authority in the country, the 1773 Act restricted the powers of the presidencies from making war or treaties without the sanction of the

governor- general-in-council. This started the British Parliament's control over the affairs of the East India Company. The Pitt's India Act of 1784 placed Indian affairs under the direct control of the British government by establishing a board of control representing the British Cabinet over the court of directors. The Court of directors of the East India Company was required to pay due obedience (and be) governed and…. bound by such orders as they shall from time to time, receive from the said board. The appointment of governor- general was made by the directors with the approval of the Crown. The position of the governor- general became very difficult with the introduction of the system of dual control. This system, with some modifications, remained in operation till 1858. As a result the company's administration became not only cumbersome but also dilatory.

The company's rule ended with the enactment of the Government of India Act, 1858 and passed on to the Crown. The board of control and the court of directors were both abolished and their powers were given to the newly created office of the Secretary of State for India. His office was known as the India office, which enabled him to discharge his functions smoothly.

3.6.1. Portfolio System:

The work of the government increased and its pressure was felt by the successive governors- general. Inordinate delay became unavoidable. This situation improved when an innovation known as portfolio system was introduced in 1859 by Lord Canning. According to this innovation a member of the council would be appointed in charge of one or more departments of the government by the governor- general and he would issue orders on behalf of the governor- general- in-council. The Act of 1861, Section 8, gave statutory recognition to this innovation. Whenever any other department was concerned, it was also consulted: the department of finance would advise on matters relating to finance and expenditure, similarly, the home department would advise for matters relating to the services of the general administration or internal politics. If the concerned department did not agree, the matter was referred to the governor- general. Reference to the governor-general was necessary for every important matter of any department as well as where it was proposed to overrule any local (provincial) government orders.

The portfolio system increased the efficiency and speed of government work in the first place. Second, the members of the council were recognized as heads of

their departments and had greater degree of initiative and responsibility in the working of the departments.

The Act of 1861 enlarged the executive council of the governor- general by adding a fifth member as the law member who has given power to conveniently transact the business. This Act tried to render the executive government very strong to be handicapped by any expansion of the Legislature and restored the legislative powers of the local governments without affecting central control. The Act of 1870 also empowered the governor- general to suspend such measures of resolutions of the councils, which may have the interest of British possessions in India. The Indian Council Act of 1892 enlarged the function and members of the legislative councils but did not implement it in toto. According to the Act, two fifths of the additional members were to be non-officials. The Act also introduced the principle of election in an indirect manner. Although the act did not provide for direct election, the mode of indirect election produced a result, which turned the balance of power against the landed aristocracy and placed legal practitioners in a dominant position.

The Act of 1909, popularly known as the Morley- Minto Reforms, carried the above policy further. The Act increased the size of the legislative councils at all levels. They still remained deliberative bodies only. The indirect election system continued but for the first time separate representation was given to the Muslim.

3.6.2. Introduction of Local Self-Government :

In 1688, a corporation was established in Madras. In 1726, corporations were created in Calcutta and Bombay. In the Presidency of Madras and Bombay, the ancient village system of rural self-government agency was retained and in the 19th Century Panchayats received encouragement from district authorities.

The Government of India resolution 1864 admitted the desirability of local people's capability to run the local affairs. A further step in the direction of local self-government was taken by Lord Mayo in 1870, popularly known as Mayo Resolution of 1870. As a result new Municipal Acts were passed in various provinces between 1871 and 1874 to relieve the burden on imperial finances by levying local rates and cesses and also extended the elective principle. The next important step was taken

during the viceroyalty of Ripon, who has been called the father of local self-government of India.

In 1882, the famous Ripon Resolution for local self-government was issued, which continued to influence the development of local government in India till 1947. The resolution declared, it is only primarily with a view to improvement in administration that this measure is being put forward and supported, it is desirable as an instrument of political and popular education. The result was the enactment of a series of municipal Acts and enactments for rural areas.

The Decentralization Commissions in its report of 1909 emphasized the importance of village pancahyats and recommended the adoption of special measures for their revival and growth. It also recommended reduction of government control over local bodies and augmenting the sources of income of these bodies; but neither the Government of India nor the provincial governments faithfully carried out Ripon's resolution.

The Montague-Chelmsford Report on Constitutional Reforms (1918) examined the system of local self- government prevalent in the country and stated that local bodies would be made autonomous and outside control would be minimal.

3.6.3. Administrative Reforms of 1919:

The Government of India Act, 1919 introduced the bicameral system and demarcated the central and provincial subjects. The central list consisted of important subjects such as defence, foreign affairs, tariff and customs, railways, post and telegraphs, income tax, currency and coinage, all –India services. The provincial list included local self- government, public health, public works, education, water supply, irrigation, agriculture, land revenue, police, forests, justice, excise and fisheries, etc. The provincial subjects were further divided into resolved and transferred subjects. The reserved subject was important, and was thus placed under the charge of councilors, who along with the governor were made responsible to the secretary of state and the central legislature. The administration of transferred subjects was entrusted to the ministers responsible to the provincial legislative council. The distribution of executive power between the Governor-General-in –council and the governor, acting on the advice of his ministers

responsible to the provincial legislative council, was called diarchy. This reform reduced the control of the secretary of state for India, over the central and provincial administration so far as the transferred subjects were concerned; but as regard reserved subjects there had been no change. This Act was a step to provide Indians with the opportunity to take charge of departments of provincial administration, not as nominated but as the elected leaders of legislatures. This new scheme was based on three principles. First, the central and provincial spheres were demarcated and distinguished from each other. Second, the provinces were considered to be the most suitable for experiment of self-government. Third, an attempt was made to give an effective voice to the people in the conduct of the central government.

3.6.4. Administrative Reforms of 1935:

The Government of India Act, 1935 had two basic concepts: provincial autonomy and an all-India federation. In the structure of the home government, some changes were made. The Indian Council was dissolved and its place was taken by a set of advisors to the secretary of state for India, whose number was fixed between three and six. The secretary to state had the right to consult these advisors individually or collectively. The Act provided for the introduction of diarchy at the centre. The system of diarchy in the provinces was abolished. The federal executive was made partly responsible to the federal legislature. The executive councilors were put in charge of defence, external affairs, ecclesiastical affairs and tribal affairs, and were accountable to the governor-general and not the federal legislature on the ground that it affected the discharge of his special responsibilities. But this was never done as in doing so this scheme would not operate.

Under the federal set-up the subjects were divided into three lists, viz., the federal, provincial and concurrent lists. In the federal list there were 59 subjects of administration related to the centre. The provincial list had 54 subjects related to the provincial governments. These provisions of the Act could not be implemented at the central level, but were introduced at the provincial level in 1937.

In spite of the failure of the federal provisions of the Act, the Government of India continued its working under the provisions of the Act of 1919 with certain modifications till the Indian Independence Act of 1947 came into force. In Britain, the Labour Party came to power after the 1945 election and initiated a new approach. The imprisoned Indian Leaders were set free; elections were held to the

central and provincial legislatures, and popular ministries were restored in the provinces. The famous Cabinet Mission plan was published on 16th May 1946. An interim government was formed in 1946, with Jawaharlal Nehru as its vice-President. The Muslim League initially declined to join the interim government but agreed later on. Further, elections were held to the Constituent Assembly, which met in Delhi in December 1946. The Muslim League boycotted it. In March Lord Mountbatten was appointed governor- general and in June he formulated his scheme for the partition of country. On 18 July, the British Parliament passed the Indian Independence Act, 1947. And at midnight on 14/1 August 1947, India became a free nation. The new Constitution was adopted on 26th January 1950.

3.6.5. Legacies of the British Administration :

India became independent on 15th August 1947 and British rule came to an end. A new Constitution was framed and adopted on 26 January 1950 and Indian became a republic. The pertinent question is what the new republic was and what was handed over by the British along with power. The answer of these questions can be found easily during the period of British governed the country by establishing various institutions. Though the Indians were very happy to get rid of the colonial rule but soon realized that the governmental system and administrative apparatus developed by the British were capable of meeting the needs of the country. Therefore, the same system, was maintained for the administrative purposes of the country even after Independence, albeit with some changes as per the requirements around that time. The main features of the British governmental and administrative system were a parliamentary form of governments, federal structure, governors in the states, secretariat system, central and state administration, civil services, district and regional administration, the procedures of work, rule of law, and local government, etc. These continued to be the main areas of the present Indian administrative system.

The federal structure of the Indian Constitution has its roots in the government of India Act of 1935. The constitutional history of India shows that the Act of 1919 mentioned transferred subjects, which were entrusted to the ministers of the provinces accountable to the elected provincial legislatures and reserved subjects meant for officials under the governors. Thus, a diarchy system was the main characteristic of the Act of 1919 that planted the seeds of division of subjects

between the provinces and the centre. The Government of India Act, 1935, added three contributions to the political development in the country: first it established a fully responsible government in the provinces, second, it contained a list of division of powers between the provinces and the centre, and third, it established a federal court, which was a promise for the federation to come into existence. The Act of 1935 provided a model for the Indian Constitution of 1950 from all its 451 clauses.

The parliamentary system of governance adopted by our Constitution is based on the British Parliamentary system. The main characteristics of the system such as a nominal head of state, plural real executive in the form of council of ministers collectively responsible to the Parliament, independent judiciary, etc., influence and shape the structure and machinery of the administrative system to a large extent.

The third and most important legacy of the British was the creation of districts and the primacy given to the district administration. The reasons for this were historical. The East Indian Company came to India for trade and not to govern the country, but around that time, due to the diminishing powers of the Mughal emperors the political situation was fluid. In 1755 the company secured the diwani rights of Bengal, Bihar and Orissa to establish direct rapport with the masses. It created the office of collector to man the district administration through its own people. As a result all provinces were divided into districts that were grouped to form divisions. Each district was also divided into sub-divisions and these were further divided into tehsils or talukas to look after a number of villages. This order of administration had three significant features. The first was that each unit should be headed by an official with overall responsibility divisional commissioner, collector or district magistrate or deputy commissioner, sub-divisional officer, Tehsildar or mamlatdar, in that order. To help the district officer there would be specialist officers such as district superintendent of police and executive Engineer. In general district administration these officers would work under the leadership of district collector or deputy commissioner. The second feature was that there should be no rigid separation in terms of personnel between administrative and judicial functions, rather, there should be some measure of combination of the functions in the same person. The district officer was, therefore, collector, magistrate and administrator. The third was the introduction of boards of nominated and later elected non-officials at the district and lower levels from 1870 to particularly after Lord Ripon’s Resolution

of 1882. These were called local self-government institutions. The record of these local self- government bodies was not glorious because they were not given substantial power to undermine the authority of the district collector. Meanwhile, the national movement leaders persuaded people not to be members of these powerless bodies, even then provinces passed innumerable legislations regarding these bodies. Thus, local self-government is also a legacy of the British rule. The administration was fully hierarchical starting from the commissioner, to the Collector, to Tehsildar and the village headman.

After the establishment of the system of district administration the need to supervise the district administration and central directives was felt, and this led to the establishment of various administrative institutions at the provincial and central levels. The office of the divisional commissioner was created for the supervision of district administration. The board of revenue system of administration was established in Madras Presidency. After 1857, when the British Crown took over the governance of the country from the East India Company, the provincial secretariat and the secretariat system was established as it exists at present in the states with various Departments for the working of the provincial government. To implement the government policies various offices of the heads of departments and directorates further established their filed organizations for implementation of government programmes. Departments such as agriculture, public works, irrigation and forests were established in all the provinces and these formed the model for the establishment of more departments in independent India. Further the British developed and established a system of central administration in Delhi to control the provincial governments. Thus, the foundation was laid for the central administrative system in India with the central secretariat in Delhi at the top of this administrative pyramid.

The fourth major legacy of the British was the creation of the civil service system to man the administrative apparatus created by them. They created Indian Civil Service (ICS) service to man the higher posts at the centre and the states. The Indian Police Service (IPS) was also established to man the higher posts in police. Recruitment to these services was based on competitive examination in which merit alone was the sole criterion. Other services were also established by the British to aid the ICS and IPS at the central and state levels for running the administration of

the country. These services, with some modifications, continue even today as central services and state civil services. The personnel to the ICS were at first recruited only in England but after the Lee Commission Report (1924) the recruitment was Indianized. The ICS civil servants were generalist and non-technical in character and were highly educated and carefully selected through a difficult competitive examination. They were expected to be adaptable, honest, devoted to duty, fully cooperative and broader in outlook rather than regional or provincial in loyalty. They started their career in the districts with a period of attachment under the guidance of an experienced officer and took charge of the district so that later they might also serve at the provincial secretariat for a period. They were also posted on deputation at the Central Secretariat but remained on the strength of their province of original allocation.

After Independence the service was renamed as Indian Administrative Services (IAS). This service was created mainly to maintain law and order and the collection of revenue, whereas people's welfare was not in their minds. Thus, the civil service structure was predominately generalist, and created by the British, had remained intact till date. But we need to give greater importance to technocrats. Although that alone is not enough because specialists do not influence IAS, on the contrary, it is the IAS who influences the specialists. When the technocrat occupies the chair of an IAS officer, his behavior pattern falls in line with the bureaucrats. Therefore, these concepts need to be changed. Thus civil service in its present form is a British legacy with minor changes.

The fifth legacy was that they introduced the rule of law. The government should be run by law and nobody is above law. In other words, nobody in the land was immune from punishment if he did wrong, however highly placed he might be. In general, the British left a legal tradition whose aim was to guard against the abuse of power. The arbitrary use of authority was subjected to legal restraint and the state was not regarded as dominant or beyond challenge. The present judicial administrative system, the Supreme Court at the central level and high courts at state levels and district courts at district and sub-divisional levels, is based on legal foundations laid down by the British.

The sixth legacy was in the filed of administrative procedures. The administrative system before independence with the mechanism of checks and balances was created to control and strengthen the British Empire. Most of the procedures followed were with the objective of checking the use of power by the lower level field administrators so that they could perform their duties as per the rules. The Police Act of 1861, the Indian Penal Code, the Official Secrets Act and Audit Rules, etc., were all framed by the British and have not been substantially changed after Independence to sit the changed conditions. The same rules, regulations and procedures continue to be followed even today after so many years. The steel frame given by the British for the administration of the country is inflexible and we have not changed or adjusted it to suit our present needs.

The rule of law, territorial integrity and unity, access to modern language through English were the main benefits of British rule. But there was another side of the coin. The British took their wages for the good they did in India. They drained the country, once considered fabulously rich. The British did much for India in the last two centuries but they also took ample compensation.

3.7. 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 that now 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 to be 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 retain the 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 are inherent 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 the welfare of mankind.

These glorious words inspired the shaping of the Basic Law of our land through 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 the Nation.

IN OUR CONSTITUENT ASSEMBLY, this twenty –sixth day of November, 1949, do HEREBY 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 document are the people of the country themselves it is not the gift of British parliament as 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 that it 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 of religion 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 to play 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 fact that 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 state should 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 in their 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 of us 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 of a 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 the Constituent 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 several areas (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 insertion of 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.

3.8. 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 the President 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 areas relating 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 that takes a decision about the selection of a Chief Minister, making or unmaking of 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 system stands 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 absolute independence 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.

3.8.1. 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 the states 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 by the 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 as to have knowledge of the operation of federal system in our country.

3.8.2. 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. These are:

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 assumed national 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 subject to 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 the request, though, any other State may adopt it after passing a resolution to this 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 on a subject of State List during the period of emergency shall come to an end when the 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 by the 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 to have 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 truncated by virtue of serious inroads whereby the Parliament may make more and more encroachments upon the legislative jurisdiction of the States.

3.8.3. Administrative Relations:

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

1. Art. 256 says that the Executive Power of the State shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing law which 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 a State, entrust either conditionally or unconditionally to that Government or its officers functions in relation to any matter to which the executive power of the Union 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 the States, 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 should be 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 provision of 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.

3.8.4. 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, passengers and 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 appropriated by the Government of India alone. These are railways, revenues earned from railways, post and telegraph, wireless and broadcasting, foreign exchange, etc.

The President may make alternation in the distribution of the revenues earned from 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 lieu of 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 special resolution.
   (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 the States 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 to delegate 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 to make 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 be collected and levied by the States and thereby forming part 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 to distribute 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 duty on 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 borrow money on the Consolidated fund of India. 10. Appointment of Finance Commission by the President.
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 whether from 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 to them by the Union Government. Often the State governments have found themselves 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 States may 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 due to this that from time to time several state governments have expressed their deep resentment and demanded more autonomy. The DMK Government of Tamil Nadu appointed a Commission under P.V. Rajamanner in 1970 which submitted a 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 devolution of 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 view and 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 should be borne in mind that in spite of federalism, the national interest ought to be paramount.

3.9. Self –Assessment Questions

1. Discuss briefly the evolution of Indian Administration.
2. Preamble is the soul of Indian Constitution, Comment.
3. Critically evaluate Union- State Legislative, or Administrative or Financial Relations in India.
4. Indian Constitution is federal in form but unitary in spirit, Discuss.

3.10. Further Readings:-

1. B.N. Puri, History of Indian Administration, Vol. 1 (Bombay: Bhartiya Vidya Bhawan, 1968).
2. Hoshiar Singh and Pankaj Singh, Indian Administration (Delhi, Pearson, 2011)
3. Subhas C. Kashyap, our Constitution (Delhi, National Book Trust, 2001)
4. Commission on Centre- State Relations Report, Part -1 (Government of India, 1988).

Unit –II

Government at Central Level: President, council of ministers and Prime Minister, Parliament Supreme Court, Central Secretariat, Cabinet Secretariat, Prime Minister's Office.

Structure :

1. **Learning Objective:** This unit will deal with the institutions of Central Government.

2. **Introduction :**

2.1. 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 based on the English model." In more forceful words, Sardar Patel observed that it

would suit the condition of this country better to adopt the parliamentary system of 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 as the 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 places the Head of the State (President) and the Head of the Government (Prime Minister) in the categories of, what Walter Bagehot said about his English system of government, the dignified and the efficient executives respectively.

2.2. President :

The President is the Head of the Indian republic. He is elected for a term of 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 drawn by dividing the population of the State (as given in the last census report) by the total 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. In case 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 a candidate 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 preference are 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 takes the 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 of the Supreme Court according to the principle of seniority. Within next six months the 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 right to 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 under five 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 officers subordinate 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 those of 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's Commission, National Commission for Scheduled Castes, National Commission

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

The administration of the Union Territories and Scheduled and Tribal Areas is 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 Scheduled and 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 effect and 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 remain in 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, but the 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 time extended 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 enforcement provided 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 name of 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 dismiss the 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 after some 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 force for 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 make a 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 law of 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 so as 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 Punjab and 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 the

financial 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 granted by 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 power of 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) governments in 1977 in a single stroke, the Congress (I) government of Mrs. Indira Gandhi did 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, a vocal 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 as a 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 statement that he would not like to be a rubber stamp even of God. P.B. Mukherjee (former judge of the Calcutta High Court) stressed the point that the Indian President is an independent institution with independent authority and independent functions.

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 of 1976 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 the reconsideration 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 head of the State, but not of the Executive. The symbolic position of the President was affirmed 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 made a 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 caretaker government could not take up policy matters. (While one ordinance had sought to 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 an advice after studying the whole case in the light of the Supreme Court's ruling in the 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 around the 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 does not 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. The Supreme 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 persuasive role.

3. 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 accordance with 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 until he 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 of the 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. In 1977 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, the President 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 appointed by 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 the leader 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) was appointed 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 the President 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 Prime Minister. 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 of government 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 afraid to speak out their mind. Cabinet meetings are not forums of serious discussion of 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.

4. Parliament

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 of the English Parliament, it is a non-sovereign law-making body like the American Congress.

4.1. 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 the representatives 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 by the members of the State Legislative Assemblies in accordance with proportional representation 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 mind or 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. that is, 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 allegiance or 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 conveyed to 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 weak chamber in comparison to the Lok Sabha for these reasons:

1. A Money bill cannot be introduced in the Rajya Sabha and when such a bill 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 the case 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) shall be 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 bill or 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 the members, present and voting) for its adoption must be passed by both the 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 electing the 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 martial law 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 and thereby 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 a law 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 and then 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 a gathering 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 just likely to be heard in the other House.

4.2. 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 President may 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 are elected directly by the voters. The whole country is divided into territorial constituencies 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 must be 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 a law 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 the light 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 :

1. It has control over the government. The Council of Ministers is collectively responsible to the Lok Sabha. As such, the ministry may be thrown 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.
2. 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 the recommendation 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 about Rajya Sabha being the upper chamber and Lok Sabha being the lower chamber of 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 and cooperation 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 lower is 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, occupies a 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.

4.3. 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 is right 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 holds his office until he ceases to be a member or he himself resigns his office, or he is removed 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, although he 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 orderly manner. 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 the records 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 the accommodation and other amenities of life granted to the members of the House. 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 has been passed by the House, or make such other changes in the bill consequential 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. Supreme Court

Introduction :

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 65 years. 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 the process 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 its authority and has in such a trial convicted the accused person and sentenced him 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 protection and enforcement of fundamental rights. Under Art. 136 the Supreme Court can allow special leave to appeal against the judgement of any court or tribunal in the 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.

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 the Court 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 stems from a feeling that a system based on a written constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of 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 are inconsistent 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 force of law. It also includes laws in force or laws made by a Legislature or a competent 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 Singh vrs. The State of Rajasthan (1965) held the view that the world 'law' occurring in Art., 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 Supreme Court. 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 down the doctrine of the basic structure of the Constitution. It is true that the Court did 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. The Court may declare a law void in case it transgresses the authority of the legislature or of the executive. For instance, the Supreme Court invalidated a decree of the President (1970) that derecognized all former rulers of the princely States 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 it down as it invalidated some parts of the law whereby 14 banks were nationalized in 1969. In case the Parliament makes an amendment in the Constitution, 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 view from 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. The point 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 and ascertain 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 supremacy is 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 leads to 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 as under:

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 and justice 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 by a 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 judge of 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 certain important matters had been done in order to keep them outside the range of 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 the removal 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 the words 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, but the 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 it assumes 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 that by 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 the environment, 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 spirited organization 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 absolutely immune 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 to take 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 parliamentary party government for ulterior motives as was sought to be done during the 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. In such a sensitive situation, the Courts have to do justice in stead of asking the 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 in doing 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 its jurisdiction, 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 notable point 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 Courts would 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 be taken as the instance of judicial activism. For instance, the Supreme Court summoned the Speaker of the Manipur Legislative Assembly (R. Borababu Singh) for not implementing its orders of the payment of salaries 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 in that 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.

6. Prime Minister's Office (PMO):

In a Parliamentary democracy, the Prime Minister is the centre of power and responsibility. In situation of crisis decisions are left to the prime Minister. He, therefore, needs institutional help and assistance to take immediate decisions. There is no disagreement for such support to the Prime Minister but there were differences as to the way in which institutional support is to be provided. Some were in favour of using already existing administrative machinery within ministries, while some favoured the prime minister's office to give direct assistance to the prime minister. There can be no question that every prime minister is entitled to have an office of his own manned by advisors loyal to him. This is the basic justification for the existence of the Prime Minister's office. This question was discussed by the ARC and its study team recommended setting up of such institutional support, which will not duplicate the work of existing ministries and will deal with only overall issues. Such an agency should be located in the cabinet secretariat rather than in the prime minister's office and quality experts alone should be appointed to man it. The existing institutional support consists of the cabinet committees, the secretaries committees, cabinet secretariat and the prime minister's office. The prime minister's secretariat / office occupies the status of a department of the Government of India under the Allocation of Business Rules, 1961 without any attached and subordinate office under it. This office is not responsible for the prime minister functioning as head of the cabinet. It is responsible for his functioning as chairman of the planning commission. It is an official link between the prime minister and his ministers, the president, governors, chief ministers and foreign representatives. On the public side, it is concerned with party matters, personal correspondence and complaints from public, etc.

Functions of the Prime Minister's Secretariat Office:

The functions of the prime minister's secretariat /office are as follows:

(i) To deal with all references that have, under the rules of business, come to the prime minister.

(ii) To help the prime minister in respect of his/ her overall responsibilities as head of government. It includes liaison with the Union ministries and the state governments on matters in which the prime minister may be interested.

(iii) To help the prime minister in the discharge of his responsibilities as the chairman of the planning commission.

(iv) To deal with the public relations side of the prime minister's office, that is, relations with the press, public etc.

(v) To assist the prime minister in the examination of case submitted to him for orders under prescribed rules.

The prime minister's office is not responsible for his functions as the head of the Cabinet, except for matters of personal correspondence between him and individual ministers. Generally, the personality of the Prime Minister and his view of his own role would greatly influence the nature and span of functions of his office. Its activities may be broadly divided into four parts. First is the processing of a large number of cases submitted by various ministries and cabinet secretary for information, approval and sanction, etc. These are basically routine matters, but this is what the bureaucracy enjoys doing the most as such cases provide ample opportunity for nitpicking and exercise of effective power at the personal level. In actual fact, the PMO has little to contribute in this area, as the government operates within an elaborate frame-work of rules and regulations, and the proper forum for their correct application is the ministry concerned and not the prime minister's office. It is in this area that the PMO Carries the heaviest work load and this is where drastic reduction through decentralization is necessary.

