



Department of Distance Education

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Lesson No.

- 1.1. : The Preamble and its importance
- 1.2. : Fundamental Rights and Fundamentals duties
- 1.3 : Directive Principle of State Policy
- 1.4 : Citizenship
- 1.5. : President and Prime Minister of India
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THE PREAMBLE AND ITS IMPORTANCE

The Preamble is an introduction to the Constitution, which states the aims and objectives for the achievement of which the Constitution is enacted and adopted. Generally, every important enactment is prefaced by a preamble which serves the same purpose as is served by a preface in a book. It briefs us as to why it has become necessary to pass the Act and what are the purpose and objects which the act aims at achieving. There was a preamble to the Government of India Act, 1919 and the same preamble was retained for the Government of India Act, 1935. The new constitution of India also has a preamble.

The Preamble to our Constitution is based upon the Resolution of Objectives which Pt. J.L. Nehru had moved in the Constitution Assembly of India in January 1947. The preamble is a part of the constitution and its constitutional significance is utmost important. It explains the aims and ideology behind the document enacted. It tells us the sources from which the Indian constitution springs.

The Preamble subscribes to the nation of popular sovereignty in: as much as the sovereign power is said to belong to the people themselves It contains the essence' of Objective Resolution and proclaims the grand ideals of justice, liberty, equality and fraternity, secularism and socialism. These are the objectives to be realised through the constitution. The preamble to the constitution indicates the sources sanction, pattern, object and contents of the constitution. The Preamble to the Indian Constitution reads "We the people, of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizens;"

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and opportunity and to promote among them all.

Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation:

In our constituent Assembly, the 26th day of November, 1949 do hereby adopt enact and give to ourselves this constitution.

The words socialist, secular and integrity were inserted by the Constitution 42nd Amendment Act. 1976.

This clearly shows that the framers of the Constitution claimed to have drafted the Constitution on behalf of and in accordance with the wishes of the people of India, acting as their representatives. A study of the Preamble clearly points out the objects and purposes underlying our constitution.

The Preamble to the Constitution begins with the words, "We, the people of India." These words clearly indicate that all authority for the framing giving and adopting this constitution emanates from the people of India themselves and the constitution itself is founded on the authority of the people. 'Although, there is no independent Article in the Constitution, as it is in the Constitution of Eire (Ireland) (Article 6), declaring that all powers are derived from the people, or vesting the sovereignty of the reserved powers in the people as in the United States of America (Tenth Amendment), yet the preamble emphasises the ultimate sovereignty of the people. The preamble emphasises that the constitution is enacted by the people of India and given by them to themselves and does not come from the British Parliament. Unlike the previous Government of India Acts. This means, it is neither an imposition, nor a grant by some outside authority. It is also emphasised that the Constitution of India is created by the people of India as a whole and not by several units, therefore, no state or group of states can either put an end to the constitution or secede from the Union created by it. The sovereignty of the people is, therefore, complete in all its aspects.

Sovereign Democratic Republic

The Preamble proclaims India to be a Sovereign Democratic Republic. It means Indian is a sovereign state subject to no other authority either in, her internal affairs or external relations and transactions. Its power is absolute in its own sphere. The Objective Resolution of the Constituent Assembly contained the words "Independent and Sovereign". It was finally decided to delete the word "Independent" since independence is a part of sovereignty.

India has declared herself to be a member of Commonwealth of Nations at the Prime Minister's Conference which met in London in 1949. But this association is purely voluntary and does not restrict the external sovereignty of India. The Commonwealth Agreement is extra-constitutional, "It is an agreement by free will, as Nehru said, "to be terminated by free will."

The Indian Independence Act 1947, had continued the constitutional relationship of the Crown of Britain and the Dominion of India by providing that the Governor General of India would be appointed by the king and he represented his Majesty for the purposes of the Government of the Dominion. The Constitution of India has brought to an end this constitutional relationship and with its inauguration India became completely independent and sovereign.

Democratic

India is a democracy. The Government established under this Constitution is the Government of people and responsible to the people, the highest offices of which are open to all whatever caste, colour, creed or faith one may belong to provided one is a citizen of India has the capability to hold the office. In India ultimate power resides in the electorate comprising the entire adult population while the government of India is carried on through their representative elected on the basis of universal adult franchise.

Secondary, democracy implies the maintenance and preservation of the rights of man. The Indian Constitution contains an elaborate list of individual rights as also provision for their adequate protection by means of constitutional remedies.

In its broad sense, however, democracy embraces, in addition to political democracy social and economic democracy as well. It is in this sense of the term 'democratic' is used in the Preamble.

Republic

India is a Republic in as much as it is headed by a President who is to be indirectly elected under Articles 54 and 55 by an electoral College consisting of all the elected members of Parliament and the State Legislative Assemblies, for a period of five years. The term republic implies an elected head of this state and does not come to occupy the office by virtue of heredity as in a monarchy. He cannot hold power as a proprietary right and must exercise all power for the common good.

The expression "democratic republic", therefore, does not only emphasise the elective principle governing the Head of the State, but also provides the means for the realisation for all citizens of India justice, liberty, equality and fraternity, the four pillars of democracy.

Socialist

The Constitution Amendment Act of 1976 has made explicit what was hitherto implicit in the constitutions. By inserting the word socialist it is intended to give a positive direction to the government in formulating its policies. The objectives of social and economic justice and its fulfillment are basic to bringing about farreaching economic changes to which we stand committed.

Secular

In terms of their attitude towards religion, the states are generally classified as theocratic, atheistic or secular. The Constitution of India did not specifically commit India to any of these three positions. But the 42nd Constitution Amendment has now clearly spelt out the concept of secularism in the Preamble as to give constitutional sanctity to a long cherished value of our national life. By incorporation it in the preamble, we have only inscribed into our fundamental law an accepted fact. It only signifies that we have respect for all religions and equal respect for all. The state shall guarantee to all

citizens liberty of faith, belief and worship. Further more, all persons shall have the right freely to profess propagate and. practice any religion. They are also entitled to establish and maintain the religious institutions of their choice. The state has been prohibited from imposing religious tax or forcing religious instructions on any person in any educational institution wholly maintained out of state-funds. The state has been directed not to discriminate among citizens on the basis of religion as such.

Thus, all religions in this country, however, small their strength may be, have the same status and same prestige and same support from the state. The state, being secular, will protect every religion equally, but the state will not have any foundation on religion.

Justice

The Preamble assures the people of India, Justice, Justice implies a 'harmonious reconciliation of individual conduct with the general welfare of the society.' The essence of justice is the attainment of the common good as distinguished from the good of the individuals or even of the majority of them. Our constitution professes to secure to all its citizens social, economic and political justice. The justice mentioned here is different from the justice to be administered by a court of law, which has necessarily to deal with the interpretation of mute law, with regard to a case before it without caring for the social, economic and political status Or a person who is standing trial. The justice mentioned here refers actually to an administrative act.

Social justice is the sine qua non of a welfare state in as much as it prohibits discrimination of any artificial grounds; it also prohibits forces creating artificial social barriers like those the untouchability. It has been laid down that untouchability has been abolished for ever; no one will be treated as a low-caste or untouchable. In a back Ward country like ours it is also required that the state must make concerted efforts to improve the lot of the downtrodden and weaker sections of the people. Thus Government of India, while doing social justice to the people, does not have to apply the same norms to all the sections of the society as the courts have to do. For example, a special education, free or at a nominal cost will have to be given to the backward people or this country to improve their social lot, Which would not be necessary for those who are already advanced.

Economic Justice

It is virtually a corollary to the social justice. It means non-discrimination between man and man on the basis of economic values. It is envisaged that equal wages will be paid for equal work. Conditions of service of the workers and their wages would be such that they can lead a good life. The constitution prohibits forced labour or beggar. It is further demanded that the state of national economy be reshaped in such a way that its benefits are equitably or justly available to a common man. Thus, the very concept of economic justice involves the idea of a socialist pattern of society.

Again, an economic justice would not be done if the Government of India were levy the same rates of taxation on all the strata of society. The low-income groups will have to be made to suffer less under a heavy burden of taxation than the high income groups in order to do economic justice between them.

Political Justice

It ensures free and fair participation of the people in their political life. As such, universal adult franchise has been guaranteed. Every adult has been given the right to cast vote irrespective of caste, colour, creed or sex and religion. Thus political justice would require a special consideration to be given to the politically backward people, so as outstanding feature of political justice may be discovered in the fact that our Constitution shows no commitment to a particular variety or political order. It establishes, what is called, liberal democratic order.

Liberty

The term 'liberty' signifies the creation of conditions which provide the essential ingredient necessary for the complete development of human personality. The progress of society depends on the society. It is a utmost necessity that the individual should give maximum to the society. Moreover, democracy cannot be established unless certain minimum rights, which are essential for a free and civilised existence, are assured to every member of the community. The liberty of thought, expression and belief are necessary attributes of a truly democratic government, while that of belief and faith are neecessaiy for the establishment of a secular state. The Preamble mentions, these essential individual rights as freedom of thought, expression, belief, faith and worship and these have been guaranteed against all the authorities of the state under part III of the constitution.

Equality

Liberty and equality are complementary. Equality does not mean that all human beings are equal in physical and mental faculties. It connotes equality of status, the status of free individuals and equality of opportunity. "Equality of status and opportunity" means that all the people of India, belonging to whatever creed or caste, would enjoy an equal status of a citizen before law. While administering justice, no distinction would be made whether a person is rich or poor, a Minister or a pauper. All will stand as equals in a court of law and each will receive his due according to his deeds. Equality of opportunity means equal chances for every person to develop potential capacity. Thus the people of India will be given among them; equal opportunity for employment and other such matters.

Thus, it is pertinent to not that guaranteeing of certain rights to each individual would be meaningless unless all inequality is banished from the social structure and each individual is assured of equality of status and opportunity for the development of the best in him and the means for the enforcement of the rights guaranteed to him. This

object is secured in the body of the constitution, by making illegal all the discriminations by the state between merely on the grounds of religion, race, caste, sex or place of birth (Art. 15); by throwing open 'public places' to all citizens (Art 15 (2)) by abolishing untouchability (Art 17); by abolishing titles of honour (Art. 18); by providing equality of opportunity in matters related to employment under the state (Art 16) by guaranteeing equality before law and equal protection of the laws, as justiciable rights (Art 14).

In, addition to the above provision to ensure civic equality the constitution seeks to achieve political equality by providing of universal adult franchise (Art 326)

Fraternity

Then the Government of India is called upon by the preamble to promote fraternity or brotherly love. among the people in order to ensure the dignity of the individual and the unity and integrity of the nation. This ideal of fraternity is also upheld by the U.N. Charter. It seems to have incorporated Art. 1 of the Universal Declaration of Human Rights of 1948, that says, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

The ideal of Fraternity has two salient parts - unity plus integrity of the nation and the dignity of the individual, Both are not only integral, rather the latter depends upon the former. The Preamble of the Indian Constitution assures the unity of the nation by emphasising "fraternity" or the spirit of the brotherhood amongst all the Indian irrespective of the differences of caste, creed language and culture. To achieve the ideal of brotherhood and unity, the Indian constitution has abolished untouchability and communal electorates.

The phrase 'dignity of the individual' signifies that the constitution, as K.M. Munshi, said is an instrument not only ensuring material betterment and maintaining a democratic set-up, but that it recognises that the personality of every individual is sacred. The addition of the phrase relating to the Integrity of the nation; in 1976 has been done to strengthen the concept of national integration.

Importance of the Preamble

Though by itself not enforceable in a court of law, the Preamble states the objects which the Constitution seeks to establish and promote and also aids the legal interpretation of the Constitution where there is any vagueness or controversy. Its significance lies in the fact that it established certain facts and declares certain principles which clearly pronounce certain features of our constitution which would deserve more than a passing reference.

The main function of a preamble is to explain certain facts which are necessary to be explained before the enactment contained in the Act can be understood.

Whether it is a part of the Constitution or not, is still an issue of debate, but

the generally held view is that it is an introduction to and not a part of the constitution. The importance and utility of the preamble has been pointed out in a number of judgements pronounced by the Supreme Court. Interestingly, the court has come to the view point that the preamble cannot be set aside unless it comes in direct conflict with a clear and unambiguous enacted part of the constitution. By itself, the preamble does not either restrict or expand any law of the Constitution, It is only when there is a lack of clarity about a particular clause of the constitution that we can look into the Preamble to ascertain the intentions of the framers of the constitution.

The Supreme Court of India has now inclined to take a larger cognizance of the Preamble as setting forth the goal of our political set up, so that it may be invoked, to determine the ambit of Fundamental Rights and the Directive Principles of the State Policy, because it is the ideals of socialism, secularism, and democracy which are elaborated by the enacting provisions.

As far as amendment of the constitution is concerned, the preamble presumably subject to amendment, as by the 42nd Amendment three words- 'socialist, secular and integrity' were inserted.

Conclusion

Thus the Preamble embodies the spirit of the Constitution and the ideal of the Indian people to promote national unity and integrity, and common welfare. It is evident from the preamble that republicanism, secularism, democracy, national sovereignty, justice, liberty, equality, fraternity, nation unity and integrity are the main pillars on which the constitutional structure of India is built, Pandit Thakur Dass Bhargava, member of the Constituent Assembly, while appreciating the Preamble said, "The Preamble is the most precious part of the constitution. It is the soul of the constitution. It is a key to the constitution. It is a jewel set in the constitution. It is a superb prosepoem, may it is perfection in itself."

As a result we can say that the source of authority in every sphere and at all levels in the people themselves. It is a sacred document which must be honored and respected by all, under all circumstances so that we may show our reverence to the framers of the constitution.

FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

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1.2.1 Aim of the lesson

The aim of the lesson is to acquaint the students with the Fundamental Rights contained in the Constitution of India. .

1.2.2 Introduction

The fundamental rights give us the best fruits of democracy. These rights are natural and essential for good life. They are absolutely necessary for the development of human personality and making the life complete. Individual's growth will be stunted without these rights. Prof. Laski goes to the extent of saying that a State is known by the rights it maintains. The grant of fundamental rights facilitates the successful working of the democracy. There are certain duties attached to the rights, because rights cannot be absolute. Everyone must recognise that one's good can be achieved in common with the good of others. No good in isolation is possible.

Part III of the Indian Constitution deals with the Fundamental Rights of the Indian citizens. These rights given by the Indian Constitution are justiciable i.e., the judiciary has been given a duty to see that these rights are not violated. This means that normally these rights are assured to the people. There is nothing new about: the inclusion of these rights in the Indian Constitution. One finds a list of such rights in the Irish and American Constitutions too. In fact, the rights given by the American Constitution are many more, than those given by the Indian Constitution. Even at the time when the

Government of India Act, 1935 was being drafted, people in India demanded the inclusion of a list of these rights. And there was nothing unnatural about it because every democratic country gives such rights to the people. In England, where there is no written Constitution, these rights are given on the sanction of practice and past traditions.

1.2.3 Salient Features of Fundamental Rights

Some of the distinctive features of our fundamental rights are as under:

1. The Indian Constitution contains the most elaborate list of fundamental rights (Art. 11-35) alongwith various implied provisions.
2. Fundamental rights are enforceable against all kinds of public authorities.
3. They are not absolute. The State can impose certain restrictions on these fundamental rights. However, these restrictions must be reasonable.
4. Fundamental rights guaranteed by the Constitution differentiate between citizens and persons. There are certain rights which are available only to the citizens (for example, freedom of thought and expression, freedom of association, freedom of movement and the like), while there are others which are available to all (right to the protection of life and personal liberty is guaranteed to every person, native or alien).
5. Fundamental rights are enforceable through court of Law.
6. Fundamental rights can be suspended during an emergency. However, it has been provided by the 44th Constitutional Amendment that the Right to Life and Personal Liberty (Art 20 & Art 21) cannot be suspended even during an emergency.
7. Fundamental rights are enforceable not only against the executive but also against the legislature.
8. They are not immutable. Like other provisions of the Constitution, they can also be amended by following a specific procedure of amendment.
9. These can be categorised as negative and positive rights. For example, Article 17 prohibits untouchability and forbids its practice in any form or Article 18 prohibits the State from conferring any special Title on any of its citizens. These rights are categorised as negative rights. While the right to liberty, right to religious freedom etc. come under the category of positive rights.
10. The 42nd Amendment has also added a list of Fundamental Duties (Part IV A) in addition to the Fundamental Rights.

1.2.4 Fundamental Rights as Enumerated in the Constitution

The six types of Fundamental Rights guaranteed by the Constitution of India are :

(i) Right to Equality. Articles 14 to 18 of the Indian Constitution have been devoted to the right to equality. This right ensures social and legal equality to the people

of India. However, without economic equality about which no mention has been made in the Constitution all equality granted remains only on paper. A poor man or his children cannot avail of all the privileges that have been granted by the Constitution. For instance; the right of redress of grievances, has been given to all, but the poor people cannot afford the luxury of going to courts.

The right of equality means the following things:

- (a) Everyone is equal in the eyes of the law. All the people will be protected by law within the territorial limits of India. (Art. 14)
- (b) There will be no discrimination against any citizen on the basis of caste, creed, race, religion or sex or place of birth. There will be no social segregation i.e., there will be no restrictions in matters of access to restaurants, shops, hotels, places of entertainment, or in the use of tanks, bathing places or wells (Art. 15)
- (c) In matters of appointment to public offices the State will meet out equal treatment to all. This will apply in general employment under the State also. (Art. 16) Only there are three exceptions to this, namely the State may reserve certain seats in public services for those SCs and STs and backward classes which do not have sufficient representation for them; residential qualifications may be laid down for some posts under a State and the office or a post of a religious institution may be open only to a person who believes in the same religion.
- (d) Article 17 of the Constitution abolishes untouchability. Its practice in any form is forbidden. The enforcement of disability on the basis of untouchability shall be an offence punishable in accordance with the law. Parliament has fixed by law the punishment for practising untouchability. Thus social inequality has been made illegal and the ambition of Mahatma Gandhi has been fulfilled.
- (e) The Constitution abolishes all titles except the academic and military distinctions. (Art. 18) The State will not confer any title on anyone. The foreigners under the employment of Indian State cannot accept any title even from foreign States without the prior consent of the Indian President. Similarly, the citizens of India cannot accept titles, presents and emoluments from a foreign State without the consent of the President. This has been done to ensure equality for all.
- (f) Universal adult franchise has been introduced in India. Every adult citizen, male or female, has a right to vote.

(ii) Right to Freedom. Articles 19 to 22 of the Constitution explain the right to freedom given to the Indian people. The citizens get the following freedoms:

(a) freedom of speech and expression, (b) peaceful assembly without arms, (c) freedom of forming unions or associations. (d) freedom of movement throughout the territory of India, (e) freedom to reside and settle in any part of India. (f) freedom of professing, practising or propagating any religion or carrying on any trade, business or occupation, (Art. 19) The original Constitution provided for freedom to acquire, hold and dispose of property. But since 44th Constitution Amendment, the Right to Property has ceased to exist to be a fundamental right.

