



Department of Distance Education

Punjabi University, Patiala

Class : B.A. I (Police Administration) Semester : 2
Unit : I

Medium : English

Lesson No.

- 2.1 : Governor And Chief Minister**
- 2.2 : Chief Secretary**
- 2.3 : State Legislature**
- 2.4 : High Court**
- 2.5 : National Human Rights Commission**
- 2.6 : Lokpal and Lokyukta**
- 2.7 : Schedule Caste/ Schedule Tribe Commission**

Department website : www.pbidde.org

GOVERNOR AND CHIEF MINISTER OF A STATE

Structure :

- 2.1.0 Objectives
- 2.1.1 Introduction
- 2.1.2 Governor - Power and Position
 - 2.1.2.1 Qualifications
- 2.1.3 Emoluments and Allowances
- 2.1.4 Powers and Functions
 - 2.1.4.1 Executive Functions and Powers
 - 2.1.4.2 Legislative Functions and Powers
 - 2.1.4.3 Financial Powers
 - 2.1.4.4 Judicial Powers
 - 2.1.4.5 Discretionary Powers
- 2.1.5 Relations with Council of Ministers headed by Chief Minister
- 2.1.6 Governor's Position in the era of Coalition Government
- 2.1.7 Chief Minister
- 2.1.8 Appointment
- 2.1.9 Powers and Functions
- 2.1.10 Position of Chief Minister
 - 2.1.10.1 When a single majority party is in power at the Centre
 - 2.1.10.2 Chief Minister of a Coalition Government
 - 2.1.10.3 Chief Minister of a Minority Government
 - 2.1.10.4 When a single majority party but not in power at the Centre
- 2.1.11 Conclusion
- 2.1.12 Keywords
- 2.1.13 Suggested Readings
- 2.1.14 Answers to Self-Check Exercises

2.1.0 Objectives :

After studying this lesson, you shall be able to :

- comprehend the powers and position of Governor as Constitutional Head of any State in India,
- analyse the appointment procedure of Chief Minister;
- describe the powers and position of Chief Minister in detail.

2.1.1 Introduction :

In the present lesson, Constitutional Head of Indian State i.e.

Governor's appointment, powers and position alongwith the powers and position of Chief Minister will be discussed in detail.

2.1.2 Governor - Powers and Functions :

Article 153 lays down that there shall be a Governor of each Indian state. He is appointed vide Article 155 by the President by warrant under his hand and seal. The Governor holds office during the pleasure of the President. In practice, 'however, the appointment of the Governor is made by the Prime Minister in consultation with the Home Minister. It was, however, desired that the appointment be made in consultation with the Chief Minister of the State concerned. But this practice is not adhered to in all cases and under all the circumstances. Thus, the practice of consulting State Chief Minister has just become a formality. He holds office for a term of five years but he continues to hold office even after the expiry of this term until his successor enters upon his office: He may submit his resignation before the expiry of his term.

2.1.2.1 Qualification: To be eligible for the office of Governor a person should be (a) a citizen of India, (b) should have completed the age of 35 years, (c) should not be a member of either House of Parliament or of the House of Legislature of any state, (d) should not hold any office of profit.

Besides these written qualifications another convention has been developed that the Governor must not belong to the State where he is appointed.

2.1.3 Emoluments and Allowances:

The Governor is entitled to official residence free of rent and is also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the second schedule.

Article 158 (1) : Article 158 (3A) lays down that where the same person is appointed as Governor of two or more states, the emoluments and allowances payable to the Governor are allocated among the states in such proportion as the President may by order determine. The emoluments and allowances of the Governor cannot be diminished during his tenure.

2.1.4 Powers and Functions

The powers and functions of the Governor can be discussed under the following five heads-Executive, Legislative, Financial, Judicial and Discretionary.

2.1.4.1 Executive Powers :

The expression 'Executive Power' is very wide. It includes acts necessary for the carrying on or supervision of the general administration of the state, including both deciding the course of action to be taken, and carrying out the decision.

- (i) The Governor is the Chief Executive, The Head of the State, having been vested with all the authority needed to act as such. All

- executive actions are taken in his name.
- (ii) He makes the appointment of the Chief Minister of the State and on his advice appoints other ministers of the Council of Ministers who hold office during the pleasure of the Governor.
 - (iii) Besides all other important and major appointments like those of the Advocate General, Chairman and members of the State Public Service Commissions are made by the Governor. The Advocate General holds the office during the pleasure of the Governor and receives such remuneration as the Governor may determine.
 - (iv) He acts as the Chancellor of the Universities in the State.
 - (v) Since he is the agent of the Centre and also the constitutional head of the state, he has to take into the efficient administration of the state, about which he keeps the President well informed. In his turn, he enjoys the right to be kept informed by the Chief Minister about the State administration and can ask for any information from the Chief Minister in this regard. As such as and when he finds that there is “breakdown of constitutional machinery” in the State he recommends to the Centre the imposition of State of Emergency and consequently becomes the real and virtual agent of the Union Government in his State.

2.1.4.2 Legislative Powers :

- (i) He summons the sessions of State legislature at such a time as he thinks fit and ensures that six months do not intervene between the last sitting and the date fixed for its next sitting.
- (ii) He can prorogue the sessions of the House of the Legislature and can also dissolve the Legislative Assembly as and when he deems fit.
- (iii) The legislative work of the Assembly starts with the address of the Governor and if there is Legislative Council also there can be joint sitting of both the Houses for the purpose.
- (iv) He can send message to the House/Houses with regard to bill and the House/Houses concerned are obliged to consider that message at the earliest convenience.
- (v) He can nominate one member of the Anglo-Indian community to the legislative Assembly if he feels that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein. He can also nominate some distinguished members to the Upper House.
- (vi) All bills passed by the State Legislature are subject to his assent. He may give his assent or Withhold it or return a bill

(except the money bill) to the Legislature for reconsideration or might reserve the bill for the consideration of the President.

- (vii) Article 192 stipulates that if at any time any question arises that a member of the Legislative Assembly did not satisfy the required qualification, the question should be referred to the Governor for decision. He shall, however, obtain the opinion of the Election Commission and is bound to take decision as recommended by the Election Commission.
- (viii) He can also promulgate an ordinance according to the urgency of the situation (in case legislature is not in session) in the State and such an ordinance can remain in force till six weeks after the reassembling of the State Legislature unless it is approved by the legislature. During the six week period, an Ordinance might be withdrawn by the Governor at any time.

2.1.4.3 Financial Powers

- (i) A money bill cannot be introduced in the State Legislature without his prior approval.
- (ii) The Contingency fund of the State is at his disposal which can be used by him to meet unforeseen and immediate expenditure pending its authorisation by the State Legislature.

2.1.4.4 Judicial Powers

- (i) The Governor has the power to grant pardon, reprieve or remission of punishment or suspend, remit or commute the sentence of any person convicted of an offence against law to which the executive power of the state extends.
- (ii) He makes the appointments of District judges, and decides matters relating to their appointments and also of other judicial officers.

9.4.5 Discretionary Powers

Some of the Governors, e.g., those of Assam and Nagaland enjoy some specific discretionary powers.

As for the Governor of the other states, their discretionary powers depend upon the nature of political circumstances prevailing in a particular state.

2.1.5 Relations with Council of Ministers headed by Chief Minister

The Constitution lays down that the executive power of the State is vested in the Governor and Article 163 provides that there shall be Council of Ministers with the Chief Minister as the head to 'aid and advise' the Governor, in the exercise of his functions except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.

Article 164, further lays down that the Chief Minister shall be appointed by the Governor and other Ministers shall be appointed by him on the advice of the Chief Minister. The article makes it very clear that the appointment of Chief Minister lies in the hands of the Governor. Of course, the Governor keeps in view the conventional practices of the parliamentary form of government. But this action cannot be challenged in a court of law and wherever challenged (Bengal 1967 and U.P. 1970) was not accepted by the High Court or even by the Supreme Court. Thus, the Governor enjoys great power in the selection of the Chief Minister of his State; although it is limited if a single party in the Legislature of a State is in majority. Here it is important to note that the recent developments in U.P. after the Vidhan Sabha election in which no party got the requisite majority, though BJP emerged as the single largest party. Out of the three claimants, i.e., Mayawati (BSF) supported by Congress Kalyan Singh (BJP) and Mulayam Singh Yadav (SP) none could succeed in securing the support of the others. The Governor Romesh Bhandari did not invite the leader of the largest party and recommended extension of the President's rule, which has been approved by Parliament.

As in appointment so also in the removal and dismissal of a Chief Minister the Governor enjoys similar powers. A Chief Minister can be dismissed by the Governor. A Chief Minister can be dismissed by the Governor if the Chief Minister has lost his majority in the Vidhan Sabha, or does not accept his proposal to call a session of Vidhan Sabha or if the Governor is satisfied that the orders of the Council of Ministers are violative of the spirit of the Constitution or are repugnant to the directives of the Centre. Under Article 167, the Minister is required :

- (1) to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposal for legislation;
- (2) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor might call for; and
- (3) if the Governor 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.

2.1.6 Governor's Position in the era of coalition Government :

It is clear that the Governor merely acts as a figure head in the selection of the Chief Minister and the Council of Ministers when the political situation is such in a State that the leader or a party enjoys complete confidence of the legislature and has clear majority with him. This exactly was the situation in India till the Fifth General Election. But the

political situation changed after that and the Congress Party lost majority support in seven states and opposition parties took control in several states. Political instability and defection became very common in some of these states. It was under these circumstances that the Governor who was an insignificant entity during the pre fourth general period rose into prominence and began to wield real power. He no longer was “a bird in golden cage” and the scope of his discretionary powers in the appointment of a Chief Minister was expanded.

The era of coalition politics brought to the surface two or three contenders who claimed the right to form the minister and in this situation, the Governor decided in his discretion as to whom to appoint the Chief Minister and invite to form the Government.

However, with the fifth general election political situation again changed in the States. The Congress Party again got hold in most of the states. Stable governments were installed once again and the Governors again became as powerless and insignificant in Indian politics as they were during the era of first general elections; But again after the sixth and seventh general elections, the dissolution of the state ministers through the Governor demonstrated that Governors being appointed on the recommendations of the Central Government, can use discretionary powers.

Till now thirteen Lok Sabha Elections have been held and last three general elections brought coalition governments or minority governments with outside support at the centre. In such situations the change in the government at the Centre saw the change in the Governors of the States. And the party at the Centre used the Governors to safeguard its interest at the state level. Thus, Governor is not an impartial observer of the Indian Politics. His situation largely depends upon the position of the party in power in the state and its equation with the party in power at the Centre.

Self-Check Exercise-I

Note : Compare your answers with the answers given at the end of this lesson.

1. Mention any two executive powers of the Governor.
2. What is Contingency fund of State?
3. Write the required qualifications to be appointed as Governor.

2.1.7 Chief Minister

The Constitution of India provides for the establishment of the Parliamentary form of Government at the state level also. The Governor is the constitutional head of the state, while the Council of Ministers with Chief Minister as its head is the real executive. Jammu and Kashmir is, of course, an exception.. It has a separate constitution of its own. No other state of the Indian Union has this privilege. In the capacity of the real executive head,

the Chief Minister exercises vast and real powers. As the leader of his State, the leader of the majority party, the head of the state Council of Ministers, the chief-advisor to the Governor and representative of the people of the state, the Chief Minister plays a leading and powerful role in the administration of the State. Article 163 of the Indian Constitution provides that there shall be a Council of Ministers, with the Chief Minister as its head, to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion. Thus, his position in the State political set-up is more or less similar to that of prime Minister of India.

2.1.8 Appointment of Chief Minister

Constitutionally and legally, the Chief Minister is appointed by the Governor. Article 164 of the Constitution states that the Chief Minister is to be appointed by the Governor and other ministers are to be appointed on the advice of the Chief Minister. The ministers including the Chief Minister hold office during the pleasure of 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 change of formation of a coalition Government, the Governor may advise the President to impose President rule under Article 356. The Governor may dismiss a Chief Minister in case he forfeits the claim of being the leader of the party having majority in the ranks of the party having clear majority.

Our Constitution provides that if any minister or Chief Minister is not a member of the State legislature at the time of his appointment, he has to get himself elected to it within six months. The seemingly undemocratic provision was included in the Constitution by the founding fathers who said of entering the rough tumble of electoral politics. Almost during all the regimes, the Chief Ministerships were given to such persons who, at the time of their appointment, were not even the members of the Vidhan Parishads.

2.1.9 Powers and Functions of the Chief Minister

Constitutionally, the Chief Minister enjoys the following powers:

1. Formation of Council of Ministers :- The Chief Minister has the power of forming a ministry of his choice. The Constitution gives him the legal right to select his ministers under Article 164(1).

The Chief Minister is free in the choice of his ministers, particularly

in case of single party having majority in the Legislative Assembly. He can appoint any member or even a non-member as a minister and allocates him any portfolio.

However, there are some practical limitations. While selecting his minister there are various considerations which weigh with him. For example, he has to give a fair representation to the various religions or the districts of the state as well as to the various communities of the state. Similarly, one or two ministers have to be taken from the scheduled castes.

In case of coalition Government, the Chief Minister has to take ministers from the various constituent units. Mostly, the minister from the constituent units of the coalition are chosen by the respective parties and the Chief Minister simply takes them in the Ministry.

2. Distribution of Portfolios among the Ministers :- After the appointment of the ministers, the next important function of the Chief Minister is the distribution of departments among the colleagues. He decides who will be a Cabinet minister or a minister of state or a deputy minister. While doing so, he has to keep in mind the seniority and political status of his ministers. He has to select duly qualified persons for allocating such portfolios as Finance. Some of the portfolios are kept by him.

The Chief Minister has the privilege to reorganise the Council of Ministers whenever he desires. He has the right to change the members of his team in the interest of the smooth sailing of the state administration. He can call upon any minister to resign. He can get any minister dismissed by the Governor. The Chief Minister is the real maker, modifier and destroyer of the Council of Ministers.

3. Chairman of the Council of Ministers :- The Chief Minister prepares the agenda of the meeting of the Council of Minister, communicates it to the Ministers and then presides over the meeting of the Cabinet. He has the right to summon the meeting of the Cabinet at any time. Every decision of the State Cabinet bears the imprint of his ideas, views and perceptions. He can veto any decision by threatening to resign.

4. Link between the Governor and the Council of Ministers :- The CM is the link between the Governor and the Council of Ministers under Article 167 of the Constitution. It is his duty to communicate to the Governor all the decisions of the Council of Ministers, relating to the administration of the state and proposals for legislation. He is also required to submit for the consideration of the Council of Ministers, any matter on which an individual minister has taken a decision and the Governor wants it to be placed before the entire Council of Ministers. Other ministers meet the Governor with the consent of the Chief Minister.

5. As Coordinator :- The Chief Minister has the responsibility of

coordinating the work of various departments of the government. It is his duty to see that no department of the Government harms the functioning of the other departments. He has to ensure that all the departments of the government pull together as a team and lend helping hand to each other in the best interest of the State. He resolves the conflict or deadlock between the two or more departments. His decisions supersede the decisions of his ministers. In case a disagreement persists, the concerned minister has to quit the ministry.

6. Role as a Leader of the State Legislative Assembly :- The Chief Minister is the leader not only of his party but also of the Legislative Assembly. He acts as the spokesman of the government. It is his duty to support the members of his Cabinet on the floor of the House if they are being cornered by the opposition. He is the Chief defender of the policies of the Government.

7. Powers Regarding Appointments :- All the major appointments and promotions are made by the Governor on the advice of the Chief Minister. Other ministers have to depend upon the Chief Minister for the acceptance of their recommendation.

8. Power of Getting the State Legislature Dissolved :- The Chief Minister has the right to advise the Governor to dissolve the state legislative assembly, if he finds that the government cannot be carried on in accordance with the provisions of the Constitution or in case he is likely to lose the majority. Normally, such advice is given by the Chief Minister on the basis of political consideration. The advice is binding upon the Governor when the Chief Minister has a majority support. But in case of split in his party the Governor can try for alternative arrangement.

9. Role in Centre-State Relations :- As the real head of the state administration, it is chief responsibility of the Chief Minister to maintain good relations with the Centre. He has to use his position for securing central grants and help, considered vital for carrying out the development work in the State. A good equation with the Union Government, particularly with the Prime Minister, can be of great help for the state when he belongs to the same party which is in power at the Centre, he has to use his influence for securing the interest of the State. If he belongs to a party, which is not in power at the Centre, he has to act as good negotiator.

2.1.10 Position of the Chief Minister

The practical position of the Chief Minister depends upon the political situation. Following are some situational factors which determine the actual position of the Chief Minister.

2.1.10.1 Chief Minister of the Single Majority Party in Power at the Centre

Chief Minister of the party in power at the Centre having comfortable majority behind him always remains in a very strong position as he finds

his friends in. Governor and Vidhan Sabha. He takes an oath of office as a result of the blessings of the High Command. Many times he is a man of the Prime Minister or some power Union- Minister. During these circumstances, the Chief Minister can exercise his power decisively and forcefully. The Governor is bound to accept his advice in almost all spheres. Partap Singh Kairon, Giani Zail Singh and Beant Singh, Ex-Chief Minister of Punjab may be mentioned in this category.

