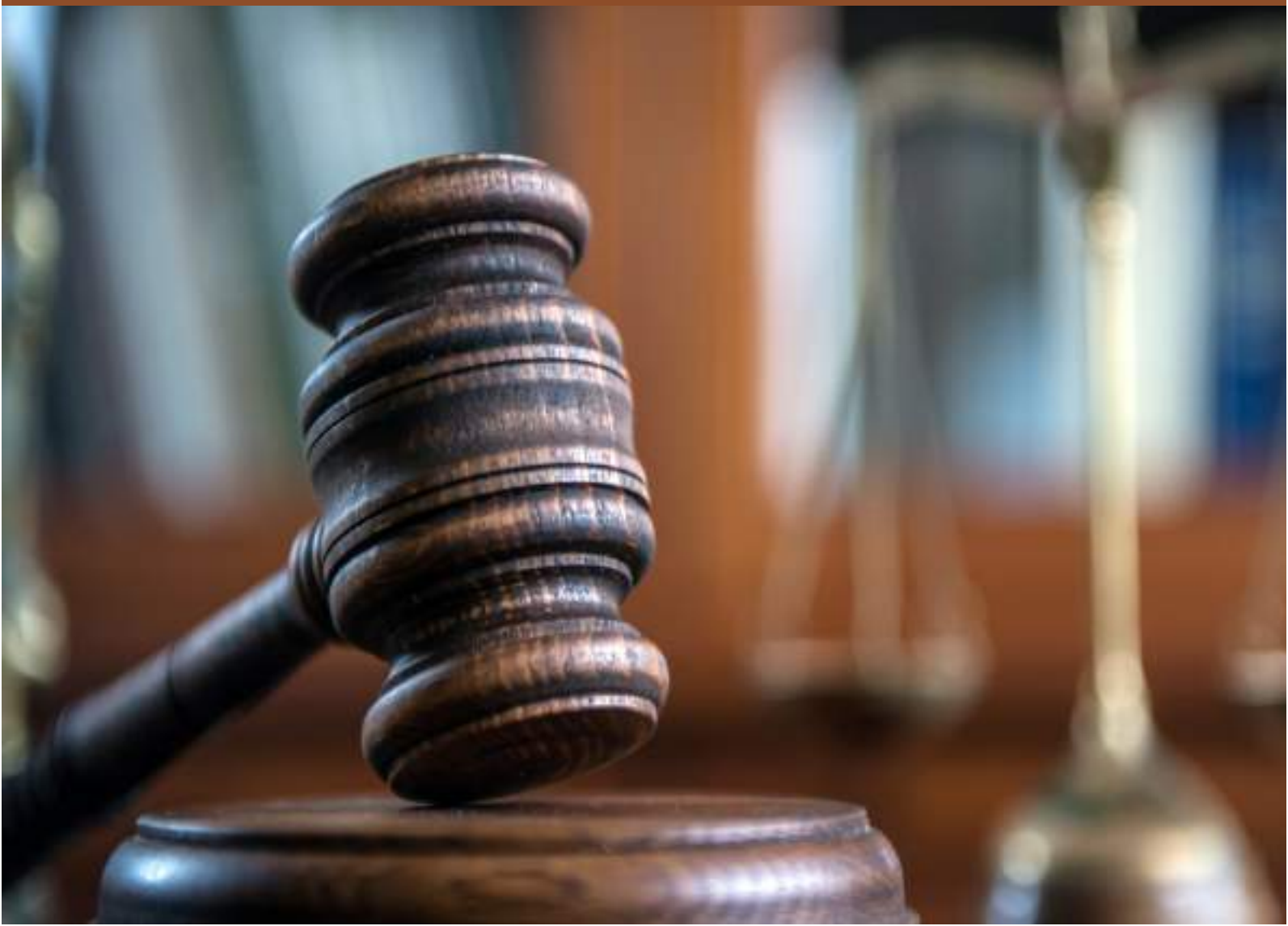
CONSTITUTIONAL LAW

Dr. Mithlesh Bansal



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Preface

Constitutional law encompasses the fundamental principles and rules that govern the operation of a country's constitution. It is concerned with the structure of government, the distribution of powers among different branches, and the rights and duties of citizens. One of the primary functions of constitutional law is to establish the framework for the organization and operation of government institutions, including the legislature, executive, and judiciary.

A significant aspect of constitutional law is the delineation of powers between these branches of government. This separation of powers ensures a system of checks and balances, preventing any one branch from becoming too dominant or abusing its authority. It also promotes accountability and transparency in governance by allowing each branch to oversee and scrutinize the actions of the others.

Constitutional law also addresses the rights and freedoms of individuals within a society. It typically includes provisions guaranteeing fundamental rights such as freedom of speech, religion, and assembly, as well as principles of equality and non-discrimination. These rights serve as safeguards against government overreach and protect individuals from arbitrary or unjust actions by the state.

Moreover, constitutional law often incorporates mechanisms for amending the constitution to adapt to changing societal needs and values. These processes usually require a supermajority or other stringent criteria to ensure that constitutional changes reflect broad consensus and do not undermine the fundamental principles of the constitution.

Constitutional law also provides procedures for resolving disputes related to the interpretation or application of the constitution. This may involve judicial

review, where courts have the authority to determine the constitutionality of laws or government actions and strike them down if they violate constitutional principles.

Furthermore, constitutional law plays a crucial role in safeguarding the rule of law within a nation. By establishing the constitution as the supreme law of the land, it ensures that all other laws and government actions must conform to its provisions. This helps prevent abuses of power and ensures that governmental authority is exercised within legal bounds.