The second function of the PMO concerns policy formulations. Most of the issues originate from ministries under the independent charge of cabinet ministers, and the basic input as also the policy frame is furnished by the

administrative ministry. In more important cases the cabinet secretary and committee of secretaries provide useful insights and offer a wider perspective. But the prime minister may like to use his office as a sounding board on certain controversial matters or ask his staff officers to consult some outside experts.

The third function is that the prime minister would certainly like to use his office to review and monitor particular activities of some ministries, keep a tab on developments on certain fronts and, at times, depute his staff officers to undertake sensitive assignments. This is a wholly unstructured and grey area of the PMO's work, and its nature and content would differ a great deal from one prime minister to another.

The fourth vital sphere of PMO's activity has not been clearly recognized, defined or exploited. In the first instance the bright vision of the poll promises gets buried under mountains of routine and the cosy comforts of office. But it is imperative for a serious –minded prime minister, who aspires to go before the electorate again, to pick on a few long-term policy issues or ameliorative measures right at the start of his term and them entrust a special cell in his office continuously a monitor, review and assist the implementation in respect of each issue. This arrangement would necessarily involve greater centralization in one wing of the PMO. But it would be the right kind of centralization, i.e. enhancing the prime minister's ability to push forward major policy initiatives taken by his government. Thus, the functional span of PMO is wide and very comprehensive.

7. Cabinet Secretariat

Together with the other structures of parliamentary democracy, the Cabinet Secretariat is also a part of British legacy to India. In the UK, the institution was first created in 1916. Prior to that, for the sake of secrecy, no records of cabinet meetings were kept.

The proceedings, one gathers, was somewhat unorganized by modern standards. There must have been plenty of room for uncertainty and dispute about what the cabinet had done. No doubt, at the end of the meeting, ministers dispersed, hoping that everybody knew and would remember what had been

agreed upon… this way of transacting business would be quite impossible or would, at any rate, lead to much confusion.

Hence, for maintaining records and providing secretarial assistance to the cabinet, the cabinet secretariat was created in the UK. Sri Maurice Hankey was appointed its first secretary.

In India, it was Lord Wellington (1931-36) who, for the first time, asked his private secretary to attend and record the proceedings of the cabinet meetings in 1935-36. Before 1935, the Governor – General had a private secretary who provided secretarial assistance to him as well as to his Executive Council. Shortly afterwards, the two offices were separated and entrusted to two different individuals. Sir Eric Coates was the first Cabinet Secretary in pre-independence India, but his designation was Secretary to the Viceroy's Executive Council. Evan Jenkins was appointed the Viceroy's private Secretary.

The post independence period :

With the dawn of independence in 1947, there came into being a council of ministers headed by the Prime Minister. The need for secretarial services to the Council was felt but, due to shortage of senior officers (as most of the ICS officers had left for the UK, the new Cabinet Secretariat was combined with the Prime Minister's Secretariat. However, they were soon separated and N.R. Pillai took charges as the Cabinet Secretary. He visited London to observe the working of the Cabinet Office in the UK and concluded that the British pattern of organization, with suitable modifications, could be adopted in India.

In 1948, the Economic and Statistical Coordination Unit was set up in the Cabinet Secretariat of the Government of India, with a view to secure all relevant data from the various departments and present it to the cabinet. Pending the formation of the Planning Commission, it also handled work relating to development schemes. After the setting up of the Planning Commission, in 1950, this work was transferred to the Commission. In the same year, the Central Statistical Unit (CSU) was attached to the Cabinet Secretariat. This unit was expected to function in an advisory capacity to the government and to

coordinate the statistical work of the government agencies. In May 1961, the Central Statistical Organization was set up and the CSU was merged with it. Another major landmark of the 1950s was the report, A survey of Public Administration in India (1953), submitted by Paul H. Appleby. On the recommendations of Appleby, an Organization and Methods Division was set up as a wing of the Cabinet Secretariat, with a view to improve administrative efficiency in all branches of governments. In March 1964, a new Department of Administrative Reforms was set up in the Ministry of Home Affairs and the O &M Division was transferred to this Department. In April 1961, the Department of statistics was created as a part of the Cabinet Secretariat. In fact, the Central Statistical Organisation was given the status of a department. This department was later taken out of the Cabinet Secretariat.

In 1962, due to the Indo-China War, an Emergency Wing was created in the Cabinet Secretariat in order to provide secretarial assistance to the Emergency Committee of the Cabinet. In July 1965, a new wing, the Intelligence Wing, was added to the Cabinet Secretariat to provide assistance to the Joint Intelligence Committee. As a consequence of the Indo- Pak War, a unit called the Directorate- General of Resettlement was set up in the Cabinet Secretariat in October 1965, for implementing the relief schemes in the adversely affected areas. This organization was, however, short- lived and its work was transferred to the Department of rehabilitation in July,1966.

The role of the Cabinet Secretariat was again expanded in 1970 with the creation of a central personnel agency in the Cabinet Secretariat. The Estimates Committee of the third Lok Sabha in its 93rd report, submitted in 1966, and the Administrative Reforms Commission Report (1967-69) had both recommended that the work of personnel management be brought under the control of a single agency. In pursuance of this recommendation, the Department of Personnel was set up in the Cabinet Secretariat in August 1970. In 1973, another major development took place when the Department of Administrative Reforms, which had earlier been handed over to the Home Ministry, was once again located in the Cabinet Secretariat. In 1977, the Department of Personnel and Administrative Reforms was taken away from the Cabinet Secretariat and shifted

to the Ministry of Home Affairs. Reorganizations, thus, have characterized the Cabinet Secretariat, ever since its inception.

Role

The function of the Cabinet Secretariat is to provide Secretarial assistance to the cabinet and its various committees. Its responsibilities include preparation of agenda for the meetings of the cabinet, providing information and material necessary for its deliberations, keeping a record of the discussions in the cabinet and of the decisions taken there, circulation of memoranda on issues awaiting cabinet's approvals, circulation of the decisions to all the ministries and preparation and submission of monthly summaries on a large number of specified subjects to the cabinet. It also oversees the implementation of the cabinet decisions by the concerned ministries and other executive agencies. For this decisions by the concerned ministries and other executive agencies. For this purpose, it can call for information from the various ministries/ departments. In accordance with the instructions issued by the Cabinet Secretariat, each ministry sends it a monthly statement showing the progress in the cases relating to cabinet decisions. In case a ministry is falling behind schedule, the matter is taken up with it to accelerate the implementation process. It keeps the President, the Vice- President and all the ministries informed of the major activities of the government by circulating monthly summaries and brief notice on important matters. Article 77 (3) of the Indian Constitution authorizes the President to make rules for the convenient transaction of the business of the government and for its proper allocation among ministers. Work relating to the drafting of such Rules of Business is handled in the Cabinet Secretariat, which provides the necessary assistance to the cabinet committees as well.

The next important role of the Cabinet Secretariat is that of functioning as the prime coordinating agency in the Government of India. It ensures that in matters coming before the cabinet or its committees, the cases presented are complete and coherent and, in particular, that the rules for business transactions, especially the procedures for inter-ministry consultations, have been adequately complied with. Where two ministries are unable to agree upon a point of view and, more particularly, where the views of the Finance Ministry differ from those of the administrative ministry incharge of the subject, care

must be taken that the different points of view are fairly and properly presented in the papers to be placed on the agenda for a cabinet meeting. The normal rule is that if two ministries disagree on a certain point, the case is submitted to the cabinet for orders. While this is done on questions of policy, there remains a vast spectrum of administrative matters for which the cabinet may not be pressed for a decision time and again. The cabinet ministers are also hard pressed for time and, hence, the different secretaries meet under the aegis of the Cabinet Secretariat and try to sort out matters. For instance, in 1988, there was dispute between the Finance Ministry and the Commerce Ministry over the imposition of special tax and granting concessions on software concerning it. The dispute was resolved by a team of Secretaries appointed by the Cabinet Secretary for this purpose.

Lastly several cases are brought before the Cabinet Secretariat involving the President, the Prime Minister, various ministries and the Parliament, on which it provides aid, advice and assistance. Some of them are:

1. Cases involving legislation including the issuing of ordinances.
2. Addresses and messages of the President to the Parliament.
3. Proposals to summon or prorogue the Parliament or dissolve the Lok Sabha.
4. Cases involving negotiations with foreign countries on treaties, agreements etc.
5. Proposals for sending delegations of persons abroad in any capacity.
6. Proposals to appoint public committees of enquiry and consideration of reports of such committees of enquiry.
7. Cases involving financial implications.
8. Cases which a minister puts to the cabinet for decision and direction.
9. Cases of disagreements among ministries.
10. Proposals to vary or reverse decisions.
11. Cases which the President or the Prime Minister may require to be put before the Cabinet.
12. Proposals to withdraw prosecutions instituted by the government.

8. The Central Secretariat:

For purpose of administration, the Government of India is divided into Ministries and departments which, taken together, constitute the Central Secretariat. The secretariat is an office which assists the ministers heading the ministries in discharging their responsibilities.

Before dealing with the composition and functions of the present –day secretariat, it would be pertinent to have a glimpse into its past. This institution, like quite a few others, is a legacy of British rule in India.

The present status :

There is no uniform terminology describing the various segments of the administrative structure of the Union Government. In common term, it can be said that the Central Secretariat is a collection of various ministries and departments. It is through this body that the Union government operates. It is the nodal agency for administering the Union subjects and establishing coordination among the various activities of the government. The functions of the Secretariat are as follows:

1. The Secretariat assists the ministers in the formulation of governmental policies. In this sphere, it performs the following functions:
   (i) Making and modifying policies from time to time;
   (ii) Drafting bills, rules and regulations;
   (iii) Undertaking sectoral planning and programme formulation;
   (iv) Budgeting, and controlling expenditure, according to administrative and financial approval of operational plans and progarammes and their subsequent modifications;
   (v) Exercising supervision and control over the execution of policies and programmes by field agencies and evaluating their performance.
   (vi) Coordinating and interpreting policies, assisting other branches of the government and maintain contacts with state administration.
   (vii) Initiating measures to develop grater organisational competence, and
   (viii) Discharging their responsibilities towards the Parliament.
2. The secretariat is a think-tank and virtual treasure- house of vital information which enables the government to examine its future

policies and present activities in the light of past precedents. Nothing is lost to history and, time and again, it provides material for ready reference.

3. Before taking any action, the Secretariat carries out a comprehensive and details scrutiny of the issue, often taking the help of other ministries such as the Ministry of Law and the Ministry of Finance. An issue is thus discussed threadbare before it reaches the minister concerned.
4. In the Indian system, a rigid demarcation does not exist between the secretariat and field functions. The officers of the secretariat are transferred to the field and vice-versa. Thus, the Secretariat ensures that the field officers execute with efficiency and economy the policies and decisions of the government.
5. Lastly, it functions as the main channel of communication between the states or agencies such as the Planning Commission and the Finance Commission.

The Central Secretariat thus occupies an apex position. The ARC commented in this regard as follows:

The Secretariat system of work has lent balance, consistency and continuity to the administration and serves as a nucleus for the total machinery of a ministry. It has facilitated inter-ministry coordination and accountability to Parliament at the ministerial level. As an instititionalized system, it is indispensable for the proper functioning of the government.

8.1. Rules of Business:

As already mentioned the Government of India is divided into a number of ministries/ departments for the purpose of efficient and convenient transaction of business. Article 77(3) of the Indian Constitution authorizes the President to make rules for the convenient transaction of business of the Government of India and for the allocation among ministries of the said business. Two of these rules are:

1. The Government of India (Allocation of Business) Rules.,
2. The Government of India (Transaction of Business) Rules.

These rules of business enable the minister or any other official subordinate to him to exercise his power, subject to the responsibility of the council of ministers to the Parliament. Under the allocation of Business Rules, framed under Article 77(3), a particular official of a ministry may be asked to discharge a particular function. When such authorized official does not any act, so authorized he does, so, not as a delegate of the Minister but on behalf of the Government, subject to the overall control of the Minister and his right to call for any file or to give directions, the validity or any decision made by an authorized official cannot be challenged on the ground that the decision was taken by an official and not the Minister concerned. The Transaction of Business Rules define the authority, responsibility and obligations of each ministry in the matter of disposal of business allotted to it.

A typical ministry of the Central Government is a two-tier structure comprising (1) the political head, that is the cabinet minister assisted by minister(s) of state, deputy minister's and parliamentary secretary, if any; and (2) the secretariat organization of the ministry with the secretary, who is a permanent official, as the administrative had. Besides, there are executive organizations under the heads of departments who function with the help of attached and subordinate offices and field agencies.

In each ministry of the Government of India, there may be the following four levels of the political executive:

The Cabinet Minister
The Minister of State
The Deputy Minister
Parliamentary Secretary

8.2. Cabinet Minister :

The cabinet minister is the political head of the ministry and is a member of the cabinet. However, certain ministries or departments may be headed by ministers of state who hold independent charge of their respective ministries or departments. Major ministries such as Home, Finance and Defence are generally headed by a cabinet minister, though, on a number of occasions, the External

Affairs Ministry has been headed by a minister of State. A Cabinet minister or a minister with independent charge attends meetings of the cabinet and therein participates in policy formulation regarding his ministry. Under the Allocation of Business Rules, a single minister may be given charge of more than one ministry. The President can also entrust responsibility for specified items of business affecting any one, or more than one, department to a minister who is incharge of any other ministry or to a minister without portfolio who is not in charge of any other department. Although the time- honoured tradition of collective responsibility or a council of ministers still remains, it is the concerned minister who is responsible and accountable for his ministry or departments. After broad policy has been laid down, the minister must see that his subordinates loyally carry out this policy. It is the minister who is responsible before the Parliament for all actions of his subordinates. He has to answer questions in the Parliament regarding the working of the ministry. As each ministry may have several departments under it, the minister has also to coordinate the working of these departments.

8.3. Minister of State :

The minister of state is below the cabinet minister and not a member of the cabinet. He may be attached to a cabinet minister or given independent charge of a ministry. If he is attached to a minister, he may either be given the charge of a department or allotted specified items of work under the overall charge and responsibility of the minister. However if he is given the independent charge of a ministry, he performs the same functions and exercises the same powers in relation to his ministry as a cabinet minister does. A minister of state holding independent charge of his ministry is invited to attend meetings of the cabinet only when matters concerning his ministry are to be considered by the cabinet.

8.4. Deputy Minister :

The deputy minister is a rank below that of a minister of state and he is attached to the latter. Generally, he is not given independent charge of a ministry or department. He is not a member of the cabinet and is generally not

invited to attend its meetings. He performs only such functions as may be assigned to him in relation to the work allotted to the ministry under the charge of the cabinet minister or minister of state to whom he is attached. His duties are generally restricted to answering questions in the Parliament on behalf of the ministers concerned. He helps in guiding the bills through various stages in the House, and maintains liaison with the members of the Parliament, political parties and the press. He may also be asked to undertake a special study of a particular problem as and when entrusted to him by the minister.

8.5. Parliamentary Secretary :

The institution of parliamentary secretary, though quite popular in the British system, has not found favour in the Indian set-up. Whenever parliamentary secretaries have been appointed in the Indian government – as happened during the first phase of Rajiv era- they have worked more or less as political trouble- shooters and think- tanks rather than as real parliamentary secretaries.

A parliamentary secretary assists the minister in the discharge of his parliamentary functions, which include collection of relevant facts and information that would help the minister/ minister of state in his answerability to the parliament. There have been cases when a ministry has been headed by a minister of state who has been assisted by a deputy minister. For the convenient transaction of business, the deputy minister may be allocated specific subjects for independent disposal.

It may be mentioned that in the distribution and execution of functions within a ministry, harmony among the various levels of ministers is requisite for the smooth functioning of the ministry. There have been occasions when due to lack of specificity concerning their respective functions and ego battles among ministers, ministers of state and deputy ministers, the work and image of a particular ministry or department has suffered immensely.

8.6. Organisational Structure :

For efficient disposal of business allotted to a ministry, it is divided into various departments, wings, divisions, branches and sections.

8.7. Department :

This is the primary unit of a ministry. Here it may be pertinent to point out the differences between a ministry and a department. A single ministry may have several departments under it. For instance, the work of the Ministry of Human Resource Development is divided into four departments, including the Department of Education, the Department of Youth Affairs and Sports, the Department of Arts and Culture and the Department of Women and Child Development. While the minister is the political head of a ministry, the Secretary to the Government of India is the administrative head of the ministry. In case there are several departments within a ministry, each is headed by a secretary. A minister remains in office for a maximum period of five years or till he remains a minister in the government, whereas a secretary generally belongs to the permanent civil service and remains in his office till he retires. It has been observed that the portfolios of ministers change frequently, particularly with every change of leadership or through occasional reshuffles in the council of ministers. The secretaries, on the other hand, enjoy greater stability of tenure. Generally, a secretary remains the administrative head of his ministry. Department for three to five years, though there are no set rules in this regard. Compared to the state governments, there is greater continuity of administrative leadership in the Government of India.

8.7.1. Wing

Depending on the volume of work in a ministry, one or more wings can be set up in a ministry. An additional secretary / joint secretary may be made the incharge of a wing. Subject to the overall responsibility of the secretary, such an incahrge of the wing is vested with the maximum measure of independent functioning and responsibility in respect of the business falling within his wing.

8.7.2. Division

A wing of the ministry is then divided into divisions for the sake of efficient and expeditious disposal of business allotted to the ministry. Two branches ordinarily constitute a division which is normally under the charged of a deputy secretary.

8.7.3. Branch

A branch normally consists of two sections and is under the charge of an Under Secretary. The under secretary is also called a branch officer.

Department
(Secretary)

Wing
(Addl/ Joint Secretary

Division
(Deputy Secretary)

Branch
(Under Secretary)

Section
(Section Officers)

Fig 10.1. Hierarchical position in the Central Secretariat

8.7.4. Section :

Headed by a section officer, a section consists of a certain number of assistants, and upper division and lower division clerks who work under the overall supervision of the section officer. The initial handling of cases, including noting and drafting is done by these assistants and clerks who are collectively known as dealing assistance.

8.7.5. Desk Officer System :

The desk officer system is an important innovation to deal with the needs of a particular ministry. In this system, the work of a ministry is organized into distinct functional desks at the lowest level of the organization. Each of these desks is manned by an Under Secretary or a section officer. Under this system, the desk officer deals with the case himself and, for this, he is provided adequate clerical and stenographic assistance in order to dispose of the cases expeditiously. The objective of the desk officer system is to minimize the time taken in disposal of a case by avoiding the tardy procedure of noting and

drafting at the lower level. The desk officer is presented with a case along with the previous papers and records and he is expected to dictate to his steno the decision on the matter. In case of serious policy matters, however, cases are sent to a higher level for disposal. The desk officer system, introduced in certain selected ministries in the mid-1950s and later adopted in others, has been borrowed from the British Whitehall system.

8.7.6. Secretariat Officials

The secretariat organization of a ministry consists of both superior and subordinate staff who assist the minister in the discharge of his functions.

The secretariat of a ministry/ department is manned by permanent civil servants. The normal organization of a department should provide for a clear and uninterrupted line of responsibility from top to bottom. Though a brief reference to the various functionaries of the ministries/debarments has been made so far, a more details analysis is attempted below.

8.7.7. The Secretary :

As already mentioned, the secretary of a department is its administrative head. In case there is more than one department in a ministry there may be as many secretaries as the number of departments. The need then arises for making one secretary senior to other secretaries to enable him to represent the ministry. Although all of them are secretaries, the senior most secretary in addition to his own work, coordinates the work of other secretaries as well. So, even if all the secretaries may draw the same salary, they may not necessarily enjoy equal rank. To give an instance, the Ministry of Defence, comprising three departments, has three secretaries- The Defence Secretary, the Secretary of defence Production and the Secretary of Defence Supply. Out of the three, the post of the Defence Secretary is a more privileged one in term so status and rank although the latter two draw the same salary as his.

The secretaries are appointed out of a panel prepared for these posts. Rigorous screening takes place at the highest level, in which the Department of

Personnel and Training, Cabinet Secretariat and the Prime Minister's Office are involved the final approval to the panel is made by the Prime Minister himself. For the appointment to individual ministries, a secretary's name for a particular department/ ministry is an approved by the Appointments committee of the cabinet and finally assented to by the Prime Minister. The more influential ministers are able to get the secretaries of their choice in their ministries.

The share of the IAS among the total posts of Secretaries varies from time to time. In the early nineties, however, this share was about 50 per cent. The rest of the secretaries belong to a variety of services, with some of them being even specialists. The secretary of a ministry/ department, though a line functionary, is also considered the principal advisor to the minister on all matters of policy and administration.

Though a secretary is attached to a ministry/ department, he is primarily a Secretary to the Government of India, and therefore, his perspective has to be wide and not confined to the narrow and immediate interests in his own organization. His responsibility is complete and undivided. It is his duty to supply to the minister all facts before any policy decision is taken. He should also brief the minister about the possible consequences of various policy alternatives. Not only does he assist the minister in the formulation of policies, he is also charged with the responsibility of keeping a watch over the execution of the policies.

The secretary represents his ministry in important national and international committees and conferences concerning his ministry. Sometimes, he accompanies the minister on foreign trips. He also represents his ministry / department before the various committees of the Parliament. The decisions given by the secretary regarding any matter are recognized as authentic government decisions in the courts of law. He is also free to issue general or specific instructions on certain cases or classes of cases to be submitted to him directly. He generally seeks weekly summaries on the cases disposed of at lower levels in his ministry/ department. The secretary is empowered to enter into agreements, treaties and so forth with foreign governments, on behalf of the Central government. His role is therefore of a coordinator, policy guide, reviewer and evaluator. On this point, Gopalaswamy Ayyangar observed.

A Secretary should not be immersed in files and burdened with routine. It is essential that he should have time to grasp the overall picture, size up the problems facing the government in the field allotted to his charge and think and plan ahead. All these are his proper functions and must be efficiently performed. Failure to make adequate provisions in this respect cannot be compensated by mere increase in the establishment under his control.

It may be emphasized that the powers of the Secretary of a ministry/ department are defined by the respective minister. These are clarified in the standing orders of each ministry which specify the levels at which a particular matter will be disposed of. However, the real influence of a Secretary in official mattes would depend on his equation with the ministers. The greater the trust a minister has in his secretary, the more will be the influence of that secretary.

8.7.8. Additional Secretary :

The post of Additional Secretary was created originally to relieve the over burdened secretary to some portion of his workload but, more often than not these posts have been created to reward some senior joint secretary by raising both his salary and ranks. Now, however, the post of additional secretary or in rare cases, of special secretary has been created in those ministries where the volume of work has increased substantially. An additional secretary assists the secretary by means of sharing his workload. It may be pointed out that when the volume of work in a ministry increases and exceeds the manageable charges of the secretary, one or more wings may be established. Such a wing is placed under the additional secretary with the maximum measure of independent functioning and responsibility in regard to the items of work allotted to him subject to the overall supervision and control of the secretary.

With the expansion of most departments and ministries in the Government of India, the posts of additional Secretaries have increased substantially. In most cases, the files of joint secretaries are sent to the secretary through the additional secretary concerned. However, as per the standing orders, he may be authorized to dispose of certain matters at his own level.

The appointment of additional secretaries is also out of the panel prepared and approved at the highest level.

8.7.9. Joint Secretary :

This post is a regular feature of the secretariat set-up in the Government of India. The joint secretary of a department / ministry is a key administrative functionary. His imprint on policy and decision- making in government is immense.

A joint secretary is generally in charge of a wing in the ministry. He is vested with the maximum measure of independent functioning and responsibility in respect of the items of work falling under the subjects allotted to his wing. In doing so, he is under the overall responsibility of secretary of the ministry. A joint secretary is, in certain rare cases, also allowed to put up cases directly to the minister in charge of his ministry. However, the secretary has to be kept informed of all these direct dealings with the minister.

A small ministry has at least one joint secretary, whereas a large ministry, depending upon the workload, may have three or more joint secretaries.

Like the additional secretaries, a large number of joint secretaries belong to the IAS. There is no fixed quota for any service but, conventionally, the IAS has the major chunk of these senior positions. The system of empanelment also applies to e posts of joint secretaries.

8.7.10. Director :

Below the joint secretary, a number of departments in the Government of India have the post of a director, who is placed above the deputy secretary. The specific functions assigned to him are mentioned in the standing orders. Much would depend, however, on the division of work effected by the secretaries of the department/ ministry.

8.7.11. Deputy Secretary:

A deputy secretary holds the charge of a division in a ministry and disposes of the government business dealt with in the division in his charge. He

has to use his discretion in taking orders from the joint secretaries, additional secretary or secretary on important cases, either verbally or by submission of the relevant papers. Much of this role- specificity, however, depends on the standing orders.

A deputy secretary assists the joint secretary in the discharge of his functions. Most of the policy measures and initiated and submitted by a deputy secretary for the approval of the joint secretary or of higher officials.

Normally, a division comprises two branches, each functioning under an Under Secretary. A deputy secretary has to supervise, direct and guide the activities of the under secretaries.