Moreover, if he is in good books of the Prime Minister then the latter plays very positive role in the selection of the Chief Minister as we find in the cases of Giani Zail Singh of Punjab and Mohan Lal Khadia of Rajasthan. In the Indian Political System, sometimes the Prime Minister deposes some of his or her trusted ministers to a state to work as the real head to the State Government as Mrs. Indira Gandhi did for S.S. Ray, P.C. Sethi and H.N. Bahuguna. Not only this, a Prime Minister like Mrs. Gandhi, while keeping in view the tugs and pulls of politics could ask her trusted lieutenants to quit and then clear the way for the coming of someone else. Even a non-Congressman), in case of Arjun Singh who was elected the leader of State Legislative of Madhya Pradesh. After his election he was installed as Governor of Punjab State, the office of Chief Minister was given to someone else. In case the Chief Minister is the head of his party then he will have a very strong hold in organisation. And he will be free in the formation of Council of Ministers as well as in the distribution of portfolios. Also, he will be influenced from any aspect regarding policy formulation. In such a situation, he may even show a very niggard behaviour towards the constitutional head of the State Government by disallowing him to hold even a very ordinary function like that of giving entertainment to the delegates of some academic conference. K.L. Rao has pointed out that there have been instances when the entertainment of the Raj Bhawans could be better only when the parties were arranged at the instance of the Chief Minister, but where the Governor did at his own, it was a poor show, the extreme depth being reached once when a Governor entertained the incumbents of an All India Body with only Potato Chips and a cup of tea, but probably that was solitary instance of the greatest niggardliness.¹ It is obvious that such a Chief Minister hardly bothers about the voice of the weak opposition that takes place in the chambers of Vidhan Sabha. He takes it for granted that the Assembly can not pass a vote of censure against his government. The strict control of the whips is always there to throttle the voice of the party men having any degree of differences with official policy. Thus, it is neither the pleasure of the Governor nor that of the Assembly. but Prime Minister, who decides the fate of the Chief Minister. On account of this latent fact and state politics that the withdrawal of the pleasure of the Prime Minister amounts to the eventual exit of the Chief Minister. Partap Singh

Kairon, a very strong Chief Minister of Punjab had to go in 1964 as Prime Minister Lal Bahadur Shastri took a very serious view of the structures passed against him by Das Commission.

2.1.10.2 Chief Minister of a Coalition Government.

The Chief Minister of a coalition Government is virtually a prisoner of the situation. He suffers of power weakness. The Chief Minister depends upon the pleasure support of various parties for the purpose of forming the ministry. So, he spends most of his time and energy in keeping the Front/coalition intact. Lack of political homogeneity in his Council of Ministers can be a source of weakness. Thus, the Chief Minister has nothing else more urgent than to see that there develop no cracks that eventually destroys his government. The Chief Minister of a coalition government has his natural opponents on all fronts, i.e., in the Governor, in the Council of Ministers, in the State legislature, and, above all, in the Union Government. The Government takes advantages of the fluid situation to make use of his discretionary powers. For example, while announcing his resignation the Punjab Chief Minister of coalition government, Gurnam Singh (1967) demanded the dissolution of the Assembly for seeking a fresh mandate. But the Governor, D.C. Pavate turned down the request of the outgoing Chief Minister to dissolve the assembly and reiterated his right to form an alternative government. It is clear from the above discussion that the Chief Minister of coalition Government is not free in the formation of the distribution of portfolios. Also, he is not free from influence in policy formation because he cannot ignore the common minimum programme.

2.1.10.3 Chief Minister of a Minority Government

The Chief Minister enjoys a very weak position as the head of a minority Government. Normally, the Chief Minister of Minority Government has to depend upon the external support of other party/parties. As head of the minority government, he will not be free in the formation of Council of Ministers and distribution of portfolios, because he cannot ignore that very party which supports it from outside. The Chief Minister functions according to the dictates of the party which is supporting him from outside. The power of the Chief Minister regarding policy formulation depends upon the direction of the supporting party. The minority Government of Lachman Singh Gill in Punjab was formed on Nov. 25, 1968 with the support of Congress High Command. This ministry collapsed due to the mistrust that had developed between the leaders of the Congress Legislature Party (Gian Singh Rarewala

1. K.V. Rao, The Governor at Work, "The Journal of the Society for the Study of Government, Varanasi, Vol. I, No.3, p. 93.

and the Chief Minister, Lachman Singh Gill) Mr. Gill tendered his resignation immediately when the Parliamentary Board of the Congress Party decided to withdraw its support to the Gill Ministry.

2.1.10.4 The Chief Minister of a Single Majority Party Not in Power at the Centre

In case another political party other than one to which the Chief Minister belongs is in power at the Centre, the position of the Chief Minister will not be so strong. He will find himself working under direct or indirect control pressure through the Governor of the state by virtue of latter's being nominee of the Centre. He gets his office by virtue of being the leader of the majority that leaves no other option in the hands of the Governor than to pick up him for the important post. He may, however, face the critical role of the Governor now and then and tackle it carefully to avoid the use of his discretionary power as the Governor, in most of the cases, must be expected to do anything great at the invisible behest of the masters sitting in New Delhi. The Chief Minister, however, has nothing to fear from the side of the Vidhan Sabha unless there are forceful dissident elements in his party to create problems for him. Such a situation may be studied in the case of the Akali Chief Minister, Parkash Singh Badal failed to do the same owing to the over riding control of Sant Fateh Singh in 1969-70 and inner dissension. encouraged by the group of a man like Tarlochan Singh Riasti. Again, Barnala Ministry (formed under the leadership of Surjit Singh Barnala in 1985) also victimized the inner dissension on the issue of police entry in Harmandir Sahib (Amritsar) on April 30, 1986. There after, Barnala ministry worked under the instructions of the Congress (ruling party at the Centre). The Congress party was supporting this ministry from outside.

Self-Check Exercise-II

Note : Match your answers with the answers given under No. 6.14 at the end of this lesson.

1. How a Chief Minister is appointed?
2. Is Chief Minister a nominal or Constitutional Head of the State?
3. Mention any four powers of the Chief Minister.

2.1.11 Conclusion

We can conclude that our country has adopted parliamentary form of Government. Under this system the CM of the State is a very important functionary. No other office in the State can match with this office. But in reality, the position of the Chief Minister depends upon the political situation. In coalition era of governance, situations may arise where

Governor can act on his own. But normally, it is the Chief Minister who is the real chief executive and exercises all the powers given to the Governor by the Indian Constitution.

2.1.12 Keywords

Coalition	-	a method of forming government when no single political party gets clear cut majority then few parties get together on certain minimum acceptable agenda and form a government.
Prorogue	-	postponing or suspending the meeting of Legislative Assembly for some time.
Consolidated Fund of State	-	all revenues received for the State government are credited to a single fund known as consolidated fund of State, all the payments of the State government are made out of it but with the sanction of the State Legislature.
Contingency Fund of State	-	it is given to Governor who can make advances from it to the government to meet unforeseen expenditure.

2.1.13 Suggested Readings

Sharma M.P.	-	Theory and Practice of Public Administration
Maheshwari S.R.	-	State Government in India
Mahajan Chander Mohan	-	Elements of Public Administration
Puri K.K.	-	Indian Administration

2.1.14 Answers to Self-Check Exercises :

Exercise No. I

- 1) Executive powers of the Governor are mentioned at No. 6.4.1 - Executive functions and powers.
- 2) In your lesson at No. 9.4.3 - Financial Powers, point(ii), this term has been described. It is also described in the keywords (6.12)
- 3) A list of required qualifications for appointment as a Governor of any Indian State have been at No. 9.2.1 of this chapter. Read it and then write your answer.

Exercise No. II

- 1) Procedure for the appointment of Chief Minister has been discussed at 9.8 in the present lesson. He is the leader of the majority party in the Assembly and is appointed by the Governor.

- 2) He is not a nominal or Constitutional Head but real chief executive of the State as all the powers are exercised by him with the help of his Council of Ministers.
- 3) The powers and functions of the Chief Minister have been discussed in detail in the lesson at under the same heading bearing No. 9.9. Read all these powers and functions carefully and describe any four of these in your own words.

CHIEF SECRETARY**Structure :**

- 2.2.0 Objectives
- 2.2.1 Introduction
- 2.2.2 Brief profile of organisation of a Department
- 2.2.3 Organisation of Secretariat
- 2.2.4 Chief Secretary
- 2.2.5 Appointment of Chief Secretary
- 2.2.6 Powers and Functions
 - 2.2.6.1 Functions relating to General Administration
 - 2.2.6.2 Functions relating to Personnel Administration
 - 2.2.6.3 Functions relating to Co-ordination
 - 2.2.6.4 Role as a Secretary to Cabinet
 - 2.2.6.5 Functions regarding Development Planning
- 2.2.7 Position in the State Administration Setup
- 2.2.8 Conclusion
- 2.2.9 Keywords
- 2.2.10 Suggested Readings
- 2.2.11 Answers to Self-Check Exercises

2.2.0 Objectives

Thorough study of this lesson will enable you :

- to understand the organisation and functions of secretariat;
- to comprehend the procedure of appointment of chief Secretary;
- to describe the powers and functions of Chief Secretary.

2.2.1 Introduction

India being a 'Union of States' follows the uniform system of government both at the Centre and in the States. As the President is the Constitutional head at the Centre, so is the Governor at the State level. Though the entire administration is run in the name of the Governor, yet the Council of Ministers headed by the Chief Minister enjoys the real powers. The unique feature of Indian administration is that parliamentary form of government has been adopted both at the Centre and in the States. Under this system the Council of Ministers of both Centre and the States

are collectively responsible to their respective legislatures. At the State level, the Cabinet exercises control over the entire administration and its directives are put into operation. In order to run the administration efficiently, the activities of all the departments is the responsibility of the Cabinet or the Chief Minister.

Council of Ministers is a comprehensive body consisting of four categories of ministers viz., Cabinet Ministers, Ministers of State and the Deputy Minister and Parliamentary Secretaries. The Governor in consultation with the Chief Minister distributes portfolios among the ministers. Cabinet Minister heads one or more departments independently and is assisted by, Minister of State and Deputy Minister. Sometimes the Minister of State is also made independent incharge of any department. The political head of each department is the Minister whereas the permanent head is the secretary. The collective name given to the department is Secretariat. Since the Ministers are politicians hence have no technical knowledge about the department under them. So Secretaries are their Chief Advisor and have the responsibility to implement the policies and decisions of the government. These secretaries are not specialist but- generation belonging to I.A.S. cadre. Besides Secretary, there are other high level personnel like Deputy Secretary, Under Secretary, Asstt. Secretary. The low-level employees, include Section Officer Assistant, U.D.C., L.D.C., Stenographers and typists *etc.*

2.2.2 Brief Profile of Organisation of a Department

The number of Secretariat departments is not the same in all the States. It varies from 11 to 34. Most States have the following departments: (i) General Administration. (ii) Home (iii) Finance (iv) Revenue (v) Cooperation (vi) Education (vii) Excise and Taxation (viii) Food ,and Supplies (ix) Planning (x) Panchayati Raj (xi) Irrigation and Power (xii) Industries (xiii) Transport (xiv) Law (xv) Jails (xvi) Local Government (xvii) Public Works (Xviii) Health (xix) Personnel Administrative Reforms (xx) Public Relations.

The organisation of a department is alike at the Centre and the State level. The organization of a state level department can be discussed as follows:

(i) Political Head :- Each department is headed by a political head known as Minister. In bigger departments the Cabinet Minister is assisted by a Minister of State and Deputy Minister. Ministers are in no way the permanent political heads of their respective departments because they can be shifted to other departments also. The tenure of the ministers are uncertain as they continue-in office so long as they have the confidence of the house. The minister of each department has dual responsibility to perform, e.g., political and administrative. The political responsibilities of the ministers are as follows:

- (i) to assist the Cabinet to determine policies;

- (ii) to determine the policies of the department in consultation with the permanent staff;
- (iii) to seek legislative approval for governmental policies and spending money;
- (iv) accountability to Legislative Assembly;
- (v) securing cooperation of administration to fulfil public needs; and
- (vi) to know public opinion regarding governmental policies.

The administrative responsibilities of the ministers are:

- (i) to ensure the proper implementation of governmental policies;
- (ii) keeping constant watch over the implementation of programmes and policies;
- (iii) helping to resolve difficulties, if any, in carrying out programmes and policies;
- (iv) to take necessary steps for clean and efficient administration in the ministry.

Normally, the Ministers do not perform these responsibilities with honesty. Thus, in the greater interest of the State, the Chief Minister should, induct such persons in his Council of Ministers who are fully competent to perform these responsibilities.

2.2.3 Organisation of Secretariat

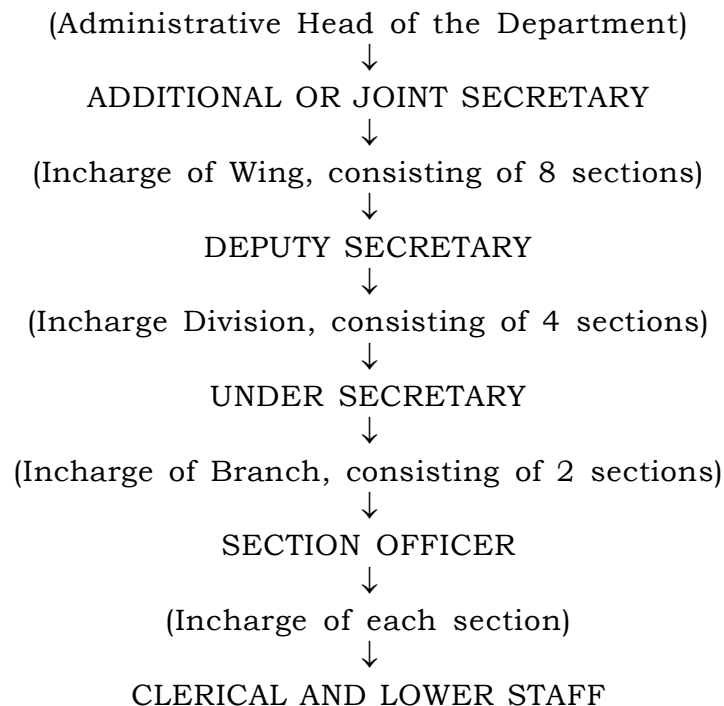
In the organisation of each ministry, the secretariat occupies the important place. The Secretarial functions of different ministers or the administrative departments are discussed below:.

- (i) From time to time, to assist the minister in policy making and in modification, if need be.
- (ii) Framing rules and regulations.
- (iii) Budgeting and control of expenditure relating to the activities of the ministry or department.
- (iv) Securing administrative and financial approval for operational programmes and plans.
- (v) To supervise and control the execution of programmes and policies by the executive departments or semi-autonomous field establishments and to evaluate their results.
- (vi) To coordinate and interpret the policies of the government and to assist its other branches and to maintain contact with the administration.
- (vii) to initiate measures to develop more organisational and personnel competence in the ministry or department and in executive agencies.

(viii) To assist the minister in exercise of his legislative responsibilities.

The Secretariat organisation is composed of two categories of personnel Officer category and Subordinate category. In the former category comes the Secretary, the Deputy Secretary and the Under Secretary. In big departments, there are additional and Joint Secretaries also.

SECRETARY



As is evident from the above chart that the Secretary is at the top who provides leadership to the department and as such only important matters should be left for him. Ashok Chanda observed that a secretary has three fold function: he is the principal advisor of the minister in matters of policy and administration; he is responsible for the efficient and economic administration of his department and the attached office and other organisations which he controls and he represents his department before the Parliamentary Committee on Public Accounts to give an account of its financial administration.

The office of the Secretary is usually manned by the officers belonging to I.A.S. Cadre. The Secretary is responsible for the proper functioning of the department under him and most of the files dealt with by the subordinate officials will pass through him to the minister. He supervises the work of officials

in his department and can seek any information from them.

In big departments where the secretary becomes over burdened the post of Additional Secretary is created. In some departments he is placed incharge of a wing and as such performs the functions of a Joint Secretary. This is how the Additional Secretary reduces the burden of the Secretary, who in turn, can devote his time on important matters of the department.

Joint Secretary is the head of the wing of a department who performs many functions on behalf of the Secretary. However, the Secretary owns the responsibility of the whole department. The head of the division is known as Deputy Secretary, who works in relation to the work of the division. However, he works under the overall charge of the Secretary.

Secretariat division is further divided into branches and each branch is put under the Under Secretary, who is responsible for the dispatch of business and maintenance of the minor cases are dealt with by him.

After officer level personnel in a department, there are subordinate personnel in which section officer/superintendent, heads a section and occupies an important place. Below him there are assistants, clerks, stenographers, typists etc. It is the place where the action is initiated and sent to the higher officers for necessary action.

These officers are generally Class II Officers belonging to State Secretariat Service. Branch is under the charge of Superintendent who is responsible for its overall efficiency. He has to maintain discipline in his branch and ensure that employees are performing their job well. He is to see that all records are maintained properly and no work is lying pending. Secretariat organisation and its working have been subjected to much criticism. It is responsible for the delay in the work. The personnel of secretariat consider themselves to be superior to personnel working in the executive branches. So there is need to bring reforms in its organisation.

It is to be remembered that Secretariat departments differ from executive departments. In the words of Simon, "The Executive Department is an administrative unit, separate from the Secretariat, which reaches its apex usually in a single officer like the Inspector General of Police, Chief Conservator of Forests, outside the secretariat altogether. Such a head of department will usually be concerned principally with Single Secretary to Government and as Single Minister for his order and the funds which he has to spend." It is worth mentioning that all executive departments are not attached with the Secretariat departments. There are many Secretariat departments, which perform advisory and supervisory work and as such no executive department sends its report to it. Finance and Law departments are some of the examples of such departments.

The executive department is headed by an expert in his field, whereas the secretary who controls his activities, is a generalist, who usually belongs to I.A.S. cadre. Normally, both these officers disagree on certain matters, and they try to encroach upon the field of others. There is no doubt that they have their definite jurisdictions, e.g., the function of the ministry is confined to policy making, whereas the department is responsible for its implementation. But still the minister interferes in the implementation process, which results into strained relations between the two, leading to inefficiency in the administration. Following are some of the principles, which help in their smooth relations.

Policy formation should be the responsibility of the Secretariat whereas the responsibility to implement the policies should vest in the department.

The head of the department should be fully empowered to supervise the activities of the staff under him.

On the basis of these principles, the main responsibilities of the Secretariat are as follows:

- (i) to formulate the general programmes of the Government;
- (ii) to prepare budget in consultation with the Finance Department;
- (iii) to supervise the appropriations to be included in the budget;
- (iv) to control the progress of programmes implemented by the government;
- (v) to make arrangement of the posting, salary and leave of personal heading department;
- (vi) to give final shape to all proposed legislative works;
- (vii) to nominate officers for their participation in the meeting convened by the Central or other State government.