Overall, constitutional law is a cornerstone of modern democratic societies, providing the framework for stable and accountable governance while protecting the rights and freedoms of citizens. Its principles and doctrines shape the legal and political landscape of nations, ensuring that they operate according to democratic norms and principles of justice.

The book on Constitutional Law offers a comprehensive exploration of the principles, structures, and interpretations shaping the governance and rights framework within a nation.

–Author

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Introduction

Constitutional law is the body of law which defines the relationship of different entities within a State, namely, the executive, the legislature, and the judiciary.

Not all Nation States have codified Constitutions, though all such states have a *jus commune*, or law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law orinternational rules and norms.

BACKGROUND

The majority of the Indian subcontinent was under British colonial rule from 1858 to 1947. This period saw the gradual rise of the Indian independence movement to gain independence from foreign rule. The movement culminated in the formation of the Dominion of India on 15 August 1947, along with the Dominion of Pakistan. The constitution of India was adopted on 26 January 1950, proclaiming India to be a sovereign, democratic republic. It contained the founding principles of the law of the land which would govern India after its independence from British rule. On the day the constitution came into effect, India ceased to be a dominion of the British Crown.

THE PHILOSOPHY OF THE INDIAN CONSTITUTION

The concepts of democracy, representative institutions, limitations on the arbitrary powers of the rulers, and rule of law were not alien to India in the

hoary past. The concept of the supremacy of Dharma was hardly different from the rule of law or limited government. The rulers in ancient India were bound by Dharma, no one was above Dharma. Enough evidence has come to light to show that republican forms of government, representative deliberative bodies and local self-government institutions existed in many parts of ancient India and democratic thinking and practices permeated different aspects of the life of the people right from the Vedic age (circa 3000-1000 B.C.). The Rigveda and the Atharvaveda mention the Sabha (General Assembly) and the Samiti (House of Elders). The Aitareya Brahmana, Panini's Ashtadhyayi, Kautilya's Arthashastra, the Mahabharata, inscriptions on Ashoka's pillars, the Budhhist and Jain texts of the period and the Manusmriti all bear witness to the existence of several functioning republics during the post-Vedic period of Indian history. After the Mahabharata particularly, large empires gave way to a number of small republican states. Jatakas make many references to how these republics functioned. The members met in Santhagar. Representatives were elected in open assembly. They selected their gopa who became King and ruled with the help of a Council of Ministers.

In the 4th century B.C. the republican federation known as the Kshudrak MalIa Sangha offered strong resistance to Alexander. Near Patliputra (Patna), there, was Vaishali, the Capital of Lichchavis. The state was a republic governed by an assembly with an elected President called Nayak. Unfortunately, we know little of the details of the constitution of these republics. The Greek scholar Megasthenes has left records of popular assemblies that were preserved in the South and which restrained the power of Kings.

Kautilya's Arthashastra also records that autocracy or the Divine Right of Kings had no place in ancient Indian polity. The power of the Indian King was hedged in by safeguards against abuse and limited by liberties and powers of other public authorities and interests. He was, in fact, a limited or a constitutional monarch. Manu and the Mahabharata say that an unjust and oppressive ruler should be killed by his own subjects like a street dog gone mad. Nitisara (Science of Polity) of Shukracharya written in the tenth century is a book on constitution. It deals with the organization of the central government as well as village and town life, of the King's Council and of various departments of government. The King was to act on the opinion of the majority of the people.

Independent Sovereign Republic and to draw up for her future governance a Constitution:

WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the constitution, shah possess and retain the status of

autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of Governments are derived from the people; and

WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign rights' on land, sea, and air according to justice and the law of civilize, nations; and

The ancient land attain its rightful and honoured place in the world and make its full and fulfilling contribution to the promotion of world peace and the welfare of mankind."

In the words of Pandit Nehru, the aforesaid Resolution was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication".

CONSTITUTIONAL REVIEW

The framing and adoption of an acceptable Constitution and political system for a country of India's past, size and nature was no easy task. Our founding fathers were some of the wisest men and women. They gave us an excellent Constitution which has stood the test of time. It envisaged a cohesive and vibrant modern polity with emphasis on democracy, egalitarianism, secularism and rule of law. With a view to ushering in a socialistic pattern of society, emphasis was laid on planned development. Under successive five-year plans, efforts were made to ameliorate the lot of the poor and the downtrodden, build a scientific and technological infrastructure, revolutionize agriculture, diversify industry and raise industrial capacity and output.

There were scores of achievements-integration of some 600-odd states, resettlement of refugees, abolition of zamindari and other land reforms, liberation of Portuguese and French possessions in India, accession of the States of Hyderabad and Jammu and Kashmir, withstanding of several aggressions from our two neighbours, development of a meaningful foreign policy with the cardinal principles of nonalignment and peaceful coexistence (with over a hundred nations at one time accepting India's philosophy and leadership), conducting of thirteen general elections in the largest democracy on earth and peaceful transfer of power more than once from one party to another party or alliance, surviving many pressures, stresses and strains inflicted on our body politic by malevolent forces, both internal and external.