8.7.12. Under Secretary :

An Under Secretary holds the charge of a branch, he is also referred to as the Branch Officer. He works as a link between the deputy secretary and the section officer under him. He is responsible to the deputy secretary for the smooth running of the branch. He exercises control not only in regard to the speedy disposal of the items of work but also the maintenance of discipline in those sections which constitute the branch under his charge. He also gives guidance to the section officers under him.

Generally, most of the cases dealing with policy matters in the ministry are initiated and submitted by the under secretary to the higher officers for their consideration and approval. An undersecretary has to formulate his opinion in a particular case on the basis of the material put up to him by members of the staff as also by dint of his own thinking. He submits the case, duly prepared, with his suggestions for the approvals of the deputy secretary.

It may be pointed out that the positions of secretary, additional secretary (and special secretary, if any) and joint secretary are referred to as parts of the top management, while those of director, deputy secretary and under secretary come under middle management. However, there is no formal categorization on this score.

Unit-II -2

Structure

1. **Learning Objectives:**

   This unit seeks to analyse the structure of state administration.

2. **Introduction :**

The pattern of state governance in India is on the lines of the Union. The head of the State, like is counterpart at the Centre, is a mere nominal head who acts on the advice of the council of ministers having majority support in the state legislature.

3. **The Governor :**

The Governor is the executive head of the state. Article 154 of the Constitution vests all the executive powers of the state in the governor, which are exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The governor is a nominal head and actual powers are exercised by the council of ministers headed by the Chief Minister.

3.1. Appointment of the Governor :

The governor of state is appointed by the president by warrant under his hand and seal and holds office during his pleasure. Anybody who is a citizen of India and above 35 years of age can be appointed as governor of a state. The person who is appointed a governor cannot remain member of either house of Parliament or of a house of the legislature of any state. If any such person is appointed as a governor, he shall be deemed to have vacated the seat in Parliament or State Legislature. He must not hold any other office of profit, but the membership of the council of ministers, presidentship, Vice-presidentship, etc. are not considered as offices of profit for this purpose.

3.2. Term :

The Governor is appointed for five years, he can be given another term also. Even after the completion of his term, he continues in office till his successor joins the office.

3.3. Immunities :

The Constitution has provided certain immunities and privileges to the governor under Article.361 which are as follows:

(a) He is not answerable to any court for the exercise of duties of his office.

(b) No civil or criminal proceedings can be instituted or continued against him in any court so long as he is in office.

(c) No process for his arrest or imprisonment can be issued by any Court against him.

3.4. Power of the Governor :

The governor is the head of the state; therefore, he has been given powers like our president except in the field of diplomatic, military or emergency powers. In certain cases, the governor an also act on his own discretion. His powers can be placed in four categories, namely, legislative, executive, financial and judicial.

3.4.1. Legislative Powers :

The governor, though not a member of state legislature, is an integral part of the state legislature and has been bestowed with many legislative powers. Some of the important legislative powers are as follows:

(i) He can summon or prorogue either house of the state legislature and has the power to dissolve the legislative assembly.

(ii) He can address the legislative assembly (or both houses where the state legislature is bicameral) at the commencement of the new session after each general election and the first session every year.

(iii) He can send messages to the state legislature on a bill pending before it or otherwise.

(iv) If the offices of both the speaker and the deputy speaker of the legislative assembly fall vacant, the governor can appoint any member of the state legislative assembly to preside over the house. Such a member shall discharge all the duties of a presiding officer till the assembly elects its own speaker. Similarly, if the offices of the chairman and the deputy chairman of the legislative council fall vacant he can make adhoc arrangements in like manner.

(v) In those states where the legislative councils exist the governor appoints one- sixth of its members from amongst persons who have special knowledge of art, literature, science, cooperative movement and social service. He can also nominate some members to the legislative assembly from the Anglo-Indian community, if he feels that the community has not received adequate representation otherwise.

(vi) On the advice of the Election Commission, the governor can decide the case regarding disqualification of any member of the state legislature.

(vii) All the bills passed by the state legislature must receive the assent of the governor before they can reach the statute book. The governor reserves the right to withhold his assent or return the bill (other than money bill) for the reconsideration of the house. However, if the legislature again passes the bill with or without amendments, the governor has to append his signatures to the bill.

The governor also enjoys the power to reserve certain types of bills passed by the state legislature for the assent of the president.

(viii) During the recess of the state legislature the governor can issue ordinances which have the same force as a law enacted by the state legislature. However, these ordinances cease to operate at the expiry of six weeks from the date of reassembly of the legislature or earlier if it passes resolution disapproving of such an ordinance.

3.4.2. Executive Power :

The Constitution vests the entire executive powers of the state in the governor, which have to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. In other words, all the executive actions of the state are taken in the name of the governor. The executive authority of the governor extends to all those matters with respect to which the legislature of the state has power to make laws. It is the responsibility of the governor to ensure that the laws passed by the state legislature and the laws passed by the Parliament in relation to his state are faithfully executed in the state.

All major appointments of the state are made by the governor. Thus, he appoints the chief minister of the state and on his recommendations the other members of the council of ministers. He also administers the oath of office and secrecy to the members of the council of ministers. The allocation of portfolios among the various members is also done by the governor on the recommendation of the Chief Minister. The governor makes rules for the convenient transaction of the business of the state and allocation of business among the various ministers. The other important appointments made by the governor of the state include the advocate general, members and chairman of the state public service commission, etc.

The governor has a right to be kept informed about all the decisions taken by the council of ministers as well as the proposals for legislation. He can also call for any other information relating to the administration of the state and ask the chief minister about any matter on which a decision has been taken by a

minister but which has not been considered by the council of ministers as a whole.

But probably the most significant executive power enjoyed by the governor of a state relates to his right to report to the president that a situation has arisen or is likely to arise under which the government of the State cannot be carried on in accordance with the provisions of the Constitution. It is on the basis of this report from the governor that the president can make a proclamation of emergency and assume the responsibility for the administration of the state. When a proclamation of emergency is made, the governor acts as the representative of the president and comes to wield very effective powers.

3.4.3. Financial Powers :

It means that no demands for grant can be presented before the state legislature without the recommendation of the governor.

The contingency fund of the state has also been placed at the disposal of the governor, who is empowered to take an advance out of it to meet unforeseen expenditure. However all such advances must be subsequently approved by the state legislature and regularized.

3.4.4. Judicial Powers :

The governor is consulted by the president while making appointment of the judges of the State High Court. He enjoys full powers with regard to the appointments, postings and promotions of the district judges and other judicial officers of the state.

3.4.5. Miscellaneous Powers :

The miscellaneous powers of the governor include the following :

(i) The right to receive the reports of the auditor general regarding the income and expenditure of the state and to place the same before the state legislature.

(ii) The right to receive the annual report of the state public service commission and to transmit the same to the council of ministers for

its comments. After these comments are received, the report along with the comments is placed before the state legislature.

(iii) He is the chancellor of all the universities within the state and appoints the vice- chancellors of these universities. However, in making these appointments he is chiefly guided by the Chief Minister of the state and the Union and State education Ministers. In fact, the governor has hardly any discretion in making these appointments.

3.5. Position of the Governor :

It is evident from the above survey of the powers of the governor that he has been assigned an important position in the state government machinery. Although he is expected to behave like a constitutional head and act on the advice of the council of ministers, his position fundamentally differs from that of the president of India vis-à-vis council of ministers, Article 163 (1) of the Constitution clearly lays down that There shall be a council of ministers with the Chief Minister at the head to aid and advise the governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions. In Article 74(1), dealing with the relationship of the president with the council of ministers, we will find that while the president is expected to exercise his functions in accordance with the advice of the Central council of ministers, there is no such stipulation of the binding nature of the advice of the council of ministers so far as the state governor is concerned. It only suggests that the governor is normally expected to act as a constitutional head of the state, but under certain circumstances he can also exercise his discretion. However, the Constitution does not specify the subjects and the filed in which the governor can act without the advice of the council of ministers. (i) selection of the Chief Minister- if no political party has a clear- cut majority in the house, or the majority party does not have any acknowledged leader (ii) dismissal of the ministry (iii) dissolution of the legislative assembly; (iv) seeking of information regarding legislative and administrative matters from the chief minister; (v) appending or refusing signatures to a non-money bill passed by the state legislature; (vi) reservation of a bill passed by the state legislature

for the assent of the president; (vii) recommendation to the president regarding the failure of the constitutional machinery in the state, etc.

On the issue of selection of the chief minister in a situation when no party has majority in the state legislature, the governor's discretion to appoint a person as chief minister becomes very important. For example, in 1967 when no party was in majority in the Rajasthan Vidhan Sabha, the governor refused to invite the leader of the majority party on the grounds that he did not count independents. In 1982, when no party was in absolute majority and the combination of the Lok Dal and BJP was in majority, the Haryana governor appointed Congress legislature party leader Bhajan Lal as Chief Minister and gave him one month's time to prove his majority. During this long one month's time, Bhajan Lal was able to manipulate majority through defections.

Dismissal of a ministry is another important discretionary power of the governor. In 1967, the governor of West Bengal, Dharam Vir, dismissed the ministry of Ajay Mukherjee on the ground that only such ministry had the right to be in office which enjoyed the majority support in the state legislature. The dismissal of Charan Singh ministry in 1970 in UP and on 2 July, 1984, the Jammu and Kashmir governor, Jagmohan, dismissed Farooq Abdullah's ministry, Andhra Pradesh governor Ram Lal dismissed N. T. Rama Rao's ministry in 1984, although he was ready to prove his majority no action was taken by the governor. Punjab governor, S.S. Ray dismissed Surjeet Singh Barnala's ministry in 1987 and in Karnataka, the Janata Dal government led by S.R. Bommai was dismissed in April, 1989. The DMK government led by Karunanidhi was dismissed in 1991 and the BJP led governments in UP, MP and Rajasthan were dismissed in 1993, not because they lost majority but on the other grounds. Thus, the governors have used their discretion in dismissing the ministries in various states.

Regarding the dissolution of assemblies, sometimes the governors dissolved the assemblies on the advice of outgoing chief ministers, sometimes they have not dissolved and appointed others as Chief Ministers, for example in Orissa and Jammu and Kashmir. The most controversial

discretionary power of governor is the report to the president for imposition of president's rule under Article 356. An analysis of over 105 cases in which the centre took over the administration of the State governments under Article 356 clearly brings out the inglorious role of the governors.

A specific issue which has reappeared in recent times is the involvement of former Bihar Chief Minister, Laloo Prasad Yadav, in the fodder scam as investigated by CBI and its request to the governor of Bihar, A.R. Kidwai, to grant sanction for prosecution of the Chief Minister. There are judicial pronouncements on the issue. In the well-known Antulay case, the Supreme Court held that in taking a decision to sanction or withhold prosecution on charges of corruption of any minister from the council of ministers, the governor is required to exercise his judgement independently. The decision seems to be based more on the propriety rather than legality. The Supreme Court in the case went by the provisions of Article 163 (2) which says that when the governor acts in his discretion that decision cannot be questioned by the Courts.

The governor of Kerala, exercising his discretion, gave his sanction to the CBI or prosecute CPI (M) state secretary Pinarayi Vijayan for his role in a major power scam when he was the state power minister in the Late 1990s. Although the state cabinet passed a resolution urging the governor R.S. Gavai not to sanction prosecution, the action of the governor was contrary to the state government's advice.

It may be further noted that the Constitution specifically provides that if any question arises regarding whether any matter is or is not a matter in respect of which the governor is by or under the Constitution required to act in his discretion, the decision of the governor in exercising his discretion shall be final, and the validity of anything done by the governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Although the discretionary powers of the governor have been made non-challengeable in courts of law but discretionary powers are not to be confused with arbitrariness. They should not be used without any norms of

fixed criteria. They should be exercised fairly and honestly on judicial grounds giving clear-cut reasons. In recent judgements, Supreme Court has declared all the discretionary quotas of central ministries ultra vires on the grounds of misuse. For example, the allotment of petrol pumps, cooling gas agencies and DDA houses by ministries on the basis of discretionary quota has been declared illegal by Supreme Court.

3.6. The Role of the Governor :

The Constituent Assembly debates highlighted the governor's role as a friend, philosopher and the guide of the cabinet and the state government. The Supreme Court held that the governor is not subordinate of the cabinet and the state government. The Supreme Court also held that the governor is not subordinate or subservient even to the Government of India, although he is appointed by the president. It is only a mode of appointment and does not make the governor a servant of the Government of India or of the state government or any other authority whatever. But the fact remains that the governor acts as an agent of the Central government. The method of the appointment and dismissal of the governor and the way the governors have been transferred, forced to resign or dismissed provide further proof that the governor has to carry out the wishes of the central government and can hardly act with an open mind and according to his best judgement based on his good conscience.

4. Chief Minister:

The Chief Minister is the real head of the State Government. He is appointed by the Governor. In accordance with the principle of parliamentary government, the Chief Minister must be the leader of the party having majority in the Vidhan Sabha. In case a political party manages to secure clear majority in the Vidhan Sabha, its leader is invited by the Governor to form the government. In case no party gets absolute majority in the /Vidhan Sabha, then a coalition government is formed. Two or more parties may form a coalition and then their chosen leader is invited by the Governor to form the government. If no party gets clear majority and there is no chance of the formation of a coalition government either, the Governor may advise the President to invoke

Art.356. The Governor appoints ministers on the advice of the Chief Minister. Since the ministry lives in office during the pleasure of the Governor, he may dismiss the Chief Minister in case he forfeits the claim of being the leader of the party having majority in the Vidhan Sabha, or when there is a serious split in the ranks of the party having clear majority there.

Like the Prime Minister at the Centre, the Chief Minister is the real head of the State Government. He advises the Governor to appoint ministers and deputy ministers and to distribute portfolios among them. He may advise the Governor to dismiss a minister in case he differs from the policy and working of the Council of Ministers. He acts as the channel of communication between the Governor and the Council of Ministers and also between the Council of Ministers and the State Legislature. He advises the Governor to make high appointments, to summon the session of the State legislature, and to dissolve the Vidhan Sabha.

However, his actual position depends upon three situational variables. in case he is a powerful leader of the party having comfortable majority in the Vidhan Sabha and is also in the good books of the Prime Minister, he behaves like a showman of his government. All ministers work under his leadership and the Vidhan Sabha cannot present to him a formidable challenge. In case he is a strong leader of the party having comfortable majority in the Vidhan Sabha but in opposition at the Centre, his position becomes weak owing to the hostile attitude of the Central government. In such a situation he manages to act like a spokesman of his party. With tact as well as with worldly wisdom, he may prove his strong hold over the government of the State. But in case he is the leader of a coalition government with different constituents pulling in different directions coupled with the hostile attitude of the Centre, his position is quite vulnerable on every front and thus he plays, in the words of Jyoti Basu, the role of a postman. The experiences of the days of Congress hegemony show that most of the chief Ministers happily devalued themselves as Chief Messengers of the supreme leader of their party and the Prime Minister of the country.

The Council of Ministers is the team headed by the Chief Minister to aid and advise the Governor in the exercise of his functions, except where he has

the power to act in his discretion, and it is collectively responsible to the Vidhan Sabha. It is necessary that all ministers must be the members of the State Legislature. In case the Chief Minister or any minister is not a member of the legislature, he must secure its membership within a period of 6 consecutive months. It is also given that in the States of Bihar, Orissa and Madhya Pradesh, there shall be a minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

The Council of Ministers is the policy-making body. The Chief Minister presides over the meetings of the cabinet and every member is bound to honour the decisions taken therein. In the event of differences of views, the minister should resign. The Governor may refer any important matter for the consideration of the Council of Ministers. If a question arises whether there is any matter in respect of which the Governor's decision shall be final and the validity of anything done by the Governor shall not be called in question, the question whether any, and if so what, advice was tendered by the ministers to the Governor shall not be inquired into any court. In case the Governor asks for any information relating to the affairs of administration or proposals for legislation, the Chief Minister is duty bound to supply it to him. However, the pleasure of the Governor does not involve the element of arbitrariness or anything like subjective assessment, because it is for the Legislative Assembly to enforce the principle of collective responsibility.

5. **State Legislature :**

Each State of the Indian Union has a Vidhan Sabha, but five States (Bihar, UP, Karnaktaka, Maharashtra and Jammu-Kashmir) have an upper chamber (Vidhan Parishad) as well. As per Art.169, the Centre has the power to creator or abolish Vidhan Parishad in case a resolution to this effect is passed by the Vidhan Sabha of that State by special majority (absolute majority of the whole House as well as 2/3 majority of the members, present and voting. Hence, the Parliament made laws to abolish the Vidhan Parishads of West Bengal, Punjab, Andhra Pradesh and Tamil Nadu. It is also possible that the Centre may adopt a dilatory attitude and in the meantime the newly constituted Vidhan Sabha may rescind the earlier resolution and thereby save the Vidhan Parishad as happened

in the case of UP and Bihar. It is also possible that a Vidhan Parishad may not be created in a State in spite of its provision in the Constitution as we may note in the case of Madhya Pradesh.

5.1. Vidhan Parishad:

The strength of Vidhan Parishad varies from State to State. It is provided that the strength of the Vidhan Parishad may be at least 40 and at most not more than one-third of the strength of the Vidhan Sabha of the State. The composition of this Chamber is determined by a formula involving the method of indirect election in some and direct election in some other categories, leaving the case of some members to be nominated by the Governor. It is as under:

1. About one- third members are elected by the Vidhan Sabha from amongst persons who are not its members.
2. About one-third members are elected by the local bodies of the State like municipal boards, zila parishads or any other authority as specified in a law of Parliament.
3. About one-twelfth members are elected by persons of at least 3 years' standing as teachers in educational institutions not lower in standard than that of a secondary school.
4. About one-twelfth members are elected by the university graduates of at least 3 years standing in the State.
5. About one-sixth members are nominated by the Governor from amongst persons possessing special knowledge of or experience in the field of art, literature, science, social service and cooperative movement.

A member of the Vidhan Parishad must have three qualifications. First, he must be a citizen of India. Second, he must be above 30 years of age. Last, he must possess all other qualifications as laid down in a law of Parliament. A person cannot be a member of both the Houses of Parliament, or of both the Houses of State legislature, or of a House of a State Legislature and a House of Parliament at one and the same time. The Vidhan Parishad is a permanent chamber. Its one-third members retire after every second year. As such a member enjoys tenure of six years. He may be re-elected any number of times. The Parishad elects its Chairman and Deputy Chairman.

The Vidhan Parishad has no effective powers. It has to pass a money bill passed by the Vidhan Sabha within 14 days and a non-money bill passed by the Vidhan Sabha 3 months. In case the vidhan Parishad rejects or returns a non-money bill, the Vidhan Sabha may readopt it and the Vidhan Parishad has to pass it within a period of one month. There is no provision for joint sitting in such a matter. A money bill cannot be introduced in the Vidhan Parishad. In case it returns it, the Vidhan Sabha may pass it again after accepting or rejecting such recommendations. The Council of Ministers is collectively responsible to the Vidhan Sabha. As such, it may put the government to some inconvenience at the most by throwing critical light on its acts of commission and omission. The members of this House do not take part in the election of the President and of the members of the Rajya Sabha. In short, the Vidhan Parishad cannot override the will of the Vidhan Sabha. Keeping in view its insignificant position and condemning it as a rendezvous of retired and burnt-out politicians, it is said that the Vidhan Parishads are not even like an ornamental chamber. Should they prove inoffensive, they might be retained. If not, they can be abolished without much trouble.

5.2. Vidhan Sabha:

But the Vidhan Sabha is the popular and powerful chamber of the State Legislature. It may have at the most 500 members and at the least 60 members depending upon the demographic composition of the State. (The strength of the Vidhan Sabhas is specified in a law of the Parliament that may fix a strength of even less than 60). The members are elected directly by the voters of the State, but the Governor may nominate one Anglo-Indian as a member in order to give representation to this community. Some seats are reserved for scheduled castes and Scheduled Tribes except in the state of Assam where special provisions have been made for the sake of scheduled Tribes. After each census the total number of seats in each state and the division of seats into territorial constituencies is readjusted by the Election Commission in accordance with the law of Parliament. It is essential that the ratio between the population of each constituency and the number of seats allotted to it must be, as far as practicable, same throughout the State.

A member of the Vidhan Sabha must be a citizen of India, he must be above 25 years of age, and that he must fulfill all other qualifications as laid down in an act of Parliament. No person can be a member of the two Houses, including the Parliament. No person can be a member of the two Houses, including the Parliament, or some other State Legislature at the same time. The normal term of the Vidhan Sabha is of five years. It begins from the date of its first meeting. In case emergency proclamation is in force, the Parliament may extend the life of Vidhan Sabha by one year by making a law in this regard. Such a law may be renewed again and again. But within 6 months of the termination of emergency, elections must take place. The Governor has the power to dissolve the Vidhan Sabha at any time. In case Art. 356 of the Constitution is invoked, it depends upon the test of the proclamation of emergency to place the Vidhan Sabha under suspended animation or to effect its dissolution. The House elects its Speaker and Deputy Speaker who are accountable to it. That, is, the Vidhan Sabha may remove its presiding officers by passing a vote of no-confidence against them by its absolute majority.

As already pointed out, the Vidhan Sabha is a powerful chamber. A money bill and a budget are introduced in it. Its members take part in the election of the President of India and of the members of the Rajya Sabha and the Vidhan Parishad (if it is there) in accordance with proportional representation with single transferable vote system. Since the ministry is accountable to the Vidhan Sabha, it may be throw out the government by passing a vote of no-confidence against it. It may express its lack of confidence in the government by rejecting an official bill, or by making a cut in the budget, or by disapproving the policy of the cabinet, or by passing the motion of censure. It considers reports submitted by the State Public Service Commission, Auditor- General, State Human Rights Commission, State Women Commission etc. In case the Centre desires to make alteration in the name, area or boundary lines of a State, the President shall refer that proposal to know the view of its Vidhan Sabha before recommending its introduction in the Parliament. He may also fix a time limit within which the Vidhan Sabha has to give its view. The Vidhan Sabha gives its view on such a proposal, but the Centre is not bound to honour it. In the case of a constitutional amendment bill referred to it for ratification Under Art. 368, it passes a resolution by simple majority to endorse it or not.

On the whole, the position of the State Legislatures is very weak. They can make a law on a subject of the State List. They can make a law on a subject

of the Concurrent list also. In case a law on a subject of the Concurrent List has already been made by the Centre, then the bill passed by the State Legislature shall be reserved by the Governor for the consideration of the President of India. Moreover, in the event of any conflict between the Central Law and the State Law on a matter of Concurrent List, the Former shall prevail and the latter shall remain inoperative to the extent of being repugnant to the former. We have also seen conditions in which the Centre can make a law on a subject of the State List and here in the event of any conflict between the central law and State Law, the latter shall remain suspended to the extent of being repugnant to the former and be effective again after the revocation of the former. If may also be kept in view that the Governor is duty bound to keep any bill passed by the State legislature reserved for the consideration of the President in case he finds it likely to be in conflict with any law or policy of the Centre. Thus, the operation of the legislative process at the Central as well as at the State levels reinforces the Union predominance in the legislative fields".

Allocation of Seats in State Legislative Assemblies

	States	**Seats**		**States**	**Seats**
1.	Andhra Pradesh	294	2.	Assam	126
3.	Bihar	243	4.	Chhatisgarh	90
5.	Gujarat	182	6.	Harayan	90
7.	Himanchal Pradesh	68	8.	Jammu-Kashmir	89
9	Jharkhand	81	10.	Karnataka	224
11.	Kerala	140	12.	Madhya Pradesh	230
13.	Maharashtra	288	14.	Manipur	60
15.	Meghalaya	60	16.	Magaland	60
17.	Orissa	147	18.	Punjab	117
19.	Rajasthan	200	20.	Sikkim	32
21.	Tamil Nadu	234	22.	Tripura	60
23.	Uttar Pradesh	403	24.	Utaranchal	70
25.	West Bengal	294	26.	Mizoram	40
27.	Arunnchal Pradesh	60	28	Goa	40

6. 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. The Indian 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 of a constitutional amendment, is vested in parliament.

6.1. 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 court to 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 of India 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 the appointment 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 the affairs of the concerned High court". The objective being to gain reliable information about the proposed appointee.

6.2. 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.

6.3. 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 be removed from his office by the President, in the manner provided for the removal 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.

6.4. 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.

6.5. 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 time of 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 relating to 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 criminal procedure. 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 away by 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 decision of 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 and from the decisions of an Assistant sessions Judge, Metropolitan Magistrate or 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 and prescribe 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 its appellate and supervisory jurisdiction over them. Article 228 empowers the High Courts to transfer constitutional cases from lower courts. Thus, if the 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, arises for 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 both the 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 the Court. The Governor may in this respect require the Court to consult the Public Service Commission of the State. He also consults the High Court in 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 power to 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 on the 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.

6.6. 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 Court are charged on the Consolidated Fund of the State.

The working of the State High Courts for more than five decades has brought to the 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 miscellaneous expenses. 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 understand them.
3. Though the Constitution has provided for the appointment of the judges of the 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 judges appointed 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 are innumerable instances where the invitations to become Judges of the High Courts 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 up against the executive are sought to be transferred to other states with the ostensible purpose of furthering national integration. Thus, in reality, the policy of 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 in the 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 but on specific it has given the Government enough to pummel the Judiciary into obedience.