Likewise the head of the department has the following responsibilities:

- (i) to prepare the initial draft of budget of his department;
- (ii) to work as technical expert on behalf of his department;
- (iii) to continue research and experience relating to his department and to bring reforms in its technical work;
- (iv) to impart education to the officers of the department relating to latest techniques of the administration;
- (v) to inspect the programmes of his department at the district level;
- (vi) to distribute funds to different branches of the department;
- (vii) to take disciplinary action against the subordinate staff of his department;
- (viii) to advise the minister regarding nominations in the outside agencies by the government.

The volume of work of the Secretariat is increasing day by day especially in a parliamentary form of government where the minister is responsible to

Legislative Assembly for the efficient working of his department. The members of legislature have the right to ask questions to the minister relating to his department. The minister is under an obligation to answer the question to the satisfaction of the members. The centralization of work in the Secretariat has also led for the increase of its functions.

Self-Check Exercise-I

Note : Compare your answers with those given at the end of this lesson.

- 1) Who is the political head of the department?
- 2) Who is the administrative head of the department?
- 3) What do you mean by Cabinet?

2.2.4 Chief Secretary

Unlike the central government, the administration at the state level is carried out by the departments. Each department is headed by a political head known as minister, who is accountable to the state legislature for the working of his department. Likewise the permanent head of the administrative department is the secretary, who is invariably a senior officer of I.A.S. cadre. There are many departments in the state secretariat. Though each department is responsible for its efficient working yet to achieve this task is impossible without the coordinating effort by an officer known as Chief Secretary. In every state, the permanent administrative head of general administration is the Chief Secretary whereas its political head is the Chief Minister. He being the head of all Secretaries is the pivot of the Secretariat. He is the Kingpin of the state administrative system.

Administrative Reforms Committee of Andhra Pradesh (1964-65) in its reports state: He is the Chief of the Civil Services and all government servants look to him to deal with all and every problem concerning their conditions of service and work. He serves as a link between ministers and the secretaries. He is the first civil servant of the state and serves as a bridge among administrative heads. He is also a channel of communication between the centre and the states. The office of the Chief Secretary is of such immense importance that it has been kept out of the purview of tenure system.

2.2.5 Appointment of Chief Secretary

In every state there is a Chief Secretary who is 'appointed by the Governor from among the I.A.S. officers. Normally, this post is held by the senior member of this cadre. Supporting this principle of seniority, the ARC recommended, "The Chief Secretary should ordinarily be the senior most person, due regard should be given to merit." This is true that in most of the states the principle of seniority is followed, but sometimes this principle is violated. Until 1970s the incumbent was not necessarily the senior

most civil servant in all the states. In U.P. and Punjab, Junior officers were made the Chief Secretaries in their respective states. It was in 1973 that the post of the Chief Secretary was equated with that of Secretary to the Government of India. Besides seniority, the overall service record, performance, and merit of the person is taken into account while appointing the Chief Secretary. Above all, the will of the Chief Minister of the State has the final say in the selection of the Chief Secretary. Thus, we can say that seniority, merit and previous record must be taken into account while making an appointment to this high office.

2.2.6 Powers and Functions

At the state level, the Chief Secretary has very wide powers. In fact, he performs all those functions which are performed by the Cabinet Secretary at the central level. Rajasthan Administrative Reforms Committee in 1968 observed, "By virtue of his unique position as head of the official machinery and advisor to the Council of Ministers, the Chief Secretary has an extremely important role to play in State Administration. Apart from attending to the works of the departments which are directly under him, he should be in a position to effectively coordinate the work of different secretariat departments and ensure that there is a certain degree of uniformity of policies adopted by the state government with respect to different departments." S.R. -Maheshwari enlists the following functions of the Chief Secretary :

- (i) He is the Principal Advisor to the Chief Minister.
- (ii) He is the Secretary to the Cabinet and as such prepares the agenda for the cabinet meetings and maintains the records and proceedings.
- (iii) He exercises general superintendence and control over the entire secretariat.
- (iv) He being the head of civil services has the authority to make postings, transfer etc.
- (v) He has control over the Central Record Branch, the Secretariat Library and the conservancy and watch and ward staff which serve all the departments of the secretariat.
- (vi) He looks after all other matters not falling within the responsibilities of other secretaries.
- (vii) During emergency he has a special role to play as coordinator.
- (viii) He has control over the staff attached to the ministers.
- (ix) As a head of all the Secretaries, he presides over different committees.

In the field of general administration, personnel administration, administrative reforms, coordination, planning etc., the Chief Secretary plays a significant

role. The role of Chief Secretary is discussed below:

2.2.6.1 Functions relating to General Administration.

In almost all the states of the Indian, Union, the chief secretary is the head of general administration department. The political head of this department is the Chief Minister. while the Chief Secretary is the head of the secretariat organisation of this department. He is further assisted by a number of senior officers viz. joint secretary, special secretary, deputy secretary and so on. This department looks after the following matters.

- (i) Establishment matters of all the secretarial department.
- (ii) Formulating rules of business of the government and office procedure to be followed by the government departments.
- (iii) Matters relating to state festivals.
- (iv) Matters relating to visit of dignitaries.
- (v) Honours and distinction of state officials.
- (vi) Death of high personages and condolence messages to be sent by the state government.
- (vii) Inter-state boundary disputes.
- (viii) Matters relating. to pensions to freedom fighters. and their dependents.
- (ix) Declaration of the state holidays. .
- (x) Internal matters of the department such as financial, legislative and personnel matters.

The matters discussed above clearly reveal that this department is solely concerned with the entire administrative machinery of the state. It is true that the day to day functions of this department are performed by junior officers under the overall supervision of the Chief Secretary.

2.2.6.2 Functions relating to the Personnel Administration

In many states; the Chief Secretary also looks after the personnel department. With. the dawn of a welfare state, its activities have not only increased but also have become complicated. In every state the Personnel department under the Chief Secretary is constituted. This department is responsible for matters relating to gazetted posts in the state. While dealing with the number of vacancies in All India Services and the State legal administrative Services, Chief Secretary plays a significant role. He also deals with matter concerning postings, transfers and promotions of certain level of posts relating to all India and State services. The Chief Secretary is also vested with the power to deal with matters to premature retirement of officers of certain level.

In certain areas of relationship between the state government and State. Public Service Commission, the Chief Secretary has to play an important role.

- (i) There is no doubt that the chairman and members of State Public Service Commission are appointed by the Governor in consultation with the Chief Minister and his Cabinet, yet the proposal of these appointments is initially submitted by the Chief Secretary to the Chief Minister.
- (ii) The cases which do not require to be submitted to the commission, but if ever to be submitted that is to be routed by the Chief Secretary.
- (iii) Any other reference to be made to the Commission is done through the Chief Minister obtained through the Chief Secretary.
- (iv) In case of disagreement between the department and the commission, matter is placed before the Chief Minister through the Chief Secretary. Similarly, most of the correspondence between the departments and the Commission is routed through the Chief Secretary.

The Chief Secretary is also concerned with the conduct of rules and disciplinary matters: Such matters pertaining to All India Services and heads of departments are decided by the Chief Secretary. The disciplinary actions against the All India Services are routed through the Chief Secretary. Besides this, the Chief Secretary has the responsibility to write and or review the Annual confidential. Reports (ACR's) and performance appraisal of officers of All India. Services. Being the head of the personnel department the Chief Secretary has to ensure that all civil servants have fairly been given the chance of promotion.

2.2.6.3 Functions Relating to Coordination

Many departments have come into existence with the emergence of a welfare state. The Chief Secretary has the sole responsibility to efficiently run the entire administration of the State. For this purpose he secures coordination of different departments. Similarly, he coordinates the administrative machinery with political executive. in the formulation of policy and its implementation. Chief Secretaries Conference is very useful because Chief Secretaries of different states exchange their views and discuss issues having common importance for various states. The Chief Secretary of each state is a member of any one of the five zonal councils, which are set up to promote inter-state cooperation and coordination. If ever there are inter-state disputes relating to state boundaries, water, irrigation, power etc., these are in the first instance settled at the Chief Secretary's level.

In every state, the secretariat has many administrative departments and each department is responsible for the implementation of state policy. There is a need of coordination among different departments to pursue this objective. So, the Chief Secretary plays the role of Chief Coordinator. He works as Captain

of the team of various administrative secretaries. He has control over the entire secretariat administration and is empowered to take necessary steps for the efficient working of the secretariat.

2.2.6.4 Role as a Secretary to Cabinet

The Chief Secretary also happens to be the Secretary to the Cabinet. In this respect, the Chief Secretary equates with the Cabinet Secretary at the union level. In the capacity of Cabinet Secretary, the Chief Secretary discharges the duties pertaining to Cabinet meeting. Being the ex-official Secretary to the Cabinet, he attends all meetings of the Cabinet and its sub committees. He records the proceedings of the meetings and the decisions of the Cabinet and forwards a copy of such record to the Chief Minister, each minister and the Governor also.

In the Cabinet meetings, the Chief Secretary takes active part in the policy making process. He also furnishes necessary information regarding state administration to the ministers. He plays a significant role in the formulation of various policies followed by its successful implementation. It is rightly said that the Chief Secretary is the ears and eyes 'of the Cabinet: .

2.2.6.5 Functions Regarding Development Planning

The socio-economic development in a developing country like India is not possible without the well designed plans. In India, Planning Commission acts as the nerve centre of national planning. The Planning Machinery at the state level is responsible for compiling the data and facts on the basis of which national plans are formulated and also prepares detailed proposals for the state plan for approval of Planning Commission and after its approval watches the implementation of plans through its administrative machinery.

In many states, the Chief Secretary also looks after the planning department. In some other cases, though this department is placed under a Secretary, yet the Chief Secretary plays a significant role in the working of the planning machinery especially being the secretary to the Cabinet. He is directly concerned with formulation of five year plans and annual plans, He has the sole responsibility for determination of plan strategy approval of plan document by the Cabinet; planning and development coordination committees; approval of preliminary memorandum of the five year plan by the Cabinet; discussions with the Planning Commission; preparation of the final annual plan of the state; and finally to ensure that the executive departments are fully equipped with men and material to implement the plan effectively. Thus, a Chief Secretary is a person who leads the development activities of the state and thus helps in bringing about desired socio-economic change for the better.

Self-Check Exercise-II

Note: Answers for self-evaluation are given at No. 8.11.

- 1) Write any two functions of Chief Secretary.
- 2) Who is the principal advisor of Chief Minister?
- 3) Who is the secretary to the Cabinet at the State level governmental machinery?

2.2.7 Position of Chief Secretary in the State Administration

Chief Secretary occupies an important place in the state administration. He is the pivot of the permanent executive around which the administrative heads revolve. He is Chief formulator of government policies and the principle advisor to the Cabinet and especially the Chief Minister. He leads the state administration. When the State comes under President's rule, the Chief Secretary assumes the significant position. and he becomes the Principal Secretary to the Governor. The other officers of the state carry out the administiration in consultation with the Chief Secretary. In fact, the real position of the Chief Secretary mainly depends on his individual personality. Person with the qualities of competence, honesty and dedication can enhance the importance of this office but the incompetent and irresponsible person can adversely affect the prestige of this office. To make the office of Chief Secretary more effective, the ARC. (Administrative Reforms Commission) in its final report recommended:

“The Chief Secretary should ordinarily be the senior-most person, due regard being paid to merit. He should have a minimum tenure of 3 to 4 years. He should be relieved of routine and non-essential work and here necessary be given appropriate staff assistance to enable him to ensure quick implementation of the Cabinet decisions and effective coordi ation in the policies and programmes of the state government.”

2.2.8 Conclusion

The foregoing discussion clearly reveals that under the organisation of a department, the secretary is the head of the Secretariat organisation and executive department is attached with him. Secretary is a person who is a general administrator, whereas the executive head is the specialist of his field. For the efficient working of the administration, both officers should work in coordination in their respective jurisdiction. But in practice the secretary always tries to establish his dominance over his counterpart, which is harmful for the department as well as the entire administrative set up. The Head of all civil servants at the State Secretariat is Chief Secretary. He is normally the senior mosst among all the civil servants at the State level. He is responsible for general and personnel administration. Alongwith these charges, he also acts as principal advisor to Chief Minister.

2.2.9 Keywords

- Political Head - Any department has two heads - political as well as administrative. Political Head is the Minister, who is elected directly by the people.
- Administrative Head - Civil servant is the administrative head of the department. He is permanent and professional in his approach. He may be Deputy Secretary or Secretary etc.
- Cabinet - It is a wheel within the Council of Ministers. Council of Ministers consist of four types of Ministers. Out of these four types - the senior most i.e. Cabinet Rank Ministers and Prime Minister form the Cabinet.

2.2.10 Suggested Readings

- Awasthi, Maheshari : *Indian Administration*
- M.P. Sharma : *Theory and Practice of Public Administration*
- Sahib Singh & Swinder Singh : *Theory and Practice of Public Administration.*

2.2.11 Answers to Self-Check Exercises**Exercise No. I**

- 1) Minister is the political head. For more details read study material given at 7.2.
- 2) Secretary is the administrative head of a department.
- 3) Answer in detail has been described at No. 7.9 - Keywords. Read it carefully and then write your answer.

Exercise-II

- 1) Various functions of Chief Secretary have been discussed at No. 7.6 (7.6.1 to 7.6.5).
- 2) Chief Secretary is the principal advisor of Chief Minister.
- 3) Chief Secretary acts as Secretary to the State Cabinet.

**STATE LEGISLATIVE ASSEMBLY :
COMPOSITION, POWERS AND POSITION**

Structure :

- 2.3.0 Objectives
- 2.3.1 Introduction
- 2.3.2 Legislative Council
 - 2.3.2.1 Composition
 - 2.3.2.2 Allocation of Seats
 - 2.3.2.3 Qualifications and Term
- 2.3.3 Functions and Powers
- 2.3.4 Position of Legislative Council
- 2.3.5 Utility of Legislative Council
- 2.3.6 Vidhan Sabha or Legislative Assembly
 - 2.3.6.1 Composition
 - 2.3.6.2 Allocation of Seats
 - 2.3.6.3 Qualifications and Term
- 2.3.7 Functions and Powers
- 2.3.8 Conclusion
- 2.3.9 Keywords
- 2.3.10 Suggested Readings
- 2.3.11 Answers to Self-Check Exercises

2.3.0 Objectives

The study of this lesson will enable you :

- to define the composition, powers and functions of Legislative Council;
- to analyse the position as well as utility of Legislative Council;
- to describe the composition, powers and functions of Vidhan Sabha.

2.3.1 Introduction

The Indian Constitution establishes a federal system with parliamentary form of government at the Union and State levels. As a result, the structure of the State Government is very much like that of the government at the centre. As we have the president in Parliament at the Centre, so we have the Governor in-legislature at the State level. In this direction an important point of difference should, however, be discovered is the fact that the State-Legislatures are weak as compared

to the position of the Union Parliament and that they are bicameral in some and unicameral in some other states of the Indian Union. Every State has a Legislature Assembly called the Vidhan Sabha, While only five states (J & K, BIHAR, KARNATKA, MAHARASHTRA and UTTAR PRADESH) have the upper chamber as well. which is called the Legislative Council (Vidhan Parishad). Two important points should be mentioned at this stage. First the State Legislature means for all practical purposes the Legislative Assembly is the powerful chamber while the Legislative Council is just like an ornamental chamber with hardly any meaningful authority Second the state legislatures have a highly circumscribed area of independent authority that makes the subordinate to the over riding control of the Union Parliament.

2.3.2 Legislative Council or Vidhan Parishad

As pointed out above only five states of the Indian Union have upper chambers in their legislatures. It is provided that the total strength of the Vidhan Parishad must not be less than 40 and more than 1/3 of the total strength of the Vidhan-Sabha of the State. It lies within the legislative powers of the Parliament to create a Legislative Council or abolish it after a resolution to this effect is passed by the Vidhan Sabha of that state with an absolute majority as well as 2/3 majority of the members present and voting. It is obvious that the life of a Vidhan Parishad depends upon the will of the Vidhan Sabha having its concurrence with the will of the Parliament.

2.3.2.1 Composition :- The composition of the Vidhan Parishad is determined by the following formula that shows indirect election (leaving the case of some nominations made by the Governor) by means of proportional representation with a single transferable vote system in the following manner:

1. About 1/3 members are elected by the Vidhan Sabha from amongst persons who are not its members.
2. About 1/3 members are elected by the local bodies of the state like municipalities, District Boards, or any other authority specified by a law of Parliament.
3. About 1/12 members are elected by the persons of at least three years standing as teachers of educational institutions not lower in standard than of a secondary school.
4. About 1/12 members are elected by the University Graduates of at least three years standing in the state.
5. About 1/6 members are nominated by the Governor from amongst persons, possessing special knowledge and experience in the fields of art, literature, science, co-operative movement, etc.

2.3.2.2 ALLOCATION OF SEATS IN LEGISLATIVE COUNCIL

STATE	Total	Election Nomination				
	By Leg. Seats Assembly	By Local. Bodies	Graduates	By Teachers	By Governor	
1. Andhra Pradesh	98	31	31	8	8	12
2. Bihar	96	34	34	8	6	12
3. Karnatka	63	21	21	6	6	9
4. Maharashtra	78	31	21	7	7	12
5. Uttar Pradesh	108	39	39	9	9	12

A look at the composition of the State legislature Council shows that their strength varies from State to State. Some important points should be borne in mind in this connection. First, the formula as given above applied in rough proportion to the allocation of seats in various categories. Thus, for example, the Legislative Assembly of U.p. elects 39 out of its 108 member (that is 1/9 of its total membership). Similarly in Maharashtra, while the number of the members elected by the Legislative Assembly is 31 (in a house of 78), it is 21 in the case of seats allotted to the Local Bodies. Second, the number of nominations to be made by the Governor should not exceed 12 in view of President's authority to make similar nominations to the Rajya Sabha that becomes equal to this figure. Last the nominations to the Legislative Council are made by the Governor on the advice of the Chief Minister.