Without going into the details, it can be safely asserted that on the political plane, by far our greatest achievements have been (i) to bring about and maintain the unity and integrity of the nation and the secular character of the polity, and (ii) preserve the system of representative parliamentary democracy, ensuring the freedom and dignity of the individual. When we see all around us, these achievements appear still greater since there are very few nations in the world where really functioning democracy and freedom have survived. Not only are we a functioning democracy, we are also the largest on earth. We can take legitimate pride in the fact that-some temporary aberrations notwithstanding-whatever problems we faced, we have solved or sought to solve them within the existing system. But there is a negative side also. The present is not very exhilarating, particularly when we think of the decline of values in all spheres and all professions, rampant corruption, terrorist activities, the use of money and muscle power in elections "the politicization of criminals" and "criminalisation of politics", the goings-on in some legislatures and the many fissiparous and divisive tendencies like casteism and communalism raising their ugly heads here and there. The noble aims and objectives enshrined in the Preamble have not been achieved. Instead of being based on some self-sacrifice and motivated by spirit of public service, politics has become a lucrative profession for sharing spoils of office. We have not been able to solve the basic problems of poverty, population, illiteracy, drinking water and development generally.

In any representative democracy, as Dr. Ambedkar had said, the root concerns are two, viz. stability and responsibility. The government that the system throws up should enjoy the strength and stability necessary for the security, development and welfare of the people and those called upon to govern should remain responsible to the people and their representatives. Our founding fathers had the background of their sad experiences of the arbitrary colonial rule which was neither representative of the people nor responsive to their urges, aspirations and needs. It was not responsible or accountable to any representative body of the people in India. It was natural for the founding fathers to prize 'responsibility' of the executive and accountability of the administration above everything else.

They therefore adopted the parliamentary system with its concept of ministerial responsibility. In the Presidential system of Government of the U.S., type, the Executive is known to be more stable inasmuch as the President as the Chief Executive and head of the State is elected for a four year period and cannot be removed except by impeachment. Though not responsible to either House of the U.s. Congress, the Executive in the United Stales is directly responsible to the people once in four years. The French have tried to combine different models and establish what may be a parliamentary system of ministerial responsibility with a Presidential system of irremovable Chief Executive superimposed. While the Ministers with the Prime Minister at the head are responsible to the National Assembly, the President is elected by the people for a seven-year period and in order to win, he must secure more than 50 per cent

votes. The latest developments in India affecting the economy of the nation, however further underline the need for greater responsibility and accountability of the political Executive and the administrators to the people through the representative institutions. On the other hand, the spectacle of unethically engineered or defection manipulated majorities or of several successive hung Parliaments and State Legislatures and minority Governments and frequent General Elections naturally cause grave concern for stability.

It is obvious that we in India would not like to dilute the element of responsibility. The choice, therefore, is to find ways and means of ensuring greater stability within the existing parliamentary system. It has also to be remembered that what is most important is the stability of the polity, of the democratic system and society and not the stability of the government of the day. All seem agreed that the country can ill-afford frequent general elections which, apart from other implications, cost collosal amounts of money. But, in a democracy, stability of the Government may not be the highest virtue. On 26 January 2000, the Constitution and the Republic of India completed half-a-century of their life. In an age when events move and developments take place at the speed of a tropical cyclone, this was not a short period in the life of a nation to take stock of our achievements and failures and attempt a self-appraisal of the working of our Constitution and the democratic institutions established thereunder.

Our Constitution is a living, dynamic process, always evolving, constantly in the making through amendments, judicial interpretations, and its actual working. It has been amended 83 times. Wide-ranging amendments followed the Swaran Singh Committee appointed by the Congress to review the Constitution. There have been numerous other amendments which have changed the Constitution without those being technically constitutional amendments. Some of the Supreme Court judgements have brought about fundamental changes. In the process there have been modifications, distortions and reversals of the intention of the framers of the Constitution. In this scenario, one has to consider whether there was anything wrong in having a look back at our experience of working the Constitution to find out if any of the problems have their source in systemic constraints or in faulty working or improper interpretation of constitutional provisions and if any remedial changes were called for. A case for review was not necessarily a case for constitutional amendments or systemic changes or for altering the basic features of the Constitution.

We have to consider what changes-legal, administrative, or other-are imperative to solve our main national problems. We have to ensure our nation's socioeconomic development and quality of life for all citizens, more particularly the deprived sections of society. Areas requiring immediate attention and separate in-depth analysis are those of Union-State relations (decentralization of powers including financial powers to the State and down to the grass roots levels), corruption (ensuring greater probity, integrity and transparency in all walks of

life), reforming the political party system and the electoral processes, providing reasonable stability to society and the system without altering the parliamentary system or eroding responsibility and accountability of the government to the people, making the governance clean, efficient, less costly and citizen-friendly. Various concrete suggestions have emerged. Not all of them may be compatible with each other or be fully acceptable. Also, they may not call for any constitutional amendments as such. But, all these may be useful as stimulants to our thinking on constitutional matters and may deserve to be considered.

Some of these suggestions may be summed up here:

1. The Lok Sabha-particularly when it is a hung house with no leader commanding clear majority support should be called upon by the President to elect its Leader. The person so elected may be appointed Prime Minister. This will keep the President above unsavoury controversies.
2. Following the German practice, we could provide for a constructive vote of no-confidence in the Council of Ministers. This would make it essential for the House to select a successor simultaneously with the throwing out of the incumbent Prime Minister.
3. There may be a trend towards developing a system of two major federal parties. It may be possible for several broadly like-minded parties to come together on the basis of a common minimum programme or a national agenda and form a coalition government, with another similar coalition forming the opposition. The emergence of the National Democratic Alliance Government after the thirteenth general elections in 1999 is a pointer in that direction. But, it should not preclude any party on its own occupying in future a predominant position on the basis of popular support to its policies and programmes.
4. Political parties participating in the democratic processes of a nation's governance must themselves be democratic in their internal organization. They need to be regulated by law. Party membership must be open to all citizens without any distinction, party elections must be regular, free and fair and sources of party funds must be made public and party accounts must be duly audited and open to public scrutiny.
5. All candidates for elections to houses of Parliament or State Legislatures must be obliged by law to make verifiable public declarations of their movable and immovable assets.