7. 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 up vacancies 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 is that 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 by the 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, Sarkaria Commission 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 order to 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 obtain his 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. The State Secretariat :

The executive functions of the Government are performed by various departments. Each department or a number of departments are placed under the charge of a Minister. The Minister is the political head of the Department while the Secretary to the Department is the administrative head. It is intended to make it clear to the Secretaries that they are not to be bogged down by the narrow considerations of a particular department. The Secretary is the Principal adviser to the Minister. He is responsible for implementing the policies and decision taken by the political chief. The Secretaries have to take care of the interests of the officers and the clienteles of their departments, and have to take care of the general policies of the Government. The expression Secretariat is used to refer the complex of departments whose administrative heads are Secretaries and political heads, the Ministers. The place where the Ministers have their offices is known as Secretariat, which is located in the capital of the State. The Secretariat is the highest office and principal executive, instrument of the government in a State. The Secretariat is such an organization of the State government which ensures objectivity, continuity and consistency in the administration. It is the Chief authority to frame rules and procedure of the working of the government.

The three essential components of the State Government are the Minister, the Secretary and the Executive Head. The most important function of the Minister is to frame policy, of the Secretary to provide the data on which the policy is based and to oversee the implementation of policy and of the executive head to give practical shape to the decisions. The Minister and

Secretary are served by the Secretariat organization which is a conglomeration of a number of administrative departments.

8.1. Organization of the Secretariat :

The Secretariat is divided into a number of departments. A Secretariat Department consists of officers and office staff. Among officers there are Secretary, Additional/ Special Secretary, Joint Secretary, Deputy Secretary, Under- Secretary, Officer on Special Duty (if any).

The office component of the Secretariat Officials include the personnel below the rank of the Under-Secretary. They are Secretariat officials because they work in the Secretariat for life long. The office staff consists of the Superintendent (or section officer), Assistants, Upper Division clerks (UDCs), Lower Division Clerks (LDCs), Steno-Typists, and typists. Below them are class-IV employees who are mostly engaged in manual and inferior work. The Secretariat Department is divided into divisions, divisions into branches and branches into sections.

The number of Secretariat departments differ from State to State. Their number varies from 11 to 35. Most of the states have the following departments: General Administration; Home; Revenue; Agriculture; Finance; Law; Pubic Works; Irrigation; Power; Education; Industries; Transport; Cooperatives; Food and Civil Supplies; Jails; Labour and Employment; excise and Taxation; Local government; Panchayati Raj; Forests, ;Commerce; Natural Resources; Public Health; Health and Medical; Tribal and Social Welfare; Economics and Statistic; Housing, Power, Rehabilitation, Complaints and Science and Technology etc.

8.2. Manning of the Secretariat Positions:

Officers :

The senior officers of the Secretariat belong to the Indian Administrative Service. The Secretary, the Special Secretaries, Additional Secretaries, the Joint Secretaries and often the Deputy Secretaries belong to this Service. In some States, the position of Deputy Secretaries is manned by officers of State Civil Services on deputation. The operation of the tenure rule in the State is much more flexible. In the State Governments, the officers are frequently transferred without any reference to any fixed tenure.

8.3. Officers from Other Services :

Generally, the Secretariat positions are manned by the officers of the Civil Services. Some officers are brought to the Secretariat from technical services. In many States posts of Deputy Secretaries/Joint Secretaries/ Special Secretaries/ in technical departments like public works, irrigation and electricity, etc. are occupied by the members of the respective technical services. In many States, even posts of the Secretaries of the technical departments like PWD, irrigation, power etc., are manned by the officers of these departments.

The functions of the Secretariat are different from the executive departments. The question of functions of Secretariat has been looked into by several committees. The Rajasthan Administrative Reforms Committee 1963 under the Chairmanship of Harish Chandra Mathur has for instance, prescribed the following functions which should be performed by a policy making body like the Secretariat.

General :

1. All matters of general body;
2. Interdepartmental coordination;
3. Matters involving the framing of new legal enactments or rules or amendments in the existing once, cases involving interpretation or relaxation of existing rules or government orders;
4. Correspondence with the government of India and other governments;
5. All matters relating to the preparations or adoption of new plan schemes and important modifications in the existing schemes;
6. Review of the progress of plan schemes, both physical and financial
7. Inspection reports and tour notes, recorded by the Head of Departments
8. All India conferences and important conferences of state level;
9. Public accounts Committee, Estimate Committee, Assembly and Parliamentary questions;
10. Delegation of powers:
11. Territorial changes and changes at headquarters
12. Litigation notices under section 80, C.P.C.; and
13. Appeals, revisions, etc. within the powers of the State Government.

8.4. Financial Matters :

1. Scrutiny and approval of Development budget estimates, major appropriation of accounts, surrender of funds, and supplementary grants;
2. All proposals involving new items of expenditure;
3. Financial sanctions not within the competence of the heads of departments;
4. Sanction of expenditure from the contingency Fund;
5. Write –off the cases beyond powers of Heads of Departments and audit objections regarding the offices of Heads of Departments etc.

8.5. Service Matters

1. Approval of Service Rules and amendments thereto;
2. Matters relating to senior appointments, promotions, transfers and cases of disciplinary proceedings against Gazetted officers;
3. Initial appointment of officers belonging to the state service and infliction of major punishments upon them; and
4. Creation of posts, their extension and continuance, re-employment, resignation, special pay, allowances and pensions not within the powers of the Head of the Department.

9. Self –Assessment Questions:

1. Examine the election procedure of the President of India.
2. 'President is a rubber stamp'. Comment.
3. Discuss the functions and role of Prime Minister of India.
4. Discuss the composition and functions of Lok Sabha or Rajya Sabha.
5. Discuss the composition and jurisdictions of Supreme Court of India.
6. Elaborate the structure and functions of cabinet Secretariat or Prime Minister's office.

10. Further Readings:

1. S.R. Maheswari (2008), "Indian Administration", New Delhi, Orient Longman.
2. S.S. Khera (1975), "The Central Executive", New Delhi, Orient Longman.
3. K.K. Ghai (2010), "Indian Government and Politics", New Delhi, Kalyani Publishers.

UNIT-III

Structure

Commissions of India:

Union Public Service Commission, Planning Commission, National Development Council, Election Commission, Finance Commission, National Human Rights Commission, Administrative Reforms Commission, Redressal of Citizens Grievances, Lokpal and Lokayukta

1. **Learning Objective :**

The aim of this unit is to focus on the structure and functions of different commissions in India. It also reflects on the role of Lokpal and Lokayukta in the redressal of citizens grievances.

Union Public Service Commission :

2. **Introduction**

Of the four pillars of democratic Constitution of India, the Union Public Service Commission is one, the other three being the Supreme Court, the Election Commission and the Comptroller and Auditor General. The authors of the Indian Constitution regarded the UPSC along with the Judiciary and the CAG as a bulwark of democracy. They, therefore, not only vested it with a constitutional status, but also provided elaborate safeguards for its independence to enable it to be the watchdog of the merit system of staffing.

In a country like India the need and importance of constitutional institutions like the UPSC is self evident. The population of 102.70 crore is multilingual and multiracial. One must also take note of the existence of regional diversity and a number of religious minorities and socially and educationally backward classes. If political and ethnic considerations, favouritism and caste considerations dominate the recruitment to the civil services under these conditions, the injury to the democratic fabric of the nation will be incalculable. It will certainly affect the efficiency, integrity and morale of the civil service.

The UPSC is a constitutional body created under Article 315 of the Constitution of India. It is endowed with the task of selecting the best suitable candidates purely on merit from among the vast reservoir of talents available in the country through an equitable objective and impartial selection process.

2.1. Membership :

At present the sanctioned strength of the UPSC is 10 members and a Chairman. It is presided over a Chairman who is designated as the Chairman, Union Public Service Commission. The Chairman and the members of the Commission are appointed by the President. It is provided that, at least one-half of the members of the Commission should be persons with a minimum of ten years experience in Government Service. This is intended to ensure always the presence of men of experience in civil service on the Commission so that it may function as an expert body. The number of members on the Commission is determined by the President by regulations.

2.2. Tenure :

A member of the UPSC holds office for a period of 6 years from the date they join duty or until they attain the age of 65 years, whichever is earlier. On the expiry of the term of office, a person who held office as a member of the Commission (or Chairman) is ineligible for re-appointment to that office. The Chairman of the UPSC shall be ineligible for further employment under the Government of India or Government of any State.

2.3. Salary and Conditions of Service :

The President is empowered to determine by regulations the salary and other conditions of service of the member of the Commission. He may also make regulations with respect to the strength of the staff of the Commission. He may also make regulations with respect to the strength of the staff of the Commission and their conditions of service. It is provided that the conditions of service of a member of the Commission cannot be varied to his disadvantage after his appointment. The Chairman and members of the Commission are paid high salaries which are charged out of the consolidated fund of India. At present chairman gets Rs. 90,000/- per month and all other members get Rs. 80,000/- per month as the basic salary.

2.4. Removal :

A member of the UPSC can be removed from office only by an order of the President on the ground of misbehavior. The Constitution prescribes a procedure to prove such misbehavior. According to this, the matter will be referred to the Supreme Court by the President and the Court will conduct an enquiry in accordance with the procedure prescribed under Article 145 of the Constitution and will submit a report to the President. The President is empowered to remove by order a member of the Commission also on the following grounds:

(i) If he is adjudged an insolvent; or
(ii) If he engages during his term of office in any paid employment outside the duties of his office; or
(iii) If he is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body, or

(iv) If he becomes in anyway concerned in any contract or agreement made by or on behalf of the Government of India or a State Government or in any way participate in its profits or benefits except as an ordinary member of an incorporated company.

All these provisions are intended to make the Commission an independent and impartial body to discharge its responsibilities in an efficient manner.

2.5. Functions of the UPSC

The jurisdiction of the UPSC extends to the public services of the Union Government and the centrally administered Union Territories. It is also enjoined upon it [Article 320 (2)] that if requested by any two or more States it should assist them in framing and operating schemes of joint recruitment for any services, for which candidates possessing special qualifications are required. In addition, Article 315 (4) empowers the Commission, at the request of the Governor of a State and with the approval of the President, to agree to serve all or any of the needs of the State". For example, the UPSC served the needs of the State of Sikkim in this matter till the establishment of a Public Service Commission for that State.

The functions of the UPSC are embodied in Article 320 of the Constitution but following Article 321 provides for conferring on it additional functions. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

In terms of Article 320, the functions of the Commission fall under two categories (i) mandatory or administrative and (ii) consultative or advisory. Mandatory or administrative functions include the conducting of examinations for appointments to the services of the Union Government. Such examinations may be written or by interview or by both; nothing is said in the above article about

it. The Union Government's consultation with the Commission is mandatory on the following issues:

(a) On the matters relating to methods of recruitment to civil services and for civil posts;
(b) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.
(c) On all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters;
(d) On any claim by or in respect of a person who is serving or has served under the Government of India, in a civil capacity, that any costs incurred by him in defending legal of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India;
(e) On any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India, in a civil capacity, and any question as to the amount of any such award;
(f) Any other matter which the President may refer to the Commission.

It should be noted that in the above matters the Commission functions only in an advisory capacity and its advice is not binding on the Government.

Thus, functions of the UPSC are vast and varied. Recruitment to the All India and Central Services is made through the Civil Services Examination, Engineering services Examinations are held for admission to the National Defence Academy, Indian Military/ Naval/ Air Force Academies. Recruitment to isolated posts is made by conducting interviews. The commissions are consulted in respect of appointment to certain categories of posts under the Municipal Corporation of Delhi, the Employees State Insurance Corporation and the Employees provident Fund Organization in terms of the provisions made in the relevant acts in pursuance of Article 321 of the Constitution.

2.6. Critical Evaluation of the Role of the UPSC.

Under the present arrangement, the UPSC is only a recruiting agency conducting examinations or holding interviews for various categories of civil services and advising on different kinds of recruitment rules and disciplinary cases. Thus it cannot be in the strict sense of the term called a central personnel agency of the Government of India.

The UPSC was supposed to have been designed to function as an independent body like the Supreme Court, the High Courts and the CAG. Its independence was, however, of a more limited nature. For instance, before assuming office every person appointed a judge of the Supreme Court, a High Court or as Comptroller and Auditor General was under the Constitution required to make or subscribe to an oath or affirmation before a competent authority. The Constitution prescribes no such oath of office for members of the UPSC. Further, the appointment of a judge of the Supreme Court, High Court, or of the CAG was to be made by the President by warrant under his hand and seal, No such condition was laid down for the appointment of the Chairman and members of the UPSC. Both the conditions of appointment made a difference to status and prestige. The difference was to be observed also in respect of removal from office. A Judge of the Supreme Court, for instance, was not to be removed from office except by an order of the President passed after an address by a majority in each House of Parliament and by not less two-thirds of the members of that House present and voting. The same conditions were to apply to the removal of the Comptroller and Auditor General or a Judge of a High Court. The Chairman and members of the UPSC could be removed without any reference to an address by Parliament. They were made subject to removal by mere order of the President on the ground of misbehavior established after an inquiry by the Supreme Court on reference made to it by the President.

The framers of the Constitution thus acted with reservation in respect of the UPSC. Though it appears to be an independent body, it has been signed a position not comparable to that of the Supreme Court, the High Courts or the Comptroller and Auditor General. Therefore, it is suggested,

1. The emoluments of the Chairman and members of the UPSC should appropriately be placed at par with those of Chief Justice and Judges of the Supreme Court respectively and such parity should be maintained in assigning positions in the warrant of precedence also.
2. Pensions should be admissible to all non-official members.
3. The conditions of service of members of the Commission should be regulated by suitable legislation enacted by Parliament, as in the case of High Court Judge and the Comptroller and Auditor General and not by the regulation making procedure of the executive followed by the President.

In respect of improving the quality of membership, the Administrative Reforms Commission recommended that:

1. In making appointments to the UPSC, the Chairman of the UPSC should be consulted (even with regard to the appointment of his own successor).
2. Not less than two-thirds of the membership of the UPSC should be drawn from among the Chairman and members of the State Public Service Commissions.
3. The minimum academic qualification for membership of the Commission should be University degree.
4. A member selected from among government officers should have held office under a State Government or the Central Government for at least ten year; and should have occupied the position of a head of department or secretary to government in State or a post of equivalent rank under the Central Government, or a comparable position in an institution of higher education.
5. Members selected from non-officials should have practiced at least for ten years in any of the recognized professions like teaching, law, medicine, engineering, science, technology, accountancy or administration.

On the whole the recommendations of the UPSC are accepted and acted upon by the Government. The Commission in their six decades of functioning substantially realized the constitutional goals of equality of opportunity and non-discrimination amongst all citizens of India for public employment. The

commissions have also shown, in good measure, their firmness to stand up to executive pressure and stick to their stand and advice, without fear or favour.

3. Planning Commission :

The Planning Commission was constituted on 15 March 1950 by a resolution of the Government of India. Being the brain child of Jawaharlal Nehru, India's first Prime Minister, who became the ex-officio first Chairman of the Planning Commission, the Commission was assigned a set of significant responsibilities for the economic reconstruction of the country.

1. **Assessing and Augmenting Resources:** The Commission makes an assessment of the material, capital and human resources of the country, including the technical personnel, and explores the possibilities of augmenting those resources which are found to be deficient in relation to the nation's requirements.
2. **Plan Formulation:** It is entrusted with the responsibility of formulating plans for the most effective and balanced utilization of the country's resources.
3. **Defining Implementation Stages:** The Planning Commission defines, on a priority basis, the stages in which the plans should be carried out and proposes the allocation of resources for the due completion of each stage.
4. **Indicating Requisites of Plan Execution:** The Commission is expected to indicate factors that tend to retard economic development, and determine the conditions which, in view of the current social and political situation, should be established for the successful execution of the plans.
5. **Determining Execution Machinery:** The Commission is entrusted with the responsibility of determining the nature of machinery needed for securing the successful implementation of each stage of the plan from a holistic perspective.
6. **Appraisal:** An important function of the Planning Commission is to appraise, from time to time, the progress achieved in the execution of each stage of the plan and then, on the basis of its assessment, recommend the required adjustments in policy and other measures.
7. **Advice :** The Planning Commission is expected to make appropriate interim or ancillary recommendations for a more effective formulation,

execution and evaluation of the socio-economic plans, keeping in view the prevailing eco-developmental milieu. Advice may also be rendered in response to specific references made to it by the Central and the state governments.

During the first four decades of its existence, the Planning Commission has devoted itself to the performance of its defined functions, and yet the success of the planning effort in India has not been uniform and consistent during this long period of socio-economic planning.

With the ushering in of a period of liberalization, and the globalization of the Indian economy, the role of the Planning Commission in changing, though this change is only subtle and no attempt has been made to formally redefine its functions. It was the Planning Commission itself which, during 1992-93 and 1993-94, attempted introducing changed in its agenda for action.

3.1. Criticism of the Role:

There has been, however, a criticism of the Planning Commission that, generally, has overstepped its role or its expected jurisdiction and arrogated to itself certain executive functions. It may be recalled that the Administrative Reforms Commission, in its report on the Machinery of Planning had underscored that the Planning Commission should restrict itself to the formulation of perspective, five year and annual plans, resource assessment and evaluation, and should not interfere in the implementation of the plans which should be the exclusive responsibility of executive agencies. The ARC also stressed that the Planning Commission should not be involved in functions of a purely executive nature.

It has also been argued that the Planning Commission has encroached upon the autonomy of the states under the federal system. This encroachment is seen in terms of the Planning Commission's acceptance, modification or rejection of the states proposals for development programmes, for which Central financial assistance is sought and which can be granted, only on the recommendation of

the Planning Commission. Yet it should be said to the Planning Commission's credit that, during the implementation of the plans. It does not interfere in the states actions. At the most, it performs and advisory role in relation to the states in matters of the plan and programme, implementation.

3.2. Structure:

By convention, the Prime Minister of India is the Chairman of the Planning Commission. He presides over the meetings of the whole Commission, keeps a watch on the implementation of the Commission's decisions, maintains liaison with the members of the National Development Council, the Union Council of Ministers, monitors the plans, undertakes their constant evaluation and broadly coordinates the working of the Commission.

The ARC view :

The Administrative Reforms commission had argued that in order to make the Planning Commission a professional body, its control by the political leadership should be reduced. In this context, it recommended that the Prime Minister, who has headed the Planning Commission ever since its inception, should cease to be its chairman, though he and the Finance Minister should continue to remain closely associated with its working. What the ARC did not favour was the formal membership of the PM and the Finance Minister though it appreciated the imperatives of their close association with the broader planning process. Why was the ARC against the PM's chairmanship of the Planning Commission ? In the ARC's opinion, taking advantage of the PM's chairmanship, the Planning Commission has steadily added to its functions and personnel and has stepped into the area of the executive authority of the centre and the state governments. Consequently, it was being viewed by the people as a parallel cabinet a super cabinet, thus adding to the levels of decision- making in government. Operationally, it was diluting the responsibilities of the ministers to the legislature and eventually, to the people. The ARC favoured the PM's association with the Planning Commission in the following manner :

While it is necessary to prevent the Planning Commission from developing into a sort of parallel or super cabinet, it should not be deprived of its vital link with the Prime Minister .... We recommend that this intimates association should be secured without formally making the Prime Minister the Chairman of the Commission. He should be kept informed from time to time of the important decisions taken by the Commission. Whenever a meeting of the Commission is to be held, copies of the agenda and the connected papers should be sent to him. He may attend the meetings of the Commission, express his views and participate in the discussions. He may also summon a meeting of the Commission and address it. He will preside over the meetings of the Commission when he attends it.

Towards the Transformed Role :

In the new economic environment, economic planning continues to be an important factor determining the strategies for public investment, besides providing guidelines for channelizing private sector investment in desired directions. They have to act as mutually complementary forces in ensuring rapid economic development of the nation. In certain key areas including energy, human resource development, backward areas development, management of balance of payments etc., a holistic approach to policy formulation is needed. It is noteworthy that public investment has provided a minimum threshold level of investment in telecommunications, transport, energy etc., which as facilitated the private sector to further diversify these sectors and, develop a large number of ancillary industries centering around major public sector units. Thus, central planning and investment has provided the base over which the superstructure of further development can occur smoothly with planning playing an integrative role. An integrated approach can decidedly help improve economy and efficiency.

Another important area of concern for the Planning Commission would be that of effecting maximum possible utilization of the plan allocation, rather than aiming at increase in the allocations. Until now, the size of the plan was a great concern. Now, the focus will have to be on the efficiency of utilization of the allocations being made. This concern will have to be reflected in the priorities, programmes and strategies of planning.

The Planning Commission believes that the key of efficient utilization of resources lies in the creation of appropriate self- managed organizations at all levels. The Commission will be expected to play a systems-change role by providing consultancy within the government for developing more productive system. Moreover, it will have to act as an institution for disseminating information to various organizations engaged in the development process. In the changing scenario of the economy, characterized by liberalization, globalization and privatization, the role of the Planning Commission has been redefined. This is a logical change in view of a highly centralized planning system giving way to indicative planning. Not that it will be entirely indicative planning for India- there are bound to be several specific areas of growth that would require a relatively more centralized planning system- and yet, the writing on the wall is clear. In this transformed pattern, the Planning Commission will concern itself with the building of a long- term strategic vision of the future and decide on priorities of the nation. Its main role will involve working out-sectoral targets and providing promotional stimuli to the economy to move and grow in the desired direction.

4. National Development Council :

The National Development Council is one of the key organizations of the planning system in India. It symbolizes the federal approach to planning and is the instrument for ensuring that the planning system adopts a truly national perspective. The NDC has experienced numerous ups and downs in its fortunes. Its status has been determined by the prevailing political climate and the support provided to it by the government in power at the Centre and the effectiveness of the pressures exerted by the state governments. Notwithstanding the vicissitudes that it has faced during the past four decades, its continuing presence in the apex policy structure has always been felt.

Way back in 1946, the Planning Advisory Board under the chairmanship of K.C. Neogi, had recommended the setting up an advisory organization that would include representatives of the provinces, princely states and other interests. Although this idea was not implemented before independence, its rationale was well-appreciated.

The planning commission of the Government of India, in the initial days of its inception, had recognized the potential utility of such a coordinating body. In the Draft First Five Year Plan, it was stressed by the Planning Commission that, in a vast country like India, where under the Constitution, the states enjoy autonomy in the performance of their functions, there was need for a body like the National Development Council which could facilitate periodical evaluation of planning and its various facets by the Prime Minister and the State Chief Ministers. Accordingly, the National Development Council was set up by a proposal of the Cabinet Secretariat of the Government of India in August 1952.

4.1. Functions :

The functions of the National Development Council, as revised in 1967, following the adoption of the recommendations of the Administrative Reforms Commission, are as follows:

1. To prescribe guidelines for the formulation of the national plan.
2. To consider the national plan as formulated by the Planning Commission.
3. To assess resources required for implementing the plan and to suggest ways and means for raising them.
4. To consider important questions of social and economic policy affecting development.
5. To review the working of the plan from time to time and to recommend such measures as are necessary for achieving the aims and targets articulated in the national plan.

Thus, the functional areas of the NDC revolve round the broad policies for socio-economic development, formulation of the national plan, resource mobilization and periodical appraisal of the plan –progress. Issues like food distribution, land reforms. State Trading Corporation has also figured in the discussions of the NDC.

4.2. Structure :

Right since its inception, the National Development Council has comprised top level representatives of the Central as well as the state Governments, along with the members of the Planning Commission. The issue of reorganization of the NDC was taken up by the Administrative Reforms Commission in 1967.

The Administrative Reforms Commission, in its Report on the machinery for Planning (Interim) had recommended that the NDC should be reconstituted as follows:

1. The Prime Minister
2. The Deputy Prime Minister, if any
3. The Central Ministers of
   (i) Finance
   (ii) Food and Agriculture
   (iii) Industrial Development and Company Affairs
   (iv) Commerce
   (v) Railways
   (vi) Transport and Shipping
   (vii) Education
   (viii) Labour, employment and Rehabilitation
   (ix) Home Affairs
   (x) Irrigation and Power
4. The Chief Ministers of all states
5. The members of the Planning Commission

It was also recommended that the Prime Minister should continue as the chairman of the NDC, while the secretary of the Planning Commission should act as its secretary.

The Government of India accepted the recommendations of the ARC in a slightly modified form. It was decided that the NDC, headed by the PM, should comprise all Union cabinet ministers, Chief Ministers of States, Chief Ministers/ Chief Executives of the Union territories and members of the Planning Commission. Accordingly, the NDC was reconstituted in October 1967, on these lines.

It may be noted that the NDC generally, does not pass any formal resolutions. The practice normally followed is that it that it maintains a detailed record of discussion held in its meetings, and then draws a consensus on the basis of such discussion. All the decisions of the Council are unanimous; yet, dissenting voices are generally difficult to ignore.

5. Election Commission :

To ensure free and fair elections, the Constitution provides an important body called the Election Commission. It is an autonomous body having all- India jurisdiction over elections to the Parliament, State legislatures and offices of the President and Vice-President. Thus, it is a central body entrusted with the work of conducting elections for State legislatures as well. Though it looks like violation of the federal system to some extent, the reason for having an all India body to supervise and conduct elections, rather than having separate bodies to organize elections in each State, is, as Prof. M.P. Jain observes, that "some States have a mixed population, as there are the native people as well as others who are racially, linguistically or culturally different from the native people. In order to prevent injustice being done to any section of the people, it was thought best to have one central body which would be free from local influences and have control over the entire election machinery in the country.