2.3.2.3 Qualifications and Term :- According to the constitution, 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 have all other qualifications as laid down by a law of the Parliament. No person can be a member of two or more State Legislatures at the same time nor a member of two or more Legislatures including the Parliament at the same time. The term of a member is 6 years. That is its a continuing chamber and its 1/3 members retire every second year. They may, however, be re-elected.

2.3.3 Functions and Powers

The Legislative Council has not effective powers at all. It is all in theory that it looks like having some powers normally vested in an upper chamber of democratic Legislature. It has no power in regard to money matters. It is required that a money bill passed by the Vidhan Sabha must be adopted by it within a period for 14 days given to it. Thus, a money bill is referred to it just for the sake of apprising it of its provisions.

Though a non money bill can originate in either house of the State Legislature, it is provided that a bill first passed by the Vidhan Sabha can be

rejected by the Vidhan Parishad only once. In case (a) Vidhan Parishad returns the bill to the Vidhan Sabha with its recommendations (b) rejects the bill (c) more than three months pass it from the date it is laid before the Parishad and the Vidhan Sabha it passes it again with or without accommodating any of the recommendations of the Vidhan Parishad, it shall be taken, as passed by the State Legislature and sent to the Governor. Moreover, it is provided that the Vidhan Sabha for second time within a period of one month only in case the same bill is re-adopted by the lower chamber with or without its recommendations.

The Vidhan Parishad has no real control over the Ministry. The Council of Ministers head by the Chief Minister is collectively responsible to the Vidhan Sabha. The members of Vidhan Parishad may hardly do anything more than asking questions from the ministers or criticising them for certain acts of commission or omission. The constitution is not clear on this point whether a bill of constitutional amendment referred to the state for ratification by their legislatures shall include the Vidhan Parishad or not. In practice, it may be understood that the will of Vidhan Sabha has to prevail. In case, the Vidhan Parishad concurs with the view of the Vidhan Sabha, it is all right, in case it differs, the Sabha may pass it again and thereby ignore the voice of the Vidhan Parishad as it can do in case of non-money bill.

It is clear that the position of the Vidhan Parishad is pitifully powerless. Even in theory, it is no match to Rajya Sabha, that despite being the upper chamber to the union Legislature, has some effective powers. As a matter of fact the Vidhan Parishad is weaker even than the British House of Lords, in view of the following facts:

1. It cannot do anything else than making a delay of 14 days in case of money bill and of three months in case of non-money bill or of one month only in case of non-money bill is re-adopted by the Vidhan Sabha after its being returned to it with its recommendations.
2. The Constitution makes no arrangements for the holding of joint session of the State Legislature. Thus, while the Vidhan Sabha may over-ride the will of the Vidhan Parishad, the reverse is impossible. In other words, non money bill passed by the Vidhan Parishad may be rejected by the Vidhan Sabha.
3. The members of the Vidhan Parishad take no part in the election of the President, nor is it required that they should have a meaningful say in the ratification of a bill on constitutional amendment. It is, therefore, quite obvious that the Vidhan Parishad is devoid of any real power. There is not even pretence of equality between the powers of the Council and Assembly, as there is between the Council of States and the House of the People.

2.3.4 Position

A pertinent question may be asked as to what after all, is the necessity of having an upper chamber in the state Legislature. Its answer may be found in the world of politics. So far the existence of the Vidhan Parishad has served the purpose of accommodating some ambitious political persons somehow in a dignified manner. The 'dark horses' or the powerful leaders manage to have their berth in the upper chambers. Thus instead of serving any useful purpose of bi-cameralism, as hopefully visualised by the Founding Fathers, it has served the unfortunate purpose of being a back door for the powerful men of the party in power. Even the creation or abolition of a second chamber has so far been a political decision. For example, the second chamber has not been created in the State of Madhya Pradesh in spite of the fact that it has been provided in the Seventh Constitutional Amendment Act of 1956. Likewise the Centre did not act upon the resolution passed by the Vidhan Sabha of erstwhile Bombay State now Maharashtra as early as in 1955 requesting for the abolition of the Vidhan Parishad, while it did the same in cases of resolutions passed by Vidhan Sabhas of West Bengal and Punjab in 1967. To take another leading example, we may say that the Union Government delayed the matter of passing a bill in regard to the abolition of the second chambers in the State of Bihar and Uttar Pradesh in spite of the fact that such a resolution has been passed by their Vidhan Sabhas till they are revoked by the popular chambers under the changed political circumstances.

As a matter of fact, the Vidhan Parishads have served the purpose of providing a ready made berth to an ambitious even though unpopular leader in the legislature of the States and thereby enabling him to hold the office of the Minister or Chief Minister. Men like C. Rajagopalachari in Madras, Morarji Desai in Bombay, G.B. Gupta in U.P. Giani Gurmukh Singh Musaffir in Punjab and B.P. Mandal in Bihar assumed office of the Chief Ministers by virtue of being a member of the Vidhan Parishad. What is really deplorable in this regard is that men like Desai managed to grab the post of Chief Minister after having been gracelessly defeated at the polls. As the upper chambers have been the favourites of the Congress Party, naturally they become hostile to be non-Congress governments formed after the fourth general election of 1967 and it was for this sake that resolutions were passed by some of the Vidhan Sabhas for their abolition.

2.3.5 Utility of Legislative Council

A study of the Vidhan Parishad in theoretical as well as practical perspective leaves an important impression on our mind. First, the fears of most of the members of the Constituent Assembly have proved true that these might only aid party bases to distribute more patronage, or be used as "a sort of an old pension device for the politicians". It was frankly asserted that "those

which find a place in these bodies and as such find an occasion rather, defend own special, sectarian or class interests than to help the popular cause. The controversy could come to an end only when Dr. B.R. Ambedkar, Chairman of the Drafting Committee, pleaded "All that we are doing by this Constitution is to introduce the Second Chamber purely as an experimental measure."

Second, the issue relating to the abolition or creation of the Legislative Council in a state "is not left in the hands of that very state." The matter is referred to the Parliament for a final action. It may be expected that the Parliament will generally act in accordance with the wishes expressed by the people of the state through proper constitutional channel; but it is not bound to be concerned. The courts have no power to issue a directive to the Parliament asking for the performance of this constitutional duty. The result of all this has been that the Vidhan Parishads have become ornamental chamber of the State Legislature. "Should they prove inoffensive, they might be retained. If not they can be abolished without much trouble."

Self-Check Exercise-I

Note : Compare your answers with those given at the end of this lesson.

- 1) Write the required qualifications to be elected to Vidhan Parishad.
- 2) Punjab has two chambers. Yes / No
- 3) Write a note on the utility of having Legislative Council.

2.3.6 Vidhan Sabha

2.3.6.1 Composition :- Every state has a Legislative Assembly called the Vidhan Sabha consisting of not less than 60 and not more than 500 members directly elected by the voters of the State. It is required that seats are reserved for the Scheduled Castes and Scheduled Tribes except in the State of Assam, where special arrangements have been made. The Governor has been given the power to nominate some members of the Anglo-Indian community in case he finds that they are not adequately represented in the House. After each census, the total number of seats in each state and the division of the seats into territorial constituencies is readjusted by the prescribed manner. It is essential that the ratio between the population of each constituency and number of seats allotted to it must far as practicable, be the same throughout the state. The total number of seats in the Legislative Assemblies are determined by an act of the parliament.

2.3.6.2 ALLOCATIONS OF SEATS IN THE LEGISLATIVE ASSEMBLIES

	States	Seats	Nominations
1.	Andhra Pradesh	287	1
2.	Assam	114	- -
3.	Bihar	324	- -
4.	Gujarat	182	- -
5.	Haryana	90	- -
6.	Himachal Pradesh	68	- -
7.	Jammu Kashmir	76	- -
8.	Karnataka	216	2
9.	Kerala	133	1
10.	Madhya Pradesh	320	1
II.	Maharashtra	270	1
12.	Manipur	60	- -
13.	Meghalaya	60	- -
14.	Orissa	147	- -
15.	Punjab	117	- -
16.	Rajasthan	200	- -
17.	Sikkim	30	- -
18.	Tamil Nadu	234	- -
19.	Tripura .	60	- -
20.	Uttar Pradesh	425	- -
21-	West Bengal	294	2
22.	Goa	40	- -
23.	Arunachal Pradesh	70	- -
24.	Delhi	70	- -
25	Mizoram	70	- -

2.3.6.3 Qualifications and Term :- It is required that a member of the Vidhan Sabha must be a citizen of India; he must be above 25 years of age, and that he must fulfil every other qualification as laid down by Act of .Parliament. No person can be a member .of both the Houses of State Legislature, nor can he be a member of two State Legislatures, including the Parliament at one and the same time. The normal term of the Vidhan Sabha is five years. It may be dissolved by the Governor at any time. It stand suspended or dissolved at the text of the Presidential order promulgated under Art. 356 provides in the event of national emergency, the life of the Vidhan Sabha can be extended by an Act of the Parliament for any length of time, though it cannot exceed the duration of one year in one instance. Fresh elections must take place at the most within six

months of the termination of emergency.

2.3.7 Function and Powers

In a real sense, the legislative of a state means its Legislative Assembly that has the following important functions or powers:

1. It can make law on any subject provided in the State list, it can also make law on a subject of concurrent List in case it does not conflict with a law already made by the Parliament. .
2. It has control over the Council of Ministers. Its members may ask questions from the ministers, introduce resolution or motions and may pass a vote of no confidence to dismiss the government. The ministry is collectively responsible to the Vidhan Sabha. The defeat of the ministry in the Vidhan Sabha amounts to the passing of the vote of no-confidence against it.
3. It controls the finances of the state. A money bill can originate in the Vidhan Sabha and it is taken as passed by the Vidhan Parishad after a lapse of 14 days when a reference is made to it by the Assembly. It may pass or reject the demands or reduce their amount implying adoption or rejection of the budget and thereby victory or defeat of the government. Thus, no tax can be imposed or withdrawn or changed without the approval constitutional of the Vidhan Sabha.
4. It has constituent powers., vide Art 368 of the constitution. a bill of constitutional amendment, after it is passed by the parliament, shall be referred to the State for ratification. It is here that the Vidhan Sabha has its role to play. It has to give its verdict by passing a resolution by its simple majority showing approval of the Vidhan Sabha of the concerned State a bill desiring alteration in its boundary lines or reorganization in a way so as to increase or decrease its territory for eliciting its views in this regard before it recommends that such a bill be introduced in the Parliament.
5. The Vidhan Sabha has some other powers also that may be put as under:
 - (a) It elects its own Speaker and Deputy Speaker and may remove them by a vote of no-confidence.
 - (b) It takes part in the election of President of India.
 - (c) It considers reports submitted by various independent agencies like the State Public Service Commission, Auditor General and others.

Self-Check Exercise-II

Note : Compare your answers with the answers given at No. 8.11.

- 1) Mention the composition of Vidhan Sabha.
- 2) Write the powers of Vidhan Sabha.

- 3) Vidhan Sabha or Vidhan Parishad - which of the two is most powerful at the State level governmental machinery?

2.3.8 Conclusion

It is therefore, clear that Vidhan Sabha is the popular and powerful chamber of the State Legislature and it performs duties within its sphere. It looks more or less analogous to the Lok Sabha at least on a theoretical plan. Vidhan Parishad has less powers.

2.3.9 Keywords

Legislative Council	-	is also known as Vidhan Parishad or upper chamber at the State level. Punjab has no upper chamber. There is indirect election method to this chamber.
Legislative Assembly	-	It is also known as Vidhan Sabha. It is the lower chamber and most popular and powerful. There is direct election to this chamber i.e. members are elected by the people of the State through secret ballot.

2.3.10 Suggested Readings :

Basu Rumki	-	Introduction to Public Administration
Maheshwari S.R.	-	State Government in India
Gupta D.C.	-	Indian Government and Politics
Puri K.K.	-	Indian Administration
Jain R.B.	-	Public Administration in India
Pandey Jawahar	-	Constitution of India
Basu D.D.	-	Constitution of India

2.3.11 Answers to Self-Check Exercises :

Exercise No. I

1. The answer to this question is given at No. 11.2.3 of the lesson.
2. No, Punjab has only one chamber i.e. Legislative Assembly. It does not have Legislative Council.
3. Read 11.5 given in the lesson very carefully and then write answer to this question.

Exercise-II

1. Study-material provided at 11.6.1 of this lesson will help you to write the answer to this question.
2. Similarly, 11.7 No. provides detailed account of powers and functions of Vidhan Sabha.
3. Vidhan Sabha is the most powerful chamber. For more details, read the material given at No. 11.7 in the lesson.

HIGH COURT-ORGANISATION, POWERS AND POSITION

Structure

- 2.4.0 Objectives
- 2.4.1 Introduction
- 2.4.2 High Court
 - 2.4.2.1 Composition
 - 2.4.2.2 Qualifications
 - 2.4.2.3 Salaries and Allowances
- 2.4.3 Powers and Jurisdiction of the High Court
 - 2.4.3.1 Original Jurisdiction
 - 2.4.3.2 Appellate Jurisdiction
 - 2.4.3.3 Administrative Powers
 - 2.4.3.4 Power of Appointment
 - 2.4.3.5 Court of Record
- 2.4.4 High Court's Judgements
- 2.4.5 Subordinate Courts
- 2.4.6 Criminal Courts
- 2.4.7 Civil Courts
- 2.4.8 Revenue Courts
- 2.4.9 Independence of State Judiciary
- 2.4.10 Suggestions for improvement
- 2.4.11 Summary
- 2.4.12 Key Words
- 2.4.13 Suggested Readings
- 2.4.14 Answers to self check exercises

2.4.0 Objectives

After studying this lesson you will be able to :

- describe the composition of the High Court;
- analyse the qualifications of the Judges;
- comprehend the powers and jurisdiction of the High Court.

2.4.1 Introduction

Although the Indian Constitution set up a federal polity in India, yet it provides for the single unified and integrated Judicial system in country. We do not have a double set of courts, one for the centre and another for the units (states). There is only one system of Fundamental law and Justice in the whole country with the Union Supreme Courts at the apex of the judicial Organisation and the State High Courts just below it. The High Courts in the states are the third organ of the State Governments but in the Union Government, there is a good deal of uniformity and centralization. Granville Austin has observed, "The centralization of the judicial system is made clear not only by the single hierarchy of courts, there are no autonomous state courts in the American sense but the uniformity of law provided for by the legislative lists criminal laws and procedure law dealing with marriage divorce, succession and the transfer of property (other than

agricultural law), concurrent legislative list and therefore, subject legislation either by parliament or by state legislatures.”

Under the Indian constitution the organisation and the jurisdiction of the State High Court is a union subject. The judges of the High Court are appointed and can be transferred from one High Court to another throughout India by the President of India by the warrants under his seal. Of course, the chief Justice and the Governor or the concerned state advise the President in the appointment of judges. Again it is President alone who can dismiss a judge of High Court provided a special address of impeachment of passed by the Union Parliament. The Parliament alone can enlarge the Jurisdiction of the High Court Judges. The Supreme Court also possesses the power to hear appeal from High Court and the former has the final word in such cases of appeal. The ruling of the Supreme Court lay precedents which the High Courts and the other subordinate courts must follow.

The Supreme Court can also grant a special leave of appeal against a Judgement of the High Court, except Court Martial.

In having a unified system of Judiciary, Indian has followed the example of Canada, and to certain approximation, Australia. In Australia the High Court is at apex and it entertains appeals from the state courts. In Canada, there is the Supreme Court at the centre, with provincial court in the units. An advantage of the single Unified judicial system is that it is a simplified judicial system, and its working is not so complicated as that of dual system of courts like in U.S.A.

2.4.2 High Court

The Constitution of India provides for a High Court in each state. Vide the 7th Constitutional Amendment Act of 1956, the Parliament has been empowered to establish a common High Court for two or more states as well as for the Union Territory. At present the State of Punjab and Haryana have common High Court. Thus, the parliament can extend the jurisdictional area of High Court or exclude it from a Union Territory.

2.4.2.1 COMPOSITION OF THE HIGH COURT

Regarding the number of judges in a High Court no definite number is fixed. Article 216 (which does not apply to Jammu and Kashmir state) states, “Every High Court shall consist of a Chief Justice and such other judges as the President from time may deem it necessary to appoint. In order to meet temporary increase in the work load of the High Court on account of huge arrears, the President can also appoint qualified persons as additional judges for a period not exceeding two years, subject to maximum of 62 years of age, at which every judge of the High Court, including the Chief Justice, retires. The President may also appoint temporary Judge to fill vacancies caused by reason of absence of any other factor in the category of Parliament Judges. As the number of judges in High Court is not uniform. It varies from one High Court to another, i.e. the Assam High Court has 19 Judges, whereas the Allahabad High Court has 33 judges which is the largest High Court. The Strength of the Punjab and Haryana High Court is 17 permanent and 6 additional judges.

Article 217 (not applicable to J & K) deals with the appointment, retirement and removal of High Court Judges. A High Court Judge is appointed by the President of India by warrants under his hand and seal in consultation with the Chief Justice of India, the Chief Justice of the High Court concerned and the Governor (s) of the State (s) concerned. In doing so, we have followed the British pattern, as there the judge of the High Court are appointed by the Lord Chancellor who is a member of the cabinet. A High Court Judge may continue to be in office up to the age 62. The age of retirement was raised from 60 years to 62 on the

recommendation of the Law commission 1958, although it has recommended 65 to be age of retirement as in case of Supreme Court. This disparity in the age of retirement of the judges of Supreme Court in India is really not understandable while both the Categories of judges are found to be doing practically the same type of work.