   Some of the other suggestions offered are:

   (a) A three or four-tier system of governance with limited direct elections, a strong Union and strong units; the Gandhian bottom-up instead of the present top-down approach; something like the subsidiary principle in the European Union and in German polity where maximum power belongs to the grassroot level institutions and only what cannot be handled at the lower level is entrusted to the higher;.

   (b) Reforming the electoral system to make it less expensive, more representative and free from money and muscle power;

(c) Placing a strict ceiling on the number of ministers and equivalent posts both at the Union and State levels;
(d) Disqualifying all defectors from membership and from holding any public office;
(e) Downsizing the bureaucracy drastically, debureaucratization of development planning and providing a mechanism for compulsory consensus-building among people and parties on some basic issues like family planning;
(g) Placing a strict ceiling on the borrowing powers of the government and making prior legislative approval necessary;
(h) Transferring right to work and compulsory elementary education to the fundamental rights chapter; and
(i) Finally, making the Government and the administration clean, corruption free and citizen-friendly through whatever legal, administrative, judicial or other reforms found necessary.

Most of the desirable reforms can be brought about without any amendment in the provisions of the Constitution. A great deal can be done by establishing healthy conventions, suitably reinterpreting the existing provisions of the Constitution, and where necessary bringing about reforms through ordinary legislation. The most important areas of reform in the electoral law and processes and in political parties, for example, need no constitutional changes. If there is political will legislation can be passed to do the needful. Also, review of the working of the Constitution must not be based on pre-conceived notions. It has got to be done with an open mind on all issues. The effort has to be to find a consensus among different parties, interests and regions before arriving at any conclusions which in any case have to come up for consideration before Houses of Parliament and the people at large and must be such as are acceptable and implementable.

THE CHARTER ACT OF 1793: BACKGROUND, PROVISIONS, EVALUATION

1793, when the company's charter timed out the British parliament passed a new charter which authorized the company to carry on trade with the East Indies for next 20 years. The company was allowed to increase its dividend to 10%. A provision in the Charter act of 1793 was made that the company, after paying the necessary expenses, interest, dividend, salaries, *etc.*, from the Indian Revenues will pay 5 Lakh British pounds annually out of the surplus revenue to the British Government.

However, the act also had a provision, that Crown could order the application of the whole of the revenue for the purpose of defense if the circumstances posed such demands. Some other Provisions: The Governor General was empowered to disregard the majority in special circumstances. The Governor General and respective governors of the other presidencies could now override the respective councils, and the commander in chief was not now the member

of Governor General's council, unless he was specially appointed to be a member by the Court of Directors. If a high official departed from India without permission, it was to be treated as resignation. The charter act 1793 can be called an act for consolidation of the Indian Judiciary. This act reorganized the courts and redefined their jurisdictions. The revenue administration was divorced from the judiciary functions and this led to disappearing of the Maal Adalats. The revenue cases were now referred to Zillah adalats or district courts. Court of appeal were made 5 provincial courts at Calcutta, Patna, Dhaka & Murshidabad.

FEATURES OF THE ACT

1. Act provided the exclusive trade privileges and renewed twenty years.
2. The realm of Governance of Governor-General increased over the Governors of Bombay and Madras.
3. A 'Regular code' of all regulations that could be enacted for the internal Government of British territory in Bengal was framed. The regulation was applied to the rights, persons and property of the Indian people and bounded the courts to regulate their decisions by the code itself.

This act was made only fairly minimal changes to either the system of government in India or British oversight of the Company's activities. Most importantly, the Company's trade monopoly was continued for a further 20 years. Salaries for the staff and paid members of the Board of Control were also now charged to the Company.

THE COMPANY RULE (1773-1858)

Regulating Act of 1773: The 1773 Act is particularly important in India's constitutional history inasmuch as it was the beginning of the efforts at British Parliamentary control over the company administration in India. The administration of territories under the company rule was no more a private affair of the traders of the company. The Regulating Act of 1773 for the first time presented a written constitution for company rule in India and acknowledged the political and administrative responsibilities of the company. This Act was also perhaps the first step in the direction of consolidation of the British Rule and centralization of administration in India. The Act established a Supreme Court at Calcutta, brought the three erstwhile independent and separate Presidencies generally under the control of the Governor-General of Bengal with his four newly appointed Councillors, and brought about fundamental reforms in the composition of the court of Directors in England.

CORNWALLIS CODE

Cornwallis Code, (1793), the enactment by which Lord Cornwallis, governor-general of India, gave legal form to the complex of measures that constituted the administrative framework in British India known as the Cornwallis, or Bengal, system. Beginning with Bengal, the system spread over all of northern

India by means of the issue of a series of regulations dated May 1, 1793. On these the government of British India virtually rested until the Charter Act of 1833.

The system, as codified in these regulations, provided that the East India Company's service personnel be divided into three branches: revenue, judicial, and commercial. Private trade was forbidden to the members of the first two branches, and they were instead compensated by a new and generous scale of pay. The land revenue assessment (the major source of revenue) was fixed permanently with zamindars, or hereditary revenue collectors. These native Indians, provided they paid their land taxes punctually, were treated as landowners, but they were deprived of magisterial and police functions, which were discharged by a newly organized government police. This "permanent settlement" provided the British with an Indian landed class interested in supporting British authority. The local administration was placed in the hands of the revenue collectors of districts. The judiciary was reorganized; there were district judges with magisterial powers responsible to provincial courts in civil cases and to courts of circuit in criminal cases. The law administered was Hindu and Muslim personal law and a modified Muslim criminal code. The higher ranks of the services were restricted to Europeans, thus depriving Indians of any responsible office.