Art. 324 of the Constitution says that the superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections of the Parliament and to the Legislature of every State, including the offices of the President and Vice-President, shall be vested in the Election Commission which shall consist of the Chief Election Commissioner and other Election Commissioners, if necessary, as the President may fix from time to time. The appointments of the Chief Election Commissioner and other Election Commissioners, including some Regional Election Commissioners working under him, shall be governed by the law of the Parliament. In the absence of any such law, the mode of the appointment and terms and service conditions etc. of the Chief Election Commissioner and Election Commissioners shall be governed by an order of the President.

The head of the Election Commission is the Chief Election Commissioner. He is appointed by the President and holds his office for a term as determined by a law of Parliament. He may tender his resignation at any time he so likes, or he may be removed by the President after a special address (or impeachment motion) is passed by both the Houses of Parliament by special majority (that is, absolute majority of the whole House and 2/3 majority of the members, present and voting). It is also laid down that, during his tenure, his service conditions or his emoluments cannot be varied to his disadvantage. In case, the President desires to take disciplinary action against any Election Commissioner, he shall do so after obtaining the recommendation of the Chief Election Commissioner. It is also laid down that the President and the Governor, as the case may be, shall, when so requested by the Election Commission, make available to the Chief Election Commissioner or to an Election Commissioner such staff as may be necessary for the discharge of functions conferred on the Election Commission.

The functions and powers of the Election Commission are given below:

1. It is its duty to get the electoral rolls for elections to the Parliament and all State Legislatures, prepared and revised subject to the provisions of the Constitution and the laws made by the Union and State Legislatures.
2. Subject to the provisions of the Constitution and other laws made by the Parliament and State Legislatures, it exercises superintendence, direction and control over all matters pertaining to the elections of the President, Vice- President, Parliament and State Legislatures.
3. It advises the President and the Governors regarding incurring the disqualifications by a member of the Union or State Legislatures, as the case may be, subsequent to his election.
4. It is its duty to appoint election officers for inquiring into doubts and disputes arising out of or connected with the election arrangements.
5. It may advise the President to appoint Regional Election Commissioners in a sufficient number to help it in the performance of its duties on the eve of elections to the Lok Sabha or to the Vidhan Sabhas of the States.
6. It may requisition from the President and the Governors, as the case may be, such staff as it may deem necessary for conducting elections.

7. It may settle a dispute regarding reservation and allotment of symbols to the parties in the event of a split.
8. It may postpone the dates of elections for some reasons or cancel an election in case it is satisfied with the complaints of rigging, booth-capturing, use of violence and the like. It may issue orders for repolling.
9. It reserves the right to prepare a roster for Central broadcasts and telecasts allocating particular days and time to particular parties.
10. It may order for the rectification of a clerical mistake made by the Delimitation Commission with the prior approval of this authority.
11. It may visit the disturbed areas and make appeals through the mass communications media to pacify the people crying for the rectification of the electoral records or procedures.
12. It may exempt a person from the disqualification imposed by a judicial decision.
13. It may waive the conditions of holding an election until the electoral rolls are revised. In exceptional situations, it may order repoll.
14. If the Government wants to extend the duration of emergency in a State (under Art. 356 of the Constitution) beyond one years, it can be done with the approval of the Parliament. But such a proposal of the Government must be supported by the advice of the Election Commission that prevailing conditions do not warrant possibility of holding elections in that State for certain pertinent reasons, or if emergency is in force.
15. After the election results are declared, it issues a notification that the House is duly constituted.

It may be added that important arrangements have been made to ensure independence and impartiality of the Election Commission. For instance, the CEC is appointed by the President and can be removed from office by following special procedure of impeachment. The other Election Commissioners are appointed by the President and may be removed by him on the advice of the CEC. Their salaries and allowances are a charged on the consolidated fund of India.

6. The Finance Commission :

The finance commission is a quasi-judicial body and our Constitution provides a finance commission in order to advise the president in exercise of his powers under Article 270 (2) and(3); 275, 278 (2) and 306. The president of India is required to appoint the commission from time to time. Article 280(i) says that The president shall within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the president considers necessary, by order constitute a finance commission which shall consists of a chairman and four other members to be appointed by the President.

The Appointment of Finance Commission :

The finance commission is appointed by an announcement of the presidential order by the finance ministry. It comes into existence from the date of assuming charge by its chairman and the members as specified in the notification and it ceases to exist as soon as it submits its report. The average duration of the finance commission had been about sixteen months. It varied from a minimum duration of 12 months in the case of the third finance commission to more than twenty months in the case of the eighth finance commission, 30 months in the case of the ninth and 41 in the case of the tenth finance commission. An analysis of the duration of the finance commission reveals that :

(a) The appointment of the finance commission was not coordinated with the presentation of the Union budget till the time of the fourth finance commission.
(b) The interval between two finance commissions has been less than five years.
(c) The duration of the finance commission has been almost stabilized.
(d) A period of nearly 16 months is just adequate for the work of the finance commission.

Composition :

Under the Constitution the strength of commission has been decided as five, including its chairman. The Parliament is free to lay down the qualifications and procedure of the appointment of the members. In exercise of its powers of Parliament has passed the Finance Commission (Miscellaneous Provisions) Act, 1951. Accordingly, the chairman of the commission shall be selected from among the persons who have had experience in public affairs and four other members shall be selected from among persons who:

(i) Are, or have been, or are qualified to be appointed as judges of a high court.
(ii) Have special knowledge of the finance and accounts of the government
(iii) Have had wide experience in financial matters and in administration, or
(iv) Have special knowledge of economics.

Functions of Finance Commission:

The functions of the Finance Commission are to make recommendations to the president in respect of

(1) The distribution of net proceeds of taxes to be shared between the Union and the States and the allocation of shares of such proceeds among the states.
(2) The principles which should govern the grants-in-aid of the revenue of the states out of the consolidated fund of India.
(3) Any other matter referred to the commission by the president in the interest of sound finance.

The specific terms of reference of each commission are drafted by the finance ministry of the central government. The president does not make an independent appraisal of the suggested terms of reference. The State Governments are not consulted while deciding the terms of reference. It is suggested that the states should be consulted in matters of drafting the terms of reference.

7. National Human Rights Commission in India :

7.1. Introduction:

There are different ways of protecting human rights. A pluralist and accountable parliament, an executive who is ultimately subject to the authority of elected representatives and an independent, impartial judiciary are necessary, but not sufficient, institutional prerequisites. Besides these basic institutions there may be other mechanisms whose establishment and strengthening will enhance the excising mechanism. Lately National Human Rights Commissions (NHRCs) have become prominent actors in the national, regional and international human rights arena. The UN bodies and other funders in international donor community have directly encouraged and supported both technically and financially the growth of these institutions. The international community lends its support because it considers the process of establishing NHRCs to be an indication that a government is willing to abide by international human rights norms.

Respect for the dignity of an individual and striving for peace and harmony in society, has been an abiding factor in Indian culture. The Indian culture has been the product of assimilation of diverse cultures and religions that came into contact in the enormous Indian sub-continent over time. The international community has recognized the growing importance of strengthening national human rights institutions. In this context, in the year 1991 a UN- sponsored meeting of representatives of national institutions held in Paris, a detailed set of principles on the status of national intuitions was developed, these are commonly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights and the UN General Assembly have become the foundation and reference point for the establishment and operation of national human rights institutions.

Establishment of National Human Rights Commission :

Universal human rights standards and norms have been included in the domestic laws of most countries. To realize these rights, there is need for the formation of implementation machinery. NHRIs have been set up in many countries in recent years to fulfill this function. Supporters of the trend towards establishing NHRIs argue that the national character of such institutions enables

them to de-mystify universal principles and translate them into practical measures at the level where it most matters.

Until the early 1990s, the Indian Government displayed scant regard for local human rights and civil liberties organizations. Their reports, appeals and petitions on human rights abuses, particularly in view of anti insurgency operation in Kashmir, Punjab and northeastern states, met with deafening silence. The scathing reports of Amnesty International and Asia Watch had sharpened the international visibility of these human rights abuses. The Indian government, however, could not continue to ignore the criticism of the international human rights community, which reported to the world the increasing incidence of human rights violations in the country and accused the government of condoning the abuses by providing impunity to security forces and virtually condoning human rights excesses. Important precedents already existed for doing so. India's parliament had created two related commissions in 1990 (a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women), as well as a National Commission for Minorities in 1992. The State of Madhya Pradesh itself had created a State Human Rights Commission in 1992.

The Government of India did realize the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights Commission by the Government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments. The Commission is the first of its kind among the South Asian countries and also few among the National Human Rights. Institutions, which were established, in early 1990s. The Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993. Fourteen Indian States have also set up their own human rights commission to deal with violations from within their states. The Act contains broad provisions related with its function and powers, composition and other related aspects. While the former guarantees certain rights to the individual, the latter gives direction to the State to provide economic and social rights to its people in specified manner. The word fundamental means that these rights are inherent in all the human beings and basic and essential for the individual.

However, the rights guaranteed in the Constitution are required to be in conformity with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a party to these Covenants by ratifying them. The responsibility for the enforcement of the fundamental rights lies with the Supreme Court by virtue of Article 32 and by Article 226 to the High Courts.

Effective NHRIs with a broad mandate encompassing all human rights have the potential to complement at the National level the vital monitoring and accountability role performed by the United Nations (UN) treaty bodies at the International level. These NHRIs can be developed according to local cultures and conditions, and offer informed advice from within the state. The importance of information and recommendations coming from within cannot be underestimated, as foreign interference, is still used by many states as an excuse to dismiss human rights concern.

It is true that India has long sought institutional solutions to its human rights problems, but in the absence of international pressure, norms and cooperation, it is unlikely that India would have created a national human rights commission per se.

Mandate :

The NHRC India has limited mandatory powers. As mentioned above that the Act takes a very narrow view of human rights and provides that human rights means the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and enforceable by the courts in India. So, main drawback of this statutory definition seems to be that it curtails the mandate of the commission by limiting it to the rights enshrined in the two covenants and the constitution. As India subscribes to the dualist pattern with regard to the relationship between international treaty law and domestic law, theoretically speaking the commission cannot discharge its responsibility for protection rights in the covenants unless the parliament enacts domestic legislation incorporating these rights. While the Supreme Court has

reiterated this dualist approach to enforcement of international treaty law in India but lately it has dealt with this issue differently. Beside this the India has signed several other International treaties but through this limited definition NHRC's mandate is restricted to the two covenants only. But this factor does not diminish the magnitude of its task or its potential to protect India's citizens and to develop a culture respectful of human rights and fundamental freedoms.

Constitution of National Human Rights Commission :

The Constitution of the Commission dealt with in Chapter II of the Act, Section 3 of the Act says: "The Central Government shall constitute a body to be known to the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of

(a) A Chairperson who has been a Chief Justice of the Supreme Court.
(b) One member who is, or has been a judge of the Supreme Court.
(c) One Member who is, or has been the Chief Justice of the High Court
(d) Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
(4) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.
(5) There shall be a Secretary- General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.
(6) The headquarters of the Commission shall be New Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

The appointment of the Chairperson and other Members are elaborately discussed under Section 4 of the Act. The other provisions relate to the removal of a member of the Commission, the term of office of Members etc.

Functions and Powers of the Commission :

Wide powers and functions have been given to the Commission under section 12 of the Act. The paragraph (a) of section 12 provides, that the Commission can enquire suo moto action against any public servant against whom a complaint has been registered for violation for human rights. Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court.

Section 12(c) empowers the Commission to visit any jail or other institution prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission found after visiting many jails that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to a lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons.

The Commission has recommended the preparation of a new All India Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison.

Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation. Under Section 12 (c) there is a separate provision to review the causes of terrorism, which inhibits the enjoyment of human rights, and to recommend appropriate remedial measures. Section 12(f) provides for the study of all treaties related to international human rights instruments and the making of recommendations for their effective implementation. Section 12(g) provides for promotion of research in the field of human rights, Section 12(h) empowers the Commission to spread human rights literacy among various sections of

society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means. Section 12(i) empowers the Commission to encourage the efforts of Non-Governmental organizations (NGOs) working in the field of human rights. Lastly, section 12(j) provides, such other functions as it may consider necessary for the promotion of human rights.

Role Played by the National Human Rights Commission in India :

The existence of Supreme Court in a setting like India may not be a panacea for attending to rights based litigation, in the absence of strong support of legal mobilization at societal level. Institutions like the NHRC are the only means, which theoretically at least, hold promise of affordable access to justice for the poor and the vulnerable which constitute at least one third of India's population. Hence in such social settings institutions like the NHRC fill an important void in a poor person's search for justice.

Despite limitations, highlighting the structural inadequacy of Indian society by focusing on economic, social and cultural rights the NHRC has made great strides in making the Indian state aware of attending to economic, social and cultural rights. The real significance of the commission is advocacy, to build constant pressure and act as reminder of the state obligations towards the rights. Due to the commission's insistence these economic, social and cultural rights have acquired constant public discourse in evaluating the effectiveness of the Indian state.

Surprisingly, the NHRC itself seems to be actually aware of what it calls its challenges. After the establishment it is the period of consolidation for the commission where the commission has observed in its annual report 1998-99 that how it has to deal with challenges of credibility, scale and expectation, variety, good governance and entrenched attitude. However, no blueprint for effective action is outlined in its documents.

As observed earlier in this study that the courts are not sufficient in themselves in attending rights because of weak support structure for legal mobilization. The view the courts and existing national institutions are sufficient

to attend to the human rights agenda is based on the assumption that support for legal mobilization is uniform throughout. However, this is not true in some social settings as India in particular and Sough Asia in General. In addition, the social composition is such that the poor and the vulnerable groups form significant components in these societies. These very social segments are hardly in the position to utilize the courts as an institution to fulfill their fundamental rights, much less their economic, social and cultural rights. In such social settings institutions like the NHRC are very much needed to keep exclusive focus on need for fulfillment of these rights and internationalization of international human rights norms.

Coming to the Indian NHRC case study it becomes clear that the commission has been hampered in realizing its full potential by external as well as internal factors. External factors are those, which are controlled by or influenced by the state and its agencies. Some of the external factors are numerated below:

- The NHRC emphasized the need to set up SHRCs and to establish clear functional relationship between the two but the central government has categorically dismissed the commission's proposals.
- In the area of child labour, education and other aspects of child welfare the commission has made policy recommendations but the central government has not responded to them.
- Dealing with human rights violations committed by armed force personnel but the privileged status of armed forces continues and the government has dismissed all such proposals as unnecessary, even case of death and rape while in the custody of armed forces.
- For the last five years the government has not appointed two members.

While internal factors are the ones, which the NHRC has, some control but because of various factors has not been able to cash on. For example: while the government was at fault for not complying with the recommendations of the NHRC, the commission was also responsible for not supporting its strong words with action. The NHRC has followed through on only a few of the recommendations issued in its annual reports.

8. Administrative Reforms :

Administrative Reforms have always been a matter of considerable concern and debate in the recent past, particularly with the emergence of democratic and industrialized states. The socio-economic policies and compulsions of development have added new dimensions to the nature, scope and strategy of administrative reforms. The entire process of development and nation-building hinges on the effectiveness of administrative reforms. It has often been advocated that for administrative reforms to have adequate impact, it is better to be selectively effective than adopt a generalized approach under populist pressures.

Administrative reforms cover a wide gamut. They must cover policy, institutional, structural, procedural and behavioural aspects of administrative working. The philosophy and ideology of administrative reforms, apart from the value system, also have an important place in the total scheme of administrative reforms.

Often reform is used interchangeably with administrative change, reorganization and sometimes revolution. Etymologically, reform means to give a new shape or form, also it signifies to bring to a better way of life. In the parlance of Indian administration, reform refers to the process of change with complete transformation in terms of structure and behavior. On the contrary, administrative reorganization is an internal exercise in which the patient is a self- appointed doctor, the approach being in the nature of prophylaxis. It takes place with some intervals. The emphasis is more on preventive than creative measures. Closer to reorganization is administrative change which is a continual process. It is natural and not deliberate and, therefore, not immediately perceptible. Revolution is at the farthest end of the spectrum of social change, with reform and reorganization occupying mid position between revolution and change. If reform has limited coverage, revolution may have impact on all facts, of life. Revolution and reform are value-laiden, reorganization may be, but change is not at all. Revolution is a social process, reform a political process, reorganization an executive process, and change is an administrative process. In

practice, as a normal course, with varying interval, revolution leads to reform, which is followed by reorganization process. When reorganization is thwarted, reform becomes a logical outcome, just as failure of reform makes things ripe for revolution.

Administrative Reforms : Meaning

Administrative reforms represent efforts, intended to enhanced and/ or expand the administrative and managerial capacity of public administration to achieve national objectives or goals.

Gerald E. Caiden has defined administrative reform as "the artificial inducement of administrative transformation against resistance. John Montgomery defines it as a political process that adjusts the relationship between a bureaucracy and other elements in a society, or within the bureaucracy itself, in order to change the behavior of the public service. Arne F. Leemans calls administrative reforms as induced change in the machinery of government… undertaken in an effort to bridge a gap between reality and desirability.

According to S.R. Maheswari, change is not reforms. Change in administration occur incessantly and even without one's asking. On the contrary, administrative reform refers to those deliberately planned changes in a country's Public Administration which are directly conducive to the realization of objectives held clear and cherished by a society. Thus administrative reform is a value-pregnant concept. It is planned exercise and goal–oriented, the goals are set by the large polity and are thus societal in origin and legitimacy.

Need for Administrative Reforms :

According to Gerald E. Caiden administrative reforms is based on three fundamental premises. The first is the imperfectability of human institutions. No matter how much mankind improves itself, it can always do better. Nothing is yet perfect. Perfect in is still beyond mankind's reach. In truth, human institutions are far from perfect. There are glaring imperfections that cry out for improvement and drastic change. All administrative systems are capable of improvement, no matter how well they may be performing. The second premise

behind administrative reform is that large organizations, particularly large public organization tend to become conservative, if not complacent. Success breeds fixation rather than flexibility. They prefer administrative systems that work reasonably well rather than risk all on unproven innovations or uncertain changes. They do this even though conditions overtake them and seemingly everyone else can see that they are heading for trouble. A third premise is that, given the highly conservative disposition of most public organizations, innovation permeates slowly. Even when a better way of doing things has been found, there is reluctance to try it. Always somebody else has to demonstrate the effectiveness of innovations always the evidence has to be examined and reexamined until any shadow of doubt is removed. Always, it takes considerable time, effort, energy and conviction to incorporate innovations. In the meantime, the outmoded and the outdated system and processes persist and they are perpetuated unless firm and drastic action is taken all the way down the line to see that things are changed.

Caiden emphatically observes, all these three premises are rarely incorrect, there is a permanent place for administrative reform in the study and practice of Public Administration. For this reason, administrative reform is becoming increasingly institutionalized. Even public administrator is trained and encouraged to be his or her own reformer. Every public organization is expected to keep up with the state of the art to promote innovation and to adopt professionally accredited research recommendations.

Administrative Reforms in India:

The basic objective of the programme of administrative reforms in India has been to make available to the government and the people of the country an honest, efficient and result oriented administrative system. In 1947, when the country achieved independence, it inherited an administrative set up which had a single overriding priority- the perpetuation of the colonial ethos. The system was structurally inadequate and functionally unprepared to meet the new challenge of economic development and social change which came to be accepted by the nation as the new primary concern of the State Policy. It stood in dire need of reorganization, reorientation and reform.

The study of administrative reforms in India may be divided into two parts- efforts for administrative reforms before Independence and efforts for administrative reforms after Independence.

Efforts for Administrative Reforms before Independence

During the rule of the East India Company and the British Crown, a series of reforms were introduced in the administrative system which continue to have an impact even on the present day administrative system. During the Company rule, most of the administrative reforms were introduced at the initiative of the then Governor- General themselves, while during the rule of the British Crown, a few important Committees and Commissions were set up to suggest improvements in the administrative system. Among such bodies were.

1. The Macaulay Committee to conduct Public Service Examinations (1854)
2. The Aitchison Commission (The Public Service Commission, 1886-1887)
3. The Royal Commission upon decentralization (1907-1909)
4. The Islington Commission (1912)
5. The Lee Commission (1923-1924)
6. The Wheeler Committee (Government of India Secretariat Committee, 1935-1936)
7. The Maxwell Committee (Government of India Secretariat Committee, 1937)
8. The Tottenham Committee (Government of India Secretariat Committee, 1945-1946)

The Macaulay Committee was appointed in 1854 to advise to conduct public service examinations in India. The Committee in its report emphasized liberal education for civil servants. On the recommendations of the Aitchison Commission (the Public Service Commission (1886-1887)) the Civil Services in India were divided into three categories- Imperial services, Provincial Services and Subordinate Services. The first was the existing Covenanted Civil Service which the Commission had proposed to call the imperial Civil Service, but which on the suggestion of the Secretary of State came to be denominated as the Indian Civil Service. The British Government was compelled to appoint in 1907

the Royal Commission upon Decentralization. One of its objects was to secure the development of local self-government as an aspect of administrative devolution. It recommended that municipalities be given increased powers of taxation, complete control over their budgets, a substantive elective majority and their own elected chairmen. The Commission indirectly revived Ripon's emphasis on popular local self-government. The Islington Commission (1912) was appointed with two main objectives in view- to prepare a report on conditions of service and to suggest ways and means to enhance the entry of the Indians into the superior civil services. The Commission suggested that recruitment to the superior services could be made partly in England and partly in India. The Lee Commission (1923-24) recommended the immediate appointment of the Public Service Commission. To meet the political demands for the provincialisation of the superior services the Lee Commission dividend the main services into three classes : (a) All India, (b) Central and (c) Provincial. Another important contribution of the Lee Commission was to fix the scale of recruitment of Indians. For the Indian Civil Service, for instance, the Commission recommended a 50:50 cadre to be produced in about fifteen years.

The Government of India appointed a Secretariat Reorganization Committee on October 3, 1935 under the Chairmanship of H. Wheeler. It reported to the Government on March 10, 1936. The main object of the Wheeler Committee was to recommend such changes in the organization and procedure of the Central Secretariat as might seem to it necessary for an efficient and expeditious dispatch of public business, especially under the new constitution that was to be established by the Act of 1935. Another recommendation of the Committee, which was included in the manual of office procedure, was to do away with the existing system of double noting by the Secretary and Joint Secretary and to recognize the separate responsibilities of these officers. Maxwell Committee (1937) was appointed before the coming into force of the Government of India Act (135) which provided for a Council of Ministers to advise the Governor-General in the exercise of his functions. Its object was to suggest such changes as might be required for the conduct of business under the new Council of Ministers, the Maxwell committee was in the main designed to suggest a kind of Minister –Secretary relationship that might conduce to administrative continuity.

Tottenham Committee (1945-46)- this one man Committee appointed soon after the Second World War was to report on reorganization of the departments, a reallocation of their business, the question of staffing and the reorganization of the entire Secretariat System. One of its important recommendations was that there should be in the secretariat organization an agreed conception of duties annexed to the different grades of Secretariat Office and an agreed nomenclature for each grade.

Efforts for Administrative Reforms since Independence :

In 1947, when the country achieved Independence, it inherited a depleted, disorganized and bewildered administrative system. Immediate action was needed to reorganize the set up. In tune with the winds administrative change blowing throughout the world, the Indian administration has also taken certain noticeable initiatives in administrative re-structuring in the post –Second World War period. The following efforts were made for administrative reforms since Independence:

The Secretariat Reorganisation Committee, 1947:

The first of the reform measures undertaken on the eve of Independence, in July 1947, was the appointment of a six member committee, headed by Sir Girija Shanker Bajpai to investigate the question of personnel shortages, better utilization of the available manpower and improvements of methods of work in the Central Secretariat in the wake of the problems arising out of the partition. The Report of the Committee, known as the Secretariat Reorganization Committee published in August 1947. Among other things the Committee recommended the appointment of the provincial civil service officers to posts in the Central Secretariat, reemployment of suitable retired officers, and a reorganization of the method of work in the Secretariat.

The Economy Committee, 1948:

The Government set up in 1948, the Economy Committee to review the increase in the civil expenditure of the Central Government since 1938-39. The Committee was headed by a prominent industrialist, Kasturbhai Lalbhai. The

Committee submitted two reports : a general report on the whole government and the other on each ministry of the Government. It warned the Government for making attractive plans and schemes without taking into account the available material and personnel resources. It recommended the setting up of a planning commission comprising of not more than three persons for advising the Government on coordination of effort and relative priorities. With a view to improving the efficiency of the public servants it emphasized the need for training. It made many recommendations for economy in Central Administration.