These liberties are not absolute. They are subject to certain limitations. For the freedom of speech and expression the Union Parliament may impose restrictions on the basis of interest of the public and State, decency, morality, friendly relations with foreign countries. The right of assembly can be limited on grounds of public order. The right to free movement can also be curbed on the basis of interests of the general public. The State can fix any technical or professional qualifications for practising any profession. The right to carry on trade or business is controlled by the State.

Besides, Articles 20 to 21 of the Constitution ensure personal liberty of the individual. It is guaranteed that no person will be convicted for an offence except for violating an existing law. Nobody will be punished or prosecuted for the same offence more than once. (Art. 20) No one will be deprived of his life or personal liberty except by the procedure established by law. (Art. 21) Art.

21 A inserted by the 86th Amendment of 2002 says that the state shall provide free and compulsory education to all children from 6 to 14 years of age in such a manner as determined by its law. Accordingly the Parliament passed Right to Education Act in August 2009 which came into force on 1 April, 2010. As a safeguard against arbitrary arrest and detention the Constitution provides that no arrested person will be kept in custody without being informed of the grounds of arrest, as soon as possible. The arrested person will have a right to consult a legal practitioner of his choice and will be produced before the nearest magistrate within twenty four hours of arrest. (Art. 22) Here in the form of limitations on rights under Art. 22, the constitution makes provision of Preventive Detention Acts, which can be passed by the state from time to time. A person arrested under PDA will not have the rights given in Art. 20.

(iii) Right against Exploitation: This right is explained in the Constitution by Articles 23 and 24. This implies two things:

(a) Traffic King in human beings and "beggar" is prohibited. (Art. 23). Nobody can compel anybody for involuntary work or labour without making any payment. Forced labour or begar does not exist now. If anyone violates this provision .he will be guilty of

an offence punishable by law. However, there is an exception. The State can impose compulsory service for public purposes. This may be compulsory military training or to serve on the jury and other such things. But in this connection the State will make no distinction on the basis of caste, creed, race, religion or sex. Trafficking in human beings means selling and purchase of human beings, including women and children, which has been prohibited in this Article.

(b) Article 24 forbids the employment of a child under fourteen years of age in a factory or mine or, for that purpose in any risky and hazardous occupation. If this provision is contravened, it will be an offence punishable according to law.

(iv) Right to Freedom of Religion : Articles 25,26,27 and 28 of the Constitution have been devoted to this right. According to it:

(a) All the people in India have a right to freedom of conscience and also a right to profess, practise or propagate any religion of their choice freely. This is subject to morality, public order and health. The State has the privilege to restrict any economic, financial, political or other secular activity which may be associated with religious practice. Also, the State can provide for social welfare and reform or throw open the Hindu religious institutions of a public character to all Classes and sections of the Hindus including the Sikhs, Jains or Buddhists. The followers of Sikh religion can carry kirpans as a matter of their religious profession. (Art. 25)

(b) Every religious denomination or its section has a right to establish and maintain institutions for religious and charitable purposes. It can manage its own affairs in matters of religion. It can also own and acquire movable and immovable property and administer it according to law. (Art. 26)

(c) No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. (Art. 27)

(d) No religious instructions shall be provided in any educational institution wholly or partially maintained out of State funds. But this will not apply to the educational institutions which are administered by the State but have been established under any endowment or trust which requires that religious instruction shall be imparted there. No student of any educational institution recognised by the State or receiving aid out of State funds, shall be required to participate in any religious instruction or worship conducted in such institutions as a matter of compulsion. (Art. 28)

This is how the Constitution protects the secular texture of the State, which is the sign of a progressive country. In India secularism is necessary because there are so many religions and religious denominations. The minority groups would feel very unsafe and insecure if the State were not to follow a policy of religious neutrality as else-

where. The State does not profess any religion but guarantees full and unhampered growth of culture and language for all the religions and religious denominations.

(v) Cultural and Educational Rights: Articles 29 and 30 of the Constitution are devoted towards explaining these rights. The object of these cultural and educational rights was to ensure a composite culture for India. No other culture or language would be imposed on any religious group, which is against its own cultural profession. Every cultural group, particularly the minority groups, would be given full scope and opportunity to preserve and develop their culture and language. The right in question says

(a) Any section of the citizens residing in the territory of India which has a distinct language, script or culture of its own will have a right to conserve the same. (Art. 29)

(b) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste or language. After the first amendment of the Constitution the State can make special provisions for the Scheduled Castes and the Scheduled Tribes and for the development of the backward classes of people.

(c) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (Art. 30)

(d) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

(vi) Right to Property (Art. 31): This provision has been removed from the chapter of Fundamental Rights in June 1979, by 44th Amendment. However, it is still a right but now it is a simple legal right given under Art. 300-A, and not a fundamental right.

(vii) Right to Constitutional Remedies: Article 32 of the Constitution gives this right in case any fundamental right is infringed. These rights are in the real sense the heart and soul of the Constitution. Right have no meaning, unless their enjoyment is secured. If there is any violation of these rights it should be promptly prevented. Every citizen has the right to move the Supreme-Court which will issue certain WRITS which are explained in 13.5 for the enforcement of these fundamental rights. All the Acts and laws which are against or in violation of these rights will be declared unconstitutional, and therefore, null and void, by the Supreme Court. Thus the doctrine of Judicial Review is prevalent in India also. The Supreme Court has been empowered to issue directions, orders or writs for the enforcement of any or all the fundamental rights. In the case of *Golak Nath vs. The State of Punjab*, the Supreme Court debarred the Parliament from making amendments for curtailing the fundamental rights of Indian citizens.

1.2.5 Enforcement of Fundamental Rights Through Writs

The Supreme Court has the power to enforce the fundamental rights of the citizens by the issuance of directions, orders and writs, Besides the Supreme Court,

other lower courts are also authorised to issue these writs to ensure the enjoyment of the fundamental rights within the local limits of their jurisdiction. These writs are :

(a) Writ of Habeas Corpus. This means '*Let us have the body*'. This writ, has been regarded as the- most valuable one and as the corner-stone of personal liberty. The writ means that no person will be detained by another person or in jail without his guilt being established in a law court or he being supplied with the grounds of his detention. When the arrested person moves the court the court issues a writ to the person or authority who has detained that person to produce him before the court. Then the court hears both the sides to decide about the justifiability or otherwise of the detention. If the court is not convinced about the legality of the detention the detenu must be set free.

(b) Writ of Mandamus. The Writ of Mandamus means '*We Command*'. This writ also has a remedial nature like the writ of Habeas Corpus. This writ is issued by the Supreme Court, High Courts or other courts authorised by the Parliament. This writ is issued to a court, corporation or a person to perform one's public duty, Such a writ is utilised for public purposes only. The writ cannot be claimed from a court as a matter of right because the issue of this writ depends on the discretion of the court. The writ is in, the nature of a command from a superior court to an inferior court or a person or an institution to do that parts of its or his duty which is mentioned in the writ issued. Writ of Mandamus is also provided for in the Specific Relief Act. Thus it is a prerogative writ meant for remedial purposes.

(c) Writ of Prohibition. The writ of Prohibition means to forbid or to stop: This is also known as '*Stay Order*'. This writ is issued by a High Court to a lower court or a non-judicial public institution or body which exercises semi-judicial or quasi-judicial functions to stop proceedings. The writ is issued when a lower Court or body tries to transgress the limits of powers vested in it. After the issuance of such a writ the proceedings in the lower court come to an end. The writ of Prohibition is issued even when an appeal is lying in a higher court against the order of the lower court. The idea is that immediate redress should be meted out to the sufferer.

(d) Writ of Certiorari. The writ of Certiorari means '*to be more fully informed of*'. It is a preventive instrument. It comes or is issued at a later stage of proceedings in the lower courts than the writ of Prohibition. The writ is meant to ensure speedy justice and with efficiency too. Such a writ is issued by a higher court to lower court to send the record in particular case to be considered in the higher court. The order for removing a case to a higher court, is intended to meet out justice because the lower court, at times, may not be competent to decide on it. This writ is also issued to institutions and bodies that exercise semi-judicial functions like corporations or district boards.

(e) Writ of Quo Warranto. The Writ of Quo Warranto means '*By what war-*

rant' or 'By what order'. This writ has the nature of an injunction. If a person acts in a capacity to which he is not entitled, he can be prevented from continuing in that office through the writ of Quo Warranto. When a person claims franchise or office in an unauthorised manner the court asks such a person to furnish the authority on the basis of which he puts forward his claim. This helps the court to decide whether the claim was right or wrong. If it was wrong, the person may be ordered not to do it.

1.2.6 Parliament and Fundamental Rights

The decision of the Supreme Court in the Golaknath case in 1967 caused a doubt whether the Parliament possessed the power to amend the constitution. The question had been raised earlier in the Supreme Court, but the Golaknath case laid emphasis on this point. In this case three different views were expressed. One view was that article 368 prescribes not only procedure but also confers substantive constituent power to Parliament. This power cannot be had from the other Article like 246 or 248 under residuary powers. The second view was that Article 368 or any other Article does not grant power to amend the Constitution more particularly the fundamental rights. Article 368 prescribes the procedure only, but does not give any power of amendment. The third view was that Article 368 deals with the procedure only, but the constituent power can be so modified as to enable Parliament to enjoy the power to amend the Constitution. After the decision in this case it appeared that no amendment in the Constitution (particularly the fundamental rights) would be possible by the Parliament, but the 24th amendment removed this difficulty. This amendment specifically conferred the Constituent power on Parliament. Its constitutional validity was challenged in Keshavnand Bharti's case in 1973. But the Supreme Court upheld it this time. Consequently, Parliament enjoyed the power to amend the Constitution including the fundamental rights. But the Supreme Court also said that by way of modification, the basic features of the Constitution cannot be changed or destroyed. The court has yet to define these basic features of Constitution. In a judgement (9th May 1980) the Supreme Court has struck down section 51 of the 42nd Constitution Amendment Act, 1976, which placed unlimited power on the Parliament to amend the Constitution. It also struck down section 4 of the same Constitution Amendment Act which had given primacy to Directive principles of the State policy over fundamental rights on the plea that it damaged basic or essential features of the Constitution. So the present position is that the Parliament possess the right to amend the fundamental rights.

It may also be made clear that majority opinion of the Supreme Court in the Golaknath case based on the view that Article 13 clearly prohibited State against making a law which took away or abridged fundamental rights. The Supreme Court has interpreted the expression Law in two ways. The first view was expressed in, Shankari Prasad Singh Vs Union of India and Sajjan Singh Vs State of Rajasthan." In these two cases the

expression 'law' was interpreted to mean only the ordinary law made by Parliament, and thus excluded the Constitutional law. Therefore, the Constitutional law is outside the prohibition-imposed by Article 13, A contrary view was expressed by majority of the judges in *Golaknath Vs the State of Punjab*. This view included the Constitutional law, within the ambit of law and, therefore Parliament could not amend fundamental rights for which a new constituent assembly was to be convened. One of the majority judges expressed the opinion that by way of amendment, Parliament could-not curtail or abridge fundamental rights, but could certainly enlarge their scope and liberalize them. The 24th amendment put an end to this controversy and expressly provided that Article 13 does not apply to the Constitutional law under Article 368.

The 42nd Amendment set aside sanctity of our fundamental rights. The Parliament was given the power to restrict, curtail or modify these rights to any extent either to prevent anti-national activities or for prohibiting the formation of anti-national associations. The Parliament could take or abridge any of the fundamental rights stipulated in Articles 14, 19, 30 of the Constitution. The citizen were thus left to suffer the unjust and arbitrary rule of the majority party. In case of clash between the fundamental rights and Directive Principles, the Directive Principles were to prevail. Further the jurisdiction of Court (both the Supreme Court and High Courts) was curtailed drastically and many matters concerning the daily lives of the citizens were taken out of the purview of the courts by incorporating the new Part XIV A (Article 323 A and 323 B) in the Constitution. Obviously the judicial check in the form of judicial review to control the arbitrary use the powers by the executive or legislature to a greater extent was eroded. The fundamental rights ceased to be fundamental rights as the same could be deformed to any extent by the Parliament. This Constitutional Amendment was termed as Black Act, which deprived the people of their genuine freedoms. Further a number of duties were imposed over the people.

To restore back the rights, (Janata Party Government at the Centre got the 43rd Constitution (Amendment) Bill passed on 23rd December, 1977; The 10 clause Bill restored to High Courts and the Supreme Court their jurisdiction to consider the Constitutional validity of any central and state law. It restored civil liberties by deleting Art, 31D which gave powers to Parliament to curtail even legitimate trade union activity under the guise of legislation for the prevention of anti-national activities)

It is gratifying to note that the 44th Constitution Amendment Act not only removed restrictions and limitations that were imposed on fundamental rights by the 42nd Constitution Amendment Act but restored rule of law in our country by bestowing back the powers on judiciary to act as guardian of fundamental rights. It also provided that the right of the life and liberty as guaranteed by Art 20 and Art. 21 cannot be

suspended by the President even during emergency. This has been obviously; provided as a sufficient safeguard to check the emergency provisions. The people cannot be harassed

by the Government during emergency as had been the case during national emergency which lasted for .19 months (June 25, 1975 to March 1977) and people had suffered miserably during this dark era.

The provision of 42nd Constitution Amendment in relation to curtailment of the Jurisdiction of High Court has also been done away with. The High Court can now issue Writ for the enforcement of fundamental rights and for any other purpose. It may also be noted that the High Court's power to issue writ to Habeas Corpus cannot be suspended during national emergency.

The 44th Constitution Amendment made special safeguards to uphold the interests of minorities and state shall ensure the while acquiring property it will not restrict or curtail the rights guaranteed to minorities. Right to property has been deleted from the chapter of fundamental rights to accelerate the achievements of desired socialist goal for the establishment of a progressive society.

As has been pointed out earlier also, the Supreme Court struck down section 55 of the Constitution (42nd) Amendment Act which placed unlimited power on the Parliament to amend the Constitution alongwith Section-4 of the same amendment through which Directive Principles were granted primacy over fundamental rights. Thus, the rights and liberties of people are safe from the encroachment of the Parliament and the supremacy or judiciary as the guardian of the Constitution has been restored.

1.2.7 Criticism of Fundamental Rights

Let us enumerate some points of Criticism as under:

1. A number of key terms without offering their precise and standard definition have been used in Part-III of the Constitution. Such as, weaker sections of the community, Socially and backward classes of citizens.. minorities, public purposes, hazardous jobs etc. as a result of which scope for litigation is widened. Even the courts have made the situation more perplexed by giving different meanings to these terms from time to time.

2. A series of Amendment have vitiated the fundamental rights as contained in the original Constitution.

For example, the First Amendment inserted clause (4) into Article 15 and there by introduced the system of reservation in favour of Scheduled Castes and Scheduled Tribes and other socially and educationally backward classes of citizens, thus violating the . principle of equality. The Fourth Amendment Act of 1955 deleted the requirement of compensation being just or adequate or reasonable. The Twenty -Fifth Amendment Act of 1971 put the word 'amount' in place of Compensation in Art. 31 (2). The

Forty-fourth Amendment of 1978 deleted the Right to Property from Part-III and inserted it into Part XII in the form of Art. 300 A.

3. The enforcement of our fundamental rights may be suspended during emergency declared by the President. In such a situation the President would have the power to suspend the right to move the courts for the enforcement of fundamental rights. The Forty-fourth Amendment of 1978 has made a little change that Art. 20 and Art. 21 can not be suspended.

1.2.8 Conclusion

Fundamental Rights, as enshrined in Part III of the Constitution have been lauded as the 'bedrock of Indian Democracy'. They constitute the Magna Carta of the essential rights of the Indian people. There is a very comprehensive list of the rights that have a justiciable character inspite of the fact that the State may impose reasonable restrictions on certain grounds on their use and enjoyment.

1.2.9 Self Check-Exercise

1. Fundamental Rights form Part.....of the Indian Constitution and are contained in Articles.....to.....
2. Article.....provides protection of.....and.....liberty.
3. Under Art.....untouchability is an.....punishable in accordance with.....
4. Right to Property has ceased to exist a Fundamental Right since..... Amendment.
5. The writs for Constitutional remedies are.....,.....,.....,....., and

Answers: (1) III, 12, 35 (2) 21, life personal (3) 17, offence, law, (4) 44th (5) Habeas Corpus, Mandamus. Prohibition, Certiorari and Quo-Warranto.

Suggested Questions

1. Explain in brief the Fundamental Rights as enumerated in the Indian Constitution.
2. Discuss the Fundamental Rights and the Constitutional remedies given in the Indian Constitution.

Short Answer Questions

1. What are Fundamental Rights?
2. Explain the right to equality.
3. Give any four fundamental freedoms.
4. Explain the right to Religion.
5. Write of mandamus.
6. Habeas Corpus

DIRECTIVE PRINCIPLES OF STATE POLICY

Contents of the Lesson

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- 1.3.10 Self-Check Exercise
- 1.3.1 Aim of the lesson

The aim of the lesson is to tell the students about the purpose and sanctions of Directive Principles, their ideological classification, importance and critical evaluation, difference between Directive Principles and Fundamental Rights, and their implementation.

1.3.2 Introduction

The Directive Principles of State Policy are a unique feature of the Indian Constitution. These have been borrowed from the Irish Constitution. These principles are in the nature of directions, instructions or recommendations to the executive and legislative authorities in India. They are like moral precepts which the authorities in India are expected to observe. If the authorities do not observe these principles, the opposition in the legislature and the people outside would be doing something laudable by criticising the government for their non-observance. It is expected that the Supreme Court will keep these principles in view when interpreting the Constitution.

The Directive Principles are like a political manifesto for the guidance of all governments in India. They tell us of the hopes which the makers of the Indian Constitution have about the future of India.

1.3.3 Analysis of Directive Principles

The Directive Principles of State Policy covering from Articles 36 to 51 of Part-IV of the Constitution underline the philosophy of democratic socialism. They are as follows:

1. Art 38 says that State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may be possible “a social order in which justice, social, economic and political areas shall prevail in all the institutions of national life.

The 44th Constitution Amendment Act has inserted a new Directive Principle. The State shall strive to minimize the inequalities in the income and will endeavour to eliminate inequalities in facilities and opportunities not only amongst individuals but also amongst groups of People in different areas or engaged in different vocations.