As a whole, the system gave social and political stability to Bengal at the price of neglecting the rights of the lesser landholders and undertenants and of excluding Indians from any responsible share in the administration.

JUDICIARY

The judiciary *(also known as the judicial system'* or court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of the state is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the "Supreme court" or "Constitutional court"), together with lower courts.

In many jurisdictions the judicial branch has the power to change laws through the process of judicial review. Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation, the provisions of the constitution or international law. Judges constitute a critical force for interpretation and implementation of a constitution, thus *de facto* in common law countries creating the body of constitutional law. In the US during recent decades the judiciary became active in economic issues related with economic rights established by constitution because "economics may provide insight into questions that bear on the proper

legal interpretation". Since many countries with transitional political and economic systems continue treating their constitutions as abstract legal documents disengaged from the economic policy of the state, practice of judicial review of economic acts of executive and legislative branches have begun to grow.

JUDICIAL SYSTEMS

Japan's process for selecting Judges is longer and more stringent than the process in the United States and in Mexico. Assistant judges are appointed from those who have completed their training at the "Legal Training and Research Institute" located in *Wako City*. Once appointed, assistant judges still may not qualify to sit alone until they have served for five years, and have been appointed by the Supreme Court. Judges require ten years of experience in practical affairs, public prosecutor, or practicing attorney.

In the Japanese Judicial Branch there is the Supreme Court located in Japan, eight high courts, fifty district courts, fifty family courts, and 438 summary courts. In difference, Mexican Supreme Court Justices are appointed by the president, and then are approved by the Senate to serve for a life term. Other justices are appointed by the Supreme Court and serve for six years. Federal courts consist of the Supreme Court with 21 magistrates, 32 circuit tribunals and 98 district courts.

The Supreme Court of Mexico is located in "Mexico City. *Supreme Court Judges must be of ages 35 to 65 and hold a law degree during the five years preceding their nomination.* In the United States Supreme Court, justices are appointed by the president and approved by the Senate. As in Mexico, justices serve for a life term or until retirement. The Supreme Court of the United States is located in "Washington D.C". The Federal court system consists of 94 federal judicial districts. The 94 districts are then divided into twelve regional circuits. The United States consist of five different types of courts that are considered subordinate to the Supreme Court, U.S bankruptcy courts, U.S Courts of Appeal for the federal circuit, U.S Court of International Trade, U.S Courts of Appeal, and U.S District Courts.

THE CHARTER ACT OF 1813: BACKGROUND, PROVISIONS, EVALUATION

On the eve of the renewal of the Charter Act in 1813 a controversy was raised as to whether the Company should continue to enjoy commercial monopoly in India. English traders demanded a share in the Indian trade, particularly in view of loss of trade in the Continent due to the Continental System of Napoleon Bonaparte who sought to cripple England commercially.

The English traders wanted to compensate their loss by sharing the Indian Trade. It was also thought if the East India Company which had vastly extended its territories in India should be allowed to continue as a monopolistic trading Company besides its political responsibility; it was ultimately decided that the

Company's commercial monopoly should go and by the Charter Act of 1813 the Company was deprived of its commercial monopoly and laid down 'the undoubted sovereignty of the Crown' in and over the possessions of the East India Company.

The East India Company was, however, allowed to enjoy the monopoly of China trade and trade in tea. The share-holders of the East India Company vehemently opposed abolition of Company's commercial monopoly and ultimately a guarantee of 10% dividend out of the revenues of India was given them should the commercial account fail to provide this amount. Separate accounts were to be maintained of the territorial revenues and commercial transactions and gains.

The Charter Act of 1813 devised as well as extended the power of direction and superintendence of the Board of Control. One of the most important clause of the Charter Act of 1813 was that a sum of rupees one lakh annually was provided for the revival and improvement of literature and encouragement of the learned natives of India and for the introduction and promotion of knowledge of the sciences among the inhabitants of the British territories in India. This was the first step towards acceptance of the principle of State responsibility for education. Needless to say, that this clause was one of the most significant steps taken by the British Government with regard to India.

The evangelicals forced the Company, by getting included in the Charter Act of 1813 to appoint a bishop whose headquarters were to be in Calcutta and his see the whole of British India. The whole of the country (India) was to be open to the Christian missionaries.

The aggressive policies of Lord Wellesley and the Marquis of Hastings led to the company gaining control of all India, except for the Punjab, Sind, and Nepal. The Indian Princes had become vassals of the company. But the expense of wars leading to the total control of India strained the company's finances to the breaking point. The company was forced to petition Parliament for assistance.

This was the background to the Charter Act of 1813 (53 Geo. III c. 155) which, among other things:

- Asserted the sovereignty of the British Crown over the Indian territories held by the company
- Renewed the charter of the company for a further twenty years but,
- Deprived the company of its Indian trade monopoly except for trade in tea and the trade with China
- Required the company to maintain separate and distinct commercial and territorial accounts
- Opened India to missionaries. This was called the "pious clause." Charles Grant (1746–1823), a former company employee in India and a director, and other evangelical Christians, lobbied for this provision. Previously, missionaries could not legally operate within company territory, although several did, including the pioneer Baptist missionary William Carey, by pursuing a trade or profession as a cover. The company was also required

to spend money for the material and moral improvement of India. As a result of the "pious clause," India became a major field of missionary endeavor. Missions established schools, hospitals, and clinics as well as churches. Company officials who were staunch Christians often worked closely with the missionaries.

The Industrial Revolution in Britain, the consequent search for markets, and the rise of laissez-faire economic ideology form the background to this act.