2.4.2.2 Qualifications

Clause 2 of article 217 lays down the qualification of the person who can be deemed to be appointed as High Court Judges. As such a High Court Judge must be a (i) citizen of India, (ii) must have held a judicial office in the territory of India for ten years or have been advocate in a High Court or two more High Courts for the same period in succession.

As an explanation of this, is the rule that in counting the period during which a person has been an advocate, of a High Court, that, shall be included which he has held judicial office, after he become an advocate.

2.4.2.3 Salaries and Allowances

Article 221 fixes, the salaries and allowances of High Court Judges, which they get from the consolidated fund of the state, the same can not be reduced to the disadvantage of incumbents. After the 54th amendment the salaries of the High Court Judges have been increased. Now the Chief Justice of a High Court gets Rs. 9,000/- P.M. Whereas other judges get Rs. 8,000/- per month. In case of Financial Emergency under Article 360, however, their salaries and allowances could be cut. A High Court Judge could be transferred from one High Court to another by the President in consultation with the Chief Justice of India. Under article 233, the President could also appoint a judge of High Court as an acting Chief Justice by reason of absence or inability of an existing incumbent to perform the duties connected with the office. Article 224 provides for the appointment of additional and acting Judge in a High Court. Similarly under the same article (224) retired Judges could be appointed on the sitting bench of a High Court.

It may be pointed out here that article 223 and 224 do not apply to the state of Jammu and Kashmir.

Self-check Exercise-I

Note : Compare your answers with the answers given at the end of this lesson.

1. What is the composition of the High Court?

2. Write the qualifications for appointment as judges of the High Court.

2.4.3 JURISDICTION, POWER AND FUNCTIONS OF HIGH COURT

A High Court is the Highest court in the state. The Jurisdiction competence of the High Court remains the same as before the commencement of the present constitution. Actually the High Court had been functioning for nearly nine decades before

1950 and the founding fathers must have thought it superfluous to give details of the same. As such article 223 keeps intact all the old powers and jurisdiction of the High Courts as before the commencement of the constitution. We may deal with the power and functions of the High Court under the following heading :-

- (i) Original Jurisdiction
- (ii) Appellate Jurisdiction
- (iii) Power of superintendence of or Administrative powers.
- (iv) Power of appointment
- (v) Court of Record

We take up a brief discussion of the same, one by one.

2.4.3.1 Original Jurisdiction

(A) Writ Issuing power :

A High Court enjoys a concurrent Jurisdiction with the Supreme Court to issue five types of writs e.g. the writs of Habeas corpus, quo-warranto, Mandamus, Prohibition and Certiorari warranty. The writ area of the High Court Jurisdiction was redefined under 42nd Amendment of the Constitution by inserting clause 38 for Article 256 Clause 38 read as under, notwithstanding in article 31 but subject to provision of article 13 and article 226 every High Court shall have powers, throughout the territory in relations to which it exercise Jurisdiction, to issue any persons or authority including inappropriate places, any government within those territories, directions, orders or writs including writs in the Nature of Habeas corpus, Mandamus, Prohibition, quowarranto or certiorari or any or them : (a) for the enforcement of any the rights conferred or (b) for the redress of any of injury of a substantial nature by reason of the contravention or any enactment or ordinance or any order, rule regulation, by law or other instrument made there under or (c) for the redress of any other injury by reason of any illegality or any proceeding by or before any authority under any provision referred to sub clause (b) where such illegality has resulted in substantial failure of Justice.

Now with the passing of the 44 th constitution Amendment Bill by the Parliament in December 1977, this part of 42th amendment has been deleted and the status quo has been restored. Now again the High courts possess the power to issue all the five, types of writs as before

Earlier a High Court issue only within the areas of its own territorial jurisdiction and it was further maintained that the cause of action shall arise within the same area of jurisdiction. But 15th Amendment act, 1963 had widened the area of jurisdiction of the High Courts to issue even outside the area of its jurisdiction, including the Government of India, L.I.C. the custodian General of evacuee property, and the Election Commissioner central board for Revenue and Income Tax investigators Commission.

But the wide power of issuing writs is to be exercised in accordance with well established judicial principles when other normal remedies are not available. So the Court is executed not to interfere in the normal course of administration through units. This is to be used only when the High Court is convinced that no other remedy for enforcing Fundamental Rights and Justice was available to an applicant. invocation of writ is not a matter of right nor can be issued against a private person.

(b) High Courts Power to withdraw case to itself

Under Article 228 the High court also possess the original power to withdraw case to itself from a subordinate court if the case that is being tried in it involves a substantial

question of law. In such a case the High Court may either decide the case itself or determine the question of law in that case and then return it to the subordinate court with a copy, of its judgement. This give to High Court an exclusive power to interpret the constitution. No subordinate court or tribunal can do so. This ansures uniformity in matter of interpretation of the Constitution in case of Article 228, either a subordinate court or an individual can move the High Court.

(c) Trying Revenue Cases

Before the present constitution commenced the provincial High Court had no power to entertain and try revenue cases.

But under article 226 of present constitution, this restriction on the High Courts was removed and the High Courts were given the power to try Revenue cases. Under clause 37 of 42th amendment, it was provided that any restriction to which the exercise of original jurisdiction by High Court in Revenue matters was subjected immediately before the commencement of Constitution, shall no longer apply to the exercise of such jurisdiction. The 44th Amendment Bill removed this restriction and gave back to the High Court the power to hear revenue cases.

The High Courts have also a limited original jurisdiction in cases dealing with adultry, will, divorce and marriage laws, company laws and contempt against itself.

2.4.3.2 Appellate Jurisdiction

State High Court enjoy appellate jurisdiction in certain Civil Criminal cases. In Civil cases an appeal from a subordinate court can be taken to the the High Court, provided the value of the suit is Rs. 5000/- or more. In Criminal cases an appeal to the High Court againse a decision of the Session Court be made provided the subordinate court has sentenced an accused to 4 years, or more of punishment or sentenced his to death. In revenue cases an appeal lie before the High Courts against the decision to the Revenue Board. Similarly High Court can also hear appeals in case involving insolvency, succession patent, and design.

2.4.3.3 Power of Superintendence or Administrative Powers of High Court :

The High Court of a State enjoys the Power of superintendence over all courts and tribunal in the state. The High Court may (a) call for returns for such courts, (b) make and issue general rules and prescribe forms for regulating the practice and proceeding of courts (c) prescribe forms in which book entries and accounts shall be kept by such courts. The High Courts also have the power to settle the table of fees to be allowed to the Sheriff and all clerks and officers of such courts, and to attorneys advocates and pleaders precticising therein.

Under Article 227, the State High Courts also exercises power of judicial revision i.e. it has the power to see that subordinate courts had worked within the limits of their jurisdiction and acted in a legal manner. The power of the High Court to act in the matter is discritionary i.e. the High Court can interfere if an inferior court or tribunal acts beyond the limits of its jurisdiction, or if it has no jurisdiction at all and if it has encroached upon fundamental, rights, The High Court also exercise administrative control over the Transport Authorities under Moter Vehicle Act of 1930, Rent the Contrroller under the Rent control Acts and the Custodian of Evacuee property under the evacuee Property Act of the 1950, the High Court can issue a writ of certiorari, or otherwise question the order of these tribunals or bodies possessing semijudicial power, but it

must be pointed out that this power of the High Courts under article 227 is supposed to be used only in exceptional cases of flagrant abuse of elementary principles of justice and patent errors of law.

2.4.3.4 High Court's Power of Appointment

Article 229 (which does not apply to the state of J&K) dealing with High Court's power of appointing officers and servants of High Court lays down that appointment shall be made by the Chief Justice of the High Court or by such other officers or a judge of the court as he may deem fit provided that no such officers shall be appointed, except after consultation with the State Public Service Commission. Further it is laid down, that subject to the provision of any law made by the state legislature, conditions of service of officers and servants of the courts shall be such as may be prescribed by rules made by the chief justice of the High Court. It is further provided that the rules made under this clause relating to salaries, allowance, leave or pension, shall require the approval of the state governor. In article 229, clause (i) this power of appointment also includes the power to suspend and dismiss court officers and servants.

2.4.3.5 High Court as a Court of Record

The High Court is a Court of Record. Its judgements are considered to be case laws. Article 215 (which shall not apply to J&K) lays down, that every High Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself. But, if a High Court judge presides over an Industrial Tribunal, he shall not exercise such a power of contempt of court as the Tribunal does to constitute a High Court.

Contempt of Court is committed when (1) the court is scandalised (2) the parties concerned in a case are scandalised, abused, or (3) When any act is done or anything is published to bring the court or judge of a court into contempt or to lower its authority. Contempt of court may be committed by a lawyer, a witness, a party, a journalist or a Judge. When a litigant goes on committing contempt, may prejudice parties, litigants or their witnesses, besides lowering the prestige of the court in public.

In dealing with a case of contempt, the High Court lays down its own procedure. A person committing contempt outside the area of jurisdiction of a High Court can be punished by it provided he happens to be within its jurisdiction. A High Court has no power to arrest a person who is outside the area of its jurisdiction.

2.4.4 High Court's Judgements :

High Courts give their judgements openly, and these are binding. But the judgement of a single High Court Judge does not bind Division Courts. It is binding only on every other judge. In case of a disagreement between two division Courts of equal strength the question of law is referred to the fuller division Bench. The division of the fuller Division bench is binding on all courts. When the former gives a decision it cannot entertain an appeal from another Division Court. The Supreme Court of India is the only court which can reverse or overrule the decision of High Court or Division Bench.

2.4.5 Subordinate-Courts

Articles 223 to 237 in Part VI of the constitution deal with subordinate Courts, which work under the State High Court. Majority of cases are actually decided by the subordinate courts. The appointment of the judges in these courts, their promotion,

transfer and posting is done by the State Government in consultation with the state High Court. Recruitment to the position of a district judge is made either promotion from judicial services of the State, or there may be direct recruitment from amongst the advocates and pleaders of not less than seven year standing on the recommendations of High Court. The appointment of judicial officers (other than the District judge), namely the Additional joint a Assistant Distract Judge) is made by the Governor according to rules made by him in consultation with the Public Service Commission and High Court of State.

The following three types of courts exist at the district level (I) Criminal court (II) civil courts and the (III) Revenue Courts.

2.4.6 Criminal courts : In every district there are Courts of Magistrate Class II and Class I Chief Judicial Magistrate. Magistrate II Class can award punishment up to one year imprisonment and fine for Rs. 1,000/- Magistrate Class I can sentence an accused upto 3 years, imprisonment and fine Rs. 5,000/- Chief Judicial Magistrate can award punishment upto seven years. Before 1973, there used to be court of Magistrate class III but by an amendment in the Code of Criminal Procedure in 1973 this court was abolished.

Session Court is the highest criminal court in district. Session judges hear a case involving murder or dacoity etc. He can also hear appeals against decisions of Magistrate class I and Judicial Magistrates. Session judges can also award death sentence, but this has got to be approved by the High court of the State.

2.4.7 Civil courts : Minor civil disputes are heard by the village panchayats. In cities there are small cases courts to hear minor civil disputes, involving a sum of Rs. 200/-. In addition there are class III, II and I Sub-judges at the district level who can hear cases of the value of Rs. 5,000/- Rs. 10,000/- and more than Rs. 10,000/- respectively. There is also a Senior sub-judge, who can hear appeals against the decision of subordinate civil courts. Then over and above them all is the District Judge. Normally, the District Judge, and the Sessions Judge is one and the same person. when he hears civil cases, he is known as the District Judge, and when he hears criminal cases he is called the Session Judge. He also hear appeals against judgement of the subordinate Judges. He also possess original jurisdiction in cases of divorce, insolvency, words etc.

2.4.8 Revenue Courts : The lowest court to hear Revenue cases is that of Tehsildar, the Revenue Assistant, then above him the Deputy Commissioner hears appeal in Revenue cases. Against his decisions the appeals lie with the Financial Commissioner, and then to Board of Revenue. The State High Court is the final authority in a State and hears appeals in revenue cases.

Self check Exercise No. II

1. Mention any four powers of the High Court

2.4.9 Independence of State-Judiciary

An independent judiciary is the corner- stone of the Rule of law and of a democratic system. This requires that the judges must be free. fearless and they must possess courage of giving independent judgement without favor or frown, being faithful to the

oath that they on assuming office as judge.

A theoretical study of our Constitution reveals that adequate arrangements have been made to make the appointment on merit; he enjoys security to tenure; and as a judge cannot be removed unless a resolution to that effect is passed by the Parliament by special 2/3 majority. The salaries and allowances of the State Judges are charged on the Consolidated Funds of the State. They are not subject to vote in the State Legislature. Actions and decisions of the judges are immune from criticism. Even the parliament cannot discuss the conduct of the judges, unless a substantive motion of impeachment is moved in the House. The High Court has its own staff with its rules and regulations. A judge of court is barred from practising after retirement in the same. However, he can plead or practice in any other High Court or Supreme court.

But the study of the Indian constitution between the lines reveals that there are several loopholes, which tell upon the independence of state judiciary, and the efficiency of the whole judicial system. In reality, Chief Minister of the state is the real appointing authority to appoint a Chief Justice in a State High court. These appointment have in fact become political in nature. The Law Commission in its XIV Report of 1958 pointed out "Communalism, Regionalism and political patronage, in considerable measure, influenced appointment to the High Court judiciary. This is very well illustrated by the cases of suppression of the judges here and there. Similarly, the provision for the appointment of an Acting Chief Justice is too imischievous. In this case an ambitious person having the requisite qualifications may manage to be appointed as Acting Chief Justice and get his appointment relgularised, Morover, there is nothing in the constitution which may prevent a retired High Court Judge from taking job after laying down his office as a judge. the only bar is that a High Court Judge after retirement cannot plead before a court lower than the High Court. The provision is very unfortunate. So many High Court Judges have been appointed as governors, ministers, ambassadors, or chairman of some commission etc. after retirement. All this is the patronage which is their real function. Then we find that the salaries and allowances of High Court Judges were too considered inadequate to give them better economic security. Beforr 1947, the Chief Justice of Calcutta High Court got Rs. 6000 P.M. While the Chief Justice of Madras, Bombay, Patna, Lahore High Court got Rs. 5000 P.M. till as late as 1986 the Judges were paid only Rs. 5000/ and 4000/- (Chief Justice and other judges respectively). However, present salary of Justice of the High Court is Rs. nine thousand p.m. and that of other Judges is Rs. 8,000 P.M. This distracted men of eminence to take to Judgeship. Then they great faced great economic insecurity, after retirement. But at least this is not valid now. The judges also do not follow the good principle of isolation from public and political life even when they sit on the bench. Some time, the executive is found to indulge in overriding the verdict of a High Court by use of some discretionary power (as in the Nunavati case) or by bringing constitutional amendment (as in case of 25th amendment). The Executive is also some times found to be criticising the decisions of the court openly. This has a great impact on independence of judiciary. The political leader have also come out with a theory of a committed judiciary, meaning that the judges ought to be committed to the social and political philosophy of the party in power. The is very unfortunate and tells upon the indendence of Judiciary.

2.4.10 Suggestions to make the State Judiciary Truly Independent :

The following are suggestions the made out to make the State Judiciary truly independent:

- (a) A panel of distinguished jurists and legal experts be constituted, out of which the President should make the appointment.
- (b) Provision for appointment of Acting Chief justice or adhoc Judge should be abolished.
- (c) Age of retirement of judges should be raised to 70 years.
- (d) No further appointment of retired judges should be made.
- (e) The Judges should be barred from practising before any court after retirement.
- (f) Seniority rule in appointment and promotion of judges should be strictly followed.
- (g) The judges must have enough moral force to discard material temptation and benefits.
- (h) The judges must remain aloof from public or political contacts.
- (i) Judges should be paid suitable pension after retirement so that they have sense of economic security.

If these suggestions are adopted, it is hoped that these would go a long way in preserving the independence of judiciary in our country.

2.4.11 Summary

In the present lesson we have discussed in detail the composition , powers and jurisdiction of the High Courts in India . We have adopted a single Constitution and single judicial system for the whole country i.e. Supreme Court at the top and so on. The courts play an important role in ensuring just and orderly functioning of the administrative and political machinery of the nation.

2.4.12 Key Words

Appeal-in law, an application for a rehearing of all or part of an issue that has already been dealt with by a lower court or tribunal.

Writ-in law, a document issued by a court requiring performance of certain actions.

2.4.13 Suggested Readings

1. The Constitution of India, Ministry of Law, Justice and Company affairs.
2. Gledhill Allon : The Republic of India
3. Gokhale, B. K. : The Constitution of India and its working
4. Johri, J. C. : Indian Government and politics.
5. Rao K. V. : The Parliament Democracy in India.
6. Gupta, D. C. : The Indian Government and Politics.
7. Jain, M. P. : The Indian Constitution of Law.
8. Bakshish Singh : Supreme Court of India as an Instrument of Social Justice.
9. Rajive Dhanan : Supreme Court and Sovereignty of the Parliament.
10. Kagzi, M. C. J. : The Constitution of India.
11. Seervai, H. M. : The Position of the Judiciary under the Constitution of India.
12. Sharam, M. P. : The Government of India Republic.

2.4.14 Answers to the self check exercises

Exercise No. I

1. This is given in the Constitution under article 216 and in this lesson, it is discussed in detail in the section 12.2.1
2. The qualifications are discussed in the lesson in the section 12.2.2 and are in the constitution's article no. 217.

Exercise No. II

1. Various powers have been discussed in the lesson in the section no. 12.3--12.3.1 upto 12.3.5 and are also contained in the Constitution under the article 223.