2. The philosophy of democratic socialism as conceived by Nehru is contained in Art. 39. It says that the State shall in particular direct its policy towards securing

- (a) Adequate means of livelihood of all citizens.
- (b) Ownership and control of the Material resources of the community to be distributed as best to subserve the common good.
- (c) Operation of the economic system not resulting in the concentration of wealth and means of production to the common detriment.
- (d) Equal pay for work for men and women.
- (e) Health and strength of workers both men and women, and the tender age of children not be abused and citizens not forced by economic necessity to enter vocations unsuited to their age and strength.
- (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and against moral and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art. 39-A says that the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or scheme or any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

3. Art 40 says that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

4. Art 41 says that the State shall, within the limits of its economic capacity

and development, make effective provisions for securing the right to work, to education and public assistance in case of unemployment, old age, sickness and disablement, and in other cases of unreserved want.

5. Art 42 says that the State shall, make provisions for securing just and humane conditions of work and for maternity relief.

6. Art 43 says that the State shall, endeavour to secure to all workers a living wage, conditions of works ensuring standard of life and full enjoyment of leisure and social and culture opportunities and in particular, the State shall endeavour to promote cottage industries on individual or co-operative lines in rural areas.

Art 43-A says that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in establishments or other organisations engaged in industry.

7. Art 44 says that the State shall, endeavour to secure for the citizens uniform civil code throughout the territory of India.

8. Art 45 says that within a period of ten years from the commencement of the Constitution the State shall endeavour to provide for free and compulsory education for all children upto the 14 years.

9. Art 46 says that the State shall, promote with special care the educational and economic interest of the weaker sections of the people and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

10. Art 47 says that the State shall, regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall strive to bring about prohibition of consumption, except for medicinal purpose, of intoxicating drinks and of drinks and of drugs which are injurious to health.

11. Art 48 says that the State shall, endeavour to organise agriculture and animal husbandry on modern scientific lines and shall in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and others milch and draught cattle.

Art 48-A says that the State shall, endeavour to protect and improve the environment and to safeguard the forest and wild life of the country, (added by the 42nd Amendment).

12. Art 49 says that it shall be the obligation of the State to protect every monument or place of artistic or historic interest from exploitation, disfigurement, destruction, removal, disposal or export.

13. Art 50 says that the State shall, takes steps to separate judiciary from

the executive in public services of the State.

14. Lastly, Art. 51 says that the State shall, endeavour to (a) promote international peace and security, (b) maintain just and honourable relations between nations, (c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and (d) encourage settlement of international disputes by arbitration.

1.3.4 Ideological Classification of Directive Principles

The Constitution framers have not classified the Directive Principles on any ground. The principles of various shades of opinion are enumerated in the Articles dealing with these Directives. These directives, in fact, represent various ideologies. For the sake of convenience the principles may be ideologically classified into four different categories:

(i) Socialistic (ii) Gandhian (iii) Liberal (iv) Internationalistic.

(i) Socialistic Principles:

In the first place we may have the following principles that look like laying down the framework of the Socialist state:

(1) Securing a social order for the promotion of welfare of the people [Article 38(1)].

(2) Minimization of inequalities in income and the elimination of inequalities in status, facilities and opportunities amongst individuals and also amongst groups of people. [Article 38(2)].

(3) Equal right to an adequate means of livelihood to all the citizens [Article 39(a)].

(4) Ownership and control of material resources of the community and their distribution subserve the common good [Article 39 (b)].

(5) Prevention of concentration of wealth and means of production to the common detriment [Article 39(c)].

(6) Equal pay for equal work for men and women [Article 39(d)].

(7) Protection of health and strength of workers from abuse forced by economic necessity [Article 39(e)]

(8) Ensuring the development of children in a healthy manner and in conditions of freedom and dignity [Article 39(1)].

(9) Protection of childhood and youth against exploitation and against moral and material abandonment [Article 39(f)].

(10) Provision of free legal aid to ensure that opportunities for securing justice are not denied to any citizen or other by reason of economic or other disabilities [Article 39a].

(11) Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement [Article 41].

(12) Provision for just and humane conditions of work and maternity relief [Article 42],

(13) Securing a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities of workers [Article 43].

(14) Participation of workers in management of industrial undertakings and establishments [Article 43 A].

(15) Protection of the weaker sections of the people from social injustice and all forms of exploitation [Article 46].

(16) Prescribing of a primary duty of the state to raise the level of nutrition and the standard of living and to improve public health [Article 47].

(ii) Gandhian Principles:

(1) Organisation of village panchayats to function as units of self government [Article 40].

(2) Prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health [Article 47].”

(3) Promotion of cottage industries on an individual or co-operative basis in rural areas [Article 43]

(4) Promotion of the educational and economic interests of the weaker section of the people including the scheduled castes and scheduled tribes [Article 56].

(5) Prohibition of slaughter of cows and calves and other milch cattle [Article 48].

(iii) Liberal Principles:

(1) Securing a uniform civil code for the citizens of India [Article 48].

(2) Provision for free and compulsory education for children until they complete the age of fourteen years [Article 45].

(3) Organisation of agriculture and animal husbandry on modern and scientific lines [Article 49].

(4) Protection of monuments and places and objects of artistic or historic interest [Article 49]

(5) Separation of executive from judiciary [Article 50].

(6) Protection and improvement of environment and safeguarding of forests and wild life [Article 48A].

(iv) Internationalistic Principles:

Promotion of international peace and security, maintaining just and honourable relations between nations, fostering respect for international law and treaty obligations

and encouraging settlement of international disputes by arbitration [Article 51].

1.3.5 Criticism

The directive principles have been criticised on the grounds:

(1) *They are mere sops thrown to conciliate critics.* The Directive Principles of State Policy are not justiciable. This makes them useless to a great extent. The critics hold that the omission of these principles from other Constitution would have done no harm. The wisdom of some of these principles is open to serious doubt. It should be remembered that Directive Principles are not eternal and that they change from time to time. It is, therefore, not wise to include them in a Constitution. Their inclusion in our Constitution is meant to deceive the credulous masses. Most of these principles are neither practicable nor sound. For instance the Directive Principle which recommends introduction of prohibition is not an unmixed blessing. Introduction of prohibition will result in a great loss of revenue which we could usefully spend on works of public utility such as education. Prohibition, wherever introduced in India has proved a failure besides causing great loss of revenue. It has encouraged illicit distillation, corruption of officials concerned with its enforcement, and illegal trade. Addicts have taken to the use of more harmful drinks and drugs.

(2) *Self-imposed directions are meaningless.* They are meaningless as directions are given only to inferiors. In the second place it looks funny and meaningless that a sovereign nation should issue directions to itself. It would be understandable, if such instructions are issued by a superior government to an inferior government, There is no certainty that these principles will be adhered to when times and conditions' have changed. The Directive Principles are more in the nature of political philosophy than practical politics. They are a more parade of high-sounding sentiments couched in vainglorious verbiage. They cannot give any real satisfaction to the people.

1.3.6 Utility

No matter what the critics say the Directive Principles are not altogether without utility.

(1) *They are fundamental in the governance of the country.* They are fundamental in the governance of the country; and it shall be the duty of the state to apply these principles in the making of laws. If the government makes a deliberate attempt to violate or even ignore them, the people are sure to resent it. If the legislators elected by the people do nothing to implement these directions, they can not expect the people to re-elect them as their representatives. A government which closes its eyes towards these principles will do so at peril to itself. A responsible government surely cannot ignore them. Directive Principles create no legal rights and obligations but are mere pious declarations with no legal behind them, but no government can ignore them as they are

fundamental in the governance of the country and the government have to answer for their disregard or violation before the electorate when the next general election comes.

(2) *They commit India to the principles of economic democracy.* The real reason and justification for the inclusion of the Directive Principles is that our Constitution-makers fore-saw the changing fortunes of party governments. They feared that a government might come in power in India or in any State which might feel tempted to impose its own economic views which might run counter to the principles of economic democracy to which India stands committed and on which the Indian Constitution is based and founded. Whichever party comes in power it has to show regard and consideration to these principles.

(3) *These are general instructions for the guidance of all state authorities.* The Directive Principles are in the nature of general instructions or recommendations addressed to all authorities of the Union and they seek to remind them of the basic principles of the 'new social and economic order which the new Constitution of India aims at building. These axioms of state policy have served as beacon-lights to our courts. For instance, restrictions imposed by law on the freedom of citizens are considered reasonable by the courts only if they are imposed in accordance with the Directive Principles. Thus, the Directive Principles not only influence all state authorities in the legislative and executive spheres but they also serve as a guide to the courts.

(4) *They amplify the Preamble of the Constitution.* The Directive Principles serve another purpose also. They are an amplification of the Preamble of the Indian Constitution which basis the authority of the Constitution of India on the solemn resolve of the people of India to secure to all the citizens justice in social, economic and political fields, liberty in all spheres equality of status and opportunity, and the promotion amongst them all of fraternity assuring the dignity of the individual and the unity of the nation.

(5) *They are as useful as were the Instruments of Instructions under the Act of 1935.* These Directive Principles are not something very new to India. Under the Act of 1935, the Crown used to issue Instruments of Instructions to the Governor-General and the provincial Governors which they were expected to follow when working the Act of 1935. These instructions had no legal force but they were generally followed. They proved quite useful. In a like manner the 'Directive Principles' contained in the Indian Constitution have a value of their own. It is not just to sneer at them.

1.3.7 Implementation of Directive Principles

The Directive Principles are thus not to remain in the Constitution as mere platitudes but have to be implemented to create a new Social Order or the Socialistic Pattern of Society in accordance with these principles. It will be amply clear from the following paragraphs, to what extent have these been implemented. Thus, they are not

just pious wishes.

(1) *Emergence of the Public Sector:* There has taken place a considerable increase in the Public Sector. The State has been vested with the ownership and control of the material resources of the community. The great multi-purpose river valley projects such as the Bhakra- Nangal, Damodar Valley and Hirakund, Iron and Steel producing concerns such as Bhilai, Rourkela and Durgapur Ship-building centres like Vizag and other concerns such as Sindri Fertilisers, Hindustan Machine Tools, Chittarajan Locomotives, Hindustan Aircrafts which have greatly contributed to the economic development of India are owned and managed by the state.

(2) *Agrarian Reforms:* India is an agrarian country. Ever since the introduction of the Permanent Settlement, land mostly belonged to a few zamindars while the actual tillers of the soil remained poor and miserable as they had to pay high rents. They were also exploited by the intermediaries in other ways. These intermediaries have been abolished and the tillers have now to do directly with the State. In many states steps have also been taken to improve the conditions of the cultivator with regards to security of tenure, fair rents, etc. With a view to prevent concentration of land-holdings in the hands of the actual tillers even ceiling has been fixed as a result of which the maximum area of land which an individual owner may hold has been fixed. The agrarian reforms have been introduced to ensure that the ownership and control of the material resources, of the community are so distributed as best to subserve the common good. The Government has abolished the old institution of Zamindari.

(3) *Promotion of Cottage Industries.* Cottage Industries are a State-subject. The Union Government has, however, set up a number of Boards to assist the States in the matter of finance and marketing, etc. The more important of these boards are All-India Khadi and Village Industries Board; All India Handicrafts Boards; All-India Handloom Board; Small Scale Industries Board; and Silk Board. The National Small Industries Corporation and Khadi and Village Industries Commission have been set up and are doing useful work.

(4) *Organisation of Village Panchayats.* Village Panchayats have been organised in all the states and endowed with powers of self-government, on a uniform pattern under the 73rd Amendment Act. These bodies deal with such matters as medical relief, maintenance of village roads, streets, tanks and wells and provision of primary education, sanitation and the like. They also exercise judicial functions both civil and criminal. They can try cases of the value of rupees 200 or less and try minor offences punishable with small fines.

By now practically all the five lac villages have their own panchayats which form the primary units of administration.

(5) *Raising of Standard of Living of people.* In order to raise the standard of living particularly of the rural population, the Union Government launched the Community Development Programme in 1952. The actual responsibility for the execution of this programme is on the shoulders of the State Governments. This programme seeks to transform rural economy particularly by the re-organisation of agriculture and animal husbandry on scientific lines. It also aims at providing better communications, better housing, improved sanitation and wider education, both general and technical.

(6) Many states have also passed laws to prohibit slaughter of cows, calves and other milch and draught-cattle.

(7) *Prohibition of intoxicating Drinks and Drugs.* Shortly after the adoption of the new Constitution a vigorous policy of prohibition was launched and by now a number of states have gone completely dry and the other states are also taking steps in the same direction. It is calculated that by 1957 the area under prohibition was over 32 % of the total area of the country. The Prohibition Enquiry Committee set up by the Planning Commission has drawn up a comprehensive Scheme to carry out the work of prohibition more effectively, and severe restrictions have been imposed on the production and consumption of intoxicating goods.

(8) *Separation of the Executive from the Judiciary.* A Directive recommends the separation of the executive from the judiciary. The Criminal Procedure Amendment Act of 1973 has gone a long way in realising the aim of separating judiciary from the executive.

(9) *Free and Compulsory Primary Education.* The different states have taken big steps in the direction of free and compulsory Primary Education. The Directive had laid down that the goal was to be reached within 10 years. This has not been possible as the period was too short for such a gigantic task. It may take another decade to implement the Directive fully. Now Art. 21A has been inserted by the 86th Amendment Act of 2002, that the State shall provide free and compulsory education to all children from 6 to 14 years of age in such a manner as determined by law." Thus, it has been made a Fundamental Right.

(10) *Promotion of economic and educational interests of backward people.* The state has taken a number of steps to advance the educational and economic interests of the weaker sections of society especially the Scheduled Castes and Tribes. More and more cottage and small-scale industries have been set up to improve the economic conditions of these people. They are given liberal aid to enable them to rise higher and become economically secure.

(11) *Uniform Civil Code.* To introduce a uniform civil code in India is a very uphill task as the followers of the different faiths have their own separate laws. The

enactment of the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 are steps leading to adoption of a uniform civil code for the entire country.

(12) *Promotion of International understanding.* India has made sustained efforts towards the promotion of international understanding and peace and her contribution in this direction is recognised and praised by almost all nations. India has refrained from war in spite of provocation from Pakistan. She desires a peaceful settlement of the Indo-China border dispute.

Besides the Directive Principles contained in part IV of the Constitution there are a few others which are also to be implemented. These are: (1) Every State and every local authority within it are enjoined by Article 350 A to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. (2) Article 351 enjoins the Union to promote the spread of Hindi Language and so to develop it that it can serve as a medium of expression of all the elements of the composite culture of India (3) Article 335 enjoins that the claims of the members of the Scheduled Castes and Tribes are taken into consideration consistent with the maintenance of efficiency of administration in the making of appointments to services and posts under the Union and State Governments.

1.3.8 Directive Principles and Fundamental Rights Distinguished:

(1) The Directive Principles of State Policy given in the Indian Constitution are of wider significance than the Fundamental Rights. The Fundamental Rights in reality seek to place some restrictions on state authority and instruct it to refrain from doing certain things. The Directive Principles are positive directions to the government to do certain things.

(2) The Directive Principles are non-justiciable but the fundamental rights are justiciable. The fundamental rights can be enforced by the courts. The Directive Principles contain only directions and were purposely excluded from the purview of the courts. If the governmental authorities at any level do not take any or sufficient interest in promoting or realising these principles the courts of law are not competent to take any action for their enforcement.

(3) The courts can not declare any law void on the ground that it contravenes some Directive Principles of State Policy if the law is otherwise valid. But if there is a conflict between a Fundamental Rights and a Directive Principles, the fundamental right shall prevail in the courts. The Directive Principles of State Policy have to conform to Fundamental Rights. The state can, however act in accordance with the Directive Principles, provided they do not come in conflict with Fundamental Rights.

(4) The Directive Principles are like the Instruments of Instructions which were issued to the Governor-General and to the Governors of the Provinces in British

India by the British Government under the Government of India Act, 1935. What are called Directive Principles is merely another name for Instruments of Instructions. The only difference is that they are instructions to the legislature and the executive. Whenever there is a grant of powers in general terms for peace, order and government, it is necessary that it should be accompanied by instructions regulating its exercise.

1.3.9 Conclusion:

There is no doubt that the Directives contained in Article 36 to 51 of Indian Constitution are of perennial value and because of it they will never go out of date. But it is very much certain that so long as they remain non-justiciable and lack legal sanction behind them they shall not serve the desired purpose. During the period of last fifty five years some of the Directives have not only been implemented but also they have been evidently violated. It will continue to be so, until they are made justiciable and they are armed with legal sanction. If it is not done, the relevance of the Directive Principles shall not bear any useful practical fruit. In that case it will not be surprising if the nonjusticiable Directive Principles are considered not only useless but also irrelevant.

As a matter of principle, the relevance of the Directive Principles cannot be doubted since the provisions contained in these Directives are very much in the interest of Indian people. The Directive Principles provide a blueprint of welfare state and thus their relevance and utility cannot be questioned. But if they are not to be implemented and if they are to serve only as “decorative pieces” of the Indian Constitution, they will not remain relevant any longer. Their contents are very much relevant because they are of ever-lasting value, but their non justiciable character and lack of legal sanction make them even irrelevant. In order to make them practically relevant, imparting to them the justiciable character and coercive legal sanction is very essential.

1.3.10 Self Check Exercise

- (1) Directive Principles of State Policy are contained in Part.....of the Constitution and consists of.....Articles from Article.....to.....
- (2) These are.....to the legislature and the executive.
- (3) They are not.....,there is no.....behind them.
- (4) They are mere.....and.....sanctions.
- (5)Constitution of.....was the source of inspiration.
- (6)said, “these are like a cheque payable by bank, at its convenience.
- (7) Panchayati Raj has been established under Article..... in Directive Principles

Answers: (1) IV, 16,36,51, (2) instructions (3) justiciable, legal sanction

(4) moral, political (5) Irish, 1937 (6) KT Shah:(7) 40

Suggested Questions

1. Describe the various Directive Principles of State Policy enumerated in the Constitution of India.
2. Examine briefly the importance of Directive Principles of State Policy. What steps have been taken for their implementation.

Short answer questions

1. Name two Directive Principles which are related to the welfare of the children.
2. Name two Directive Principles related to the welfare of women?
3. Are the Directive Principles justiciable?
4. What is the meaning of Directive Principles of State Policy?
5. What is the sanction behind Directive Principles?

Self-Exercise Questions

Descriptive Questions

1. Write briefly fundamental right in Indian Constitution.
2. Write a note on causes for the rise of Human Rights Groups in India and the role of those groups in the protection of human rights.
3. What is the Punjab State Human Rights Commission. Discuss its main functions.

Short questions

1. What is meant by human rights ?
2. Under which act the NHRC is constituted.
3. Describe any two restrictions imposed on fundamental rights.
4. Write five fundamental duties.
5. When was the Punjab State Human Rights Commission was established and composition of the Board.