The act:

- Divested the company of its commercial functions
- Renewed for another twenty years the company's political and administrative authority
- Invested the Board of Control with full power and authority over the company
- Carried further the ongoing process of administrative centralization through investing the governor general in council with full power and authority to superintend and through controlling the presidency governments in all civil and military matters
- Initiated a machinery for the codification of laws
- Provided that no Indian subject of the company would be debarred from holding any office under the company by reason of his religion, place of birth, descent, or colour. However, this remained a dead letter well into the twentieth century.

Meanwhile, British influence continued to expand; in 1845 the Danish colony of Tranquebar was sold to Great Britain. The company had at various stages extended its influence to China, the Philippines, and Java. It had solved its critical lack of the cash needed to buy tea by exporting Indian-grown opium to China. China's efforts to end the trade led to the First Opium War with Britain.

1. INTRODUCTION TO THE CHARTER ACT, 1813

In 1813 the Company's Charter came once again for renewal. By this time the missionaries prepared the ground through agitation in England for imparting western education in India and for proselytizing activities therein.

The officials of the Company, on the other hand, influenced the Court of Directors through agitation for revival and improvement of the literature of the learned natives of India. It was against this background the Charter of the Company came up for renewal.

The House of Commons set up a Committee for that purpose.

The main educational issues before this Committee for consideration were two:

1. Should the missionaries be allowed to go to India and work in the territories of the Company for the education and proselytization of the Indian people (attitude towards the missionaries)?
2. Should the Company accept responsibility for the education of the Indian people? If it should, what should be the nature and scope of its educational activities (the nature and extent of State responsibility in education)?

(i) With regard to the first the missionaries and their supporters scored a clean victory. That means the missionaries were allowed to enter India and continue their educational and proselytizing activities completely and freely.
(ii) With regard to the second strong opposition came from the Directors of the Company.

The grounds for such opposition were mainly three in number:

(a) Firstly, in those days, education was not regarded as a responsibility of the state even in England;
(b) Secondly, the Company was not prepared to accept it in India purely on financial grounds;
(c) Thirdly, the natives of India themselves were most apathetic in the matter.

But the opponents of the missionaries keenly intended "to create a powerful and rival and secular agency in Indian education to counteract the results of missionary enterprise". So the Company under the pressure of circumstances had to accept the responsibility.

It is stated clearly in clause 43 of the Charter Act which runs as follows:

"…….A sum of not less than one lac of rupees in each year shall be set apart and applied to the revival and improvement of literate and the encouragement of the learned natives of India and for the introduction and promotion of knowledge of the sciences among the inhabitants of the British territories in India".

The clause 43 clearly reflects a synthesis of the views of the Orientalists as well as the Occidentalists.

The Clause tried to compromise the two view-points in splendid manner.

The clause/bears three propositions, viz:

(a) The revival and improvement of literature.
(b) The encouragement of the learned natives of India, and
(c) The promotion of a knowledge of the sciences among the inhabitants of that country.

With regard to the first two propositions (a and b) the Orientalists no doubt scored a clean victory. The third proposition is clearly the viewpoint of the Occidentalizes. Thus the clause contained the germs of future educational controversy. It did not give a clear verdict.

2. IMPORTANCE OF THE CHARTER ACT, 1813

The educational implication of the Charter Act in India is immense. It is a turning point in history of Indian education.

It laid the foundation-stone of modern Indian education and influenced the future educational developments in India in various ways:

(a) The first implication is that the Company would undertake educational responsibility and duty of the Indian people. With this end in view the Company would incur an expenditure of 1 (one) lakh of rupees each year which was conspicuously absent prior to 1813.

(b) In order to implement the clause 43 of the Act the Company would create an agency of its own.

(c) A system of educational grants was initiated. Prior to 1813 the Company used to provide occasional financial aids indirectly through the missionaries, but now the Company directly entered into the field of educational administration and management. Education in India had a claim on public revenue.

Thus the State system of education began with the Charter Act. Side by side, private enterprise (viz. missionary enterprise) was also allowed to function. This educational partnership between official and non-official enterprises continues till date,

(d) The Charter Act brought to an end the era of agitation started by Charles Grant, Wilberforce and others. "It allowed the missionaries to land in India in large numbers and establish modern English schools and thereby they laid the foundation of the well-organised modern educational system".

As the shores of India were thrown open to missionaries, they poured into India not only from England but all also from other parts of the world, particularly from Scotland, Germany and America. In fact, missionaries from outside Great Britain came to India only after 1833. The Charter Act created an era of controversies with regard to the content of education, the aim of education, the medium of education and the agency of education.

3. THE MISSIONARY ENTERPRISE IN EDUCATION (1813 – 53)

The Charter Act recognised educational development in India under the guidance and control of three distinct agencies, viz.:

(i) The missionary enterprise,
(ii) Non-official enterprise, both European and Indian and
(iii) Official enterprise.

At the beginning we will discuss the first. The missionary enterprise is also regarded as non-official enterprise. During the period 1813 – 33 education under official enterprise did not make much headway.

The progress was not much appreciable. It was slow and tardy because education had been passing through an experimental stage. Official educational efforts and non-official enterprises (missionary) went hand in hand. The Charter Act opened the shores of India to missionary societies. As a result, the period from 1813 to 1833 was one of great mission activity in different parts of the Company's possessions. The earlier missionary societies expanded their activities and new societies entered the field. Of these latter societies special mention may be made of the General Baptist Missionary Society, the London Missionary Society, the Church Missionary Society, the Wesleyan Mission and the Scotch Missionary Society.