Type Setting :

Department of Distance Education, Punjabi University, Patiala. (2018)

- Chairperson, [National Commission for Scheduled Castes](#) Chairperson, [National Commission for Scheduled Tribes](#)
- [Syed Gayorul Hasan Rizvi](#), Chairperson, [National Commission for Minorities](#)
- Rekha Sharma, Chairperson, [National Commission for Women](#)

FORMER CHAIRPERSONS

Sr No	Name	Tenure
1.	Justice Ranganath Misra	12 October 1993 – 24 November 1996
2.	Justice M N Venkatachaliah	26 November 1996 – 24 October 1999
3.	Justice J S Verma	4 November 1999 – 17 January 2003
4.	Justice A S Anand	17 February 2003 – 31 October 2006
5.	Justice S. Rajendra Babu	2 April 2007 - 31 May 2009
6.	Justice K G Balakrishnan	7 June 2010 - 11 May 2015
7.	Justice H.L. Dattu	29 Feb-2016

Present Tenure of Chairperson and Members of the Commission

S.No	Name	Designation	Date of Assumption	Date of demitting office	Post held before joining the Commission
1	Shri Justice H. L. Dattu	Chairperson	29.02.2016	02.12.2020	Chief Justice of India
2	Shri Justice Pinaki Chandra Ghose	Member	29.06.2017	27.05.2022	Judge, Supreme Court of India
3	Smt. Jyotika Kalra	Member	05.04.2017	04.04.2022	Advocate on record, Supreme Court of India

COMPOSITION OF THE COMMISSION

The commission is a multi-member body consisting of a chairman and four members. The chairman should be a retired chief justice of India, and members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights. In addition to these full-time members, the commission also has four ex-officio members—the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women. The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India. The chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairman and members are not eligible for further employment under the Central or a state government.

The president can remove the chairman or any member from the office under the following circumstances:

- a) If he is adjudged an insolvent; or

- b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- c) If he is unfit to continue in office by reason of infirmity of mind or body; or
- d) If he is of unsound mind and stand so declared by a competent court; or
- e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairman or any member on the ground of proved misbehavior or incapacity. However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairman or a member. The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment. All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS OF THE COMMISSION

The functions of the Commission are:

- a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- f) To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- g) To undertake and promote research in the field of human rights.
- h) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- i) To encourage the efforts of non-governmental organizations (NGOs) working in the field of human rights.
- j) To undertake such other functions as it may consider necessary for the promotion of human rights.

WORKING OF THE COMMISSION

The commission's headquarters is at Delhi and it can also establish offices at other places in India. It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the Central and state governments or any other authority subordinate thereto. The commission has its own nucleus of investigating staff for investigation into complaints of human rights violations. Besides, it is empowered to utilize the services of any officer or investigation agency of the Central government or any state government for the purpose. It has also established effective cooperation with the NGOs with first-hand information about human rights violations. The commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence. The commission may take any of the following steps during or upon the completion of an inquiry:

- a) it may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
- b) it may recommend to the concerned government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- c) it may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
- d) it may approach the Supreme Court or the high court concerned for the necessary directions, orders or writs.

ROLE OF THE COMMISSION

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, or to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the concerned government or authority. But, it should be informed about the action taken on its recommendations within one month. In this context, a former member of the Commission observed⁵: 'The government cannot wash away the recommendations made by the Commission. The commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. It is, therefore, improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendation'. Moreover, the commission has limited role, powers and jurisdiction with respect to the violation of human rights by the members of the armed forces⁶. In this sphere, the commission may seek a report from the Central government and make its recommendations. The Central government should inform the Commission of the action taken on the recommendations within three months. The commission submits its annual or special reports to the Central government and to the state government concerned. These reports are laid before the respective legislatures,

along with a memorandum of action taken on the recommendations of the commission and the reasons for non acceptance of any of such recommendations.

PERFORMANCE OF THE COMMISSION

The various human rights issues taken up by the Commission are as follows:

1. Abolition of Bonded Labour
2. Functioning of the Mental Hospitals at Ranchi, Agra and Gwalior
3. Functioning of the Government Protective Home (Women), Agra
4. Issues Concerning Right to Food
5. Review of the Child Marriage Restraint Act, 1929
6. Protocols to the Convention on the Rights of the Child
7. Preventing Employment of Children by Government Servants: Amendment of Service Rules
8. Abolition of Child Labour
9. Guidebook for the Media on Sexual Violence against Children
10. Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation
11. Sensitisation Programme on Prevention of Sex Tourism and Trafficking
12. Maternal Anemia and Human Rights
13. Rehabilitation of Destitute Women in Vrindavan
14. Combating Sexual Harassment of Women at the Work Place
15. Harassment of Women Passengers in Trains
16. Abolition of Manual Scavenging
17. Dalits Issues including Atrocities Perpetrated on them
18. Problems Faced by Denotified and Nomadic Tribes
19. Rights of the Disabled Persons
20. Issues Related to Right to Health
21. Rights of Persons Affected by HIV / AIDS
22. Relief Work for the Victims of 1999 Orissa Cyclone
23. Monitoring of Relief Measures undertaken after Gujarat Earthquake (2001)
24. District Complaints Authority
25. Population Policy – Development and Human Rights
26. Review of Statutes, including Terrorist & Disruptive Activities Act, and (Draft) Prevention of Terrorism Bill, 2000
27. Protection of Human Rights in Areas of Insurgency and Terrorism
28. Guidelines to Check Misuse of the Power of Arrest by the Police
29. Setting up of Human Rights Cells in the State / City Police Headquarters
30. Steps to Check Custodial Deaths, Rape and Torture
31. Accession to the Convention against Torture
32. Discussion on Adoption of a Refugee Law for the Country

33. Systemic Reforms of Police, Prisons and other Centers of Detention
34. Review of Laws, Implementation of Treaties, and the International Instruments on Human Rights
35. Promotion of Human Rights Literacy and Awareness in the Educational System
36. Human Rights Training for the Armed Forces and Police, Public Authorities and Civil Society

HUMAN RIGHTS (AMENDMENT) ACT, 2006

The Parliament has passed the Protection of Human Rights (Amendment) Act, 2006. The main Amendments carried out in the Protection of Human Rights Act, 1993, relate to the following issues:

1. Reducing the number of members of State Human Rights Commissions (SHRCs) from five to three
2. Changing the eligibility condition for appointment of member of SHRCs
3. Strengthening the investigative machinery available with Human Rights Commissions
4. Empowering the Commissions to recommend award of compensation, etc. even during the
 1. course of enquiry
5. Empowering the NHRC to undertake visits to jails even without intimation to the state Governments
6. Strengthening the procedure for recording of evidence of witnesses
7. Clarifying that the Chairpersons of NHRC and SHRCs are distinct from the Members of the Respective Commission
8. Enabling the NHRC to transfer complaints received by it to the concerned SHRC
9. Enabling the Chairperson and members of the NHRC to address their resignations in writing to the President and the Chairperson and members of the SHRCs to the Governor of the state Concerned
10. Clarifying that the absence of any member in the Selection Committee for selection of the Chairperson and member of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees
11. Providing that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be members of the NHRC
12. Enabling the Central Government to notify future international covenants and conventions to which the Act would be applicable

NOTES AND REFERENCES

1. The president promulgated the Protection of Human Rights Ordinance on September 28, 1993. Subsequently, the Protection of Human Rights Bill, 1993,

- was passed by both the Houses of Parliament and received the assent of the President on January 8, 1994. The act came into force with retrospective effect from September 28, 1993.
2. 'International covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966 and such other Covenant or Convention adopted by the General Assembly of the UN as the Central Government may Specify. The Indian government acceded to these two International Covenants on April 10, 1979.
 3. T K Thommen, 'Human Rights Commission', *Cochin University Law Review*, Vol. XVII, nos.1 and 2, March-June 1993, p. 67-68.
 4. A M Ahmadi Committee set up by the Commission recommended that the Commission should be empowered to inquire into any matter after the expiry of one year, if there is sufficient reason for not filing the complaint within the said period.
 5. Justice V S Malimath, 'Role of Human Rights Commission', *Human Rights in India: Problems and Perspectives*, BP Singh Sehgal (ed.), Deep Publications, 1995, p. 17-20.
 6. Under the Act, 'armed forces' means the naval, military and air forces and includes any other armed forces of the Union. A M Ahmadi Committee set up by the commission recommended that the definition of the 'armed forces' should be changed in a way that it includes only navy, army and air force, not Para-military forces.
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LOKPAL, LOKAYUKTA

Structure

- 2.6.0 Objectives
- 2.6.1 Introduction
- 2.6.2 Ombudsman
- 2.6.3 Lokpal and Lokayukta in India
- 2.6.4 Conclusion
- 2.6.5 Suggested Readings
- 2.6.6 Answers to Self-Check Exercises

2.6.0 OBJECTIVES :

After studying this lesson, you shall be able to :

- * understand the working of Central Vigilance Commission;
- * describe the office of Ombudsman;
- * explain the position of office of Lokpal and Lokayukta in India and various states particularly Punjab.

2.6.1 INTRODUCTION :

Earlier governments were responsible for performing just regulatory functions like maintenance of law & order and collection of revenue, but, now there being welfare states with Governments performing multifarious functions influencing the life of masses to a greater extent, thus has been accorded vast administrative discretionary powers. But limitations of the means of external & internal control over the exercise of such powers has led to evils like bribery, nepotism, misappropriation i.e. various forms of corruption and maladministration.

Corruption among employees reached climax during world war-II. Hence, the government of India established Special Police Establishment in 1941 in order to investigate cases of bribery and corruption in transaction, Thus special police establishment at central and state level is working in India since British Raj, mainly investigating cases of bribery and corruption. Similarly Central Vigilance Commission & state Vigilance Commissions have also been established on the recommendations of Santhanam Committee but Commissions functions are purely advisory i.e. departments/ministries often either ignore its recommendations or unilaterally close the cases or sometimes not even provide the relevant record. Though one can appeal to the court against administrative injustice or can file writ

petition which means that judicial remedies available to Indian citizens are quite comprehensive but still are subject to certain limitations like all administrative actions can't be reviewed by the courts. Courts can't look into the matter by itself but only when a case is filed by someone. Moreover the procedure is very lengthy, expensive and cumbersome that it is not possible for a common man to adopt it as a mean for redressal of his grievances. At times departmental files, records are not produced before it on the pretext that it will be against the public interest. Even if court "awards some compensation, sometimes it leads to further litigations. Thus judicial-review of administrative action is a powerful instrument but is severely limited.

Administrative Tribunals were established so as to provide inexpensive, impartial and timely justice to the aggrieved party but have failed to come upto the expectations, Moreover these can be set up only in few areas cover the entire administration.

Legislature has its general control by means of debates, discussions, motions etc., and though its committees particularly committee on Petitions, There can be departmental or interdepartmental complaint cells, reception cum enquiry counters, public relations unit etc. Moreover Second United Nations Development Decade has suggested for citizen Associations & Voluntary Organisation forms etc.

But all above said means and methods are inadequate and ineffective in several respects and have failed to bring transparency in the working of administration as almost every day, one reads about scams, scandals whether it be 'Sugar Scam', 'Security Scam', 'Telecommunication Scam', 'Hawala Scandal' or 'JMM Scam' etc. In which all involved are top government officials; ministers and the prominent leaders of the nation thus cutting party lines. Thus look out for a machinery capable enough to provide efficacious relief to aggrieved citizens against administrative arbitrariness has been strengthened.

In the past few years efforts are being made to adopt the Scandinavian Office of Ombudsmen in India.

2.6.2 OMBUDSMAN

It's originally Swedish word which means an officer of Parliament who investigates complaints from citizens that they have been unfairly dealt with by the government departments and who, if finds that the complaint is justified, seeks a remedy. The office of Ombudsman was first developed in Sweden in 1809.

Working of Ombudsman in Sweden

In Sweden, there is an Ombudsman for civil affairs and one for military affairs though only former is relevant to your course. His main purpose is to ensure the correct and rightful functioning of the administration and to provide protection and relief to the citizens against faulty administration. He acts on the complaints received from the public or can act on his own after carefully reading the government reports, newspapers etc. He conducts formal investigations and can ask for relevant information from government officers. He functions in flexible and non-partism manner and provides greater transparency as his working and investigations are open to public and press, which contributes a lot to the acceptance of his advice and recommendations.

He looks into the cases of failure to follow the law or to use fair procedures in dealing with employees and citizens as well as for evidences of inconsistency in the application of the law to individual cases. He suggests changes in the law themselves to make them more defensible and also makes a comprehensive annual report to the parliament. The cost of his office is borne by the taxpayer. But unlike the courts ombudsman has no power to quash or reverse an administrative decision but can suggest only various types of remedies like apology, fresh decision, payment of exgratia compensation or any other financial benefit. Courts follow elaborate procedure but his action is fast and inexpensive. Courts have power to intervene to prevent recurrence or continuance of wrongful acts by way to writs, stay orders etc. but Ombudsman has no such power. Still in many administrative matters, this is more efficient way to establish the truth than the procedure followed by the courts.

Newzealand's Ombudsman

This office was created in 1962 by enacting the parliamentary commissioner (Ombudsman) Act, 1962. Any person who is not a member of Parliament is appointed as Ombudsman for a term of four years; may be reappointed for a second or third term. Though his principal function is same as that of Sweden's Ombudsman but the former has wider powers than the latter. He looks into complaints :

- Where administrative action is contrary to law, or
- the action is unreasonable, unjust, oppressive, improper, discriminatory, or
- if there is mistake of law or fact or if the action is wrong, or
- the law or practice under which the action has been taken in itself unreasonable, unjust or discriminatory.
- In his report to Parliament, he can suggest suitable action or can draw Parliament's attention to some law which he believes

unreasonable or unjust. He may refuse to entertain any complaint if he is convinced that it can be corrected by any other established means like courts etc.

Ombudsman in Denmark

In Denmark, Ombudsman is appointed by the legislature (Folketing) at the time of each general election.

Jurisdiction of Ombudsman :

Both civil & military administration and municipalities and Administrative, Tribunals but not courts. Though municipal councils in their collective capacity are excluded. His principal functions and working is almost similar to that of Sweden's Ombudsman. Though he can make action on his own but so far he has not used this power and has only recommended it to the appropriate authority.¹

Parliament Commissioner for Administration (PCA) in England

It was set up in 1967 by a statute called Parliamentary Commissioner Act, 1967 passed by the British Parliament, thus bringing this functionary into being. He is appointed by the Queen on the recommendation of the government and holds office till the pleasure of the Queen. The need for such an office arose as already existing measures failed to provide satisfactory solutions to citizens grievances.

The British Ombudsman investigates the complaints independently but only when asked to do so by the MP's on behalf of members of the Public. He has the power to investigate the administrative action by central government departments, executive and non-departmental bodies but not in the policy matters or matters relating with other countries he has access to relevant departmental papers. He submits his annual report to Parliament. He also publishes selected investigation quarterly. A common selection Committee has the responsibility for over-seeing his work.

2.6.3 LOKPAL AND LOKAYUKTA IN INDIA

Sweden's Ombudsman, England's Parliamentary Commissioner for administration (PCAI) is called Lokpal & Lokayukta in India. The need for having such a functionary arose in fifties when the evil of petty bribery before independence became a large-scale racket of corruption. Though discussion on Corruption and its remedial measures was initiated in 1952 in Parliament it was in 1959 that Mr Deshmukh, the then U.G.C. chairman & former Finance Minister of India, vociferously demanded for the establishment of such a machinery.

He claimed to be in possession of such documents which can prove the wrong doings of some members of the government but wanted an independent judicial tribunal to make the investigations. But such a demand was refused by the then P.M Pt. Nehru on the grounds that it was against the democratic norms and would lead to acrimony and distrust.

In sixties third all India Law Conference stressed for having a machinery to look into the grievances of citizens against administration. This demand was justified by Dr. L.M. Singhvi in the following words. "Such machinery will help the Parliament to function effectively in individual cases and will ensure independent. Impartial justice in matters of administrative excesses in individual cases.

In Parliament, Home Minister stated it to be of great urgency and importance but became practical only when Administrative Reforms Commission was appointed in 1966. ARC accorded this matter the highest priority and submitted its interim report in Oct 1966 itself. But at the same time another proposal was placed before Cabinet to create an independent authority i.e. Commissioner for Redressal of Citizen's Grievances, with power and responsibility to deal with gross negligences affecting masses. But unlike Sweden the Commissioner will be appointed by the government and not by Parliament. He would not be an independent authority but just investigator and supervisor within the ministries and departments. He would be part of the government machinery and not an outside agency. He would be placed in Home Ministry. This proposal was approved by the Cabinet and Commissioner, for additional Secretary rank officer, was appointed in March 1966 i.e. Months before ARC¹ submitted its interim report. Secretary of Department of Personnel was asked to perform these functions.

Administrative Reforms Commission's Report

Arguments advanced by ARC for the Creation of such Machinery:

- Would help in removing the sense of injustice from the minds of adversely affected citizens.
- Necessary to instil public confidence in the efficiency of administrative machinery.
- Would act as a deterrent to acts of mal-administration.
- Faith and fair amount of satisfaction with administration will facilitate the success of Indian democracy.

Major Recommendations

1. *Mias Paderson in Rowat Donals C., Ombudsman : Citizen's Defender*

The Administrative Reforms Commission recommended to the central government, the setting up of the institution of Lok Pal and Lok-Ayukta which are analogous to the Parliamentary Commissioner in England and New Zealand the institutions provided for the redressal of the public grievances. It stated that there should be Lok Pal to deal with the complaints against ministers and secretaries to the government. both at Centre and state level. There should be Lok-Ayukta to deal with complaints against other officials both at centre and state level.

The Institution of Lokpal, though not strictly judicial can be called a quasijudicial to control over administration. Corruption at high level, i.e. in Ministers holding different departments, must be checked, because it encourages the higher and lower administration to be corrupt.

ARC suggested that the office of Lokpal :

- should be independent and impartial.
- investigations and proceedings should be conducted in private and be informal in character.
- non- political in character.
- status be equivalent to highest judiciary functionary in the country.
- should have access to departmental and other relevant information and without any judicial interference.
- should mainly deal with matters involving acts of injustice, corruption or favouritism. Chairman of Administrative Reforms Commission, Sh. Desai submitted a draft Bill to Government of India and after its acceptance, Lok Pal and Lok-Ayukta Bill was introduced in 1968 in Parliament to provide Ombudsman in India. Though it was passed in 1969 but lapsed in 1970 due to dissolution of Lok Sabha.