CITIZENSHIP

MEANING AND SIGNIFICANCE

Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights. They are of two categories—friendly aliens or enemy aliens. Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, e.g., they do not enjoy protection against arrest and detention (Article 22). The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Right to equality of opportunity in the matter of public employment (Article 16).
3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
4. Cultural and educational rights (Articles 29 and 30).
5. Right to vote in elections to the Lok Sabha and state legislative assembly.
6. Right to contest for the membership of the Parliament and the state legislature.
7. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.

Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on. In India both a citizen by birth as well as a naturalized citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalized citizen is eligible for the office of President.

CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship

subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act, 1955, which has been amended in 1986, 1992, 2003 and 2005. According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:

1. A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India (Article 5).
2. A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration (Article 6).
3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration (Article 7).
4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship (Article 8). To sum up, these provisions deal with the citizenship of
 - (a) persons domiciled in India;
 - (b) persons migrated from Pakistan;
 - (c) persons migrated to Pakistan but later returned; and
 - (d) persons of Indian origin residing outside India. The other constitutional provisions with respect to the citizenship are as follows:
 1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (Article 9).
 2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (Article 10).

3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship (Article 11).

CITIZENSHIP ACT, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement

of the Constitution. This Act has been amended so far four times by the following Acts:

1. The Citizenship (Amendment) Act, 1986.
2. The Citizenship (Amendment) Act, 1992.
3. The Citizenship (Amendment) Act, 2003.
4. The Citizenship (Amendment) Act, 2005.

Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this

provision was repealed by the Citizenship (Amendment) Act, 2003.

ACQUISITION OF CITIZENSHIP

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent,

registration, naturalisation and incorporation of territory:

1. **By Birth** A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents. A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth. Further, those born in India on or after 3rd December 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a Citizen of India and the other is not an illegal migrant at the time of their birth. The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.
2. **By Descent** A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth. A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth. From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

3. By Registration The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) if he belongs to any of the following categories, namely:-

- (a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- (d) before making an application for registration;
- (e) minor children of persons who are citizens of India;
- (f) a person of full age and capacity whose parents are registered as citizens of India;
- (g) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- (h) independent India, and has been residing in India for one year immediately before making an application for registration;
- (i) application for registration;
- (j) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

An applicant shall be deemed to be ordinarily resident in India if –

- (i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.
- (ii) A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th August, 1947.
- (iii) All the above categories of persons must take an oath of allegiance before they are registered as citizens of India. The form of the oath is as follows:

I, A/B..... do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfill my duties as a citizen of India.

4. By Naturalisation The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:

- (a) that he is not a subject or citizen of any country where citizens of India are prevented from
 - (b) becoming subjects or citizens of that country by naturalisation;
 - (c) that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted;
 - (d) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;
 - (e) that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;
 - (f) that he is of good character;
 - (g) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution³, and
 - (h) that in the event of a certificate of naturalisation being granted to him, he intends to reside in
 - (i) India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India. However, the Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.
- 5. By Incorporation of Territory** If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.

Loss of Citizenship

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired under the

Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

- 1. By Renunciation** Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a

declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government. Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

2. **By Termination** When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.
3. **By Deprivation** It is a compulsory termination of Indian citizenship by the Central government, if:
 - (a) the citizen has obtained the citizenship by fraud;
 - (b) the citizen has shown disloyalty to the Constitution of India;
 - (c) the citizen has unlawfully traded or communicated with the enemy during a war;
 - (d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
 - (e) the citizen has been ordinarily resident out of India for seven years continuously.⁴

SINGLE CITIZENSHIP

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides

for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only

to the Union. There is no separate state citizenship. The other federal states like USA and Switzerland, on the other hand, adopted the system of double citizenship. In USA, each person is not only a citizen of USA but also of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights—one set conferred by the national government and another by the state government. This system creates the problem of discrimination, that is, a state may discriminate in favour of its citizens in matters like right to vote, right to hold public offices, right to practice professions and so on. This problem is avoided in the system of single citizenship prevalent in India. In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them. However, this general rule of absence of discrimination is subject to some exceptions, viz,

1. The Parliament (under Article 16) can prescribe residence within a state or union territory as

- a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory. Accordingly, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957 and thereby authorised the Government of India to prescribe residential qualification only for appointment to non-Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh.
2. The Constitution (under Article 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and not on the ground of residence. This means that the state can provide special benefits or give preference to its residents in matters that do not example, a state may offer concession in fees for education to its residents.
 3. The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted. Of course, this is done to protect the distinctive culture, language, customs and manners of schedule tribes and to safeguard their traditional vocation and property against exploitation.
 4. In the case of Jammu and Kashmir, the state legislature is empowered to define the persons who are permanent residents of the state and confer any special rights and privileges in matters of employment under the state government, acquisition of immovable property in the state, settlement in the state and scholarships and such other forms of aid provided by the state government.
 5. The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation. Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. Thus, the cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

References

1. On this date, the permit system for such migration was introduced.
2. This provision refers to migration after 1 March, 1947 but before 26 January, 1950. The question of citizenship of persons who migrated after 26 January, 1950, has to be decided under the provisions of the Citizenship Act, 1955.
3. The 8th Schedule of the Constitution recognises presently 22 (originally 14) languages.
4. This will not apply if he is a student abroad, or is in the service of a government in India or an international organisation of which India is a

member, or has registered annually at an Indian consulate his intention to retain his Indian citizenship.

5. By virtue of Article 371-D inserted by the 32nd Constitutional Amendment Act, 1973.
6. Article 35-A in the Constitution (Application to Jammu and Kashmir) Order, 1954. This was issued by the President of India under powers conferred on him by Article 370 of the Constitution.

THE PRESIDENT AND PRIME MINISTER OF INDIA

Structure

- 1.5.0 Objectives
- 1.5.1 Introduction
- 1.5.2 President
- 1.5.3 Election of President
 - 1.5.3.1 Composition of Electoral College
 - 1.5.3.2 Principle of Uniformity
 - 1.5.3.3 Proportional Representation System of Election
- 1.5.4 Tenure and Re-eligibility
- 1.5.5 Procedure of Impeachment
- 1.5.6 Qualifications required
- 1.5.7 Emoluments
- 1.5.8 Powers of the President
 - 1.5.8.1 Executive Powers
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 - 1.5.8.3 Emergency Powers
- 1.5.9 Prime Minister
- 1.5.10 Appointment and Dismissal rules
- 1.5.11 Powers of Prime Minister
- 1.5.12 Position of Prime Minister
- 1.5.13 Summary
- 1.5.14 Key Words
- 1.5.15 Suggested Readings

1.5.0 OBJECTIVES :

After studying this lesson, you shall be able to:

- understand the election process of both the highest executives of our country i.e. President and Prime Minister;
- describe the powers and position of President and Prime Minister.

1.5.1 INTRODUCTION :

In India, we have adopted Parliamentary form of government where there is pattern of dual leadership. All the powers under the Indian Constitution are vested in the President who is the Constitutional Head of the country but in reality these powers are exercised by the Prime Minister and his Council of

Ministers.

1.5.2 PRESIDENT OF INDIA:

According to Article 53 of the Constitution, the Executive power of the Union is vested in the President and he is to exercise it either directly or through the officers subordinate to him.

1.5.3 Election of President

1.5.3.1 Composition of Electoral College :

The President is elected by an electoral college consisting of:

- (i) The elected members of both Houses of Parliament; and
- (ii) The elected members of the Legislative Assemblies of States.

The composition of the Electoral College mentioned above clearly shows that at the centre the elected members of House of the People (Lok Sabha) as well as the Council of States (Rajya Sabha) have right to participate in the President's election. At the State level of the elected members of the Legislative Assembly alone (not of the Legislative Council) have the right to participate in the election. Moreover, it should also be noted in this connection that the nominated members of Parliament as well as of the Legislative Assemblies have no right to participate in the Presidential election.

Union Territory Legislative Assemblies do not participate in Presidential Elections :

- (A) Herein, it should be noted that the elected members of the Legislative Assemblies of the Union Territories do not participate in the Presidential election.

1.5.3.2 Principal of Uniformity Between States and Parity Between State and Union:

According to article 55, as far as practicable there shall be uniformity in the scale of representation of the different states at the election of the President. For securing this uniformity among the states and as well as parity between the states as a whole and the Union, a unique method has been adopted to determine the number of votes to be cast by every member. The total population of each State divided by the total number of elected members in the state assembly. The quotient obtained is further divided by 1,000. If the remainder exceeds 500, then the number of votes is increased by one. The number of votes of each elected member of legislative assembly of each state is thus determined by the following formula :

- (i) Total population of the state

÷ 1000

Total number of the elected members of the Assembly

- (ii) Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes

assigned to the members of the Legislative Assemblies of the States, by the total number of elected members of both Houses of Parliament. Fractions exceeding one-half being counted as one and other fractions being disregarded. In simple expression it means :

Total votes of the MLAs of all the state = Votes of each
No. of Elected members of both the Houses of Parliament elected M.P.

1.5.3.3 Procedure of Election - a system of Proportional Representation:

The method adopted for electing the President of India is through a system of Proportional Representation System by means of Single Transferable Vote.

1.5.4 Tenure of Office of President and Re-eligibility :

1.5.4.1 Tenure of Office of President of India

The President is elected for a term of five years and his term begins from the date on which he enters upon his office. But notwithstanding the expiry of his term, he continues to hold office until his successor enters upon his office. It is interesting to know that there is a similar provision about the Governor and that provision has been sufficiently misused rather violated and the Governors in many States were not appointed ; sometimes for many years after the expiration of their normal term of office. For example, late B.N. Chakravarti, the former governor of Haryana, remained till further orders for a period of about three and a half years. It may be asked in this connection as to how far it will be possible for the Government of India to keep the President in office by adopting the same tactics, which it has adopted in the case of Governors. The simple answer is that in the case of the President, the elections must be held before the expiry of his normal term. IN this case, the Presidential election was held even when Assembly in Gujarat had been dissolved.

Before the completion of his normal term, the President may, however, by writing under his hand a letter addressed to the Vice-President resign his office. But to whom he addresses should his letter of resignation, if the office of the Vice-President is vacant? This situation developed in 1969, when after the death of Dr. Hussein, V.V. Giri, the then Vice-President, who was acting as a President wanted to resign in order to contest the election of the President. Since the President is to address his letter of resignation to the Vice-President and the office of the Vice-President was vacant, then the problem was as to whom he should address his letter of resignation and who should discharge the functions of the President after his resignation? The-matter was referred to the Attorney General. His opinion was that since the Office of the Vice-President was vacant and the President could not address his letter of resignation to an office, which is vacant, he therefore, could resign by unilateral declaration

under article 67. However, to comply with the form of article 67(a) he should write a letter to resignation, sign it and should deposit it in the President's Secretariat. He was also advised that the copies of this letter should be sent to the Prime Minister and the Chief Justice of India and a notification in the Gazette of India should be issued immediately.

When the above mentioned situation developed, a major lacuna of the constitution came to light and then Parliament Passed the President (Discharge of Function) Bill 1969 enabling the Chief Justice of India or in his absence the senior most judge of the Supreme Court to discharge the functions of the President, when both the offices of President and Vice-President are vacant.

1.5.4.2 Re-eligibility

Unlike the Constitution of Burma and Ireland, which forbid the re-election of the President more than twice there is no bar in the constitution of India on the re-election of the same person to the office of the President for any number of times. Though the Drafting Committee proposed that "a person who holds or has held office as President shall be eligible for re-election once but only once", however, subsequently this provision was deleted and it was hoped that a two-term convention would be established. Until now one President remained in office for more than two terms in fact it was only Dr. Rajendra Prasad who completed two terms. Dr. Radha Krishanan, V.V. Giri and Neelani S. Reddy, Giani Zail Singh, R.V. Venkatraman all completed only one term, whereas. Dr. Zakir Hussain and Fakhruddin Ali Ahmed could not complete even that because both the them died in office during their first term.

1.5.5 Procedure of Impeachment

According to article 61 of the Constitution, the President can be impeached on the violation of the Constitution and for this purpose the charges can be levelled in either House of Parliament. But before moving such a resolution, a notice of at least fourteen days must be given in writing, which should be signed by not less than one fourth of the total members of that House. If after following this procedure, the House passes a resolution by a majority of not less than two third of the total membership of the House, the matter will be referred to the other House which will investigate the charges. When the other house investigates the charges, the President shall have the right to appear before the investigating Committee either in person or through his lawyer. If as a result of that investigation, a resolution is passed by that Hose by a majority of not less than two thirds of the total membership declaring that the charges against the President have been sustained, the President will be considered to have been removed from the date on which the resolution was passed.

1.5.6 Qualification for Election as President

Before a person contests election for the office of the President, he should

have the following qualifications.

- (1) He should be a citizen of India.
- (2) He should have completed the age of thirty-five years.
- (3) He should be qualified for the election as a member of House of People.
- (4) He should not hold any office of profit.

Besides the above mentioned qualifications in the constitution, the President Election Act of 1974 provides, for a security deposit of rupees 2500 (the amount keeps changing from time to time) along with the nomination papers of the candidate proposed at least by ten and seconded by ten other members of the electoral college and a person who does not secure one sixth of the number of votes necessary to secure the return of the candidate, he forfeits his security deposit,

1.5.7 Monetary and other benefits

Besides the free furnished three official residences (Rashtrapati Bhawan at Delhi, Rastrapati Nilayam at Hyderabad and Retreat at Moshoba near Simla), the President gets a salary of RS. 1,50,000 per month and on retirement a pension.

1.5.8 Powers of the President

1.5.8.1 Executive Power

The President has been given important executive powers, which he can exercise either directly or through the officials subordinate to him. The constitution, after 42nd amendment provides that there shall be a Council of Ministers, with the Prime Minister as the head, to aid and advice the President who shall in the exercise of his functions act in accordance with such advice.

(i) Appointment of Prime Minister :

One of the most important powers of the President is to appoint the Prime Minister. He may appoint any one as a Prime Minister even, if he is not a member of Parliament, provided he is able to carry the majority of the members of the House of the People with him, and he is able to get a seat in Parliament in six months of his appointment.

It may, however, be asked as to how far the President has a discretion in the appointment of the Prime Minister? So long as one of the political parties has a clear majority in House of People and has a clearly recognised leader, the President has no say in his appointment. But in case, none of the parties enjoy a clear majority in the House of the People, when the elections are held, the President may play quite an important part in the appointment of the Prime Minister. In such a situation, he may or may not appoint the leader of the largest party in the House of the people as Prime Minister. The only guiding principle before him will be as to who will be able to form a stable government.

(Examples mentioned here are for the information only). It may be

relevant to recall that the President N Sanjeeva Reddy extended invitation on July 18, 1979 to YB Chavan, the Leader of the opposition in Lok Sabha after Morarji Desai tendered the resignation of 28 months old Janata government on July 15, 1979 without facing the Lok Sabha on the no confidence motion which was tabled by Mr. Chavan, Since he was having a support of 74 members, Mr. Chavan informed the President about his inability to form the government. Thereafter, the President asked Morarji Desai and Charan Singh simultaneously to furnish the names of their respective supporter to settle the rival claims. In doing so, the President declined the claim of Morarji for being invited to form the Ministry even if his party was the largest party in the Lok Sabha. After scrutinising the two lists; President invited Charan Singh (Leader of the newly formed Janata Secular) who had entered into alliance with Congress (S) to form the Coalition government on July 2, 1979 as he had the support of 262 as against 235 of Janata list. In recently held 1996 elections again, there was an occasion before the President when he could exercise his discretion as none of the parties had clear majority in the house though BJP was the single largest party. Congress the second largest party. There was also a national front later called United Front composed of 13 parties which staked its claim to form government with the out-side support of the Congress Party. President invited BJP to form government adhering to the principle that single largest party had the for most claim to form government but since it (BJP) could not win motion of confidence on the floor of house it had to go out of office after thirteen days in office.

(ii) Dismissal of the Prime Minister :

The President not only appoints the Prime Minister but can also dismiss him because he holds office during his pleasure, which ordinarily means that he stays in office only so long as he enjoys the confidence of the House. Then on account of large scale organised defections, his majority becomes doubtful, the President can ask him to face the House without unnecessary delay. If he refused to do so, the President can dismiss him.

(iii) Appointment of Ministers:

The President appoints other Ministers on the recommendation of the Prime Minister and whenever one of the parties has a clear majority in the House and a clear recognised leader, the President may have no role in so far as the appointment of other Ministers is concerned. But in case none of the political parties has a majority, he can play quite an important role in this respect.

(iv) Dismissal of Ministers:

The Ministers after their appointment hold office during the pleasure of the President, which in fact means that they stay in office only so long as the

Prime Minister wants them. He can ask any one of them to resign and if he refuses to do so, he can recommend to the President to dismiss him. But in case there is a coalition Ministry in office and the Prime Minister belongs to a smaller partner, the ministers belonging to the major partner may not be dismissed on his recommendation if they refuse to resign when asked by him to do so. At the State level this happened in U.P. in 1970 when the Congress (R) a major partner withdrew support from Charan Singh ministry but the Ministers of the party refused to resign when a request was made by the Chief Minister, Then-the Chief Minister recommended to the Governor that they should be dismissed but the Governor refused to do so on the ground that the Chief Minister of a coalition government cannot be treated at par with the Chief Minister of one party Government in matter of appointment and dismissal of Ministers. The Possibility that the President could adopt this course of action in certain circumstances cannot be completely ruled out. Though no such example has come to light at center so far.

1.5.8.2 Legislative Powers :

Like the crown in England, the President of India is an integral part of Union Parliament, which consists of the President, the Council of states, and the House of the people i.e. Rajya Sabha and Lok Sabha. Though President is not a member of the House of People or Council of State, he has certain powers with regard to their composition and functions, which are :

(i) Power of Nominating Members to Parliament:

The President may, *if* he is of the Opinion that Anglo-Indian Community is not adequately represented in the House of People, nominate not more than two members of that community to the House of People. Besides it, the President also nominates twelve members to the Council of States from among the persons having special knowledge or practical experience in the field of literature, Science, Art, and social service etc. These nominations are made by the President on the advice of the Council of Ministers.

(ii) Disqualification of Members :

The 44th amendment had deleted the provision, which gave the final power to the President to decide the issue of disqualification. He will now act according to the opinion of Election Commission.

(iii) Power to Summon Parliament:

According to the constitution, each House of Parliament is summoned by the President, to meet at such time and place as he thinks fit, however "It shall not exceed six months between its last sitting in one session and the date appointed for its first sitting in the next session." It means that in no case, the gap between the last sitting in one session and the date fixed for its first sitting in the next can be more than, six months. This is as only in the case of

Council of States and not for the House of the People. Sometimes, it may not be possible to summon the House of the People within a period of six months because of its dissolution. But if the House of People exists then the gap should not, be more than six months.

Since under article (87 (i) of the constitution, it is obligatory on the part of the President to address both houses of Parliament assembled together at the commencement of the first session after each general election and the commencement of the first session of each year. It is, therefore, necessary that for these sessions both the houses of the Parliament will have to be summoned simultaneously. In other sessions of Parliament, both Houses may be summoned separately.