The Distinctive Features of the Activities of the Latter Missionary Societies:

1. The main object of the missionaries was proselytization and not education. Education was regarded by them as a means to an end. It was the secondary object and not the principal one. Their sole aim was to propagate Christian doctrines.

They mainly aimed at religious conversion. They took up educational work in order to meet the needs of the converted Indian. Further, they intended to train up Indian assistants for their proselytzing activities. It is, however, true that their activities greatly helped to the educational progress of the country.

2. The early missionaries attached importance to the use and development of the modern Indian languages. They employed the local Indian languages (mother-tongue of the pupils) as the media of instruction. But the latter missionaries attached importance to the English language as the medium of instruction.
3. The early missions had to work among the lowest classes of the society who knew their own languages only. But the latter missions chiefly worked among the upper classes of the society who knew the English language to a certain extent. The latter believed that Christianity would filtrate from the upper classes to the lowest classes. They practically invented the Downward Filtration Theory in the field of religion. This is especially applicable to Alexander Duff of the Scottish Mission.
4. The missionaries prior to 1813 mainly worked in the field of primary education. But after 1813 their attention was gradually shifted to secondary and higher education.
5. The early missionaries did valuable pioneering work in the field of vocational education. But the missionaries after 1813 gave pioneering services in the field of women education. The latter opened "Jay schools for Indian girls, established Orphan Homes and "Zenana" educational institutions (domestic schools). The 19th century missions laid a strong foundation of women education in different parts of Bengal, Madras and Bombay Presidencies. Rev. May established a Girls' school at Chinsurah in 1818. The Baptist Missionary Society founded a Girls' school at Serampore.

   In 1820, the Calcutta Female Juvenile Society conducted ten schools. Miss Cooke (Later Mrs. Wilson) established altogether twelve schools for girls in between 1821 and 1822. She also established a Central school in 1826 and started teacher-training classes. Modern schools for girls were also established by the missionaries in Madras, Bombay, Banares, Allahabad, Berilly, *etc.*
6. The earlier missions were mostly Catholic, but the missionaries who came after 1813 were mostly Protestants.
7. The missionaries before 1813 mainly worked in the South-Western region of India, but the missionaries who came later primarily worked in the North-Eastern belt of India.
8. The missionaries who poured into Indian soil in between 1813 -1833 belonged chiefly to Great Britain. But the missionaries who came to India after 1833 mostly belonged to Germany and America. These missions included The Basle Mission Society, The Protestant Lutheran

Society, and Women's Association of Education of Females in the Orient (founded in Berlin), The American Baptist Union, The American Board and the American Presbyterian Mission Board.

9. Another important feature of the missionary enterprise after 1813 was that the relations between the Company and the missionaries were cordial and cooperative. The earlier strained relations between them from 1793 to 1813 improved slowly and steadily. Each tolerated the other and each co-operated with the other.
   As a result, missionary enterprise was greatly facilitated by the cordial relations that existed in this period between the officials of the Company and the missionaries. This was due to changed social and political relations in the country and introduction of a number of social reforms and liberal ideas.
10. The largest part of educational enterprise in India in between 1813 – 1853 was provided by the missionaries and not by the Company. The total missionary activity in education must have certainly exceeded the official enterprise during the said period". But at the same time it is true that the extent of mission activity varied from Province to Province. The largest amount of mission activity took place in Madras in comparison to Bombay and Bengal and other provinces.
11. Though the Company created an agency of its own (G.C.P.I.) for the administration of education yet it offered some financial assistance to the missionary educational institutions. But the Government gradually increased its annual educational expenditure from one lakh to ten lakhs by 1833.
12. Two systems of modern schools existed side by side. The mission schools laid emphasis on Bible-teaching and as such these were disliked and unpopular, but the schools conducted by the Company were exclusively secular and popular with the Indian people.
13. The financial position of the Company's schools was comparatively sound than that of the mission schools. Hence, the latter faced financial crisis which the missionaries determined to overcome, and they worked hard to maintain their existence.

They, therefore, put forward the following claims:

(a) The education provided in the Company's schools was secular and as such it is "godless" and harmful;
(b) The Company should withdraw from direct management of educational institutions and it should be left to the missionaries who had a strong organisational base;
(c) The Company's schools were costlier than the mission schools and as such the latter should be provided with grants-in-aid on permanent basis through proper legislation;
(d) There should be only one agency in the field of Indian education and it is surely the missions who would provide all the institutions required by the country.

These claims were not educationally sound as later development would prove it. However, all these claims were accepted in principle by the Despatch of 1854.

The London Missionary Society was very much active in Bengal. In between 1810 and 1818 Rev. May established 36 primary schools in and around Chinsurah which were attended by three thousand children. Captain Stewart of Church Missionary Society founded ten vernacular schools in and around Burdwan.

The number rose to 107 in 1885 and about ten thousand children used to receive education in these schools. The Bishops' College was founded at Shibpur in Bengal in 1820.

The Church Missionary Society also established many schools in Madras between 1815 – 1835. Similarly the C.M.S. founded schools at Meerut, Azamgarh, Jaunpore and Nasik in Bombay Presidency.

Missionary activities received a new momentum and direction in the hands of Alexander Duff, the vigorous and the greatest Scottish missionary of the period. His indomitable spirit and tireless efforts resulted in the spread of English education in Bengal.

He was thrice in India. 1830 – 35, 1840 – 50 and 1856 – 63. He came to Calcutta as the first missionary of the Church of Scotland in 1830. Duff was thinking of preaching salvation to India.

According to him salvation of India depended on what the West and particularly the Bible gave her. He was an energetic educationist. He advocated the promotion of English education combined with Christian faith as its animating spirit. In 1835 he observed that "every branch of western Knowledge would destroy some corresponding part of the Hindu system, and so one stone after another would be thrown down from the huge and hideous fabric of Hinduism".