It was introduced again in 1971 then in 1977 by Janta Government then again in 1985 during Rajiv Gandhi Government but every time it met the same fate. Department of Administrative Reforms and Public Grievances was set up so as to improve the machinery for redressal of public grievances. Then Directorate of Public Grievances was also setup in the Central Secretariat. But a strong need was felt to have an external agency But Lok pal and Ayukta institutions were criticised both by the opposition and public on various grounds like -

According to Mr. Mukherji (former chief justice of West Bengal) Ombudsman's power to change the administrative decision and to prosecute the brutal policemen and power to modify faulty regulations may make him an

authoritarian Thus, need to provide proper safeguards against this arises.

Constitutional Objections - According to M.P. Jain, "ARC's scheme is inconsistent with the federal structure. Single functionary for both centre and states is not practical. But as there is a provision to have separate Lok Pal for Centre and for each state so this objection doesn't hold good.

Jurisdictional Problems - There may be overlapping of functions performed by Central Vigilance Commission and Lok Pal. Thus, functions be clearly demarcated and co-operation be sought. A citizen who complains often runs the risk of arraying the entire official against himself. Moreover, competent authority is not bound to accept the findings.

Punjab Lokpal :

The Punjab Lokpal Act, 1995 provides for the Lokpal in Punjab. Appointment of a Lokpal to inquire into the complaints of maladministration and allegations of misconduct and favouritism against public men and for matters connected therewith. This Act came into force on 7th May, 1995. In accordance with this Act, Justice Sodhi was appointed Lokpal, Punjab. But due to major changes in Punjab's political set up, this Act has been repealed. Here it's being given for your information only. Though few of the clauses are similar with little or no modification so essential changes are being made wherever necessary. Another resolution was moved by Bhattal Govt. thus making it a body of three members, one Lokpal and two Uplokpal. So far many changes have been made from time to time.

Appointment of Lokpal

Lokpal is to be appointed by the Governor in Consultation with Chief Minister and Chief Justice of High Court.

Qualifications

A person who is or has been a judge of Supreme Court or High, Court or Chief Justice of High Court in India can be appointed as Lok Pal.

Oath

Before entering upon his office, he has to make an Oath or affirmation.

Ineligible to hold other office

The Lokpal shall not be a Member of Parliament or any State Legislature or shall not hold any office of trust or profit. He shall not be associated with any political party and shall not carry on any business, profession etc.

Terms and Conditions of Service

He is generally to be appointed for 5 years. He may resign or can be removed in the manner prescribed for this purpose.

He is debarred from further employment.

His allowances and pension is to be determined by the Governor accordingly. His salaries, allowances etc. are charged upon the consolidated fund of the state.

Removal of Lokpal

Can be removed on the grounds of misbehaviour or incapability and according to the procedure laid down for the removal of Judges of High Court.

Staff

A secretary, some officers and employees according to the requirement be appointed by the government in consultation with Lokpal. According to new Act, four posts of senior assistants, two of senior scale stenographers, three class IV posts have been created.

Jurisdiction of Lok Pal

It comprises matters relating to allegations of misconduct against a public man. He may inquire into matter relating to any other person if it is relevant to matter for investigation against the public man.

But if he has a bias in any matter of against a person, he can't investigate Matters referred to commissions can't be inquired into. If action has been taken five years before the date of making complaint, he shall not inquire into it.

Complaints

- Can be filed by any person other than public servant.
- Alongwith deposit of five thousand rupees, it should be made on the prescribed format.
- The complaints are preliminary scrutinized by Lokpal and if it IS worth investigating then a set procedure is followed in respect of Inquiries.
- Lokpal has the power to search and seizure of relevant evidences in connection with the investigations.

He submits the Annual Consolidated Report to the Governor who shall cause the same to be laid before the state legislature.

Secrecy is to be maintained by Lokpal during the entire procedure. Lokpal is competent to take action in case of false complaints like imposing penalty or imprisonment for a term which may extent upto one year.

Protection

No suit, prosecution or often legal proceedings shall be against Lokpal and no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed or called in question, in any court. This office was still in its initial stage when it was abruptly abolished. It seems that government has taken such

a drastic step at such crucial stage only to gain political mileage. It may have a negative impact in a democratic society. Even eminent advocates have stated that such an institution will prove beneficial only when one functionary is allotted the work.

LOK AYUKTA

The A.R.C. also recommended the institution of Lokayukta, which is supposed to have jurisdiction over the public servants who do not fall within the purview to the Lokpal. The conditions of appointment, tenure of office, removal scope of function etc. of the Lokayukta are analogous there of Lokpal.

Working of Lokayukta with Special Reference to U.P. Lokayukta-Uplokayukta Act, 1975 Appointment

Lokayukta shall be appointed by the Governor with the consultation of the Chief Justice of High Court and the leader of the Opposition in the Legislative Assembly in U.P. Lokayukta shall be appointed by the Governor after consultation Lokayukta as he is subject to administrative control of Lokayukta.

Eligibility for Lokayukta and Uplokayukta :

- Shall be a person who is or has been a judge of Supreme Court or High Court.
- Should not be a member of any legislature.
- Should not be connected with any political party.
- Should not hold any office of profit and should not carry any business.

Term :

The duration of term is same in both the cases i.e. Five years unless he resigns or is removed from the office by the Governor on the grounds of misbehaviour or incapacity.

Removal :

Removal is subject to the provisions of Article 311 of the Constitution. But the order of his removal has to be approved by atleast 2/3rd majority of each House of State Legislature.

Jurisdiction :

Lokayukta or UpLokayukta may investigate any action taken by any public servant including a public servant notified for this purpose by the state government. But investigation will be conducted only when the complaint has been filed. Complaint must be accompanied by an affidavit. Before initiating the investigation, a copy of the complaint is to be forwarded to the public servant concerned so as to provide him an opportunity to offer his comments on the complaint. If Lokayukta or Uplokayukta is satisfied that injustice has been done

to the complaint then he shall recommend to then public servant and the concerned competent authority that such injustice be remedied within the specified time. But if he is not satisfied with the action taken against a public servant he may make a special report upon the case to the Governor and also inform the complaint concerned. But false complaint is liable to be punished.

An annual consolidated report on the performance of their functions is to be presented to the Governor.

Self-Check Exercise

1. Is there a Lokpal at Central level of government in India?
2. From which country the institution of Lokpal has been borrowed?
3. Under which Act, Lokpal has been established in Punjab? Write its main features and functions.

2.6.4 CONCLUSIONS

In Sweden, Denmark and other countries having full-fledged Ombudsman, it has been a great success. It has proved important not only as a device for controlling the ever-growing powers of bureaucracy but also as an affective agency for redressal of public grievances. In Sweden Ombudsman for safeguarding consumer's interests has also been appointed.

But in India till 2013 at the Central level it has remained only on paper as a scheme. In 2013, Lokpal and Lokayukta Act 2013 was passed. In 2019, first lokpal of India was appointed. States have shown keen interest in adopting this institution but mainly have appointed Lokayuktas Even Banking- Institutions also appointed this functionary and his appointment has been hailed by the concerned authorities. Thus to boost public morale and to have administrative transparency such an institution be enacted as early as possible, and undoubtedly this institutions will prove to be a means of judicial control over administration by giving it some enhanced judicial powers.

2.6.5 SUGGESTED READINGS

- | | |
|---|-------------------------------------|
| M.P, Jain | Lokpal - Ombudsman in India |
| Massey | Administrative Law (Latest Edition) |
| Upadhaya | Administrative Law (Latest Edition) |
| Felix Nigro | Modern Public Administration |
| Orrisa & Lokayuktas Act, 1970 | |
| Punjab Lokpal Act, 1995 | |
| Maharashtra Lokayukta & Uplokayukta Act, 1971 | |
| Bihar Lokayukta Act, 1973 | |

U.P. Lokayukta Uplokayukta Act, 1975

R.B. Jain Contemporary Issues in Indian Administration

2.6.6 ANSWERS TO SELF-CHECK EXERCISE :

1. No, many attempts have been made so far but this institution has failed to be established at the central level.
2. From Scandinavian countries. For more details read 14.3 of your lesson carefully.
3. Punjab Lokpal Act, 1995. Answer to this question is given at 14.4 - sub heading 'Lokpal in Punjab'.

POLICIES AND PROGRAMMES FOR SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER BACKWARD CLASSES

Structure

- 2.7.0 Objectives
- 2.7.1 Introduction
- 2.7.2 Meaning of SC/ST/OBC
 - 2.7.2.1 Definition of Scheduled Castes
 - 2.7.2.2 Scheduled Tribes and Denotified Tribes
 - 2.7.2.3 Other Backward Classes
- 2.7.3 Constitutional Provisions to safeguard the interests and to promote their welfare
- 2.7.4 Governments Policies and Programmes
- 2.7.5 Commissioner for SC's/ST's
- 2.7.6 Achievements of the programmes during Five Year Plans
- 2.7.7 Conclusion
- 2.7.8 Key Points
- 2.7.9 Suggested Readings
- 2.7.10 Answers to 'Check your Progress' Exercise

2.7.0 Objectives

After studying this lesson, you shall be able to :-

- * understand the meaning of scheduled castes/tribes and other backward classes;
- * describe various constitutional provisions in this respect;
- * analyse governmental measures through legislations and also through five year plans.

2.7.1 Introduction

India is a vast country and persons belonging to numerous religious races and castes live in it. Caste has been described as the 'foundation of the Indian social fabrics which has been prevalent in India since time immemorial. Due to caste system and social discrimination a section has been created in our society, which is the lowest of all and a backward one. This section includes scheduled castes, scheduled tribes and backward classes. This section of our society has remained socially and economically backward and it has been always exploited by the other sections of the society. They have been leading a depressed and backward life, due-to educational, social and economic handicaps. But in free India, several efforts have been made for the welfare of the people belonging to this backward sections. Opportunities and

facilities for progress and development have been provided to the people of this section, so that they can lead a better, respectful and a happy life in societies.

2.7.2 Meaning of Scheduled Caste/Tribe and Other backward classes

According to First Five Year plan, "The term 'backward class' is difficult to define. Backwardness is expressed as lack of adequate opportunity for group and individual self development, especially in economic life and in matters of health, housing and education. It is measured in terms of low levels of income, the extent of illiteracy, and the low standard of life demonstrated by living conditions." Therefore we can say that scheduled castes and backward classes are those classes, which are socially and economically backward. They do not have the facilities and opportunities and sources for development as the other sections of society have. The backward classes can be divided into following four categories : (i) Scheduled castes (ii) Scheduled Tribes (iii) That Group which used to be called as Criminal Tribes and now known as Denotified Tribes, (iv) Socially and economically backward such other classes which are declared by the Union or State Government as backward.

2.7.2.1 Scheduled Castes

According to Article 341 (1), "The President may with respect to any state or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this constitution be deemed to be Scheduled Castes in relation to the state or Union Territory, as the case may be. "The Parliament can also make amendments in the list of Scheduled Castes issued by the President. In this way parliament can increase or decrease the number of castes included in this list. The President had issued one list of Scheduled castes in 1950, which was amended by the parliament in 1956, for this purpose the Scheduled Castes and Scheduled tribes orders (Amendment) Act, 1956, was passed. According to the census of 2001, the population of the Scheduled castes in the country was 166,635,700.

2.7.2.2 Scheduled Tribes

Those tribes of India which used to lead a primitive life in the forests and hills far away from the civilisation are known as nomadic tribes. They are also known as tribal people. They still live in forests and hilly regions. Their main sources of livelihood are the hunting of animals and fruits. At some places they also till the land on small scale. They are more backward than the Scheduled Castes. According to Article, 342 (1), "The President may with respect to any state or union territory, and where it is a state after consultation with the Governor thereof, by public notification, specify, the tribes or tribal communities or parts of groups within tribes or tribal communities which shall for the purposes of this constitution be deemed to be scheduled tribes in relation to that State of Union Territory, as the case may be. "In 1950, the President

issued a list of Scheduled Tribes, which was amended by the Parliament by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956. According to the census of 2001, the population of scheduled tribes in India was 84,326,240.

Denotified Tribes

Denotified Tribes consists of several groups which can be divided mainly into two parts-nomadic tribes and settled tribes. Among the nomadic groups are the pastoral communities, which do not reside at one place permanently. They earn their livelihood by doing petty jobs, and to attain this end they move from place to place. Their main profession is to make small implements and household goods of iron. Settled and unsettled groups include non-regulated criminal people, who were uprooted from their original homes long ago due to the aggression or political changes. They got the evils of bootlegging, poverty, lack of means for better economic condition and other psychological ills from their ancestors as a legacy. All these were responsible for their taking to the criminal acts. Under the Criminal Tribes Act, 1924 they were divided into 137 criminal groups. These tribes used to be kept in the colonies. After independence the Government of India, in 1949 appointed a Criminal Tribe Enquiry Committee. On the recommendations of this committee, the Government repealed the Criminal Tribes Act on August 31, 1952 and many restrictions on these people were withdrawn. These tribes were accordingly given a new name of denotified tribes. On the recommendations of this committee the government started arrangements for giving education, training and employment to the people of these tribes. SC's and ST's comprise 24.4% of country's population at present.

2.7.2.3 Other Backward Classes

Besides the above mentioned castes and tribes are some other classes in our society, which are socially and economically backward. After the report of the Commission for Backward Classes in 1961, the Government of India decided that no new list for backward classes should be made besides the list of scheduled castes and scheduled tribes, which have already been framed. But it has given authority to the State government that they could frame list of backward classes, on the basis of criteria fixed by them under Art 340. Therefore, the state government have framed the lists for backward classes in their respective areas on different basis. Some of the criteria fixed by certain State Government for this purpose are as follows : In Punjab, those persons whose annual income is less than one thousand rupees have been included in the list of other backward classes. In Tamil Nadu those families whose annual income is less than fifteen hundred rupees are included in the list of other backward classes. Like the scheduled castes the persons belonging to those classes have also been provided special concessions in field of education and employment. In U.P. the government has made a list of other backward classes in which 58 castes have been included. The State government is not in favour of fixing any other

criteria than the annual income for this purpose. OBC's comprise 52% of the total population of our country.

2.7.3 Constitutional Provisions to safeguard the interests and to promote Welfare of the Scheduled Castes, Scheduled Tribes and Backward Classes

After the attainment of independence, the government wanted to raise this backward and depressed section of the society. Therefore, several such provisions were made in the constitution, the need for which was felt since long to safeguard the interest and to promote the welfare of Scheduled Castes, Scheduled Tribes and other backward classes. The Indian constitution has described in detail the welfare measures for Scheduled Castes, Scheduled Tribes and backward classes so that their development in economic and educational fields can be attained and their social handicaps can be removed. The main constitutional provisions in this regard may be described in the following lines :

1. Untouchability is abolished and its practice in any form is forbidden by law. (Art. 17)
2. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and to protect them from social injustice and all forms of exploitation. (Article 46).
3. Throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. (Article 25).
4. Removal of disability, liability, restrictions or conditions with regard to access to shops, public restaurants, hotels and places of public entertainment, the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds or dedicated to the use of the general public. (Article 13).
5. The state has the power to make law imposing reasonable restrictions on the exercise of the rights of all citizens to move freely throughout the territory of India to reside and settle in any part of the territory of India and to acquire and dispose of property for the protection of any Scheduled Tribes (Article 19(5)).
6. Removal of restriction for admission into any educational institution maintained by the state or receiving aid out of state funds (Article 29).
7. It is the responsibility of the government to make reservations for the persons belonging to backward classes, while making appointments in the public services. The constitution also imposes an obligation on the state to consider the claim of the scheduled castes and scheduled tribes, consistently with the maintenance of efficiency of administration, in the making of appointments of public services (Article 15 and 335).
8. To give special representation to scheduled castes and tribes in Parliament and Legislators upto 25th January, 1980 (Article 330, 332 and 334).

9. To establish advisory councils and separate departments and to appoint a special officer at the centre of the development for their welfare activities and to safeguard their interests (5th Scheduled, and 338).
10. To make special arrangements for the administration and control of scheduled and tribal areas (5th and 6th scheduled and Article 244).

2.7.4 Government's Policy and programmes for the Welfare of Scheduled Castes, Tribes and other Backward classes

We can see the essence of government's policy regarding the welfare of scheduled castes, scheduled tribes and other backward classes in the above mentioned constitutional provisions. On the basis of these constitutional provisions the government has framed and implemented its policies for the welfare of this backward section.

To make the social, political and economic development of the persons belonging to scheduled castes, scheduled tribes and other backward classes, to raise their status equal to that of the sections of the society, their educational development, to provide them better opportunities and facilities for employment, to make their standard for living better, to provide them social and legal security etc. are some of the important objectives of the government's policy.

The Untouchability (offences) Act, 1955

To eradicate untouchability from the country, the government has enacted and implemented the Untouchability (offences) Act, 1955. By this law the government has declare untouchability as a crime. If any person prevents another person from entering into and to use the public places, religious places, places of drinking water and bathing walls, taps, ponds and canals etc. shops hotels, dharmshalas, waiting rooms and prevents him to use those utensils which are being used by other persons without any restriction, then that person can be awarded imprisonment for six months and five hundred rupees fine as a punishment under the law. In this way now no person can treat another person as an untouchable and all the public places have been thrown open for the use of everybody. So with this scheduled Act the Government of India has elevated the scheduled castes, scheduled tribes and other backward classes equal to that of the other sections of the society.

Representation in the Lok Sabha and State Legislative Assemblies

To provide representation in Lok Sabha and State Legislative Assemblies to the persons belonging to scheduled castes and scheduled tribes, some seats have been reserved for them in proportion to their population. In the beginning this facility was provided only for ten years from the commencement of the constitution. But with the amendments later on made in the constitution now this facility will be available to the persons belonging to those castes and tribes up to 2010. No reservation of seats has been made for the persons belonging to these castes and tribes in Rajya Sabha and State Legislative Councils. To provide representation to those people some seats have

been reserved in the Metropolitan Councils, Municipal Corporations, Municipalities, Panchayats and other institutions of the Panchayati Raj from them. In the Lok Sabha at present there are 77 representatives of scheduled castes and 40 representatives of scheduled tribes. In the State Legislative Assemblies of the Union Territories there are 515 representatives belonging to scheduled castes and 321 representative of scheduled tribes.