(iv) Power to Prorogue

Besides summoning Parliament, the President also has the power to prorogue it. About the powers of Governor to prorogue the Assembly, the Supreme Court has held that Article 174 (2) of the Constitution which enabled the Governor to prorogue the Legislature did not indicate any restriction on his power" Since article 174 (2) is a carbon copy of article 85 (2), therefore, the power of the President in this respect before the 42nd amendment were the same as that of Governor. But the 42nd amendment has made the advice binding on the President. This is, however, so only as long as the Council of Ministers has the confidence of House. This power too may be used by the President for helping the Prime Minister if he belongs to his party and if he does not belong to his party then he may ignore the advice for some time and thereby may force the Ministry to face the House. This is because even the 42nd amendment does not make it obligatory for the President to accept the advice immediately. At the State level there are instances where the Governor prorogued the Assembly just to save the Ministry in office. This course of action was adopted by the Governors of Madhya Pradesh and Jammu Kashmir in 1967 and 1970 respectively.

(v) Powers to dissolve the House of the People

Besides summoning and proroguing the Parliament, the President can also dissolve the House of the People. Ordinarily, this power is exercised by the President on the recommendation of the Prime Minister when he has a majority in the House of the People. But when the majority of the Prime Minister in the House of the People has been lost or is doubtful, the President may or may not dissolve the House of the People on this recommendations in spite of the 42nd amendment.

While exercising the power of dissolution the President is not bound by the advice of the Prime Minister if there is a possibility of an alternative Ministry. If he is favorably disposed towards the Prime Minister he may grant

dissolution without exploring the possibility to an alternative Ministry as was done by V.V. Giri in 1970 when he dissolved the House on the recommendation of Mrs. Indira Gandhi.

The President made extra-ordinary use of this power of dissolution and dissolved the Lok Sabha on the advice of Prime Minister Charan Singh on 22nd August 1979, who headed the first coalition government at the National level. He tendered resignation just an hour before he was scheduled to face the vote of confidence in Lok Sabha on August 20, as the Congress (I) had withdrawn support to his Ministry while tendering his resignation he advised the President to dissolve the Lok Sabha and order fresh elections. The Janata party leaders and many constitutional experts questioned propriety of President's decision for accepting the advice of a conditional Prime Minister of coalition govt., as he was required to demonstrate his majority on the floor of the Lok Sabha. Apart from it, he was a leader of one of the smaller group vis-a-vis Janata Party. It is obvious from the above that the President denied the opportunity to Jagjivan Ram (who succeeded Morarji Desai as new leader), who was the leader of the Opposition with the massive support of 203 members to form a new Government as was done by the President in case of YB. Chavan. The President thus seemed to have violated his own precedent and dissolved the House as he felt that not stable Government was possible in the prevailing circumstances. It may be kept in mind that all political parties except the Janata Party favoured dissolution of Lok Sabha.

(vi) Right to Address and to send Messages to the House or Houses

According to Article 86 of the constitution at the commencement of the first session after each general election to the House of the People and the commencement of the first session of each year, the President has to address both Houses of Parliament assembled together and inform Parliament of the cause of its summons Ordinarily it is a Government address prepared by the Council of Ministers but in case it contains material derogatory to the dignity of the President or the Judiciary, the President may not read those passages. At the State level this happened in West Bengal in 1968 when Dharam Vira refused to read certain passage of the Governor's address which according to him crossed the legitimate limits of criticism Though 42nd amendment has made the advice of the Council of Ministers binding yet that will be so only if the address is within the constitutional limits.

(vii) Issuing of ordinance

Besides the above-mentioned Legislative Powers, the President also has the power of issuing an ordinance when Parliament is not in session. If the President is satisfied that a particular law is immediately needed, and then he

can even prorogue the Parliament and then can issue an ordinance. These ordinances are issued by the President on the advice of the Prime Minister.

1.5.8.3 Emergency Powers

The President has been given emergency powers and part XVIII of the constitution deals with them. Without defining the term 'Emergency' the constitution classifies it into three categories, namely:

- (i) emergency caused by war or external aggression or armed rebellion. (Art. 352).
- (ii) failure of the constitutional machinery in the State (Art. 356).
- (iii) Financial emergency (Art. 360).

(A) General Emergency:

Article 352 of the constitution deals with the first type of emergency which says : "If the President is satisfied that a grave emergency exists whereby the security of India or any part of territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect." The President can issue the proclamation of emergency before the actual occurrence of war or external aggression. After the 42nd Amendment Act of 1976 emergency can be declared even in a part of India.

(B) Failure of Constitutional Machinery in any state :

Article 356 of the Constitution deals with the failure of the constitutional machinery in states. If the President on the receipt of a report from the Governor of a state or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the constitution, he can

- (i) assume to himself all or any of the functions of the Government of the State and or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State.
- (ii) declare that the powers of the State Legislature shall be exercisable by or under authority of the Parliament.

(C) Financial Emergency :

The third type of emergency power deals with the financial emergency. Article 360 says that if the President is satisfied that a situation has arisen whereby the financial stability of India or any part of the territory thereof is threatened, he may through proclamation make a declaration to that effect. This proclamation is also to be approved by each house of Parliament in the same manner as the proclamation of emergency under Article 352. When the financial emergency is declared, the President can reduce the salaries and allowances of all the employees of the State as well as of the Central

Government including the judges of the Supreme Court and High Court. So far this power has never been used in India.

This shows that the President has been given vast powers and he is not a golden zero as some think him to be. Though by the 42nd Amendment Act of 1972, an effort was made to sterilize him, yet in certain situations he is still a force to reckon with. It will not be out of place of mention here that B.D. Jatti, the then acting President of India (in May 1977) was not prepared to dissolve the nine State Assemblies on the advice of the Council of Ministers. He only agreed to do so when he was given an ultimatum by the Prime Minister either to dissolve or face the consequences.

Self Check Exercise I :

1. What do you mean by proportional representation system?
2. What is the tenure of President of India?
3. Write any two executive or legislative powers of President.

1.5.9 THE PRIME MINISTER-POWERS AND POSITION

According to Article 74 of the constitution there shall be a Council of Ministers with the Prime Minister as the head, to aid and advice the President who shall in the exercise of this functions act in accordance with such advice. This is the position after 42nd amendment. The 44th Constitution Amendment has only empowered the President to send back the decision of Cabinet for reconsideration.

1.5.10 Appointment of the Prime Minister:

According to the Article 75 (i) of the constitution, the Prime Minister is to be appointed by the President and at the time of his appointment, it is not necessary that he should be member of either House of Parliament. But in case a person, who is not a member of either House of Parliament, is appointed as the Prime Minister, he will have to resign if he does not become a member within six months of his appointment. Shri Narsihma Rao was not a member of the parliament when he took office he secured the Lok Sabha membership by contesting bye-election to the Lok Sabha. Similarly, our present Prime Minister was elected to Rajya Sabha from Kamataka later on and he was member parliament when he become P.M.

In England, there is a convention that the Prime Minister should ordinarily belong to the House of Commons. This convention was established in 1923 and was strictly followed till 1963. In 1963, this convention was temporarily violated when after the resignation of Harold Macmillan, the Queen appointed Earl of Home as the Prime Minister who was the member of the House of Lords. But just after his appointment, he resigned his seat in the House of Lords and contested a seat for the House of Commons and became its member. In India, however, since there was no such convention, after the death of Lal Bahadur

Shastri in 1966. Mrs. Indira Gandhi, who was the member of Rajya Sabha at that time, became the Prime Minister and she continued to remain a member of Rajya Sabha in 1967. At the State level there are many examples, of the Chief Ministers who were members of the Legislative Council. For example, C. Rajgopalachari in Madras and Morarji Desai in Bombay in 1952 and C.B. Gupta in UP. in 1960 were the members of Legislative Councils.

Dismissal of the Prime Minister

The Prime Minister holds office during the pleasure of the President, which ordinarily means that he stays in office only so long as he enjoys confidence of the House of the People. When on account of large scale organised defections his majority becomes doubtful, the President can ask him to face the House without unnecessary delay if he refuses to do so, the President can dismiss him.

However, no such situation has arisen so far. When Mr. Morarji Desai lost majority, he submitted his resignation before the vote of no confidence was introduced in the house. Charan Singh submitted his resignation without facing the Lok Sabha in 1979. Vote of no confidence was passed against NF government headed by V.P. Singh in Nov. 1990 and he resigned. Again Chander Shekhar resigned after remaining in office for only four months. As pointed out earlier as well as in May 1996, Atal Bihari Bajpai had to go after remaining in power for just 3 days, because motion of no confidence was passed against the government.

1.5.11 Powers of the Prime Minister

1. **Forming the Council of Ministers :** Generally, Prime Minister prepares the list of names of Ministers who are then appointed in the name of the President, while exercising his power he must ensure that all-important leaders of the party or parties are included, due representation has been given to all the states, communities and classes inhabiting the country etc.

2. **Dismissal of Ministers :** Ministers hold office during the pleasure of the Prime Minister. Dissenting Minister may be asked to resign or Prime Minister may dissolve the Ministry and form it again after dropping few colleagues. He may reshuffle the portfolios thus shifting such erring Minister to some less prestigious Ministry.

3. **Distribution and Reshuffling of Portfolios of Ministers :** Portfolios or Ministers are distributed among the Ministers at the discretion of the Prime Minister. He also reshuffles the Ministers as and when he feels like doing so.

4. **Head of the Council of Ministers and Cabinet:** He presides over all the Cabinet meetings, decides its agenda, and convenes the meetings. He also acts as a link between all the Ministers of his council. In case of rift between any two or more Ministers, it is he who provides solution. He ensures that all

Ministers work in close co-operation and co-ordination.

5. Link between the President and Council of Ministers : Prime Minister being the head of the Council of Ministers communicates to the President all the decisions of the Council of Ministers. He is to furnish such information relating to the administration of the union and proposal for legislation as the President may call for.

6. As a Leader of Parliament : Prime Minister acts as a real spokesman of the house with regard to its internal matters, external matters like dealing with the other house or the state legislature as well as announcing major policies of the nation. He may recommend the dissolution of the Lok Sabha to the President, who must grant it. Thus, Prime Minister should rather must use this power with great caution.

7. As a Spokesman of the nation : Prime Minister attends important international conferences, enters into treaties with other nations. Acceptance of foreign aids and loans, enters into collaboration with regard to developmental activities, decides various crucial issues like recognition of new States and Governments. Even as a leader of the nation, citizens of the nation also rely of him for his leadership and guidance in all situations.

8. The whole administration of the nation is headed by the Prime Minister, who has full power to implement the programmes and policies. Thus, he must act very judiciously lest people start taking his government to be dictatorial.

9. At the time of Emergency : All the powers including powers of all the states, U.T.s as well as individual's rights and freedom of press-comes in the hands of the Prime Minister thus making him very powerful.

1.5.12 Position of the Indian Prime Minister

After discussing the powers of the Prime Minister, we can easily understand that Indian constitution provides for two heads-one is a nominal head i.e. President and another is the real head i.e. Prime Minister. All the powers are exercised by the Prime Minister thus, making him the Supreme Ruler, head and King pin of his party. Council of Ministers, Parliament and above all, of the nation.

He being the most powerful person, there are chances when he may turn into a dictator. Such an instance had occurred during the regime of Mrs. Indira Gandhi who proclaimed national emergency thus abusing and misusing her powers.

Present scenario where no single party could form the government has posed a situation projecting a weak Prime Minister who is often pressurised by his coalition partners who also led to downfall of his government ultimately . So, we can say that Prime Minister is the most powerful authority only when the

(his) single party forms the government at the center.

The Prime Minister and the party :

He is usually the leader of the party. But situation keeps changing according to circumstances and his hold over the party. As long as P.V. Narsihma Rao was the Prime Minister as a consensus candidate of the Congress Party, the different factions in the Congress (Arjun Singh and Sharad Pawar) have been indulging in the game of struggle for power though later on his position became strong i.e. when he managed the Congress to have majority. Soon after the death of Mr. Rajiv Gandhi, the loyalists of Gandhi family (better known as the Coterie) tried to persuade Mrs. Sonia Gandhi to first accept the President ship of the Congress party and then fight the Lok Sabha seat of Amethi. However, Mrs. Sonia Gandhi did not agree. The result had been a strong position of P.V. Narsihma Rao. He had been elected the President of the Congress Party again. Though he had been always saying that he prefers one-man one post principle. All this goes to show that when the same person has both the positions i.e. President ship of the party and Prime Minister ship, his position is very strong. There is less factionalism and organisation works more harmoniously. Though such practice is against the democratic norms.

SELF-CHECK EXERCISE-II

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

1. How is Prime Minister appointed?
2. Mention any two powers of Prime Minister.

1.5.13 SUMMARY

Under Article 53 of the Constitution, the Executive power of the Union is vested in the President and he is to exercise it either directly or through the Officers subordinate to him. Since we have adopted Parliamentary type of democracy, the President is only a nominal head of the state and all of his powers are exercised by the Council of Ministers headed by the P.M. using all his powers.

The above analysis of the powers of PM shows that he is the most important functionary in the country. He is the pivot around which whole of country's administration revolves. Though in normal circumstances, when any one political party has clear-cut majority in the Parliament then Prime Minister happens to be the most powerful but in the era of coalition government when no single party has gained majority then many such situations arise where President can administer his discretion while using the powers.

1.5.14 Key Words:

Electoral College

- is the indirect system of voting for the President and consists of all elected members of State Legislative Assemblies

- and elected members of both the houses of Parliament.
- Proportional Representation - electoral system in which distribution of party seats corresponds to their proportion of the total votes cast and minority votes are not wasted.
- Single Transferable Vote - candidates are numbered in order of preference by the voter and any votes surplus to the minimum required for a candidate to win are transferred to second preferences, as are second preference votes from the successive candidates at the bottom of the poll until the required number of elected candidates is achieved.

1.5.15 SUGGESTED READINGS :

- Basu D.D. - Constitution of India
 Maheshwari S.R. - Indian Administration
 Puri K.k. - Indian Administration
 Basu Rumki - Introduction to Public Administration
 Pandey Jawahar - Constitution of India

1.5.16 Answers to Self- Check Exercises :

Exercise No. I

1. The answer to this question is given in the lesson under the Key Words
2. The tenure of the President is five years. He may resign from the post of can be impeached through the formal prescribed procedure in the Constitution of India.
3. In the lesson, the powers of the President are described in detail under various heads at no. 3.8-(3.8.1 to 3.8.3). Read all of these carefully and describe any two legislative powers given at no. 3.7.2 or write any two executive powers given at no. 3.7.1 in this lesson.

Exercise No. II

1. Prime Minister is appointed by the President of India. He is normally the leader of majority party in the Parliament.
2. Various powers of the Prime Minister have been discussed in detail in the lesson at no. 3.11.

UNION COUNCIL OF MINISTERS**Structure**

- 1.6.0 Objectives
- 1.6.1 Introduction
- 1.6.2 Council of Ministers
- 1.6.3 Cabinet
 - 1.6.3.1 Composition
- 1.6.4 Procedure of Conduct
- 1.6.5 Functions
- 1.6.6 Cabinet Committees
- 1.6.7 Principles of Cabinet
- 1.6.8 Role of Cabinet
- 1.6.9 Summary
- 1.6.10 Key Words
- 1.6.11 Suggested Readings

1.6.0 Objectives

Studying this lesson will enable you to :

- differentiate between Cabinet and Council of Ministers;
- analyse the powers and functions of Cabinet and Council of Ministers
- define the principles of Cabinet and Council of Ministers.

1.6.1 Introduction

The Constitution of India provides for a parliamentary form of government as it lays down in Article 74 that there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions. This Council of Ministers, the constitution specially points out, shall be collectively responsible to the Parliament. That the President was sought to be a nominal head is evident from the debates of the constituent assembly also. The Council Ministers is marked by political homogeneity and comprises only members of the Parliament, taking active part in its deliberations and guiding its activities.

1.6.2 Council of Ministers :

Like England, India has also followed the system of Parliamentary form of Government in which the two types of the executive - the nominal and the real

executive exist. Undoubtedly, Article 53 confers all executive powers of the Union Government on the President. However, Article 74 provides for the Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions. But in practice the Cabinet is not an advisory body of the President, but the real possessor of all executive powers. President is merely the Constitutional head of the State who is bound to accept the advice of the Cabinet. Emphasising on the importance of the Cabinet, Marriot observed." It is a pivot around which the entire political machinery revolves."

Composition of the Council of Ministers:-

Constitutionally, there is no provision of the Cabinet but of the Council of Ministers which is a composite body comprising of the following three categories of Ministers.

1. Cabinet Ministers:-

In the Council of Ministers, the position of Cabinet Minister ranks the highest. The Cabinet Ministers are the members of small and internal wheel of the Council of Ministers. All Ministers included in the Council of Ministers are not the members of the Cabinet because their number is very small. They hold independent charge of their respective administrative departments. However, many a times, some persons are inducted in the Cabinet without any portfolio. They are called Minister without portfolio. All important decisions relating to the internal and external policy of the country are taken by the Cabinet.

2. Ministers of State:-

Ministers of State hold position in the Council of Ministers next to the Cabinet Ministers. They are neither the members of the Cabinet, nor participate in the meetings of the Cabinet. However, any Minister of State can be especially invited to participate in the meeting of the Cabinet. Generally the Ministers of State are appointed to assist the Cabinet Minister and as such do not hold independent charge of the department. However, sometimes the independent charge of less important department can be given to them. Administrative Reforms Commission in its report recommended that no department should be placed under the independent charge of the Minister of State. But the Government of India has not accepted the recommendation of the Commission. It is important to note that a many a times the administrative departments have been kept under the independent charge of the Ministers of State.

3. Deputy Ministers:-

The third category of Ministers is known as Deputy Ministers who hold the lowest position in the Council of Ministers. They are in fact, appointed to assist the Cabinet Ministers and the Ministers of State in their work. They can never head any administrative department independently. They also cannot participate in the meetings of the Cabinet. Their main function is to assist the

Minister in preparing the answers to questions asked in Parliament and to get the Government bills passed in the Parliament.

4. Parliamentary Secretaries:-

Besides the three categories of Ministers, there is another category known as Parliamentary Secretaries which are included in the Council of Ministers but cannot be called Ministers in the real sense. Constitutionally, they do not possess any authority nor any administrative responsibility is given to them. Like other Ministers they are not appointed by the President but by the Prime Minister who administers them the oath of office. Their main function is to assist the Ministers holding important portfolios in the Parliament. The Administrative Reforms Commission in its report (1970) recommended for the abolition of the office of the Parliamentary Secretary, but the Government of India rejected this recommendation on the ground that "the office of Parliamentary Secretary provides useful experience to the young political leaders. They are given more senior responsibility and the Parliament and the Prime Minister gets an opportunity to test their Parliamentary ability."