The Ayyangar Committee, 1949:

The first comprehensive review of the working of the machinery of the Central Government could only be undertaken in 1949. The survey was done by N. Gopalaswamy Ayyangar, the Minister without portfolio, who submitted a report on reorganization of Machinery of Government. One of the main recommendations of Ayyangar was to reorganize the Ministries grouped in forum buraux (Bureau of Natural Resources and Agricultural, Bureau of Industry and Commerce, Bureau of Transport and Communications and Bureau of Labour and Social Service) and place a limit on the number of Departments in the Ministries. Ayyangar actually recommended that the Central Secretariat should be divided into 37 primary units, 28 Departments, 8 Central Administrative offices and a Cabinet Secretariat, in addition to 20 Ministries controlling the entire machinery of Government, each Ministry having three categories of Ministers- a Cabinet Minister, a Minister of State and a Deputy Minister.

Gorwala Report, 1951:

In July 1951, the Planning Commission which had been set up an year earlier in March 1950 asked A.D. Gorwala, a retired ICS to examine the existing administrative machinery and methods and to assess how far they were adequate to meet the requirements of planned development. Gorwala submitted two reports – Report on Public Administration and Report on the Efficient Conduct of State Enterprises. While the first report was more general in nature, the second was restricted to public undertakings. Gorwala's first report highlighted the faulty relationship between the Secretariat and the heads of departments working under it and the relationship between the administrative

ministries and the Finance Ministry. It recommended the desirability of the delegation of certain financial powers to the administrative ministries and heads of departments. It drew attention to the lack of harmonious relations between a Minister and his Secretary and laid emphasis on proper recruitment, training and organization methods. He emphasized the need for right recruitment, right training and right allocation for meeting the requirements of administration generated out of planning efforts. In his second report on public enterprises Gorwala enlisted certain measures like evolution of suitable forms of control, direction and management; new devices in a relatively untried sphere by the state and different in aspect from ordinary governmental administration.

The Appleby Reports, 1953 and 1956:

Paul H. Appleby submitted two reports (Public Administration in India: Report of a Survey, 1953) and Reorganization of India's Administrative System with Special Reference to Administration of Government's Industrial and Commercial Enterprises, 1956) dealing with administrative reorganizational practices indicating where they went wrong and what needed to be done in fine tuning this administrative set up on the basis of certain rational principles a management. Appleby commended India as among the dozen or so most advanced governments in the world and then went on to call it archaic, feudalistic and unimaginative. His important recommendations were structural changes through the creation of middle level functionaries, personnel development training programmes, creation of O & M organization in the Government of India. Two of his well known recommendations were implemented within a year of the submission of the report. These related to establishment of the Institute of Public Administration at the national level and of O& M organization.

Committee on the Prevention of Corruption, 1964:

In September 1962, the Santhanam Committee was appointed to study the causes of corruption to review the existing set up for checking corruption in the government and to suggest measures for their improvement. The Committee was also asked to suggest changes in the government servants conduct rules and the disciplinary rules so as to ensure the speedy trial of cases relating to

corruption. The report submitted on 31 March, 1964 identified various socio-economic and political causes for corruption in public services. The Committee came to the conclusion that the corruption was not limited to the lower ranks of public service. The Committee made far reaching recommendations for streamlining procedures regarding prevention of corruption and as a result of its recommendation, the Central Vigilance Commission was set up by the Government of India.

The Administrative Reforms Commission, 1966:

The First Administrative Reforms Commission (A.R.C.) was established on 5th January 1966 by a resolution of Government of India. It was headed by Morarji Desai and five other members who, except for one civil servant, were all members of Parliament. When Morarji Desai took over as Deputy Prime Minister in March 1967, K. Hanumanthaiya became chairman of the Commission. The Commission was then left with five members only.

The appointment of the Commission added a new dimension to activities in the field of administrative reform, for it was required to examine the entire field of Public Administration in the country and to make recommendations for reform and reorganization wherever necessary. It was in fact asked to consider the need for ensuring the highest standards of efficiency and integrity in the public services, and for making Public Administration a fit instrument to carry out the social and economic policies of the Government. Its terms of reference covered Public Administration at the Centre and in the States and the important field of Centre- State relationship. The sectors of administration mentioned in the terms of reference as requiring particular attention included such aspects as the machinery of the Government of India and its procedures work, the machinery for planning at all levels, financial administration, economic administration with special emphasis on the administration of public enterprises, administration at the state level, district administration, agricultural administration and the redress of citizens' grievances. This was the first comprehensive inquiry of its kind in India.

At the outset the Commission set up 18 study teams and 3 working groups to examine different sectors of administration. As the work of the Commission proceeded, new fields of study opened up. Two more study teams, ten working groups and one task force were therefore set up by the Commission at various stages in 1967.

The study teams of the Commission were as a rule concerned with broad issues in their respective areas. The Working Groups, on the other hand, were for the purposes of making inquiries into what might be called departmental administration.

The ARC submitted 20 reports, making a total of 537 recommendations, at a total cost of ten million rupees, in a period of over four years- 1966-70.

The reports were on the following subjects:

1. Machinery of Government of India and its procedures of work
2. Personnel Administration.
3. Problems of Redress of Citizen's Grievances.
4. Centre-State Relations
5. State Administration
6. Administration of Union Territories and NEFA
7. Machinery for Planning (Interim, 1967)
8. Public Undertakings
9. Economic Administration
10. Finance, Accounts and Audit
11. Delegation of Financial and Administrative Powers
12. Railways
13. Posts and Telegraphs
14. Reserve Bank of India
15. Life Insurance Corporation
16. Small Scale Sector
17. Central Direct Taxes Administration
18. Treasuries
19. Scientific Departments
20. Machinery for Planning, 1968 (Final Report)

Some of the major recommendations of the ARC are as :

1. The ARC recommended that the maximum number of Ministers in the Union Cabinet should be 16 including the Prime Minister. The strength of the Council of Ministers should normally be 40 but should in no case exceed 45. Each department/ subject should be represented in the Cabinet by one or other Cabinet Minister. The Commission favoured the continuance of the three- tier system of the ministerial set up and asked for the abolition of the office of Parliamentary Secretaries.
2. The Prime Minister should be given institutional support in the form of Deputy Prime Minister for ensuring efficient and effective functioning of the governmental machinery.
3. The role of the Cabinet Secretary should not be limited to that of a coordinator. He should also act as the principal staff advisor of the Prime Minister, the Cabinet and the cabinet sub-committee on important policy matters. He should have a tenure of 3 to 4 years.
4. There should be only two levels of consideration below the Ministry, namely, (i) Under Secretary/ Deputy Secretary and (ii) Joint Secretary/Additional secretary / Secretary. Work should be assigned to each of these two levels on the lines of desk officer system. Each level should be required and empowered to dispose of a substantial amount of work in its own.
5. Each Ministry of major administrative department should be assisted by policy advisory committee charged with the responsibility of considering all important issues of long- term policy.
6. A separate Department of Personnel headed by a Secretary should be set up who should work under the general guidance of the Cabinet Secretary and it should be placed directly under the Prime Minister.
7. The ARC recommended that the middle and senior level positions in the corresponding areas in the secretariat should normally be occupied by the members of the concerned functional services. These persons will be required to develop specialization knowledge of and experience in one of the following broad areas of specialization at headquarters, the allocation in a particular specialism depending on their qualifications and previous

background : (i) Economic Administration (ii) Industrial Administration (iii) Agricultural and Rural Development Administration (iv) Social and Educational Administration (v) Personnel Administration (vi) Financial Administration (vii) Defence Administration and Internal Security (viii) Planning.

The selection of officers for these areas is to be made through a process of mid-term competitive examination. After their selection of the officers are to undergo training especially designed for each of the eight specialism's.

8. The Commission recommended for a unified grading structure, for purposes of pay. Accordingly, the posts in the civil services should be grouped into grades so that all those entailing similar qualifications, difficulties and responsibilities are grouped in the same grade. The number of such grades should be between 20 to 25.
9. The Commission advised raising the upper age limit for entrance to the competitive examinations for the IAS and other services to 265 years and restricting the number of changes allowed to a candidate to two only.
10. On the question of lateral entry into the public services, the ARC saw 'a case' for including, into Government, of all persons from Universities, industrial and commercial concerns.
11. The ARC held that in making appointments to a State Public Service Commission, the Governor should consult the Chairman of the UPSC as well as the Chairman of the State Public Service Commission. In making appointments to the UPSC, the Chairman of the UPSC should be consulted, even on the matter of the appointment of his own successor.
12. The ARC viewed training as an investment in human resources and stressed the need for enunciating a national policy on civil service training.
13. The ARC recommended the establishment of a Civil Service Tribunal for hearing appeals from government employees against major punishments.
14. It looked at the Indian Administrative Service as an indispensable one. The ARC was the votary of the All Services and pleaded for their continuance and even enlargement.

15. The Commission in its "Report – on Problems of Redress of Citizens' Grievances" recommended the setting up of two institutions of Lokpal and Lokayukta, the former to look into complaints against the administrative acts of ministers and secretaries in Central and State Governments. The other functionary, the Lokayukta, to be appointed one in each State and one at the Centre, was to examine complaints against the administrative acts of other categories of civil servants. Both these functionaries were to be independent of the executive as well as the legislature and judiciary.

While there has been a general appreciation of the work done by the ARC, the performance of the Commission has also come in for a certain measure of criticism. For instance, it has been mentioned that the terms of reference of the Commission were so wide and its recommendations so extensive that several commissions would be needed to process its reports and views. There is no denying the fact that impact of the deliberations of the ARC and the scope of its recommendations has been so great that administrative reforms has almost become synonymous with the recommendations or deliberations of the Administrative Reforms Commission. It has also been mentioned that the Commission was not a professional group and as such its recommendations were more in the nature of admonitions rather than professional advice. While it is a fact that the members of the Commission, were all men who had a deep knowledge of the aspirations of the people of the country. The Commission appointed study groups and task forces for looking into the professional aspects of various issues facing the administration. In any event, the deliberations and recommendations of the ARC generated a lot of interest about the performance of the administrative system of the country and the need for improving the efficiency and public image of the set up.

One of the criticisms against the ARC was that it concerned itself with only big things such as Council of Ministers and creation of departments. It made no attempt to investigate the day to day procedures of work and other routine matters of administration. The lower levels of administration are very vital areas from the citizen's points of view and need to be given as much attention as has been given to the top and higher administrative hierarchical levels, quite disproportionately. Another critic observed, much of the ARC's recommendations

has failed to rouse authority positive action. ….whatever reforms they have recommended and acted upon by the Government have hardly touched the force of administration. It remains as cumbersome, out of date and red tape- ridden as it was before the Commission was brought into being.

Out of about 581 recommendations of the ARC, most were of a procedural nature or restated the well known premises of reforms. A few, however, were significant and implemented by the Government. The Commission's recommendation of a separate Department of Personnel was implemented in 1970. The Government consented to introduce the desk-officer system of staffing and functioning in the Central Secretariat, but made the system more flexible. The recommendation for raising the upper age for competitive examinations from 24 to 26 years was accepted by the Government. The recommendation that recruitment to Class I engineering posts be made only through a competitive examination, and not through an interview, was also accepted.

The Kothari Committee, 1976:

The Committee on Recruitment and Selection Methods (Kothari Committee)was appointed by the UPSC in 1976 to examine and reports on the system of recruitment to All India Services and Central Group A and B services followed by the UPSC. The Committee finalized its report in 1976 itself. The Central Government announced its decision on the recommendations of the Committee in November 1978. It was decided that there would be a single examination for all India Services and Central Group a Non-technical services. The examination would consist of two parts, a qualifying preliminary examination (objective test) and the main examination (written and interview test).

National Police Commission (1977-1981):

The Government of India set up the National Police Commission by a Resolution in 1977 with Dharam Vira as the Chairman. The terms of reference of the Commission included the examination of role and function of the police with special reference to control of crime and maintenance of public order, the method of magisterial supervision, the system of investigation and prosecution and maintenance of crime records. The commission was also required to look

into the question of modernization of law enforcement and up gradation of the police communications network. The Commission was also called upon to suggest measures and institutional arrangements for preventing misuse of powers by the police, ensuring quick and impartial inquiry of public complaints and for the redressal of grievances of police personnel and periodic objective evaluation of police performance. The commission submitted 8 reports in all. The last report was presented to the Government on June 2, 1981. The Commission made well over five hundred recommendations extending over a wide area of interest regarding police administration.

Economic Reforms Commission (1981-1984)

The Economic Reforms Commission was established by the Government of India in March,1981, with L.K. Jha as Chairman. The main functions assigned to the Commission were a study of the important areas of economic administration with a view to suggesting various reforms to streamline the functioning of the system. Examination of the Rent Control Acts of various States and preparation of a model rent control law were also included in the tasks assigned to the Commission. The Commission submitted a number of reports to the Government of India, which advocated the rationalization and modernization of the economic administrative system and paved the way for a new economic order.

Commission on Centre- State Relations (1983-1987)

The Commission on Centre- State Relations was formally constituted as per Government of India, Ministry of Home Affairs Notification dated June 9, 1983 under the Chairmanship of Mr. R.S. Sarkaria, a retired judge of the Supreme Court. The terms of reference of the Commission were :to examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and making recommendations as to the changes and measures needed. The Commission presented its two volume reports in 1988. Some of the important recommendations of the Commission are :

(i) The residuary power of legislation (Article 248), which now rests with the Union Parliament, should be bifurcated- while power in

regard to taxation matters should continue to remain exclusively in the competence of the Parliament, the other powers should be included in the Concurrent list, by an amendment to the Constitution.,

(ii) A convention should develop that the State Governments should be consulted when laws are made by the Centre on the items in the Concurrent list.

(iii) The Centre should enforce laws only on those items of the Concurrent List, on which "uniformity of policy and action is essential in the larger interest of the nation", and leave the rest to the States for action within the broad framework of the policy laid down by the Centre.

(iv) Recognizing the indispensability of the office of the Governor in the constitutional set up, it is necessary to ensure that the Governor is an eminent person, from outside the State concerned and detached in his attitude and unconnected with local politics, indeed, one who is not active in politics generally, particularly in the recent post. It might be preferable to select a person from the minority groups. The Vice- President of India and the Speaker of the Lok Sabha should be consulted confidentially and informally and not as part of constitutional obligation by the Prime Minister in the appointment of a Governor. Even the Chief Minister concerned should be consulted. A Governor should not return to active partisan politics.

(v) Certain guidelines should be laid down to establish uniformity in the use of discretionary power of the Governor, especially in the appointment of a Chief Minister, and dismissal of a Ministry.

(vi) On bills reserved by the Governor for Presidential consideration, the President should either dispose them off within four months, or return for reconsideration by the State Legislature within two months. Normally, as a matter of convention, the President should not withhold his assent, to a bill, and if he does so, the reasons for it should be communicated to the respective state.

(vii) Proclamation of emergency provision (Article 356) should be done sparingly and only in extreme cases. Before doing so all available alternatives should be exhausted. Further, it should be invoked in a

situation of actual and not potential breakdown of the constitutional machinery. It is preferable to dissolve the Assembly, rather than impose President's rule. Two precautions should be taken even prior to the dissolution of the Assembly. The State government should be warned before resorting to Article 356, and Governor's report containing all the material facts and grounds, should be first placed before each House of Parliament, and only then action taken.

(viii) Financial relations should be recast by making the corporation tax shareable with States, and certain other levies, loan procedures, etc. should be liberalized in favour of the States.

(ix) National development Council should be reconstituted as National Economic and Development Council (Under Article 263), to work in coordination with the Planning Commission on all economic and developmental problems.

(x) Terms of reference of the Finance Commission should be determined by the Centre in consultation with the States, and the existing division of responsibilities between the Finance Commission and the Planning Commission should continue.

(xi) A permanent Inter-Governmental Council (i.e. Inter-State Council, as provided in Article 263) should be established to deal with matters other than socio-economic planning and development.

(xii) A Zonal Council should be constituted to provide a forum, for the first level discussion on most, if not all, issues of regional and inter-state relevance.

(xiii) Recognizing the organic character of the political system which has a vital bearing on the range of centre- state relations, it is necessary to consider the importance of decentralization of power as a broader national issues. Decentralization should go beyond the two-tiers of government, at the Centre and the States, and to cover local institutions, like Zilla Parishads, Panchayat Samitis and Gram Panchayats in order to help defuse the threat of centrifugal forces, increase popular involvement, broaden the base of our democratic polity, promote administrate efficiency and improve the health and stability of inter-governmental relations.

(xiv) Planning process must also be decentralized, and reach out to Panchayati Raj and for a local bodies by allowing them full scope to play their role.

(xv) Constitutional amendments for improving Centre- State Relations should cover the following items (a) Article 155 (appointment of Governor) (b) Article 217 (empowering the President to frame rules) (c) Article 248 read with Entry 97, List I (residuary powers regarding non-tax matters, (d) Article 252(2) (regarding amendment to an Act passed under Clause) (e) Article 269(I) (f) Entry 92, List 1 (enlargement of their scope) (g) Insertion of a provision regarding sharing the Corporation Tax, analogous to Article 272, (h) Article 276(2) for raising the tax- ceiling on professions, trades, etc. (i) Article 356 (to ensure its proper and efficacious use and (j) Shifting a part of Entry 5 of List II to List III (for ensuring regular elections to and working of local bodies by an all-India statute).

All these proposals, even if accepted and implemented, would still leave much to be desired in creating an authentic federal polity.

The Satish Chandra Committee (1988-1989)

An eight member committee, under the Chairmanship of former UGC Chairman, Shri Satish Chandra, was appointed by the UPSC in 1988 to review and evaluate the recruitment procedure in higher civil services and to recommend improvements in the civil service examination system. The Committee presented its report in 1989. On the basis of the Committee's recommendations, an essay paper of 200 marks has been introduced in the Civil Services (Main) Examination, and besides, the marks for interview have been increased from 250 to 300.

Report of the Civil Service Examination Review Committee, 2001

The UPSC on July 19, 2000 constituted a committee under the Chairmanship Professor Y.K. Alagh to review the existing scheme of civil services Examination. The Committee submitted its report to the chairman of the UPSC on October 22,2001.

One of the recommendations made by the Alagh Committee seeks to address the biggest criticism of the manner in which the examinations are conducted that one can clear the examination by learning by rotation. In order to ensure that the best candidates are selected, not just those who managed to mug up all the right answers, the Alagh committee has reportedly recommended that passing the interview be made mandatory.

"We already have guidelines for the personality interview by which we aim to verify the depth of knowledge of the candidates. What we are looking for is a young man or woman who has the qualities of an officer, displays leadership ability and can work in a team."

The aim of the personality test, explained an official, is to give the candidates an opportunity to display their practical intelligence as well as their character traits.

"We are looking for a candidate who is mentally alert, has powers of assimilation, has clear and logical expression, balanced judgment and ability to make decisions. We also look at the intellectual and moral strength of the candidate along with his or her courage of conviction and will power. It is learnt that the committee has suggested that the two optional subjects for written examination should be done away with instead of a paper be introduced consisting of questions on general knowledge, language and mathematical aptitude." The committee is also learnt to have favoured the introduction of psychological tests for candidates.

Surendra Nath's Committee Report, 2003

The department of personnel had asked a special committee, headed by former UPSC chairman Surendra Nath, to the present system of Annual Confidential Reports (ACRs) for officers and evolve a new system in its place. It has also been asked to relook the current system of empanelment of officers for joint secretary and higher levels in order to inject greater objectivity in the process.

The committee has specifically been directed to take a cue in this exercise from the best practices of leading corporate houses, the defence services and the civil services of other countries.

The Surendra Nath Committee has indeed come out with a comprehensive report to streamline the civil services. The report encompasses the system of performance appraisal (PA) of the officers for promotion. It also emphasizes the need to assess the officer's professional capabilities with a view to determining capacity building needs and suitability for particular areas of responsibility and assignments and his/ her conduct with peers, juniors, elected representatives and the public.

The PA is expected to work as a tool for developing a work plan for the (forthcoming) year and assessing the officer's performance in his/ her current assignment, which includes training, study courses and deputations outside the government, based on monitorable inputs, relative to his/ her peers.

The PA could also help identify genuinely exceptional work that has been accomplished. Finally, the PA would enable the officer to identify systemic shortcomings in the organization with a view to improving governing standards.

The ideas related to the system of scrutiny through computerization, openness, grade inflation/ numeric grading, health checks, 360 degree reporting merit attention. However, the report is silent about the performance of the overall sector. In addition, promotions should also be based on the performance of the sector. For instance, the Disinvestment Secretary should be given promotion only when his sector performs well in terms of achieving the target over a given period.

Report of the Committee to Review In-Service Training of the IAS Officers, 2003.

A committee was set up (2003) under the chairmanship of B.N. Yugandhar, former Director of the LBSNAA, to review the in-service training programmes of IAS Officers. As per its terms of reference, the committee reviewed the prevalent one –week training programmes as well as two-week

training programmes. In order to maintain uniformity in terminology with the professional induction training (alongwith Foundation Course) Phase-I and Phase-II, the committee recommended for the introduction of the three mid-career programmes to be called as Phase-III, Phase- IV and Phase-V programmes. With some modifications from the year 2006-07, it has been decided to introduce a new system on mandatory mid-career training for IAS Officers.

Committee on Civil Service Reforms, 2004:

The Cabinet Secretariat with the approval of Prime Minister had constituted a Committee on 3rd February, 2004 under the Chairmanship of Shri P.C. Hota, former chairman, UPSC and former Secretary (Personnel) to examine the whole gamut of Civil Service Reforms covering the All India Services and the organized Group A Central Services and to make suitable recommendations to the Government. The Department of Administrative Reforms & Public Grievances was directed to serve the Committee. The Committee was required to submit its report within six months. Accordingly, the committee submitted its report to the Cabinet Secretary on 20.07.2004.

IMPORTANT RECOMMENDATIONS OF HOTA COMMITTEE:

1. The minimum and maximum age at the recruitment be what it was from 1948 to 1971, i.e. 21 and 24 years for general candidates.
2. Mid- term appraisal of officers and if in that appraisal, the officer is not found to be honest and performance oriented, then he should be weeded out of service on completion of 15 years on proportionate pension.
3. Every ministry, department and office with a large public interface must have a few toll free telephone numbers with voice mail facility.
4. Officers of All India Services on deputation to their home state must immediately report back to telephone numbers with voice mail facility.
5. Only one term of deputation for an officer of the All India services should be allowed to the home state. The exemption at present, which is available for officers of the North- East or Jammu and Kashmir cadres, may continue.

6. To increase the representation of woman in the service, at least 25 per cent members of higher civil services should be women.
7. Women in higher Civil Services should be given four years of leave with full pay in this entire service career, over and above the leave due to them under the normal rules. Such facility will enable them to balance their roles as officers with their role as mothers.
8. The official Secrets Act should be modified to cover only the essential minimum requirements of national security, public order and individual privacy.
9. To provide a clean honest and transparent government, antiquated rules and procedures must be discarded and new simplified ones should be put in place. Such an exercise is absolutely essential for introduction of e-government.
10. Annual property return of all public servants should be put on the website.
11. Rules should be framed under Benami Transactions (Prohibition)o Act, 1988 for attachment /forfeiture of benami/ ill-gotten property of corrupt bureaucrats.
12. The Constitution be amended to enable the president or governor to dismiss or remove public servants summarily in case of corrupt practice.
13. All officers having a public interface to wear a name badges while on duty.
14. Junior officers at the cutting edge level of administration should be given training in customer services, attending to phone calls and resolving public grievances.

Second Administrative Reforms Commission : August 31, 2005

The United Progressive Alliance Government in its National common Minimum Porgramme (May 2004) has, inter alia, envisaged setting up of an Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public administrative system. On August 31,2005, the Union Government has appointed the Administrative Reforms Commission for the second time almost after four decades and its term has since been extended upto 31st March, 2009 with the approval of the cabinet. Accordingly former Chief Minister of the Karnaktaka State Veerappa Moily is appointed as Chairman of the new commission. The government has asked Veerappa Moily to prepare a detailed blueprint for revising and revamping the public administrative system.

Besides Veerappa Moily the commission will also have V. Ramachandran, former chief Secretary of Tamil Nadu, A.P. Mukherjee, former director of CBI, A.H. Carlo from IIM Ahmedabad and Jayaprakash Narayan, member of National advisory Commission as its members. Vineeta Rai, an IAS Officer was the member secretary of the commission.

A 13- point terms of reference for the Commission, headed by former Karnaktaka Chief Minister Veerappa Moily, wants it to strengthen the framework for efficient, economical, clean sensitive, objective and agile administrative machinery.

It has also been asked to define ethics in governance to strengthen pro-active vigilance to eliminate corruption and harassment of honest civil servants, including limiting executive discretion and addressing systematic deficiencies in reluctance to punish the corrupt.

The commission, which has been set up after four decades, would also identify procedures, rules and regulations and factors, which lead to corruption, suggest measures to combat the menace and also provide a framework for their periodical review in consultation with the stakeholders.

It would also review operation of federal relationship to between the civil service performance that will include framework for continuing interaction between the centre and the states.

The Task Force set up to finalize the Terms of Reference for the ARC has tentatively identified the following areas, for consideration by the ARC:.

1. Organizational Structure of the Government of India
2. Ethics in Governance
3. Refurbishing of Personnel Administration
4. Strengthening of financial management systems
5. Steps to ensure effective administration at the state level
6. Steps to ensure effective District Administration
7. Local Self Government / Panchayati Raj Instituions

8. Social Capital, Trust and Partiicpative public service delivery
9. Citizen- Centric Administration
10. Promoting e-governance
11. Issues of Federal Polity
12. Crisis Management
13. Public Order.