Reservation in Civil Services

Arrangements have been made for reservation of seats in All India Services Central Services, State Services, Public Corporations and Local Institutions services to give representation to the persons belonging to scheduled castes, scheduled tribes and other backward classes. 13% posts have been reserved for scheduled casts A in the recruitment of those posts which are being filled by open competition on All India basis.

$16\frac{2}{3}\%$ posts are kept reserved for scheduled castes in those services whose recruitment is being made by other methods. $71\frac{1}{2}\%$ seats are kept reserved for scheduled tribes in both the above mentioned forms of recruitment. At present 27 percent seat, are reserved for scheduled castes in higher education. Seats are also reserved for the persons belonging to these castes and tribes in the state civil services and the civil services of the Union territories. Their percentage of reservation varies from state to state. State governments have been increasing the number of reservations for them from time to time by framing new rules. Besides recruitment, some seats are kept reserved at the time of promotions also for the persons belonging to these castes and tribes. Punjabi University, Patiala has set up a training centre where the candidates of these castes are imparted preparatory training for competitive examination free of cost. By 1991, SC's % age in Central Government services was 9.09 as compared to 1971 when it was 2.68% for Class 1 services. ST's representation in 1991 was 2.53 from 2.41 in 1971 at Class 1. In PSU's 1991 data shows 9.68% as compared to 1971 when it was 8.17 (all categories).

Facilities for Education

Government has provided special facilities to impart education to the scheduled castes, scheduled tribes and backward classes. Free education, scholarships, financial aid for books, notebooks and other necessary material are being given by the government to the children of these castes and classes. They have been exempted from payments of the admission fee for the public examinations, scholarships for higher education, and research abroad and travel cost to foreign lands are also being provided to them. The number of such scholarships awarded every year for scheduled castes are 13 to 21, for scheduled tribes they are 6, for denotified tribes it is one and for other backward classes it is three. Arrangements have been made for providing milk and mid-day meals in the schools to the students belonging to these casts and tribes. Special concessions are given to them in the hostels also. At the time of admission to the

General educational institutions, technical and professional educational institutions, seats are kept reserved for the children belonging to these castes and classes. Civil services coaching facilities provided free of cost at about 103 coaching centres throughout country.

Economic Development

Besides reserving seats in the civil services of the country to the persons belonging to scheduled castes, scheduled tribes and other backward classes, numerous facilities are being provided to them for their economic development. Those persons of these classes who neither have any source of income nor any land or property, are being provided with free land by the government so that by agriculture they may become self-dependent. They are also being provided with bulls, agricultural implements, seeds and fertilisers etc. They are being encouraged to establish cottage and small scale industries, so that they may earn their livelihood. Government also gives them grant and loan for this purpose. They are being given incentives for running poultry farms, piggeries and sheep and goat keeping. For this purpose they are given required training and financial aid. They have been freed from the bonded labour and the clutches of the moneylenders. In the way the government is making efforts for their economic development.

Health Services

Government has made arrangements for looking after the health of the persons belonging to scheduled castes, scheduled tribes and other backward classes. Free medical aid and medicines are being provided to them. Arrangements have been made for providing them knowledge aid maternity and family planning.

Housing and other facilities

Government is making efforts for providing better housing to the persons belonging to Schedule Castes, Scheduled tribes and other backward classes. Arrangements have been made for providing free plots to those persons of these classes who do not have any house to live in. Grants and Loans are also being given by the government to them for construction their houses. At several places the government has constructed residential colonies for them and houses have been allotted to them on cheaper prices and instalments. Facilities of clean drinking water supply, supply of electricity and entertainment have also been provided to them.

2.7.5 Commissioner for Scheduled Castes and Scheduled Tribes

Under article 338 of the constitution, the President appointed in 1951 a Commissioner for scheduled caste/Tribes. This officer has been entrusted with the responsibility for safeguarding the interests of the persons belonging to these castes/tribes. He is also to review various policies, programmes for union and state government and make suggestions in this respect. In 1978 Cabinet's resolution at Union level constituted a Commissioner for SC's/ST's. In 1987, National Commission for SC's/ST's with a chairman and four member replaced commissioner for SC's/ST's. Then office

of the commissioner ceased to exist from March 1992. At central level, National SC's/ST's. Finance and Development Corporation was created in 1989 to support State Scheduled Castes Development Corporations. Its main functions are to support activities for their overall development and welfare. At state level in Punjab, Punjab State SC's/ST's land Development and Finance Corporation, Tribe Finance Development Corporation are also created where tribe population is found.

2.7.6 Achievements under the programme for the welfare of scheduled castes and backward classes during Five Year Plans

Government has paid special attention to the welfare of scheduled castes, scheduled tribes and other backward classes during this five year plans. The achievements in this field may be briefly described in the following lines :-

First Five Year Plan (1951-56)

Rs. 26 crores were spent on the welfare of the scheduled castes scheduled tribes and other backward classes, during first five year plan. Besides the state government, the centre government had awarded 37,077 post-matric scholarships to the children of the scheduled castes, 291 schools were opened for the children of denotified tribes and 42,065 scholarships were awarded to them. Efforts had been made for providing to the persons belonging to scheduled castes, scheduled tribes and other backward classes the facilities of education, medical aid supply of drinking water, agriculture and irrigation, establishment of cottage industries and construction of roads in the tribal areas. Seventeen colonies had been established for rehabilitation of the denotified tribes.

Second Five Year Plan (1956-61)

Rs. 78 crores had been spent on the welfare of scheduled castes, scheduled tribes and other backward classes and denotified tribes during the second five year plan. Up to the end of second five year plan, about nine lakh children of scheduled castes were getting government scholarships. The persons belonging to these castes were given 93,300 houses and plots. The eighty co-operative societies had been organised. With the aid of the central government 156 training and production centres were established. For multipurpose development 43 tribal books were started. Land for agriculture and other necessary material was given to scheduled tribes. 25,592 post-matric scholarships was awarded to their children. Maturity and child welfare centres were also established in the tribal areas. 13,246 families of denotified tribes were rehabilitated. The Government of India appointed the Scheduled Area and Scheduled Tribes Commission in 1960, the Commission submitted its report in 1961.

Therefore, steps were taken during the third plan period to implement the recommendations of this commission.

Third Five Year Plan (1961-65)

Rs. 102 crores had been spent on the welfare of the scheduled castes, scheduled tribes, Denotified tribes and other backwards classes during Third Five Year Plan.

Social and economic development of the people of this section was kept continuing. Spread of education among them was accelerated. More representation in Public services was given to them. More facilities were provided for housing, drinking water, medical and maternity aid, and welfare of their children. The campaign for the complete eradication of untouchability was accelerated. By the end of the Third Plan progressive activities were continuing for the Welfare of Scheduled tribes in 413 tribes for Tribal development. They had been provided with the aid for agricultural and cottage industries.

Three Annual Plans (1966-69)

About Rs. 69 crores were spent on the welfare of these classes during three annual plans. 3.27 lakh post-matric scholarships were awarded to the children of scheduled castes. 65,676 post-matric scholarships were awarded to the children of the scheduled tribes. The number of tribal development blocks in the country was increased from 413 to 480. More representation in public services was provided to the persons belonging to these classes. For their aid and guidance training-cum-guidance centres were established in Delhi, Jabalpur, Kanpur and Madras.

Fourth Five Year Plan (1969-74)

For the welfare and development of scheduled castes, scheduled tribes, denotified and other backward classes Rs. 13238 crores were spent during the fourth five year plan. On 1st January, 1972 the number of scheduled castes and Scheduled tribes officers in the country's major civil services was as follows :-

Indian Administrative Services	-	280
Indian Police Service	-	133
Indian Foreign Service	-	49

The tempo of spread of education among these classes had continued unabated. By the end of this plan, pre-matric scholarships were being awarded to 30 lakh scheduled castes and one lakh scholarships to scheduled tribes children. Post-matric scholarships were being awarded to 1,90,000 scheduled castes and 35,000 scheduled tribes students. The number of guidance and training centres of these people were also increased. For this purpose, ten pre-examination coaching centres for All India and Central Services examination and four training-cum-guidance centres were established.

By the end of this plan progressive activities were being conducted in the 480 tribes development blocks and 20 sub-blocks. Rs. 4.5 crores were spend to rehabilitate scheduled tribes.

Fifth Five Year Plan (1974-79)

The target of Rs. 255 crores has been fixed which is to be spent on the welfare of scheduled castes and other backward classes during fifth five year plan. Two main objectives have been fixed for their welfare :- i) to raise the standard of living of the persons belonging to scheduled castes and tribes and backward classes. ii) To decrease the differences between the backward classes and the general public. For the attainment

of these objectives development centres are reinforced in the country, efforts are being made for increasing facilities regarding transport, education, health and supply of electricity. Legal and institutional structure is being strengthened. The amount of scholarships which is being awarded to the children of these classes has been increased. Free books are being supplied to them through banks. Loans and grants are being given for the construction of houses. At some places, the state is providing them constructed houses on easy instalments. They have been relieved from bonded labour and the clutches of money lenders. In this way government is making various efforts for raising the standard of life of these people and making them self dependent.

Sixth Plan aimed at upliftment of the living standard of these classes, removal of poverty and unemployment through growth of labour intensive village and small industries. To bring about institutional reforms in public policies in favour of the poorest sections, to alleviate rural poverty, Integrated Rural Development Programme (IRDP) was launched mainly for the benefit of the poorest sections like families of landless labourers, scheduled castes/tribes and socially and economically backward classes. Special component plans of states and central ministries and special central assistance to states has been given for the implementation of these plans.

Seventh Plan (1985-90)

In 1987, tribal cooperative marketing development federation was set up as an apex body for state tribal development co-operative corporations, poverty removal on sustainable basis through poverty alleviation programmes and increasing employment opportunities through National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP). Social service programmes mainly for SC's/ST's and OBC's were allocated Rs. 31,545 crore - 17.5% of total plan outlay. Still lot more need to be done for these sections of the society. 30% of total beneficiaries were to be from SC's/ST's though actually it was 32.05% in case of SC's and 13.04% in case of ST's.

Eighth Plan

Aimed at providing adequate food supply, control of inflation, effective functioning of public distribution system (PDS) and development programmes generating employment for betterment of weaker sections of the society. In rural areas, 1987-88 shows reduction in SC population below poverty line from 64.6 to 44.7 and in case of ST's from 72.4% to 52.6%.

Ninth Plan (1997-2002)

Had its objective of empowering socially disadvantaged groups such as SC's/ST's and OBC's as agents of socio-economic change and development. It tends to achieve growth with equity.

Tenth Plan (2002-07)

Under this plan Rs 6976.93 crores was the outlay and Rs 6642.33 crores was the expenditure Rs. 5048.58 crores was spent for the Scheduled Caste Development and Rs.

429.99 was spent for Backward Classes Development.

Eleventh Plan (2007-12)

Under this ongoing plan, Rs. 13043.00 crores is the outlay and already Rs. 2172.79 crores have been spent. Out of this Rs. 1714.20 crores has been spent for scheduled castes development and Rs. 205.74 crores for the development of Backward Classes.

Five years plans in India have chalked out various programmes and projects for their upliftment but still incidence of poverty is very high. SC's/ST's still are mainly landless, unorganised workers suffering from long periods of unemployment and underemployment. Inequality and exploitation is still prevalent particularly in case of rural SC's. They often fail to derive full benefit of development programmes as majority of them are illiterate and ignorant of their rights. Half hearted attempts regarding implementation of various such programmes have further aggravated their problems.

2.7.7 Administrative Set Up

Hitherto, welfare of the weaker sections was entrusted to a number of ministers/departments. With a view to providing an integrated thrust to the development of these sections of the population, a new Ministry of Welfare was constituted on the 25th September, 1985, by integrating subjects concerning.

- (i) welfare of the SC and ST and socially and economically Backward Classes, Other Backward Classes, (OBC), religious and linguistic minorities earlier dealt with within the Home Ministry;
- (ii) the work relating to the welfare of the disabled and the handicapped and programmes on social defence connected with the victim of alcoholism, drug addition, juvenile maladjustments, welfare of the aged, all dealt with earlier by the erstwhile Ministry of Social and Women's Welfare; and
- (iii) matters relating to the administration of Wakf, earlier within the jurisdiction of the Ministry of Law.

With effect from April 26, 1990, this Department was shifted to the new Ministry, the Ministry of Welfare is today reorganised into the Department of Welfare and the Department of Women and Child Development. Activities of the welfare Ministry are carried out through five bureaus, viz., handicapped, social defence ministries, tribal development and SC and STs. The Ministry is the nodal agency for overall policy planning and coordination of programmes and each central ministry and department is the nodal agency concerning its sector. The Ministry also maintains liaison with the other central ministries and state governments.

State government and Union Territory administrations have separate departments of their own for this purpose. Administrative set up, however, varies from state to state. In Bihar, Madhya Pradesh and Orissa, separate ministers have been appointed to look after tribal welfare (Article 154). Some other states have set up committees of members

of the State Legislatures on the pattern of the Central Parliamentary Committee. All the states having scheduled areas including Tamil Nadu and West Bengal have constituted Tribal Advisory Council as per the provision in the fifth schedule to advise on matters pertaining to the welfare and advancement of STs. It should be noted that responsibility for implementation of welfare schemes is being shared between the centre and states. The centre is responsible for formulating welfare policies and programmes besides coordinating, guiding and promoting implementation of welfare services by states.

Welfare of Scheduled Castes and Scheduled Tribes

The Constitution has prescribed protection and safeguards for these castes and tribes and other weaker sections of society either specially or by way of insisting on their general rights as citizens with the object of protecting their educational and economic interest and removing social disabilities they are subjected to.

Besides, successive Five Year Plans have regarded their progress as a major objective of national policy. It should be kept in mind that these sections are in economic terms the most depressed and backward sections of society and all general measures to eradicate or lessen poverty in the country are bound to affect them most.

The Governments, both central and state, irrespective of their political aims and objectives, are committed and determined to uplift these sections. These sections are also socially most exploited and ill-treated. Still these communities continued to be vulnerable and atrocities are committed against them in one form or the other. In order to protect them against such atrocities, the Government has enacted the SC and ST (Prevention of Atrocities) Act, 1989, the Act came into force on 30th January, 1990.

NATIONAL COMMISSION FOR SC's & ST's

The Central Government had set up three Parliamentary Committees in 1906, 1971 and 1973 respectively to examine the implementation of programmes of development for these castes and tribes. The Committee of Parliament, the tenure of its members being one year.

By virtue of the Constitution (Sixty-Fifth amendment) Act, 1990, the special Officer's post under Article 338 has been substituted by the National Commission for Scs and Sts. The Commission consists of a Chairman, a Vice-Chairman and five other members appointed by the President under his hand and seal. The Commission has the power to regulate its own procedure. It submits reports to the President who causes them to be laid before each house of parliament along with a memorandum explaining the action to be taken on the commission's recommendations relating the Union and the reasons for the non-acceptance of such recommendations. Such reports are sent by the President to the Governor of the state concerned for submission to the state legislatures. The Commission has

the powers of a Civil Court trying a suit. The functions of the Commission may be summarised as follows :

- (1) to investigate and monitor all matters relating to the safeguards provided by law of and to evaluate the working of such safeguards.
- (2) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the castes Tribes.
- (3) To participate in and advise on the planning process of socio-economic development of such communities and to evaluate the progress of their development.
- (4) to present to the President annually and otherwise reports upon the working of these safeguards along with its recommendations.
- (5) to discharge such other functions in relation to the protection, welfare, development and advancement of the SCs and ST's.
- (6) the union and every state government is to consult the Commission on all major policy matters affecting the SC and STs. A number of voluntary organizations also promote welfare of these sections of population. The Government provides grants-in aid to the non-official voluntary organizations.

2.7.8 Conclusion

No doubt that the government has taken significant steps for raising the standard of life of this backward section of the society, but still it has not attained full success in its targets. Still we find that there is a long distance between the other sections of society and these backward classes. Still they are the victim of illiteracy, disease, unemployment and poverty. Therefore, for their full development more efforts have to be made by the government particularly regarding implementation.

2.7.9 Key Points

Meaning of Backward Class

Backwardness is expressed as one where lack of adequate opportunities for group and individual self-development, especially in economic life and matters of housing and education. It is measured in terms of low levels of income, the extent of illiteracy, and the low standard of life demonstrated by living conditions.

Policy of the Government

The policy of the government is to raise the standard of living of this depressed section of the society and to make it self-sufficient for leading a better and happy life.

- 1) Appointment of a Commissioner, for scheduled castes and scheduled tribes.
- 2) Eradication of Untouchability by the passage of the untouchability (offences) Act, 1955.
- 3) Representation in the Lok Sabha, State Legislative Assemblies and local government institutions.
- 4) Reservation in Civil Services- at the time of recruitment and promotions.

- 5) Facilities for education-free education, scholarships, free books and reservation of seats in educational institutions.
- 6) Economic development for raising their standard of living and better social status-land for landless, cottage and small scale industries, raising the wages of agricultural worker, freedom from bonded labour and money-lenders, facilities of loans and grants.
- 7) Health Services, maternity and medical aid and facilities for family planning.
- 8) Housing and other facilities Free plots and built-up houses on easy instalments, supply of drinking water and electricity.
- 9) Tribal development blocks.

2.7.10 Suggested Readings

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| 3. | Sachdeva and Dua | - | Studies in Indian Administration, Kitab Mahal, Allahabad. |
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| 6. | Hoshiar Singh | - | Indian Administration. |
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Swinder Singh | - | Development Administration |
| 8. | Puri and Brar | - | Development Administration. |