5. Size of the Council of Ministers:-

The Constitution originally does not fix the size of the Council of Ministers. The size of the Council of Ministers depends on the will of the Prime Minister. It consists ordinarily of 50-60 members, which varies from time to time. Administrative Reforms Commission in its report (1970) recommended that the number of Ministers in the Union Council of Ministers should not exceed 50 but the Government of India did not accept this recommendation. The number of the Ministers in Vajpayee's Council of Ministers as on July 2000 was 75 and it rose to 79 in May 2003. However, by 91st Constitutional Amendment Act the size of the Council of Ministers has been fixed to 15% of the total number of Lok Sabha seats.

Tenure of the Council of Ministers:-

Article 75(2) provides that, "The Ministers shall hold office during the pleasure of the President." But infact, according to the principle of 'Collective Responsibility' they continue to hold office so long as they enjoy the support and confidence of the majority of members in the Lok Sabha. No doubt, the normal tenure of the Council of Ministers is five years, but this tenure is not fixed because when the no-confidence motion is passed against the Council of Ministers or the ruling party is reduced to minority, it has to tender its resignation. In addition to it, the President cannot remove any Minister on his own but on the recommendation of the Prime Minister. If any Minister develops difference of opinion with the Prime Minister, the latter may ask him to resign.

Oath of office and Secrecy:-

The Ministers before assuming their offices are administered the oath of

office and secrecy by the President.

Difference between the Cabinet and the Council of Ministers:-

There is no provision of the Cabinet in the Constitution. It is to be noted here that Article 74 provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President. Generally, no difference is considered between the Cabinet and the Council of Ministers and both terms are used in place of one another, But in practice there is difference between Cabinet and Council of Ministers a composite body comprising of Cabinet Ministers, Ministers of State and the Deputy Ministers, but on the other hand, the Cabinet Ministers who are experienced and seasoned politicians are small in number. Policy formulation and other important matters to be decided fall under the jurisdiction of the Cabinet. Thus, the meetings of the Cabinet are usually held and whatever decisions are taken by it are considered the decisions of the Council of Ministers and all its members are bound to abide by it. That is why all Ministers are collectively responsible to the Parliament. In other words if Lok Sabha passes a motion of no-confidence against the Cabinet the entire Council of Ministers has to resign. In short it is said that they swim and sink together."

1.6.3 Cabinet :

The word cabinet finds no mention in the Indian constitution but, as in England, it has been used in day-to-day language as a substitute for the Council of Ministers. The cabinet however is not the synonym of the Council of Ministers as every member of the latter is not a member of the Cabinet. This wheel within the wheel is a product of extra-constitutional growth and is a reasonably small body to make it a widely thinking, planning, and deliberating body.

1.6.3.1 Composition : Members of the Cabinet are senior most ministers with an established reputation of leadership and dedicated service to the party in power. While there is no hard and fast rule as the portfolios held by the Cabinet Ministers, generally Finance, External Affairs, Defence, Communications, Home Affairs, Railways etc. are under the care of Cabinet Ministers. The Council of Ministers includes besides the Cabinet Ministers, Minister of State and Deputy Ministers and while the Deputy Ministers normally do not hold an independent charge of a department, the Ministers of States are department chiefs and perform the same functions and exercise the same powers as a Cabinet Minister. Ministers of state however are not members of the Cabinet and don't attend its meetings save when specially invited to do so. The policy laid down

* 4.3,4.4,4.5,4.6,4.7,4.8 parts relating to cabinet are only for your

knowledge and studying purposes.

by the Cabinet is to be followed by all Ministers. Dissenting ministers are required to resign.

1.6.4. Procedure of Conduct: The meetings of the Cabinet are held once a week regularly and it has assumed all the 'functions and powers normally attributed to a Council of Ministers in a parliamentary system of Government. In fact, it exercises all the powers vested in the President and in addition provides legislative leadership. It thus occupies a pivotal position in the Indian Constitutional.

System and its role can be understood in the Context of its four fold functions :

- (a) to approve all proposals for legislation embodying the policies of the government; .
- (b) to make all major appointments;
- (c) to solve all inter-departmental disputes ;and
- (d) to co-ordinate the various activities of the government and watch the progress in the execution of the policies.

SELF CHECK EXERCISE I

Note : Compare your answers with the answers given at the end of this lesson at no. 1.11

1. Write the composition of the Council of Ministers.

1.6.5 Functions

- (i) The most important function of the Cabinet is to define the lines of national policy and to decide how various problems, including internal arc to be handled.
- (ii) It has to chalk out a programme in keeping with the requirements of a welfare state, besides discharging obligations like maintenance of law and order and defense of the country.
- (iii) It approves all plans of economic development.
- (iv) The foreign relations of the country are also controlled by the cabinet, the policy formulated by the Cabinet is embodied in the address delivered every year by the President; in the first session of the Parliament but this address is really prepared by the Cabinet and the President has only to read it out.
- (v) Article 53 of the Constitution of India lays down that the executive power of the Union will be exercised by the President of India either directly or through officers subordinate to him but as the Council of Ministers is to act and advise the President and hold itself accountable to the Parliament the powers of the President are in actual practice exercised by the members of the cabinet.
- (vi) The Cabinet occupies an important place in the field of legislation.

With the backing of majority, which determines its continuance in office, it can get any bill passed in the Parliament. No bill initiated by individual members has an opportunity of being passed, if the Cabinet is opposed to it. An overwhelmingly large number of bills are initiated by the Cabinet and once a bill has been approved by it there is no chance of it being defeated. During the life of first Parliament the number of bills that emanated from the Govt. was 315. It would not be inappropriate to remark that now a days it is the Cabinet that legislates with the advice and consent of the Parliament. The power to issue ordinances when the Parliament is not in session has added to the legislative role of the cabinet and the ever-increasing burden of the legislative work giving birth to delegated legislation has further enhanced its powers and position.

- (vii) The Cabinet is the highest appointing authority and all-important appointments including those of Governors, Ambassadors, Attorney General, Controller and Auditor General, Members of the Union Public Service Commission, Finance Commission etc are made by it in the name of the President.
- (viii) The Cabinet has to perform important financial functions. The annual statement of estimated income and expenditure (i.e. Budget) is prepared by the Finance Ministry in consultation with various Ministers and is laid on the floor of the Parliament by the Finance Minister. It is the Cabinet that decides as to how much amount is to be spent and what fresh taxes are to be levied. This power adds new dimensions to the role of the Cabinet.
- (ix) The exercise of emergency powers vested in the President make the Cabinet all powerful and is likely to lead to the growth of Cabinet dictatorship which finds a stimulus in its parliamentary majority, backed by rigid party discipline. The present emergency of 1979 has demonstrated beyond doubt vast powers, which the Indian Cabinet enjoys, during the course of national emergency.

1.6.6 Cabinet Committees

In view of the enormous magnitude of governmental work necessitating expertise, the cabinet functions through a number of Committees. These Committees are of two types standing Committees and ad-hoc Committees. Previously, there were four standing Committees of the Cabinet : Defence Committee, Economic Committee. Administrative Organisation Committee, Parliamentary, and Legal Affairs Committee. Adhoc Committees are constituted from time to time as and when new problem arises necessitating special study by a group within the Cabinet before a final decision is taken by the Cabinet

as a whole. There is provision for the setting up of Sub-Committees as and when necessary.

- (1) Political Affairs Committee merging in itself three previous Committees namely Foreign Affairs Committee, Defence Committee and Internal Affairs Committee. The Prime Minister is the head of this Committee.
- (2) Economic Co-ordination Committee replacing the Prices, Production, and Export Committees. This Committee includes the Prime Minister who is the chairman and seven other Ministers.
- (3) Economic Policy Planning Committee with the Prime Minister as Chairman and four other Ministers.
- (4) Accommodation Committee to deal with the problem of residential accommodation of Government employees including officers and ministers.
- (5) Family Planning Committee.
- (6) Committee on Heavy Industry.
- (7) Rehabilitation Committee.
- (8) Scientific Committee to devise the Science policy of the government to establish a liaison between various ministries and different governmental and semi-governmental Scientific Institutions, to seek the co-operation of various International bodies engaged in Scientific and technical work.
- (9) Food and Agriculture Committee.
- (10) Parliamentary Affairs Committee.
- (11) Information and Broadcasting Committee.
- (12) Appointment Committee.

The decisions taken by these committees are merely recorded or registered by the cabinet but these committees are an index to the principle of division of labour having been accepted by the cabinet promoting efficiency and quick and prompt decisions. The vast array of functions assigned to it show the conspicuous role played by the Cabinet in our country. The Cabinet is assisted by a Cabinet Secretariat.

1.6.7 Principles of Cabinet System :

The Cabinet System of Government in India works on the basis of certain established principles, associated with a Parliamentary form of Government. These are as follows :

1. Collective Responsibility to Parliament : The principle of collective responsibility means that all these types of Ministers are collectively responsible to the Lok Sabha. It is the essence of the cabinet system of government and is expressed in Art 75 (3) of our Constitution. All the Ministers come into power together and leave their office together, they swim or sink

together. So, the Ministry, as a body, shall be under a Constitutional obligation to resign as soon as it loses the confidence of the House of people. Moreover, the criticism of one Ministry by some opposition members is the criticism against all the Ministers. Only one Minister is concerned with a particular subject to be discussed or introduced for the legislation, or to answer in the Parliament but the whole Ministry (Council of Ministers) is possible for his acts of commission and commission. Similarly, during the discussion in the Cabinet meetings, there may be difference of opinion among the members but the final decision reached at is the collective decision of the Cabinet No Minister is expected to show his difference of opinion after that, as the Cabinet decisions must appear to be unanimous.

2. **Intra-Cabinet Responsibility:** This principle means that when a Minister differs with the Cabinet decisions, he must resign. A dissentient Minister should not speak against it in public or vote against it in Parliament. The Ministers work on the basis of give and take and are willing to make compromises. Cracks in Cabinet may bring about its fall, which must be saved by the Ministers working as a team.

3. **Individual Responsibility to President :** This principle is embodied in Art 75 (2), which states, "The Ministers shall hold office during the pleasure of the President." Though the Ministers are collectively responsible to the Lok Sabha, they are individually responsible to the Executive head and are liable to dismissal even when they have the confidence of the Lok Sabha. This power of the President is in fact exercised by the Prime Minister to get rid of an undesirable colleague. "Usually the Prime Minister exercises this power by asking the concerned Minister to resign, which the latter complies with order to avoid the dismissal.

4. **President Stays out of Cabinet :** As a principle, the President is not expected to be associated with the cabinet. He does not attend or preside over the cabinet in India, which being the task of the Prime Minister. Of course. President has the right to be informed by the Prime Minister of all the decisions that take place in the cabinet.

5. **Leadership of Prime Minister :** In the Parliamentary system of government, Prime Minister is the head of the cabinet. In India also the constitution makes the Prime Minister, the captain of the team of Ministers. He selects the Ministers, assigns them ranks and portfolios, and can remove any one out of his team. He convenes cabinet meetings, decides its agenda and presides over its meetings.

6. **Principle of Secrecy :** Another principle attached with the cabinet system is naturally associated with any system of government. That is keeping or maintaining the secrecy of the government, which is also included in the constitution. As stated earlier, every minister before entering upon his office takes the oaths of office and of secrecy. He swears in the name of God that he

will not directly or indirectly communicate or reveal to any person any matter brought under his consideration or become known to him.

7. Co-ordination between Cabinet and Parliament : Every Minister is required to be a member of either house of the Parliament and if he is not, he has to become so to remain as a Minister. This clearly indicates their relation with parliament, i.e. they serve as a link between cabinet and Parliament. They also Participate in the Parliament, answer questions, propose legislations and defend their policies.

1.6.8 Role of Cabinet

The Cabinet is the formulator of national policies, the highest appointing authority, an arbiter of inter departmental disputes, and the chief co-ordinating agency in the government

1.6.9 Summary

In Indian governmental system all the important functions are performed by the Cabinet. In the Indian Constitution, the word used is Council of Ministers and the word 'Cabinet' is nowhere to be found. President is to exercise all the powers with the aid and advice of Council of Ministers headed by the Prime Minister.

But Council of Ministers being a large body consisting of four types of ministers i.e. Cabinet Ministers, Minister of State, Deputy Minister and Parliamentary Secretaries.

Out of the above discussed four types of ministers only the Cabinet rank Ministers and the Prime Minister form the Cabinet and thus are its members. It is a small but most powerful body of the government.

1.6.10 Key words

Cabinet	-	a small room implying secrecy and in politics it means the group of ministers holding a country's highest executive offices who decide government policy. In Britain the Cabinet System originated under the Stuarts.
Members of Cabinet	-	high ranking and senior-most political leaders in the party are chosen by the Prime Minister. Their policy is collective and the meetings are secret.

1.6.11 Suggested Readings

Sharma M.P.	-	Theory and practice of Public Administration
Harbir Singh	-	Public Administration
Maheshwari	-	Indian Administration
Basu D.D.	-	Public Administration

PARLIAMENT OF INDIA**Structure**

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1.7.0 Objectives :

After studying this lesson you will be able to:

- understand the organisation of Lok Sabha and Rajya Sabha;
- analyse the powers of both the Houses i.e. Lok Sabha and Rajya Sabha;
- have a comparative view of both the Houses.

1.7.1 Introduction:

It is essential that there should be law-making body in every democratic country. Accordingly, Indian constitution provides for a Parliament, which consists of two Houses i.e. Lok Sabha and Rajya Sabha. Generally, it is thought that the above two Houses make Parliament, but it is a wrong notion. In Article 79 of the Indian constitution, it has been clearly mentioned that Parliament consists of President and both the Houses.

N.N. Mallya has tried to clarify the concept of Parliament in his words, "It is a belief widely held that Parliament is Principally a law making body and all other functions are incidental. Nothing could be farther from the truth. The fact that such assemblies are called legislatures is partly responsible for this mistaken notion. In reality, : the functions of parliament under the constitution are many. Indeed, it could be called the pivotal institution in the cabinet system of government which we have adopted'. As an institution. Parliament stands, as it were, midway between the citizen who is its voter on one hand that fictitious entity called the state which is, and ought to be his protector and benefactor at the other."

Indian Parliament is a bicameral legislature like the Legislature of England, U.S.A. and 'Switzerland India being a federal state, the lower House of Parliament is called Lok Sabha or the house of People and upper house is called Rajya Sabha or the Council of States.

1.7.2 LOK SABHA

Lok Sabha is the lower and more important House of the two Houses forming Parliament Consists of 545 members. Out of this total, 525 come from the States and are directly elected by people and 20 from Union territories elected according to the law passed by Parliament. However, under article 331, the President can nominate two members of the Anglo-Indian-community to the Lok Sabha if he is of the opinion that this community is not adequately represented in the House through elections.

In fact, originally the number of the members of Lok Sabha was fixed at 500 But this number was raised to 525 as the result of 14th constitutional amendment in 1969, Again the constitution was amended on 8th May 1973 to raise the number to 545 (31st constitutional amendment) excluding the two representatives of Anglo-Indian community, who were to be nominated by the President of India. Certain seats out of total are reserved for Scheduled Castes also for the purpose of electing the members, the states are divided into territorial constituencies and number of members to be allotted to each such constituency is to be so determined as to ensure that there shall be not less than one member for every 200,000 of the population and not more than one member for every 7,50,000 of population. The ratio between i.e. number of members allotted to each territorial constituency and the population of that 'constituency as ascertained it the last preceding census is, so far as practicable, to the same throughout the territory of India. The representation of the union territories falling within the territory of India but not included within any state is to be such as Parliament may by law provided". However, through an amendment the upper limit was removed and now a Member of Parliament can represent even more than 7,50,000 people. According to 42nd amendment of constitution, the number of members of Lok Sabha will remain frozen up to year 2,000 irrespective of increase in population. That means that the

population as it was according to 1971 census shall continue to determine the strength of Lok Sabha till the year. 2,000. It has been proposed by cabinet to freeze it till 2026.

1.7.3 Election to Lok Sabha :

Lok Sabha is elected on the basis of a universal adult franchise. Every citizen who is not less than eighteen years of age is entitled to vote. Before 61st amendment passed in 1988, the voting age was 21 years. Those who are otherwise disqualified on ground of unsoundness of mind, no residence, corrupt practices, etc. are not entitled for this right.

1.7.4 Qualifications to become member of Lok Sabha:

To be candidate for the Lok Sabha, an individual has to fulfill certain conditions mentioned in the constitution : (i) He must be a citizen of India; (ii) his age should not be less than twenty-five years; (iii) He should not be holding any office of profit under, Central or state government and he should not be an insolvent or of unsound mind. N.N Mallya discusses this in detail and remarks. "A person is disqualified from being a member of either house of Parliament if he is of unsound mind, is an undischarged insolvent, if he is not a citizen or has acquired the Citizenship of any other country, if he has been convicted of any criminal offence for which he has been sentenced for two years or more has committed any one of the election offences like bribery, exercise of undue influence, impersonation, removal of ballot paper or the like which has debarred him from being a candidate for a period of five years or more."

1.7.5 Term of Lok Sabha

The normal life of the House of People is five years unless it is dissolved earlier. It was raised to six years according to 42nd amendment of the constitution but was again reduced to five years by 44th amendment. In certain case the Prime Minister (and his cabinet, can get the Lok Sabha dissolved if he advises the President. The Lok Sabha elected in 1967 was dissolved in December 27, 1970 i.e. year earlier than its normal term, which expired in 1972. Its term can be extended also in case when an emergency has been declared in the country. In such circumstances, its life can be extended maximum for one year at one time. During emergency, the term of the Lok Sabha, which was to end in March 1976, was extended for one year up to March 1977. It was again extended for one year up to March 1978. However, this period of extension was not availed of and the election of Lok Sabha was held in 1977. Its life cannot be extended beyond a period of six months, when the emergency ceases to operate. The Lok Sabha formed after 1989 election was again dissolved before the completion of its full term. The tenth Lok Sabha was constituted 1991 and 11th in June 1996, 12th Lok Sabha 1998, and 13th in 1999 was also dissolved approx. nine months earlier.

Every Member of Parliament has to take an oath before President or some

other person appointed by him, before taking his seat in the House. In case a person is elected a member of both the houses, he has to vacate his seat in one of the houses. A member of either house will have to vacate his seat, if he remains absent from its meeting for more than 60 days without the permission of the houses.