The Government of India had constituted a Group of Ministers (GOM) chaired by Shri Pranab Mukherjee, the then Finance Minister to consider to recommendations of the Commission, to review the pace of implementation of the recommendations as well as to provide guidance to the concerned Ministries / Departments in implementing the decisions.

List of Reports submitted by the Second Administrative Reforms Commission upto April 2009

1.	First Report	:	Right to Information : Master Key to Good Governance (June 2006)
2.	Second Report	:	Unlocking Human Capital: Entitlements and Governance – A Case Study (July 2006)
3.	Third Report	:	Crisis Management: From Despair to Hope (October 2006)
4.	Fourth Report	:	Ethics in Governance (February 2007)
5.	Fifth Report	:	Public Order – Justice for All …Peace for All (June 2007)
6.	Sixth Report	:	Local Governance – An Inspiring Journey into the Future (November 2007).
7.	Seventh Report	:	Capacity Building for Conflict Resolution – Friction to Fusion (March 2008)
8.	Eighth Report	:	Combating Terrorism- Protecting by Righteousness (August 2008)
9.	Ninth Report	:	Social Capital- A shared Destiny (October 2008)
10.	Tenth Report	:	Refurbishing of Personnel Administration – Scaling New Heights (November 2008)

11.	Eleventh Report	:	Promoting e-Governance – The SMART Way Forward (January 2009)
12.	Twelfth Report	:	Citizen Centric Administration – The Heart of Governance (February2009)
13.	Thirteenth Report	:	Organizational Structure of Government of India (April 2009)
14.	Fourteenth Report	:	Strengthening Financial Management Systems (April 2009)
15.	Fifteenth Report	:	State and District Administration (April 2009)

The procedure prescribed for processing of the recommendations made by ARC was that the recommendations were first considered by the concerned Administrative Ministries/ Departments. Their views were then considered by the Core Group on Administrative Reforms (CGAR) headed by the Cabinet Secretary. Subsequently, they were placed before the Group of Ministers (GoM) for its consideration. The views and recommendations of the GoM were then submitted for the information and orders of the Prime Minister.

The Government constituted a GoM on 30.03.2007 under the Chairmanship of the then External Affairs Minister to consider the recommendations of the Second ARC and to review the pace of implementation of the recommendations as well as to provide guidance to the concerned Ministries / Departments in implementing the decisions. It has since been reconstituted under the Chairmanship of Union Finance Minister on 21.08.2009. CGAR under the Chairmanship of Cabinet Secretary has finished examination of all the 15 reports.

This GoM has so far considered twelve reports, namely : (i) Right to Information : Master Key to Good Governance (First report), (ii) Unlocking Human Capital: Entitlements and Governance- a Case Study relating to NREGA (Second Report), (iii) Crisis Management: From Despair to Hope (Third report), (iv) Ethics in Governance (Fourth Report), (v) Local Governance (Sixth Report), (vi) Capacity Building for Conflict Resolution : Friction to Fusion (Seventh Report), (vii) Citizen Centric Administration – The Heart of Governance (Twelfth Report), (viii) Social Capital – A Shared Destiny (Ninth) Report, (ix) Organizational Structure of Government of India (Thirteenth Report), (x) Promoting e-Governance- The

SMART Way Forward (Eleventh Report) (xi) Strengthening Financial Management System (Fourteenth Report) and (xii) State and District Administration (Fifteenth Report)

The decisions of GoM on these reports are at various stages in implementation. The report on Combating Terrorism (Eighth Report) has been handled by the Ministry of Home Affairs and it is understood that necessary action has already been taken on this report. In all, 13 Reports have been considered so far and the remaining 2 Reports (Report NO.V and X) are yet to be considered by GoM.

The details of each of the above reports, in brief, are as under:

(i) **Right to Information:** Master Key to Good Governance: This Report deals with effective implementation of the Right to Information Act. A meeting of the GoM to consider the recommendations was held on 16.06.2008. This Report contains 62 recommendations out of which 39 recommendations have been accepted.

(ii) **Unlocking Human Capital:** Entitlements and Governance: A Case Study: This Report deals with the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act. A meeting of the GoM to consider the recommendations was held on 13.12.2007. This Report contains 114 recommendations, out of which 88 recommendations have been accepted.

(iii) **Crisis Management:** From Despair to Hope: This Report concerns recommendations on enhancing effectiveness of response and recovery in meeting crisis situations arising out of natural and man-induced disasters. A meeting of the GoM to consider the recommendations was held on 13.12.2007. This Report contains 142 recommendations, out of which `136 recommendations have been accepted.

(iv) **Ethics in Governance :** In this Report, the commission has made recommendations relating to various legal, institutional and procedural measures covering the Legislature, Judiciary and the

Executive with the focus on tackling corruption. A meeting of the GoM to consider the recommendations as held on 12.08.2008. This Report contains 134 recommendations, out of which 85 recommendations have been accepted, 28 recommendations were not accepted, 3 recommendations were deferred and 18 recommendations were referred to other for a.

(v) **Public Order:** Justice of Each … Peace for All: This Report deals with public order; policing and attendant issues related to the criminal justice system. This Report contains 165 recommendations under 51 sections. MHA has given its views. A meeting of the CGAR under the chairmanship of National Security Adviser was held on 21.10.2008. Meeting of GoM is yet to be held to consider the recommendations on the report by CGAR.

(vi) **Local Governance:** The Report focuses on issues relating to rural and urban local governance in India with a specific focus on the need for real democratic decentralization. A meeting of the GoM to consider the recommendations was held on 03.09.2008. The Report contains 256 recommendations, out of which 230 recommendations were accepted, 24 recommendations were not accepted and 2 recommendations were deferred.

(vii) **Capacity Building for Conflict Resolution –** Friction to Fusion: The Report endeavours to examine the background and the emerging facets of conflicts that plague India. A meeting of the GoM to consider the recommendations was held on 8.12.2009. The Report contains 126 recommendations, out of which 111 recommendations were accepted.

(viii) **Combating Terrorism:** The Report contains 23 recommendations and is being handled by Ministry of Home Affairs. It is understood that necessary action has already been taken on this report.

(ix) **Social Capital –** A Shared Destiny: The Report considers various ways in which social capital can improve the performance of the government. It looks at the structure and functioning of social capital institutions, corporate social responsibility, self help groups and self regulatory authorities. A meeting of the GoM to consider the recommendations was held on 27.01.2010. This Report contains

66 recommendations, out of which 36 recommendations have been accepted, 11 recommendations were not accepted and 19 recommendations were deferred.

(x) **Refurbishing of Personnel Administration –** Scaling New Heights: This Report considers issues pertaining to the Civil Services. It makes recommendations regarding recruitment, training, enhancing performance and ensuring accountability, placement of civil servants. The Report contains 97 recommendations under 22 sub-headings. The meeting of GoM is yet to be held.

(xi) **Promoting e-**Governance: The SMART Way Forward: In this Report the Commission has examined aspects of e-governance while dealing with specific issues of governance. The Report contains 47 recommendations under 17 sub-headings. The GoM was held on 17.06.2010 out of the 47 recommendations, 46 recommendations have been accepted.

(xii) **Citizen Centric Administration:** The Heart of Governance: The Report tries to examine the role of special institutional mechanisms such as the national and state commissions set up to safeguard the rights to vulnerable sections of the society. GoM considered the report in its meeting held on 08.12.2009 and accepted 41 recommendations out of 50.

(xiii) **Organizational Structure of Government of India:** In this Report, the ARC has made recommendations for reforming the structure of Government of India since the sustainability of other reforms is closely interlinked with the creation of a pro-active, efficient and flexible organizational framework. A meeting of the GoM to consider the recommendations was held on 27.01.2010. This Report contains 37 recommendations, out of which 32 recommendations have been accepted.

(xiv) **Strengthening the Financial Management System:** In this Report, the ARC has focused on the strengthening of financial management system in Government. A meeting of the GoM to consider the recommendations was held on 14.03.2011. The Report contains 36 recommendations under 17 sub-headings, out of which

33 recommendations have been accepted, 2 have not been accepted and 1 recommendation has been deferred.

(xv) **State and District Administration:** The Report makes recommendations relating to Public Administration at State and District level. It deals with issues of modernizations, increased devolution of functions and powers, effective grievance handling system, people's participation, enhancing responsiveness, process simplification and delegation of power. The meeting of the GOM was held on 17.06.2010. The Report contains 158 recommendations under 57 sub-headings. Out of 158 recommendations, 134 recommendations were accepted.

Standing Committee on Systemic Changes :

The Cabinet Secretariat with the approval of Prime Minister had constituted a Standing Committee under the Chairmanship of Cabinet Secretary which also includes Principal secretary to the PM and Chief Vigilance Commission to recommend systemic changes in governance for developing grater probity, efficiency and transparency in the Civil Services and making it responsive and citizen friendly the committee would interact with officers of various Services to get their feedback. It would also invite suggestions from other sources as and when necessary. The committee would meet once in a month. The Committee would be serviced by the Department of Administrative Reforms and Public Grievances.

With a view to suggesting systemic changes in delaying with service related grievances of officers of the level of the Joint Secretary and above working in the Central and State governments as well as Public Sector Undertaking and autonomous organizations under their control, a Standing Committee has been set up comprising Cabinet Secretary, Principal Secretary to the Prime Minister and Secretary (Personnel). The Committee is serviced by the Department of Administrative Reforms and Public Grievances.

9. Lokpal Bill, 2011

Government Proposal:

Lokpal will have no power to initiate suo motu action or receive complaints of corruption from public. It would probe only complaints forwarded by the Lok Sabha Speaker or Rajya Sabha Chairman. It will enable the ruling party to protect its own.

Lokpal will be an advisory body. It will forward its enquiry report to "competent authority", which will have the final say. All its probes will tantamount to "preliminary enquires". There is no mention of the CBI's role after the Bill is enacted. Mild punishment for corruption minimum 6 months, maximum 7 years has been prescribed. There is no provision to recover ill-gotten wealth.

Anna Hazare's Proposal :

Lokpal will have powers to initiate investigations suo motu in any case and directly entertain complaints from the public. It will not need reference or permission from anyone to initiate investigation into any case. Lokpal will not be an advisory body. It will have powers to initiate prosecution against anyone after completion of investigations in a case. It will also have powers to order disciplinary proceedings against any government servant.

Lokpal will have police powers. It will be able to register FIRs, proceed with criminal investigations and launch prosecution. The anti-corruption wing of the CBI will be merged with Lokpal so that there is just one independent body to act against graft.

Enhanced punishment – minimum 5 years, maximum life imprisonment.

Loss caused to the government owing to corruption will be recovered from all the accused.

A STRUGGLING HISTORY OF JAN LOKPAL BILL AND IMPORTANCE OF LOKPAL BILL IN INDIA IN THE CONTEXT OF CORRUPTION

Lokpal Bill is not a new word for Indian people. It is frequently used against corruption. Anna Hazare creates a new history for the demand of Jan Lokpal Bill in the year of 2011. There is a discussion about a struggling history

of Jan Lokpal Bill and important of Lokpal Bill in India in the context of corruption.

What is Jan Lokpal Bill?

Jan Lokpal Bill is a proposed anti-corruption law framed by prominent civil society activists to deter corruption effectively. Word of Jan Lokpal Bill derives from Lokpal which means ombudsman (Legal Representative) in India.

Lokpal word has been derived from the Sanskrit words "loka" (people) and "pala" (protector/ caretaker). So Lokpal is meant as the 'protector of people)

Jan Lokpal Bill is referred as citizens ombudsman bill also in India. Ombudsman would create the law called the Lokpal Bill. It would be an independent body similar to the Election Commission in India.

The Lokpal will have a three –member body with a chairperson. The chairperson will be a Chief Justice or Judge of Supreme Court. Other two members will be high courts judges or chief justices.

Importance of Jan Lokpal Bill:

It is being expected that Lokpal bill will reduce corruption in India. The Jan Lokpal bill provides powers of filing complaints of corruption against the Prime Minister, other ministers and members of parliament with the ombudsman.

The Lokpal Bill gives us a right, except for a public servant, to file a complaint and the Lokpal has to complete the inquiry within six months.

A Role of Anna Hazare in Jan Lokpal Bill:

Kisan Baburao Hazare aka Anna Hazare went on hunger strike "unto death" on April 5,2011 at Jantar Mantar, Delhi. He gave a statement that the government must treat the Lokpal Bill as the people's right and not a largesse. The movement for Lokpal Bill of 72 year old Gandhian Magsaysay award winner-Anna Hazare inspired people of India. Lokpal Bill movement took a new shape

and more than six crore people supported it. Anna Hzare appeared to the youth of nation to come forward for Jan Lokpal Bill 2011, this is the second freedom struggle of India. After the JP movement, this is the first people's movement. I am delighted to see the youth's participation in this movement. I look up to them with lots of expectations.

DIFFERENCES BETWEEN GOVERNMENT'S LOKPAL AND JAN LOKPAL BILL

Lokpal Bill :

Government will not have any power:
To initiate action suo motu in any case.
To receive complaints of corruption from public
To register an FIR
Police powers
To investigate any case against PM in foreign affairs, security and defence
To jurisdiction over bureaucrats and government officers.

Jan Lokpal Bill 2011 :

The Jan Lokpal Bill will have powers :
To initiate investigations suo motu in any case
To complaints from the public
To initiate prosecution after completion of investigations police powers.
To register FIR, proceed with criminal investigations and launch prosecution
To jurisdiction over politicians, officials and even judges
To merge the entire vigilance machinery into Lokpal.

REDRESSAL OF CITIZEN'S GRIEVANCS

LOKPAL & LOKAYUKTAS :

OMBUDSMAN: an institution which has long been established in Sweden and adopted more recently in other Scandinavian countries. By now many countries have imported and established this institution as a part of the machinery for prevention of corruption and remedy of maladministration and many have come to the conclusion that the creation of an Ombudsman is the only way out. Indeed, the Ombudsman, the Parliamentary Commissioner, the People's

Procurators general, the Council d'etat and the Lokpal represent some of the major experiments in designing machinery for Redress of citizen's grievances.

Genesis of Indian Ombudsman: Evolution of the idea :

In this direction, India has lagged far behind. As a young democracy with a powerful bureaucracy, India needed such an institution the most. But owing to apathy, ignorance and misunderstanding of top leadership, no attention could be paid to the problem. Discussions about the idea of an Indian Ombudsman began in the early sixties. The matter was raised in the Parliament on the 3rd of April, 1963, when the demands for grant of the Ministry of Law was being discussed. Participating in the debates, Dr. L.M. Singhvi said, I should like to mention another matter which is of very great importance of our country in particular. It is the matter of having a sort of a Parliamentary Commission on the pattern of Ombudsman in Scandinavian countries. This is an institution which may be the real solution for the various problems which arise in respect of the injustice being done in particular cases. This institution would be securing to the common citizen a forum wherein his grievances can be effectively ventilated. This would be securing for the Parliament an institution through which it can effectively function in individual cases. The Administrative Reforms Committees of Rajasthan and Maharashtra recommended the establishment of this institution at State levels. Making a statement on the floor of the Parliament on 16th December, 1963, the Home Minister admitted the importance and urgency of providing a machinery for looking into the grievances of citizens against the administration. However, this urgency and importance became meaningful only with the appointment of the Administrative Reforms Commission of India in 1966. The Commission thought the problem of redress of citizens' grievances to be of highest priority and, therefore, brought out its very first Interim Report on Problem of Redress of Citizen's Grievances in October 1966 itself. The Commission was convinced that an Ombudsman type of institution was justified not only for removing the sense of injustice from the minds of adversely affected citizens but was also necessary to instill public confidence in the efficiency of the administrative machinery. It recommended the appointment of two new special authorities- designated as Lokpal and Lokayukta- for the redress of citizen's grievances.

LOKAYKTAS

The step taken into the establishment of Lokayuktas in various states has been effective as comparative to Lokpal. Orissa has been a pioneer state in the case of establishment of the Lokayukta in the year 1970. Second state to set up Lokayukta was Maharashtra (1971) followed by Bihar (1973), Rajasthan (1973), Tamil Nadu (1974), Jammu & Kashmir (1975), Madhya Pradesh (1981), Andhra Pradesh (1983), Kerala (1983), Himanchal Pradesh (1984), Karnataka (1984), Assam (1985), Gujarat (1986) and Punjab (1995).

The Lokayuktas have been combating corruption at the state level but the powers and effectiveness of the functionary vary from state to state. In Himanchal Pradesh, Orissa and Kerala the Chief Minister has been brought within the orbit of inquiry by the Lokayukta. Lokayuktas tenure in some states is 5 years whereas in some others is 3 years. Lokayuktas will also have jurisdiction over actions of public servants other than actions within the purview of proposed Lokpal.

The conditions of appointment, term of office, removal, scope of functions, manner of making complaint, manner of functioning, recommendations, reports, secrecy of informations, concept and protection in respect of Lokayuktas are identical to the concerning state.

A study of the working of the Lokayuktas brings out a number of short comings in the working which needs immediate treatment if this institution is to work effectively. The First All India Conference of Lokayuktas and Upa-Lokayuktas was held in Shimla on May, 1986 and a number of resolutions were passed to streamline the functioning of this institution.

Expression of these problems of their Lokayuktas themselves indicate that all is not well with them. It was asked in the conference that the Lokayuktas and Upa-Lokayuktas be given a constitutional status. The jurisdiction of these should cover not only allegations/ corrupt practices, but also grievances/ maladministration as defined in Central Lokpal and Lokayukta Bill of 1968. It is advisable that ex-ministers and ex-public servants concerned in regard to the action complained against be also expressly brought within the purview. It was also be demanded to institute Lokayukta in every state and there should be

uniformity throughout India in regard to the service conditions of the Lokayuktas and Upa- Lokayuktas.

Current Lokpal Bill:

The following are the provisions of current a Lokpal Bill:

- Lokpal will consist of a chairperson and a maximum of 8 members, 50% of who would have judicial background. 50% on the whole would be from SC,ST, OBC, minorities and women
- Selection of Lokpal members will be by a committee comprising the PM, speaker, leader of Oppn. In LS, CJI and eminent jurist
- It will have jurisdiction over all levels of public servants, including PM. But Lokpal cannot initiate any probe against PM without consent of two-thirds of its members. There can be no probe against PM on complaints relating to international relations, security, public order, atomic energy & space.
- No prior sanction required for launching prosecution in cases probed by Lokpal or investigated at its instance. Lokpal will be empowered to attach provisionally any ill-gotten wealth even while prosecution is pending. The attachment is subject to confirmation by court.
- Lokpal will have its own inquiry wing for preliminary enquiry. If a prima-facie case is established, Lokpal can refer the case for investigation to any agency, including the CBI. It will have power of superintendence and direction over any investigating agency for all cases referred by it.
- Lokpal will have an independent prosecution wing. Once the investigation is completed, Lokpal may direct its prosecution wing or the agency concerned to initiate the prosecution.
- Separating the CBI's investigation and prosecution functions, the Bill creates a directorate of prosecution linked to the agency. The directorate will be headed by a prosecutor reporting to the CBI Director.
- The Bill enhances the maximum punishment for corruption from 7 years to 10 years. The minimum term for any conviction in a corruption case will be 2 years.
- The Bill makes it mandatory for every state to set up within a year a Lokayukta, the corresponding ombudsman for public servants in states.

10. Self –Assessment Questions:-

1. Examine the composition, functions and role of Union Public Service Commission.
2. Discuss the composition and functions of planning commission.
3. Elaborate the structure and functions of National Development Council.
4. Discuss the composition and functions of Finance Commission of India.
5. Describe the role of National Human Rights Commission for the protection of Human Rights in India.
6. Discuss the role of Administrative Reforms Commission for administrative improvement.
7. Discuss the role of Lokpal for prevention of corruption in administration with a focus on current Lokpal Bill.

11. Further Readings :-

1. N. Jayapalan (2001) "Indian Administration", New Delhi, Atlantic Publishers and Distributors.
2. D.C. Gupta, (2010), "Indian Government and Politics", New Delhi, Vikas Publishing House.
3. M. Sharma (2003),"Indian Administration", New Delhi, Anmol Publications.
4. S.R. Maheswari (2002), "Administrative Reforms in India", Delhi, Macmillan India Ltd.
5. P.B. Rathod, "Indian Administration: Dynamics and Dimensions", New Delhi, Commonwealth Publishers.

Unit-IV

Structure :

1. **Learning Objective :**

This unit seeks to analyze the composition and functions of Board of Revenue. It will also discuss the functions and role of Revenue Divisional Commissioner and District Collector.

2. **Board of Revenue :**

2.1. Introduction :

The Board of revenue in Orissa plays a vital role in the revenue administration of the state. While all the states in India follow a common administrative (revenue) pattern in having a Collector at the head of the district, there is no common pattern as regards the intermediately institution between the district and the state levels. In Orissa the board of revenue acts as an intermediary institution in the Revenue hierarchy. But then there are not many proposals for modifications of the existing system in respect of revenue collection and arrangements at the level of the Board of Revenue.

2.2. The Board of Revenue in Retrospect:

The modern conception of the Board of Revenue is very much interrelated to the Land Revenue system. The land revenue system prevailing in Orissa to assess the role played by the board of revenue in this respect.

The system of revenue formed the basis of administration during the region of the Hindu kings in Orissa. The revenue minister, who was the Amatya was the head of the Revenue department. He had a large number of superintendents to assist him in Revenue administration.

The Britishers are responsible for the constitution of the Board of Revenue & the hierarchy under them for revenue administration. In 1770 two revenue councils were established. The Board of Revenue took a permanent shape in 1786 in accordance with the direction of the Board of Directors with one of the members of the Govt. as the president. In 1829 Revenue Commissioners were introduced for a group of districts for direct supervision over collector.

In 1913 the Bihar & Orissa board of revenue Act was passed, providing for one member only the provincial government was empowered to appoint an additional member. Orissa became a separate province in 1936 & in pursuance of art -289 of the above act, a revenue commission was appointed for the province to discharge the power and function of the Board of revenue.

The recommendation of the Rowland committee, to increase the membership, abolition of commissioners, the Orissa board of revenue Act, 1951 was passed, providing for not more than 3 members. They are appointed by the state govts from the Board of Revenue with one of the members as the president. The functions & powers are exercised by the commissioners were assigned to the members of Board of Revenue and the President became the ex-officio secretary to the Govt. of Orissa. The Orissa Board of Revenue (amendment) act, 1957 & the Orissa Divisional Commissioner Act, 1957 passed.

The board of revenue now consists of a single member & the state has been divided into 3 commissionership viz, Central, Southern and Northern with its headquarters at Cuttack, Berhampur and Sambalpur respectively. The Board

of revenue is separated from the Revenue Department having its head quarters at Cuttack and the member no longer secretary to the Govt. of Orissa.

2.3. The Organisational set up : (Composition)

The efficiencies and smooth administration of the Board of Revenue depends on its structural set up. The Board of revenue was created in order to relieve the Govt. burdens, both in respect of revenue administration and general administration. The Board was created by the Legislature and was constituted by the Orissa Board of Revenue act, 1951.

In its composition the member is appointed by the state Govt. by that notification published in the Orissa Gazettee. The members' appointment is regulated by Govt. orders & service roles of the Indian administrative service.

The selection of the member Board of Revenue, is done on the basis of the principle of seniority through the principle of merit is duly considered. The promotions or appointment to the post of member, Board of Revenue is made mostly on the basis of seniority- cum- merit principle.

In its organizational set up, the Board secretariat reveals that it consists of a secretary, two deputy secretaries, four under secretaries, one finance advisor, a confidential assistant & several class-III &IV employees. The Secretary belongs to the IAS cadre, the other officers to the rank of deputy Secretary, belongs to the OFS (1) cadre. Several commissioners & Directors acting as Head of Deptts also assist the member, Board of Revenue.

The Secretary performs the crucial function of the coordinator, among these heads of the dept. within the board. The official function of the Board are divided into various sectors under the section officers. The deputy secretaries under secretaries and upper officers are under the direct control of the Secretary of the Board, who in turn is under the control and supervision of the member.

In respect of the physical structure of the board, it is always situated in a central phase (viz. at Cuttack in Orissa). The service conditions including leave retirement benefits and disciplinary actions of its officers & employees are

governed by the Govt. of Orissa service rulers. During holiday, the board functions, so as to dispose of important & urgent official matters. In its functioning, apart from the Orissa Board of Revenue Act, 1957, is also divided by several other laws in matters relating to settlement of land, land reforms consolidation of lands, excise, forest, Bhoodan etc.

2.4. Role and Function:

The various powers and functions of the Board of Revenue reveals the significant contribution it makes to the Revenue and General Administration of the state. The Board enjoys broadly two types of powers.

(A) Administrative Powers.
(B) Judicial powers.