1.7.6 Privileges granted to the members of Lok Sabha

The members of Lok Sabha enjoy certain privileges. These have been mentioned by G.N. Joshi in the following words. "The member is assured freedom of speech in Parliament subject to the provisions of the constitution and to the rules and standing orders regulating the procedure of Parliament. No member of Parliament is liable to any proceedings in any court in respect of anything said or of vote given by him in Parliament or any report, paper, or proceedings. Other privileges and immunities of the members of the house will be such as may be defined by Parliament and until so defined, shall be the same as are enjoyed by the member of the House of Commons of the Parliament of the U.K. and of its member and Committees at the commencement of this constitution"

Apart from the above a member of Lok Sabha cannot be arrested in a civil case when the session is on. He enjoys this immunity for 40 days preceding and succeeding a session. However, no such immunity is allowed in criminal cases as in cases of preventive detention due to executive orders. The house as a whole also enjoys certain privileges. These may be described as follows :

1. The House enjoys collectively the privilege to decide what it will discuss and when, as well as to regulate the procedure for doing so.
2. It can suspend its rules. No court can question the validity of any proceedings in parliament on the ground of any alleged irregularity of procedure.
3. Each House has the power to punish its members or outsiders for disorderly conduct or for disrespect, or either contempt committed while the House is sitting.
4. The House must be informed when a member is arrested, detained, released or convicted, or when he is acquitted.
5. The House extends protection to witness, petitioners and others, when they are to appear before the House or committee of the House.
6. The House has a right to punish those who are guilty of the contempt of House.

1.7.7 Powers of Lok Sabha :

Lok Sabha enjoys all sorts of powers-legislative, financial, executive and judicial. It also enjoys certain constitutional powers.

(i) As a legislative body, Lok Sabha enjoys immense powers. No bill can take the form of an act so long as it does not get the approval of Lok Sabha. Most of

the non money bills originate in this House because mostly the ministers sit here and pilot different kinds of bills. It is rarely that an important bill originates in Rajya Sabha because the latter can impose six months delay in the passing of the Bill. If an ordinary Bill, which originates in Lok Sabha is not returned within six months, it would automatically be considered as having been passed by Rajya Sabha. Even if it is returned with objections, the Lok Sabha may not agree and as a result of it a joint meeting of the two houses is called by the President. In this case too, Lok Sabha has the upper hand because of its numerical majority. Accordingly it can have its own way in matters of ordinary legislation.

(ii) So far as financial powers of Lok Sabha are concerned, every money bill must originate from Lok Sabha. Rajya Sabha can delay a money bill only for fourteen days. In case it does not return it within the prescribed period, it is considered to have been passed in its original form. In case it is returned within the prescribed period with objections, Lok Sabha has a right to overrule the objections.

(iii) The executive powers of Lok Sabha are also very extensive. Council of Ministers is responsible to Lok Sabha. This responsibility is enforced in many ways. For example, the members of the House can put any questions to a minister about his department. The concerned minister is bound to reply. In case, the given answer is unsatisfactory a supplementary question may be asked. A call attention or an adjournment motion may be moved in order to discuss matters of grave nature. The members of Council of Ministers may be criticised when demands for grants relating to their department are put before the House. A strong weapon in the hands of lower House is no confidence motion, which if passed shall result in the ministry tendering its resignation immediately. In the words of D.K. Sen. The term ministerial responsibility means the political responsibility of the ministers. This has a two-fold significance, (i) The ministers are responsible collectively for each department for general policy. This is the principle of collective responsibility, and (ii) every minister is responsible individually for the work of his department.

(iv) The judicial powers of Lok Sabha are also not less important. It can impeach President or Vice President of India on certain charges. In case of President the proceedings may start in any House. The charges be brought out by one House and he may be convicted by the other House. In the case of Vice-President, the charges must start from Rajya Sabha and House of People convicts him. The House may convict any body on the Charges of "Contempt" in case the House is insulted or shown disrespect in any way.

(v) The constituent powers of the Lok Sabha too are worth noting. In spite of its functioning under the constitution, it may make changes in the constitution itself when the need arises. No constitution is permanent, has to change with the passage of time. Lok Sabha and Rajya Sabha enjoy equal powers in the matter of amending the constitution of India.

(vi) Lok Sabha enjoys some elective powers also. The Members of the Lok Sabha participate in electing President of India. But every Member of Parliament is not entitled to vote. Only elected members are eligible to vote. For example, two members of Anglo Indian Community nominated by the President of India to the House in case of their non-representation through election in the House, would not be eligible to vote. But when Vice-President of India is elected, each and every member may vote. Lok Sabha enjoys the powers of electing its own Speaker and Deputy Speaker.

SELF CHECK EXERCISE NO. I

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

- 1.: What is the term of Lok Sabha?
- 2.: Name any two powers of Lok Sabha.

1.7.8 Rajya Sabha

It is the Upper House of the Parliament and unlike the House of People it represents states of the Indian union. However, the representation given to the states is not equal as we find in the case of the Senate in U.S.A. There every state sends two members irrespective of its size. But in India total number of representative that different states are required to send is according to size and population of the state. The total number of members of Rajya Sabha may not exceed 250, out of which twelve may be nominated by the President of India from amongst those who enjoy a special reputation in the field of Art, Literature, Science, Education or some other fields of activity.

Generally in a federation, the Upper House secures the representation of the federal units on the basis of equality, irrespective of their size and their population, lest the small states should be swamped by the bigger units and this is achieved by preserving their equality as regards states and by securing their representation in the Upper House on a basis of equality. But the states in Rajya Sabha are not represented on the basis of equality, and in this respect federal principle was not adhered to, as the federal sentiment was not as strong in India as in other federations.

1.7.9 Election to Rajya Sabha

238 members of Rajya Sabha are not elected directly by the people, but by the members of legislatures of the states through proportional representation on the basis of single transferable vote system.

1.7.10 Eligibility for becoming a member of Rajya Sabha

A candidate in order to be eligible to be a member of Rajya Sabha must fulfill certain conditions. Firstly, he should be a citizen of India. Secondly, his age must not be less than thirty years. Thirdly, he should not be holding an office of profit under Central government or State government or local bodies. Fourthly, he should not be an undischarged insolvent and fifthly he should be fulfilling other

qualifications required by an Act of the Parliament in this regard.

1.7.11 Term of Rajya Sabha

Rajya Sabha is a permanent house, one-third of its members retire every two years. In that way the term of an individual member comes to be six years. A member however, may resign earlier, if he so desires or he may cease to be a member because he did not attend the House continuously for sixty days without the permission of the House.

1.7.12 Chairman of Rajya Sabha

Vice-President of India is ex-officio Chairman of the House. He generally performs all those functions, which are performed by the Speaker in the Lower House though his powers are not so extensive as those of the Speaker. However, there is one Deputy Chairman who is elected by the House and who performs all the functions in his absence.

When a resolution for the removal of Vice-President is being considered by Rajya Sabha, he will not Preside over the House. However, he is entitled to take part in its proceedings, but has no right to vote. In other matters he enjoys a casting vote.

1.7.13 POWERS OF RAJYA SABHA

(i) Legislative Powers

Rajya Sabha shares the power of law making with Lok Sabha. An ordinary bill may be introduced in Rajya Sabha also. Generally bills of non-controversial nature are introduced here. So far as its powers with regard to ordinary Bills are concerned, if a non-money Bill is passed by the Lower House and sent to it, it has to return the bill within six months. If the Bill is not returned within six months, it would be considered to have been passed. In case, a Bill is returned with objections to which the House of the people does not agree, it is placed before joint meeting of the two Houses. However, here the Rajya Sabha proves ineffective because of its less numerical strength and usually the House of People has its way. Thus Rajya Sabha can impose a delay of six months only, in case of ordinary legislative measures.

(ii) Executive Powers

Rajya Sabha does not enjoy equal powers with Lok Sabha in executive spheres also. It may put questions and supplementary questions, pass adjournment motions, discuss anything pertaining to any department, but it cannot remove the Council of Ministers through "no confidence" resolutions. This power is enjoyed exclusively by Lok Sabha. But because the members of Rajya Sabha are a bit mature and they get sufficient time to discuss the matters, the standard of discussions here is high and it has an important bearing on the policies of the government. It has been aptly remarked, in the executive sphere, although the ministers are responsible to the House of People, the Council of States can exert its influence by questions, and supplementary questions, by moving adjournment motions and by

criticising the acts of omission and commission. The ministers defend themselves in the Council, even if they may not be its members,

(iii) Financial Powers

In the matter of financial powers, the position of Rajya Sabha is definitely weak, money Bill is presented in the Lower House only and cannot be presented in any case in Rajya Sabha. However, it must come to Rajya Sabha for its consideration. Rajya Sabha can detain it only for 14 days. If the money bill is not returned within fourteen days, it is considered to have been passed in its original form as received from Lok Sabha. Even if some objections are raised or amendments proposed, it makes no difference. The reason is that in the case of non-agreement of House of People to these objections or amendments, the House of People may pass it in the form it was sent, and send it to the President for final approval, which in every case is given. Thus Rajya Sabha is certainly a weak House in financial matters.

(iv) Judicial Powers

Rajya Sabha enjoys certain judicial powers also. These powers relate to impeachment of President and Vice-President in which both the Houses participate. The President of India can be removed from his office as a result of an impeachment. The impeachment may start in either of the Houses. In the case of Vice-President, the proceedings in this connection must start in Rajya Sabha. The power of removal of Chief Justice of Supreme Court through impeachment is equally shared by Rajya Sabha with Lok Sabha.

(v) Elective Powers

Rajya Sabha enjoys some elective powers also. For example, in the election of President, both the Houses participate, and have equal rights. In the case of election of Vice-President also both the Houses participate and enjoy equal rights.

(vi) Miscellaneous Powers

- (i) The approval of the Council of States is essential along with that of the Lok Sabha if the proclamation of emergency is to continue for more than one month.
- (ii) The president's order of suspending the enforcement of Fundamental Rights also requires its approval.
- (iii) Amendment of the constitution requires its approval also.

(vii) Exclusive Powers :

Rajya Sabha enjoys some exclusive powers also. It alone has been authorised to declare a subject on the State List as of national importance, because "first it is the Rajya Sabha which represents the states and their legislatures in the centre; secondly, when a situation demanding such action arises, the Lower House may have been dissolved prior to an election, and therefore, it is the permanent House which can take such action to enable the Lower House to legislate on such subject when it meets again."

Apart from the above, the Council of States is also authorised to pass a resolution for the establishment of new All India Services. Parliament passes the bill only if earlier, the Rajya Sabha passes the resolution by two third majority.

SELF CHECK EXERCISE II

Note : Compare your answers with the answers given at no. 6.18 of this lesson.

1. : Is election to Rajya Sabha direct?

2. : Write any two powers of Rajya Sabha.

1.7.14A Comparative view of Powers of both the Houses :

Rajya Sabha is certainly a weaker chamber as compared to Lok Sabha. In legislative field, it can cause a delay of six months.

In the event of joint meeting, it remains at a disadvantage because of its numerical minority, which is almost half of the Lok Sabha. In the case of money bills it is more powerless, as it can cause a delay of 14 days only. However, in matters of impeachment it enjoys equal powers with Lok Sabha. It enjoys equal power with Sabha in matter of amending the constitution and electing president of India. It enjoys certain exclusive powers also. For example, it may declare any subject in the State List as of National importance and in that case Parliament will be entitled to legislate over that subject as well. Also the creation of more All India services is its exclusive privilege.

1.7.15 Summary

Obviously, the Rajya Sabha seems to be a weak chamber in relation to Lok Sabha. But in fact, it is not so weak as it appears to be on the surface. For example in 1959 Dowry Bill was put in the joint meeting of the Houses, and it was the Rajya Sabha that had come out victorious and not the Lok Sabha. It means, in the matters of non-money bills, it has an important voice. No doubt, it is weak and helpless in the case of money bill. But this deficiency is made up with its exclusive powers, which are considerable and not enjoyed by the Lok Sabha. It may also influence the policies of the government with its discussions. When all this is said, it may not, however, be forgotten that the Upper House should enjoy respect rather than power. Constituted of the wise citizens of the country. It should guide and not rule. If its wisdom is accepted by the Lower Houses, well and good, but if it is not, let the people realise and learn only by experience. Considered in this sense, even the powers conferred on it are rather too large. The position of Rajya Sabha may be summed up in the following words : It is not all too powerful a body like the American Senate, nor only dilatory body like the British House of Lords and the French Council of Republic. It does not and should not require more than that, because in democracy popular will should ultimately prevail. The Rajya Sabha is not only the best constituted second chamber in the world, it is also the most well balanced in its powers to fit in modern democracy and to serve the constitutional purpose which a second chamber in democracy is required to perform in the best possible manner.

Lok Sabha really enjoys vast powers and as compared to the popular Houses of other countries, it is definitely a very powerful house. Its numerous powers in various fields' legislative, executive, judicial, constitutional, elective, etc. go to make it the most potential House. In the end we may conclude with the words of G.N. Joshi, "If the parliament is the supreme organ of state, Lok Sabha is the supreme organ of the parliament.

1.7.16 Keywords :

1. Parliament - legislative body of a country. In India, it consists of President and both the Houses i.e. Lok Sabha and Rajya Sabha.
2. House of People - lower House or Lok Sabha. Its members are elected directly after every five years.
3. Council of States - upper House in which members are elected indirectly by the members of Legislative Assemblies.
4. Ex-officio - as a result of one's position or status. This word has originated from Latin. It is made up of two words-ex which means out of and officium means duty.

1.7.17 Suggested Reading :

1. N.N. Mallya Indian Parliaments .
2. G.N. Joshi-The Constitution of India,
3. D.K., Sen-A Comparative study of Indian Constitution
4. G.S. Chhabra-The Indian Constitutional System
5. S. Dayal-The Constitutional Law of India
6. Socialist Indian (Magazine). 23 October, 1976.

1.7.18 Suggested Viewing :

Lok Sabha Channel
Rajya Sabha Channel

1.7.19 Answers to Self-Check Exercises

EXERCISE No.1

1. The term of Lok Sabha is Five Years. It may be less if the government loses the confidence of the Parliament. It is often happening in the era of Coalition.
2. In the lesson at no. 6.7 various powers of Lok Sabha are discussed in detail. Read all these powers carefully and then write your answer.

EXERCISE NO. II

1. No. The members of Rajya Sabha are not directly elected. They are elected by the elected representatives of the people.
2. In the lesson powers of Rajya Sabha are discussed in detail at no. 6.13. read them, understand them and then write your answer after memorizing them.

Supreme Court of India-Organisation, Powers and Position

Structure

- 1.8.0 Objectives
- 1.8.1 Introduction
- 1.8.2 Composition
- 1.8.3 Procedure of appointment of Judges
- 1.8.4 Qualifications
- 1.8.5 Tenure of Office and Salaries
 - 1.8.5.1 Tenure
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- 1.8.7 Powers of the Supreme Court
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- 1.8.12 Suggested Readings
- 1.8.13 Answers to the Self-Check Exercises

- 1.8.0 Objectives
 - Thorough study of this lesson will enable you to :
 - comprehend the composition of the Supreme Court;
 - define the procedure of the appointment of the Judges and their qualifications and tenure of Office;
 - describe its various powers.

1.8.1 Introduction

The renowned American Scholar, Rawle has observed, "It is indispensable that there should be a Judicial Department to ascertain and decide rights, to punish criminals, to administer justice and to protect the innocent from injury and usurpation of the Constitution," "Mr. Rawle's observation is very true because without an efficient judicial department, no Government can succeed in achieving its objectives and very truly in the absence of an organised judicial system despotism and not democratic order shall reign supreme, Lord Bryce has correctly said, "there is no better test of excellence of a Government than the efficiency of its judicial system. "That is why an organised judicial system has come to be regarded as one of the main pillars of a political system. In a federal setup, the need for the organisation of the judiciary is all the more essential.

According to Prof. Dicey, the three leading characteristics of a federal constitution are (i) the supremacy of the constitution, (ii) the distribution among bodies, with limited and co-ordinate authority, of the different powers of the Government and (iii) the authority of the courts to act as interpreter of constitution. The very fact of distribution of powers requires an independent agent to preserve that distribution and to adjudicate with regard to it. Such function can be entrusted only to a judicial body.

The Constitution of the United States has established two types of courts-namely the State courts and Federal courts. The federal judiciary consists of a hierarchy of three kinds of courts:- the District Courts at the bottom, the Circuit Courts of Appeals above them and the Supreme Courts at the top. But the constitution of India has not provided for a double system of courts as in the case of United States. Under the Indian Constitution there is a single integrated system of court for the Union and the States and the courts administer both Union and State laws. Article 124 of the constitution provides for a Supreme Court, there are High courts of various states and beneath them there is a hierarchy of Subordinate Courts. The Supreme Court is the highest court of India. After the enactment of the Abolition of Privy Council Jurisdiction Act, 1949, the Judicial Committee of the Privy Council ceased to have jurisdiction over the Indian courts. Under the Government of India Act, 1935, a Federal court was established in India. Before the inauguration of the India Republic on 26th January, 1950 and immediately after the abolition of the Jurisdiction of Privy Council, the Supreme Judicial Power in India was vested in Federal Court of the land finally gave place to the Supreme court constitution under the Constitution of free India and established on inauguration of the Indian Republic on 26th January 1950.

1.8.2 Composition of Supreme Court: Before the commencement of Indian Constitution, the Federal court, established under the Act. of 1935; had been working in India. Under the new Constitution it was laid down that the "Judges of the Federal Court holding office immediately before the commencement of this constitution shall, unless they have been elected otherwise become on such commencement the judges of the Supreme Court, "Art. 374 (I) Thus the Supreme Court was first constituted of a Chief Justice and seven Puisne Judges. Later through parliamentary legislation in 1956 the number of Puisne Judges was increased from seven to ten, again in 1960 from ten to thirteen and again in Dec. 17 to eighteen. and April 1986 the number of Judges was increased to 25. The most important feature of this increase was that for the first time a lady appointed as Judge of the Supreme Court. She was Meera Sabiba Fatima Beebi. Besides the Chief Justice of India, he has power, with previous approval of the President of India, to request a retired Judge of the Supreme Court to work for a temporary period. Similarly, the Chief Justice, with the previous consent of the President, may request High Court Judges otherwise qualified for Judgeship of Supreme Court, to act as adhoc judges. Although the minimum number of the judges of Supreme Court has not been prescribed in the Constitution yet the clear implication of Article 144 is that the court must consist of at least five judges while interpreting any constitutional matter.