2.4.1. Administrative powers :

The administrative powers enjoyed by the board includes :-

1. Survey & Settlement
2. Land Reforms
3. Collection of Revenue
4. Excise & Escheats
5. Department Examination & Promotion
6. Manual Revision
7. Budget & Finance
8. Special Relief Measures
9. Library &Record Room
10. Stamp Administration
11. Inspection
12. Coordination
1. Survey and Settlement

The overall supervision of this is vested in the board of revenue. The first operations in Orissa were conducted in the District of Cuttack, Puri & Balasore

from 1890 to 1900. This function is undertaken by the board with the help on the Director and Land records & survey who is an officer of the IAS cadre. The director prepares the settlement report & submits it to the state Govt. through the Board of Revenue.

The preparation of Record of Rights is an important state of survey & settlement operations. The board may of its own or an application made within one fear from the date of publication of the record of right call for revision of any record of right. After the settlement operation, a final report is submitted by the Board of Revenue to the state Govt.

2.4.2. Land Reforms :

The Board of Revenue has got the power of overall supervision in the implementation of the land reforms which includes laws on sailing on land & records survey and settlement operation, consolidation of holdings and conferring better right on tenants.

The member, Board of Revenue, is the chairman of the Land Commission which reviews the progress of Land reform measures.

The Board also exercises over all supervision & control over the subordinate revenue authorities in connection with the implementation of seeking laws throughout the state. The board has the power to superintend & regulate all measures of consolidation & holding of lands. Finally, the Board exercises supervision & control over the administration of Bhoodan land.

2.4.3. Collection of Revenue :

The board is concerned with the overall supervision and control over revenue collection. It fixes the largest for the collection of revenue & issues instruction to the Collectors & Divisional Commissioner.

In case of default, the government dues are collected through certificate cases. The Board has been empowered to call for returns of the certificate cases from certificate officers for onward transmissions to the Govt.

2.4.4. Excise & Escheats:

The excise administration of the state is regulated by the Board of Revenue. The excise branch makes rules for the guidance of the excise administration. The power of revision of any order passed by the collection, the excise commissioner on the revenue divisional commissioners has been vested with the board of revenue.

In matters relating to escheats, the Board has been vested with powers of general superintendence over all escheated properties & over all officers & authorities other than civil court.

2.4.5. Department examination and promotions :

The responsibility for the conduct of departmental examination lies with the board of revenue. The member of the Board is the chairman of departmental promotions committee which consider & recommends promotion of non-gazetted officers to gazette posts. In the promotions to the IAS, a departmental promotion committee is formed where the member, Board of Revenue, is a member. It also conducts the direct recruitment test of Junior Assistance for the officer of the head of the department.

2.4.6. Manual Revision :

The board of Revenue has been empowered to revise & update the revenue manuals & codes. It also publishes journals & bulletins in respect of revenue administration. It prepares the annual reports to the land revenue administration of the state.

2.4.7. Budget & Finance :

The board of revenue controls different budget heads. It prepares the budgets of its own establishment & scrutinizes the budget prepared by the district officer and revenue divisional commissioner. Finally, it submits the budget to the finance Deptt. of the Govt.

The Board of revenue is authorized to distribute the grants to various drawing & disbursing officers and exercises effective control over expenditure. The internal audit organization detects grave irregularities & financial

improperties owing to non-observance of the prescribed rules & procedure for the maintaining the accounts. Copies of the audit- reports are furnished to the Collectors & divisional commissioners for information and necessary actions.

2.4.8. Special Relief Measures :

In the matter of special relief measures the board of revenue is directly responsible for all kinds of relief operation in the affected areas. It also issues necessary orders to all heads of the departments & their sub-ordinates & coordinate their relief operation work.

This office was created in the year in 1966 & abolished in 1973 making the member, Board of Revenue, the ex-officio special relief commissioner. The Board has the statutory powers to control and guide the R.D.Cs & collectors in the matter of relief operation.

2.4.9. Library & Record Room:

The Board of Revenue exercises over all supervision & control over the libraries & record room of its own office & in the officer of the R.D.C's and Collectors. It issues instructions from time to time to rectify the effects found in the working of the library & record room.

2.4.10. Stamp Administration :

In stamp administration, the board is the chief controlling revenue authority and exercises full control and supervision.

The Collector who is in the charge of stamp administration at the district level is under the control and supervision of the board. It regulates the supply & sale of stamp and stamped papers & is empowered to prevent effectively the illegal printing of stamp. It frames rules for stamp administration & amend the rules when necessary for the smooth conduct of stamp administration.

2.4.11. Inspection :

The board of revenue exercises the power of inspection. It undertakes two types of inspection,

(a) Internal

(b) Vertical

(a) Internal :

It inspects its own office which is undertaken by the Secretary, Dy. Secretary, Under Secretary, Section Officers and the superintendent of the board, under the control & supervision of the member, Board of Revenue.

(b) Vertical :

It is undertaken by the board over its subordinate offices of the R.D.C's, Collectors, S.D.O's & Tahasildars. It is conducted once every year.

Inspection is a tool of control & supervision. Due to lack of personal touch, inadequate supply of the copies of inspection notes, delays in the process of compliance have all combined to reduce the importance of inspections.

To improve inspections & ensure better coordination among the board and sub-ordinate officers are as follows:-

a) Intensive inspection of selected items is necessary.
b) Setting up an organization & methods cell within the boards office to improve the efficiency and standard of inspection. It can diverse new techniques for a better and improved standard of inspection.
c) A tentative time limit for compliance report, ordinary report, should be submitted to the board within a month from date of the receipt of the inspection note by the office inspected.

Coordination :

It coordinates the activities of the subordinate revenue authorities the R.D.C's, Collectors through periodic conferences & meetings. It also secures horizontal co-ordinations between the district administration, department of land records and survey, excise commissioner, I.G., etc. Thus the board conducts both inter-departmental and intra departmental and also internal coordination.

Judicial Powers :

The board of revenue in Orissa is the highest revenue court in the state. It is the chief revenue controlling authority and acts as the highest court of appeal in revenue matters.

The revenue cases are filed in the Board and the case files move through a systematic process.

The Board of Revenue in Orissa supervises the Govt. action in respect of conduct of suits in revenue matters. Generally the collector of a district proposes to file a suit on behalf of the state govt. it supervises the government action in respect of conduct of suits in revenue matters. It performs the function of a court of appeal, revision review and reference under various revenue laws and act. So it is the highest judicial body on matters of revenue.

3. Revenue Divisional Commissioner

3.1. Introduction :

The divisional commissioner system represents a well known pattern of field administration interposed between the state headquarters and the districts. This functionary tended to become over a period of time this super-field administrator of the govt., supervising, controlling & coordinating the overall activities of the district officers in his region. In due course of time & with the growth of functional specialization, the activities of the specialists at the divisional level also come within the purview of his supervision &control. Thus it made the R.D.C an important element in the level of field administration with the inauguration of planned rural development, the coordination authority & directing role of the commissioner. Further came into prominence when he was designated as the 'Divisional Development Commissioner'.

Thus he becomes directly responsible for the proper implementation of the development programme in his region. Consequently, his work load increased and his role become more and more meaningful, for he no longer remained a mere post office, or a formal channel of communication between the govt. and district administration, but served as the "Fulcrum" or "Linch pin" of the state

headquarter & the field agencies, i.e. the districts in respect of state administration.

3.2. Revenue Divisional Commissioner in Retrospect :

The office of the R.D.C. existed in Orissa even before its creation as separate province on 1st April 1936. There were two divisional commissioners before Orissa became a separate province. Only in 1951 Board of Revenue was reconstituted with three divisional commissioners. As the members of the Board of Revenue were unable to devote adequate attention & time to the speedy execution of development plans, the Govt. decided to bring back the commissioners. They were resituated in 1958 under the Orissa revenue divisional commissioners Act, 1957. At present there are three Revenue Divisions, each under the charge of a commissioner. They are the Central Division with it's headquarter at Cuttack. The Southern division with it's headquarter at Berhampur and the Northern Division with its headquarter at Sambalpur.

3.3. Role and Function

The Revenue Divisional Commissioner is the chief executive authority in charge of the general administration of the division. Conceived thus, the entire administration of the division is his responsibility. He is usually a seasoned and veteran administrator of the I.A.S. cadre & all the other officers of the districts starting from the Collector to the Tahasildar are greatly benefited from his advice and guidance. His role & relevance depending to a great extent on the powers that are exercised by him as the head of the division. They include

(a) Revenue Administration
(b) Law and Order.
(c) Local Bodies
(d) Development Administration
(e) Relief Operation.
(f) Establishment
(a) Revenue Administration :

The RDC is in a very real sense, the head of the revenue administration at the divisional level of his various revenue functions the first and foremost is the

collection of Land revenue, cess & other miscellaneous dues. He reviews the progress of collection at the divisional Revenue conferences. In the event of any major short fall in collection in respect of any district, the commissioner directs the collector concerned to bring the collection up to the mark.

He also exercises administrative as well as appellate power under a large number of revenue acts and manuals. He is the recommending authority for publication of notification under section 4 (1) and 17(4) of the Land Acquisition Act, 1894 to the State Govt. regarding proposals of acquisition of land. In case of special land acquisitions the RDC has been authorized to issue under section-7 of the Act to take possession of the Land.

In respect of Land settlement, the RDC is competent to revise any order made by RDC against any order of the estate officer. Every such order by the RDC shall be final & shall not be called in question in any original suit, application or execution proceedings.

The RDC also has appellate & revisory powers in regard to construction & maintenance of irrigation works, supply of water, levy of water rate etc., against every order passed by the SDO dealing with these matters, as appeal can be made to the RDC under the Orissa irrigation Act, 1959. He may also summon and examine the witness & documents of any like that of a civil court. If necessary he may revise the order of the subordinates as he deems fit.

(b) Law and Order:

The RDC is also the head of the Law & order administration at the divisional level. He is even said to be the head of the police force. In this capacity he receives fortnightly confidential reports from the District Magistrates, weekly reports from the superintendence of Police and daily reports from the Orissa Special Branch Police regarding Law and Order situation. Regular review on crimes is being conducted at divisional level & important suggestions are incorporated in the said review for remedy.

In recent years, however, the police have tended to be more and more independent and work in their own hierarchy. The RDC does not have any direct control over the instruction of law and order. He does not inspect the officers in the police hierarchy, he does not have any magisterial designation & has not

been mentioned in the criminal procedure code either. However the Collector, under section -3 (dealing with reservation and Settlement of Government Land & under section 3B (dealing with the resumption of Land & imposition of penalty of the Orissa Govt. Land Settlement Act, 1962, an appeal may lie to the RDC against any order made by the Collectors.

The RDC can also approve the action of the Collectors to acquire surplus land of a land holder in excess of the ceiling area under sec. 5 of the Orissa Land Reforms Act, 1960. The RDC also exercises the power of pension under this act.

The RDC enjoys appellant & revisional powers in respect of certificate case. The recovery of Government dues through certificate governed by the Orissa Public demands Recovery Act, 1962 the District Collectors & the Sub-Divisional Officers are ex-officio certificate officers. Further an appeal from any original order made in a certificate case by the Collector lies to the RDC. The RDC may revise any order passed by the Collector in certificate cases.

With regard to public Land encroachment case, the RDC has got both appellate & revisory power along with the power of review. As per the provision of the Orissa Prevention of Land Encroachment Act, 1972 the amount of Fine, assessment or penalty imposed on any person unauthorizedly occupying any land shall be recoverable from him as arrears of Public Demands.

The Orissa Public premises Act, 1972 make the RDC the appellate authority in all cases relating to this Act under section -5 & Sec-7 of the Act, an appeal shall lie before the Orissa RDC Rules of 1959 categorically state that the RDC advises the state Govt. over any serious breakdown of Law & Order were to take place, Government does not hesitate to hold the RDC responsible as the head of Law & order administration.

The RDC acts as the appellate & controlling authority when the licence to process & use any arms is granted by the district- magistrate. Any person who is aggrieved by the order of the district Magistrate or ADM’s over refusal to grant such licenses, can appeal against that order before the RDC. In such cases the order of the RDC might either confirm or revise the earlier orders.

(c) **Local Bodies :** (Power relating to local bodies power of control & supervision over the District boards, municipalities lying within his jurisdiction in matters relating to water supply, sanitation lightings etc. He is also authorized to exercise power or supervision & control over the grampanchayats under the provisions of the Orissa Grampanchayat Act, 1964. Accordingly, the RDC is entrusted to settle disputes between Gram Sasans & other local bodies, as against the decisions of the Parishads & the District Collector.

Under the above mentioned Act, the RDC is entrusted with responsibilities of setting disputes between different Grama sasans & other local bodies. Dispute is represents of any matter:

a) Between two or more Grama Sasans if within different districts.
b) Between one or more Grama Sasans and any other local authority.

d) Development Administration:

The RDC is the head of the rural District Administration. In this capacity functions as Divisional or Area Development Commissioner he reviews all development activities undertaken mostly through the community development block like drinking water supply. Construction of school building distribution of house sites, construction of rural houses etc. Besides, he reviews the programmes & activities in the field of agriculture, animal husbandry, cooperation, public works, irrigation etc.

In 1953 the role of Dist. Collector in implementation of different plans and programmes are outlined in great detail. Though the Collector is the king pin of Dist. Development administration yet, the RDC is the Chief Executive Authority vested with powers of overseasing implementation of rural development work at the divisional level.

This chapter can be concluded with the following observation made by A.D. Gorwala:

The Divisional Commissioners ought to be expediters, coordinators, advisors and supervisors… The usual tenure for a Commissioner ought not to be

less than three years. Commissioners should be men of understanding, personality, initiative and courage.

4. The District Collector :

The district is the basic unit of administration below state level in India. A District is placed under the charge of a district officer called the district Collector or deputy Commissioner, the Kingpin of our administration. The district is also the unit of administration for the various other government departments like the police, industries, agriculture, education, medical and health, public health, electricity etc. However, the position of the collector is different from that of the officers of other departments functioning in the district. He is supposed to be the chief representative of the government in the district.

The Evolution of the Office of the Collector

The present institution of the collector may be directly derived from the East India Company. It got the diwani rights and decided to take upon itself the administration of revenue. At the same time, the company decided that the collector has to supervise revenue collection and preside over the courts. At that time revenue collection was a major and very important function, hence, the collector came to occupy a very important position. In 1872, Sir George Campbell, at that time the lieutenant governor of Bengal said that the collector is the general controlling authority over all the departments in the district. He declared that the DM/ Collectors should be supreme in his area, except in matters of courts of justice.

After independence, the circumstances changed and the functions and powers and position of the collector also changed. Democracy and specialization in post – Independence period had affected the powers and prestige of the district officer. The separation of judiciary from executive and advent of panchayatiraj and growing resentment of technical departments and their officers towards the collector's dominant position in the district have some of the potent factors which have adversely affected the position of the collector. But he

is still a chief coordinator of all the functionaries in the district and representative of the government as a whole at the district level.

The district officer is known as collector in Rajasthan, Gujarat, MP, Maharashtra and Andhra Pradesh, etc. in Punjab, Haryana, Assam, Jammu and Kashmir and Karnataka, the deputy Commissioner and District Magistrate (DM) in UP and West Bengal, is the head of district administration. He is a generalist IAS Officer directly recruited or promoted from state civil service. He performs more undefined than defined functions. Thus, due to the multifarious nature of his functions he is called the pivot of the district administration.

Functions of the District Collector:

The district Collector is the ultimate boss of the district, responsible for every single event which happens in his jurisdictional area. In spite of the size of the districts, attendant lethargy and complexity and corruption, the institution of the district collector is one of the most powerful ones in the country. Even today, despite panchayati raj and the mandal, the collector is still perceived as being above petty politics, and truly for the people. First we will discuss his most important functions, namely, land revenue, law and order and developmental functions and others.

Land Revenue :

The office of the collector was created to collect revenue. The first governor –general of India, Warren Hastings, had created the office for the dual purpose of collecting revenue and dispensing justice. He is the head of the revenue department of the district. In this capacity he exercises the power of general supervision and control of the land records and their staff. His functions concerning land revenue are of several types such as collection of land revenue, canal dues and other government dues, relief of fire sufferers; payment of zamindari abolition compensation and rehabilitation grant; relief to the fire sufferers, assessment of loss of crops due to floods, drought or locusts in the harvest season for recommendation of relief given to the affected farmers, control over land records, land acquisitions and all matters relating to land records, inspection of mutation work, hearing of appeals against the orders of the lower consolidation authorities, relief measures in case of scarcity conditions

caused by natural calamities like fire, drought, flood, water-logging and excessive rains, etc; assessment and realization of agricultural tax; collecting and furnishing multifarious agrarian statistics concerning rainfall, crops, etc; supervision of the treasury and sub—treasuries, enforcement of Stamp Act; ensuring proper administration of land and proper sale and mortgages of land; submission of periodical reports to higher authorities and seeing that the rights in land are held and enjoyed and passed from one party to another according to law in a peaceful manner. For the proper performance of revenue functions the collector is assisted by other revenue officers. The district is divided into sub-divisions, Tehsils, Kanungo circle and patwari circles, and the officer in-charge of these are SDO, Tehsildar, kanugo, patwari and village headman, patel or chowkidar to assist the collector.

The Maintenance of Law and Order :

At the District level, according to the Police Act, 1860, and the police regulations of different states, police functions are under the overall supervision and control of the DM. He is responsible for maintenance of law and order. The district police under the Superintend of Police (SP) is his main instrument to maintain law and order. As a DM he promulgates orders if there is any danger of breach of peace and public order. He can inspect police station and ask for any information, record, statement and register dealing with crime. He grants licenses for explosive and fire arms. He can order enquiry into an accident caused by explosion, can also issue warrants for the arrest of a suspected offender on apprehension of breach of peace, a person may be detained by him. In 1993, thousands of workers of the BJP were arrested to prevent them from participating in the rally at Boat Club, New Delhi by the district administration.

In serious cases of breach of peace, the DM can seek the assistance of special armed forces or the provincial armed constabulary (PAC) to maintain peace. The home guards can also be called at a short notice in case of need. In case of disturbances CRPF battalions may be requisitioned by him. The central government can ask the other state governments to send their armed forces. He

may impose curfew in a particular area if situation demands. He has power to disperse unlawful assemblies and issue prohibitory orders under section 1344 of CrPC.

The Collector conducts inspection of jails, disposes the case of under trial prisoners, grants superior class to prisoners, orders premature release of prisoners, release of prisoners on parole, deals with mercy petitions of prisoners, submits annual criminal report to the government, appoints village chowkidars, deals with labour problems strikes, etc. He takes necessary action for eviction under Public Premises (Eviction Act and Rent Control Act he hears general complaints of the people against any matter relating to the district administration. He makes necessary arrangements of the holding of fairs and exhibition in order to ensure peace.

Maintenance of law and order is impossible without proper intelligence system. The area which is known for mischief mongering needs special attention on the basis of intelligence gathered. In the district activities of student organizations, particularly of bigger ones, activities of communal organizations of political organizations, they might be planning political agitations, and activities of such persons who are known for creating law and order problems needs constant watch and intelligence.

Developmental Function :

Since Independence, the nature and scope of governmental functions have increased. The government is striving to achieve socio-economic justice. The realization of these two-fold objectives has led the government to perform developmental functions. With the increasing activities undertaken by the government, this function of the collector has been gaining more and more importance.

To perform developmental functions, two types of patterns have emerged in different states. One is the Maharashtra and Gujarat pattern in which all the developmental functions have been brought under the control of the zilla parishad and all district level officers of development department have been placed under the administrative control of zilla parishad. A separate IAS officer

has been appointed as Chief executive officer of the zilla parishad, who exercises control on all its officials.

The second pattern is found in Tamil Nadu and other states. The collector looks after both the regulatory as well as developmental functions. Both the patterns have worked satisfactorily. Prior to the introduction of Panchayatiraj in 1959 on the recommendations of Balwant Rai Mehta Committee, 1957, the collector was connected with all the developmental activities in the district, including community development. After the introduction of panchayatiraj, developmental activities have been handed over to the elected bodies and the role of collector in this respect differs from state to state. Balwant Rai Mehta Committee had suggested that at the district level, the collector or the deputy commissioner should be the captain of the team of officers of all development departments and should be made fully responsible for securing the necessary coordination and cooperation in the preparation and execution of the district plans for community development. Where he is not already empowered to make the annual assessment of the work of the departmental officers in regard to their cooperation with other departments, their speed of work, their dealings with the people and their reputation for integrity, he should be invested with such powers. He is responsible for the successful implementation of developmental schemes of the panchayati raj.

That prevailing practice in many states at present is to make the district collector the coordinator of developmental functions and appoint an officer as the additional district collector and chief executive officer of the zilla parishad. The collector being the final authority in the district, is in a better position to get the cooperation of all district functionaries, therefore, look after the developmental functions in the district. In agriculture development programmes and even in other development progrmames a large number of agencies were required to supply inputs wisely. Therefore, coordination is required to make sure that the necessary inputs are available to the farmers at proper time. Moreover, there are number of special progammes like Integrated Rural Development Programme (IRDP), Drought Prone Areas Programme (DPAP), Desert Development Programme (DDP), Rural Landless Employment Guarantee Programme, National Rural Employment Programme, MGNREGA, JRY, etc.,

There is hardly any programme which does not involve the land acquisition, land management, regularization of sale and purchase of land, etc. A number of coordination committees are functioning for implementation of various programmes under the district collector to ensure successful implementation of different development programme.

Other functions :

In addition to these above- discussed functions, he performs many other functions of varied nature:

1. The collector is the returning officer for elections to parliament and Vidhan Sabha constituencies and has responsibility for coordination of election work at the district level.
2. He conducts census operations every 10 years.
3. He grants old age pension and house-building loans.
4. He is concerned with preparation of district gazetteers and protection of ancient monuments.
5. He is concerned with supervision and control over municipalities in the district.
6. He is concerned with controlling, drawing and disbursing offices of the district staff.
7. He acts as the protocol officer in the district and issues tour programmes of ministers and VIPs and makes arrangement for stay of VIPs at circuit houses.
8. He is the responsible for national savings or the state loans floated from time to time and contributions to the national defence fund.
9. He is the chairman of several committees such as the soldiers and sailors welfare fund, staff committee, public grievances committee, family planning committee, etc.
10. He is concerned with management of government estates.
11. He is concerned with attending to character verification, issuance of certificates for domicile, scheduled castes and backward classes, etc.,
12. He is concerned with training junior officers in official procedures and administrative work.
13. He is concerned with superintendence over all other branches of district administration.

14. He is concerned with enforcement of Press Act.
15. He is concerned with postings, transfer and leave of the land revenue officers working under his control.

In short, the duties and functions of the collector leave many things on him without formal mention, and he has to be very vigilant to face any eventuality.

The Position and Role of the Collector :

The role of the collector is changing at a fast pace due to various welfare schemes. The collector as the head of the district administration is closely connected with the development progrmames and has acquired a key position working as a guide and philosopher.

The district officer, as chief agent and the representative of the state, serves as a channel of communication between the government and the public.

The Administrative Reforms Commission (ARC) also made some recommendations on district administration. The main recommendations are as follows:

(a) In the state where the judicial work of the collector has not yet been transferred to the judiciary, steps may be taken to have it so transferred. In those states in which only a partial transfer of judicial work has taken place, steps may be taken to make the transfer complete.

(b) The district administration should be divided into two sectors- one concerned with regulatory functions and the other with developmental functions. The district collector should be the head of the former and the panchayati raj administration should have the responsibility for the later. The district collector and president of the zila parishad should meet at periodic intervals to resolve matters calling for coordination between the regulatory and developmental administration. This procedure should be given official recognition in the legislation dealing with the panchayati raj.

(c) The collector and DM as the head of the regulatory administration in the district should exercise general supervisory control over the police organizations in the district. Except in an emergency, he should not interfere with the internal working of the police administration. In the day to day work of the police organization and with regard to routine matters

like postings and transfers, the district superintendent of police should have full control. The collector should annually record his views on the performance of the district superintendent of police after receipt from the officer concerned, in a note written by him on his performance during the period under review.

(d) It should not normally be necessary for the collector or any other district officer to wait upon a visiting dignitary unless his officers should spend a prescribed minimum number of days on tour with night halts in the camp. The tour should be utilized, among other things, for the redress of public grievances on the spot wherever possible.

(e) There should be only two administrative units whose heads are invested with powers of decision making in the district administration- one in the tehsil, talukas or group of tehsilstalukas of a sub-division in the states where there are no tehsilsltalukas) and the other at the headquarters of the district. The intermediary levels where they exist may be abolished. Powers should be delegated to the maximum extent to the officer in charge of the sub-division district administrative unit.

(f) When conditions are more propitious for considering the question of readjusting the boundaries of district, the state governments may appoint committees for the purpose of examining the size and boundaries of districts in the light of administrative requirements.

The recommendations of the ARC are still relevant and we have to further strengthen district administration. The district administration should meet the people in focal villages/ rural centres in rotation so that genuine rapport is established between the administration and the citizen and maximum participation is achieved. At district level if we want to give social and economic justice then there has to be a rapid change in the district official's mode of functioning/ working. The districts should be rationally reorganized on the basis of area, population, productivity of land, means of communication, history and resources to remove the difficulties of the people. In the end, the revival of the authority of the district administration should be our prime national concern.

5. Self –Assessment Questions:-

1. Discuss the composition and functions of Board of Revenue.
2. Evaluate the functions and role of Revenue Divisional Commissioner.

3. Discuss the changing role of Collector in post independent district administration.

6. Further Readings :-

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