1.8.3 Procedure of Appointment of the Judges :

With regard to the appointment of the Judges of the Supreme Court, it has been laid down in Article 124 (2) that "every judge of the Supreme court shall be appointed by the President by the warrant under his hand and seal after consultation with such Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose." It means that the Chief Justice of India is appointed by the President after consultation with such Judges of the Supreme Court and of the High

Court in the state as the President may deem necessary for the purpose. But while appointing a Judge of the Supreme Court, the President is bound to consult the Chief Justice of India because it is very explicitly provided in Article 124 (2) "that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. In regard to the Chief Justice and the judges, there is one glaring lacuna in the constitution. Though it has been laid down that while appointing the Chief Justice the judges of the Supreme Court and High Court of States, the Chief Justice of India shall always be consulted, but nowhere it has been laid down whether the advice tendered by the Chief Justice of India or the Justice is binding on the President or not. The literal interpretation of Article 124 (2) gives an impression that the matter relating to the appointment of the judge of the Supreme Court relate to the discretionary authority of the President and the provision that he must consult such judges of the Supreme Court and the High Court in the State as he may deem necessary in the event of the selection for the post of the Chief Justice of India is of a recommendatory and not a mandatory character.

It may be noted here that while interpreting the provision regarding the advice of the Chief Justice in the appointment of judges, the Supreme Court gave its verdict on Oct. 6, 1993, in which the advice of the Chief Justice was declared to be primary.

Till 2nd of April, 1973, in regard to the appointment of the Chief Justice, the practice had been that the next senior most judge used to be appointed the next Chief Justice. But this practice was abandoned when Justice A.N. Ray was appointed the Chief Justice of India in supersession of three judges—Justices, Shelat, Hedge and Grover. This appointment raised a public discussion and some public leaders and lawyers charged the government with the infringement and violation of the independence of Judiciary in India. But the Government justified its action on the plea that Law Commission had recommended "the appointment to the office of the Chief Justice rests on special consideration, and does not as a matter of course go to the senior most judge. "On January 28th, 1977 Mr. Justice Mirza Hamidulla Beg was again appointed Chief Justice of India in supersession of Mr. Justice H.R. Khanna who was senior to Justice Beg. H.R. Gokhale, the then Union Law Minister said in a statement made on 28th January 1977 that the appointment of Mr. Justice Beg as Chief Justice of India was in keeping with the declared policy of the Government and was no reflection on Mr. Justice H.R. Khanna. Shri Gokhale said that Mr. Justice Khanna would have had only a short tenure of about five months as Chief Justice whereas Mr. Justice Beg would have a long period of about thirteen months. Mr. Gokhale further said that it was the Government's view that appointment to the high office of Chief Justice should not be made for such a short duration. As reported in the Tribune 29th January, 1977, Mr. Khanna submitted his resignation from Judgeship to the Supreme Court and that too without mentioning any reason for it.

1.8.4 Qualifications :

Under the U.S. Constitution, the President of United States can appoint any person as the Judge of Supreme Court if appointment is not objected to by the Senate. But our constitution has not left the power of appointment of the judges at the sole discretion of the Executive. Rather by prescribing the requisite qualification for a person to be appointed as a judge, it has, though to a limited extent, guarded against the predominance of political consideration in the matter of appointment of the judge of the Supreme Court. It has been laid down in Article 124 (3) that "a person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and (a) has been for at least five years a judge of high Court or of two or more such courts in succession or (b) has

been for at least ten years an advocate of a High Court or two or more such courts in succession, or (c) in the opinion of the President, a distinguished jurist.”

1.8.5 Tenure of the office and Salaries:

1.8.5.1 Tenure

No minimum age is prescribed for appointment as a judge of the Supreme Court, but in Article 124, it has been laid down that every judge shall hold office, until he attains the age of sixty five years. Before the attainment of the said age, a judge at his own accord may resign his office. Besides this, a judge can be removed from his office by an order of the President provided an address seeking the removal passed by both the Houses of Parliament, is presented to the President. Such an address should be supported by a majority of the total membership of each House and by majority of not less than two third of the members present and voting. The two Houses are required to pass such an address separately in the same session of Parliament. Hence, it may be pointed out that the judge of supreme Court of India hold their office during good behaviour and not during pleasure of the President as is the case with the members of civil and military services in India. It is clearly laid down in Article 124 (4) that the judge can be removed on the ground of proved misbehaviour or incapacity. This strict prescribed procedure for removal requiring parliamentary intervention ensures non-interference in the working of the court and assures to judges the security of their tenure. Here it may be added that the impeachment case against a judge of Supreme Court was introduced and discussed only once in the total history of Supreme Court in India. This was against Justice Rameswamy, who before becoming a judge of Supreme Court in 1989 was Chief Justice of Punjab and Haryana High Court. The impeachment case was discussed and debated on May 10 and 11, 1993 in Lok Sabha but it fell because of lack of required majority.

1.8.5.2 Salaries of Judges : The salaries of the judges in the Supreme Court are fixed by Constitution. In Article 125 (1), It is laid down that there shall be paid to Judges of the Supreme Court such salaries as are specified in the second schedule. Previously, the Chief Justice of India was paid a salary of Rs. 5000/- per month and each of other judges Rs. 4000/- per mensem. Besides this “every judge was entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time determined by law or made by Parliament,” Recently, the wages of judge have been increased by the Cabinet on July 31, 1986. At present, the Chief Justice of India is paid a salary of Rs. 10,000/- per mensem and each of the Judges Rs. 9000/- per mensem. Additionally after retirement, the Judges of supreme Court will now get pension Rs. 54,000 instead of Rs. 28000 per annum.

1.8.5.3 Ban on Practice after Retirement : Clause 7 of Article 124 clearly lays down that “no person who has held office as a judge of Supreme Court shall plead or act in any court or before any authority within the territory of India. “This provision goes a long way in ensuring the independence of the judiciary and maintaining the dignity of the judges of the highest court in India. But it may be pointed out that a retired judge of the Supreme Court may be appointed as chairman of some Commission. There is no constitutional bar to such appointment. For instance, Justice Shah, a former judge of the supreme court was appointed as one man Commission to look into excess committed during emergency. So many other similar commissions headed by the retired Judges of Supreme Court were appointed by the later governments.

1.8.6 Separate Establishment : The Supreme Court of India has got its own establishment. The officers and officials of the Court are appointed by the chief Justice in consultation with the Union Public Service Commission. The conditions of service of

its officers can be prescribed by the Parliament through enactment of law, and by rules which may be made by the Chief justice of India. The administrative expenses of the court including the salaries, allowances, and pensions of its officers are charged on the Consolidated Fund of India and thus, they are not votable in the Parliament. The Supreme Court sits in New Delhi in Supreme Court building. It can sit at any other place in the Country, fixed the Chief Justice of India with the prior approval to President.

Self-Check Exercise-I

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

1. Write the composition of the Supreme Court.

2. Mention the required qualifications to be appointed as Judge of the Supreme Court.

1.8.7 Powers of the Supreme Court : The jurisdiction of the Supreme Court is of three kinds (i) Original (ii) Appellate and (iii) Advisory.

10.7.1 Original Jurisdiction :of the Supreme Court is dealt in Article 131 of the Constitution. The functions of the Supreme Court under article 131 are purely of federal character and are confined to disputes between the Government of India and any of the State of Union, the Government of India & any state on one side any state of states on the other side, or between two or more states. In other words, we can say that the original jurisdiction of the Supreme Court extends to the disputes between different units of the Indian federation.

The original jurisdiction of the Supreme Court is exclusive which means that no other court in India has the power to entertain any dispute. It may be mentioned here that original jurisdiction of the Supreme Court in the aforementioned case is subject to the following qualifications and limitations:

- (i) The dispute must be one which involves any question on which the existence or extent of legal right depends. In simple words, the dispute should be legal in character and a political one.
- (ii) The original jurisdiction of the Supreme Court does not extend to a dispute arising out of any treaty agreement covenant, engagement or other similar instrument, which having been entered into or executed before the commencement of Constitution continue to be in operation after such commencement or which provides that said jurisdiction shall not extend to such a dispute.
- (iii) Article 262 the Constitution provides that the Parliament may by law exclude the jurisdiction of Supreme Court in disputes or complaints with respect to the use, distribution or control of the waters of any inter state river valley.

- (iv) According to provisions of Article 280 matters referred to the Finance Commission will be outside the jurisdiction of the Supreme Court.

Article 32 of the Constitution has guaranteed the right to move Supreme Court by appropriate proceeding for the enforcement of the rights conferred by Part III of the Constitution. It has been laid down that Supreme Court shall power to issue directions or writs for enforcement of any of the rights conferred by Part three of the Constitutional. The jurisdiction for the Supreme Court to entertain an application under Article 32 for the issue of a constitution writ for the enforcement of the fundamental rights, is sometimes viewed by the jurist as original Jurisdiction of Supreme Court. Undoubtedly the said jurisdiction may be original in the sense that the aggrieved party has to directly move the Supreme Court by presenting a petition instead of coming through a High Court by way of appeal. But this Jurisdiction has no analogy with the Jurisdiction laid under Article 131 because the disputes under Article 32 are not between the units of the Union but an aggrieved individual and the Government or any of its agencies. It may be recalled that 42nd constitution Amendment had ousted the jurisdiction of the supreme court to consider the constitutional validity of any State Law unless validity of any Central law was involved. It means that the state law contravening the fundamental rights of the Indian citizens could not be challenged directly in the Supreme court. By 43rd constitutional amendment, it has been deleted and thus once again the status quo has been restored. It menas that the Supreme court can now judge the constitutional validity of state laws too.

1.8.7.2 Appellate Jurisdiction :

The appellated jurisdiction of the supreme court cover the following four categories:

- (i) Cases involving a substantial question of law as to interpretation of the constitution (Art. 132)
- (ii) Civil Cases (Article 133).
- (iii) Criminal Cases (Article 134).
- (iv) Appellate jurisdiction by special leave of the Supreme Court against judgement, order etc of any court or tribunal in India (Act. 136).

i) **Appeals in Constitutional Matters :** The Supreme Court has appellate jurisdiction in all cases civil, criminal or others in which any matter in involving any question of interpretation of any provision of constitution arises. An appeal comes before the court either by virtue of a certificate given by the High Court stating that a question of law as to the interpretation of the constitution is involved, or on basis of any special leave of appeal granted by Supreme Court, in a case, where the High court refuses to give such a certificate. A High Supreme Court, before it grants a certificate, should be satisfied that the case involves a substantial question of law, raised in the case, relates to the interpretation of the constitution.

ii) **Appeal in Civil Cases :** A civil case relates to private rights connection with the enforcement of property interest, contractual obligation etc. With in the meaning of section 8 of the Code of Civil Procedure a Civil dispute involves a question of right to property, or an office. Appeals in civil cases lie to the Supreme Court from the judgement, decrees of final order of the various High Court. Prior to the adoption of 30 the constitutional amendment in 1972, the provision in Article 133 was that an appeal lay from any judgement, decree of finalorder of a bench if a High Court granted a certificate stating that (a) the valuation of the subject matter in dispurte both in the court of first instance and in the appellate court was Rs. 20,000 or above (b) or the judgement, decree or final order of the court affected a claim in respect of a property of the value of Rs. 20,000 or

more. In any case of lesser valuation an appeal lay only if the High Court concerned granted certificate of fitness, that is a certificate stating that the case was a fit one for appeal in the Supreme Court. But those provision now stand amended by virtue of the constitution (Thirtieth Amendment) Act, 1972. The said amendment has substituted a new clause (I) of Article 133. The amended clause provides that a civil appeal should lie to the Supreme Court if the appropriate High Court certifies that it involves (i) a question of law of general importance and (ii) in its opinion the question needs to be decided by the Supreme Court. The 30th amendment has, thus given recognition to the importance of the those cases which involve substantial question of law and the amendment has, thus disregarded the valuation test for an appeal. It is correct also because valuation cannot prove to be the only responsible and logical yard-stick for a right to make appeal. Important question of law can arise even in suits of small value and to deny them the access to the highest court of land because of the meagre amount involved in them is to deny justice. In civil proceedings, appeals can also be filed in the supreme court under Article 136 by special leave of the court.

iii) **Appeal in Criminal Cases :** Prior to the commencement of present Constitution, there was no court of criminal appeal over the High Courts. it was only in a limited sphere that Privy Council used to entertain appeals in criminal cases, that too by special leave. article 134 of constitution has, for the first time, provided for an appeal to the Supreme Court for any judgement, or final order of sentence in a criminal proceeding of a High Court in two specified categories of case namely (a) where the High Court had reversed by an appeal the order of acquittal passed by the lower court and passed a sentence of death on the accused (b) where the High Court having with drawn a case form any subordinate court for its consideration has passed a death sentence upon the accused.

In these two categories of cases relating to a sentence of death by High Court, appeal lies to the Supreme Court as a matter of right. Besides these two categories, an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case is a fit one for appeal to the Supreme court. Besides inthe cases of criminal appeal, the Parliament is empowered to make any law conferring on the Supreme Court further powers to bear appeal from criminal matters. As a consequence of fit in 1970 the Parliament passed the Supreme Court (enlargement of criminal appellate jurisdiction) Act. The said Act has enlarged the criminal appellate jurisdiction of the Supreme court and now appeal also lies in a case where High Court sets aside an order of acquittal of an accused person and sentences him to imprisonment for not less than ten years. The same holds goods even though a court has passed similar sentence in a case with drawn from the lower court for trial before itself.

iv) **Special Leave for Appeal :** Article 136 confers very wide discretionary powers on the Supreme Court in matter of granting special leave to appeal from any judgement. decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India. The only exception to these powers in regarding the judgement of any court of Tribunal constituted by or under any law relating to the Armed Forces. The powers given by Article 136 of the Constitution are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law in cases where requirements of justice demand interference by the Supreme Court. However, the Supreme Court does not grant special leave to appeal unless there are some special reasons and circumstances warranting the exercise of an over-riding supervisory jurisdiction but it. Article 136 confers no right of appeal on any one, it provides merely for a discretionary power of the Supreme Court to grant special leave in grave

cases of miscarriage of justice. Miscarriage of justice might also be caused from failure to adopt the procedure established by law. Besides appeals in civil, criminal and other matters against the judgements, decrees, determinations or sentence so the High Courts and other courts of law, Appeals by the special leave of the Supreme Court also lie against the decisions and awards of various administrative tribunals such as industrial and compensation tribunals etc.

1.8.7.3 **Advisory Jurisdiction** : Article 143 lays down that “ if at any time it appears to the President that question of law fact has arisen or likely to arise which is of such nature and of such public importance that it is expedient to seek an opinion of the Supreme Court upon it, he may refer the question to court for consideration and the Court, may, after such hearing as it think fit, report to the President its opinion thereon.” It means that unlike the Supreme Court of the U.S.A, the British House of Lord and the Australian High Court our Supreme Court possesses an advisory jurisdiction. It may be mentioned here that certain State courts in the U.S.A. and the Canadian Supreme Court also possess advisory jurisdiction. Advisory jurisdiction means that any question of law can be referred to the Supreme Court of its opinion if the President considers that the question is of such a nature and of such public importance that it is expedient to obtain the opinion of Supreme Court. It differs from a regular adjudication before the Supreme Court in the sense that there is no litigation between two parties in such a case and the opinion given by the Supreme Court on such a reference is not binding upon the court itself and further that the opinion is not executable as a judgement of the Supreme Court. In other words, the authority conferred on the court in this regard is not the authority to hear any case of complaint referred to the Supreme Court in the formal manner, but the discretionary power of the Supreme Court to give its opinion on any question of public importance that may be referred to it by the President. Since the opinion given by the Supreme Court is not a judicial pronouncement, it is evident that the opinion is not binding upon the courts in India under Article 141 which says that the “law declared by the Supreme Court shall be binding on all the court within the territory of India.” The opinion rendered by the Supreme Court is advisory and the Government may take it into consideration while taking any action in the matter but it is not bound to act in conformity with the opinion of the Supreme court.

1.8.7.4 **Power to Review its own decisions** : Article 137 of Indian Constitution lays down that subject to the provisions of any law made by Parliament, the Supreme Court shall have the power to review and revise the judgements pronounced or orders made by it. In *Bengal Immunity Co. Ltd. Vs. State of Bihar*, the Supreme Court observed “there is nothing in the Indian constitution which prevents the Supreme Court from departing from its previous decision, if it is convinced of its error and its baneful effect on the general interest of the public.” In the case of *West Bengal Vs Corporation of Calcutta* the Supreme Court observed that, “In constitutional matters which affect evolution of country’s policy it must readily correct itself than in the other branches of law as perpetration of mistake will be harmful to public interest. While continuity and consistency are conducive to smooth evolution of rule of law, hesitancy to set right deviations will retard its growth” It is thus evident that Article 141, which lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India, very obviously refers to the courts other than the Supreme Court.

1.8.7.5 **Powers regarding transference of Cases** : The 42nd Constitutional Amendment incorporated a New Article, 129-A, in the Constitution. The

new article provides, “if, on an application made by the Attorney General of India, the Supreme Court is satisfied that case involving the same or substantially the same questions of law pending before it and one or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case pending before the High Court or the High Courts and dispose of all the cases itself.’ The Supreme Court may, if it deems it expedient to so for the ends of justice, transfer any case, appeal or other proceeding before any High Court to any other High courts. This power of transference of certain cases vested in the Supreme Court has enhanced its prestige and influence.

1.8.8 Court of Record : Article 29 of constitution says that “the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.” It means that it is a court which has power to fine and imprison a person for its contempt and its acts and proceeding are enrolled for perpetual memory and testimony. The records of such a court are preserved have evidentiary value and are conclusive evidence of that which is recorded in them.

1.8.9 Rules regarding decisions of the Supreme Court

Under Article 145 the Supreme Court has the power to make rules to regulate its own procedure. There is conflict between the legislative power of Parliament and the rules making power of the Supreme Court because any rule made by the Supreme Court would be put into operation only subject to the laws made by Parliament. As per rules laid down after hearing a case, the court pronounces the judgement in open court at once or on some further date fixed judgement after due notice to the parties. A judgement is arrived at by the majority of either the judges of the court and can be read by any of these judges. A judge disagreeing with the majority opinion can give his dissenting judgement.

Self -check ExerciseII

1. Write any two powers of Supreme Court.

1.8.10 Summary :

The Supreme Court of India is the guardian of Constitution because it is the final interpreter of it. Thus Court ensures that ordinary people are not deprived of their basic rights by onslaughts of executive or legislative despotism.

1.8.11 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. The outcome can be a new decision on all or part of the points raised or the previous decision may be upheld.

Advisory Jurisdiction-the authority to give advice. Transference-Moving a case from lower court to higher court.

1.8.12 SUGGESTED BOOKS

1. Constitution of India : Dr. M. J. Kagzi
2. Constitution of India : Dr. V. N. Shukla
3. Commentary on the Constitution of India Vol. I II III : D.D. Basu.

4. Constitution of India : Dr. A. C., Kapoor

1.8.13 Answers to self check exercises:

Exercise no. I

1. Answer to this question is given at no.8.2 of the lesson.
2. In this lesson study the point no. 8.4 thoroughly and then write your answer.

Exercise no. II

1. Various powers of the Supreme Court are given at number 8.7-8.7.1 upto 8.7.5 in the lesson .