The "spirit and faith of Duff soon infected almost all the missionaries working in the field of Indian education and English schools conducted by the missionaries began to multiply very rapidly after 1830.

The period from 1830 to 1857 can rightly be regarded as "the age of the mission school" in India. "He had ardent followers, and used education, specially higher education, as a missionary instrument", said Dr. Zelluer Ambrey, the great American writer. Duff led a full-fledged missionary movement. He initiated a new missionary policy in India.

He considered Western education as the soundest weapon for conversion into Christianity. He aimed at bringing the upper classes into contact with missionaries and imparting Western education "inseparable from the Christian faith and its doctrines".

Duff hoped that English education would secure converts from the upper classes and Christianity would percolate from them to the masses. (Thus Duff invented the Downward Filtration Theory in the field of religion which Macaulay applied to education later). With this objective in view Duff founded the General Assembly's Institution (the present Scottish Church College) in Calcutta in 1830.

In this venture he was assisted by the great Indian Raja Rammohan Roy, an ardent advocate of Western education. In this Institution English was used as the medium of instruction and the study of Bible was made compulsory for all. Duff was a staunch supporter of women's education. He was intimately associated with the establishment of the Calcutta Medical College (1835) and the Calcutta University (1857). He was the Editor of the Calcutta Review for some time. He wrote the famous book entitled "India and Indian Missions". It is evident that the missionaries employed education as a subservient means to propagate their Christian doctrines. As regards the organisation of teaching, they printed school text-books and framed time-table for the schools. The credit of writing the first school text-books in Indian languages goes to the missionaries. Sunday was fixed as a holiday.

The curriculum was wide and included subjects like grammar, history and geography. For gradation a regular class-system was also introduced. They provided different teachers for different classes and subjects. Previously a single teacher had to manage all the classes in a school.

Thus the missionaries introduced a modern system of educational organisation in India. But the aggressiveness of the missionaries contained the germs of their ultimate failure. The disillusionment came by about 1870. Only a small section of the Indian upper classes embraced Christianity.

The bulk of the Indian masses, particularly the middle class, remained outside the orbit of Christianity. Most of them welcomed western education minus Christianity.

Thus an unhealthy competition developed between the mission schools imparting denominational western education and the Company's schools providing secular western education.

The competition led to conflict between the Government and the Missionaries whose fate was ultimately sealed by the Report of the Indian Education Commission (1882 – 83).

4. NON-OFFICIAL EUROPEAN (BRITISH) ENTERPRISE (1813–53)

Bengal

The role of the missionaries in the development of modern Indian education was no doubt significant, but the part played by a few British officials in their individual capacity and non-officials was no less significant.

They actively participated in the development of Indian education because they were in favour of secular western education and they really wanted to encourage private Indian enterprise in education.

The most pioneering services rendered in this regard was by David Hare, a humble watchmaker and jeweller by trade from Calcutta. David Hare (1775 – 1842) was not a "scholar" in the modern sense of the term. But he had some knowledge and information about the best English authors. Very modestly he used to describe himself as "an uneducated man friendly to education".

He came to India in 1800 and showed very keen interest in the development of education. David Hare was an advocate of the liberty of the individual as well as of the press. He was in favour of introduction of English as the official language in place of Persian. He had no regard for scientific studies and had a contempt for Sanskrit. He was already running a primary school near Calcutta.

He was in favour of secular western education. He firmly believed that a knowledge of English literature was essential for the regeneration of the Hindu society, but being a secularist he was not in favour of religious instruction.

From his personal experience he came to the decision that Indian children liked to learn English. It was his firm conviction that "India needed secular schools and colleges teaching the mother-tongue and English and spreading knowledge of English literature among the people".

With this conviction he worked throughout his life and "carried out his most important educational project, the Hindu Vidyalaya or College", the first collegiate institution on western lines in this country and on a purely secular basis.

In carrying out this project he enlisted the support of Raja Rammohan Roy, a staunch supporter of Western education, and Sir Edward Hyde East, the then Chief Justice of the Supreme Court in Calcutta.

On March 14, 1816, a public meeting was held in the house of Sir Edward Hyde East. A resolution was taken to found an institution for providing good English education to the sons of Hindu gentlemen. A sum of half a lakh of rupees was collected and a Managing Committee was formed with equal number of Europeans and Indians to give effect to the resolution. Hare himself provided the site of the proposed building.

The Hindu Mahavidyalaya (College) was opened on Jan., 20, 1817. It was given Government grant-in-aid in the year 1824. "The main object of founding the institution was to instruct the sons of the Hindus in the European and Asiatic languages and sciences". Special importance was attached to the teaching of English. The College soon developed into a well-known institution imparting higher education in a variety of subjects.

The curriculum included English, Ethics, Grammar, Hindustani, Bengali, Arithmetic, History, Geography, Astronomy. The study of Sanskrit and Persian languages had been precluded from the College curriculum. Thus it is evident that secular Western education became very popular with the Indian people. Owing to financial difficulties, however, the Vidyalaya was later handed over to the Company for management and became Presidency College in 1854.

The Vidyalaya, being the first institution of its kind, soon attracted the attention of the intelligentsia of Calcutta. It produced pupils who actively participated in the Bengal renaissance movement creating an intense urge for modern educational reforms.' The main contribution of Hare to the cause of modern education is the principle of secularism. The then educational institutions particularly conducted by the Company were dominated by religion. Banaras Sanskrit College or Calcutta Madrasah were dominated by the teaching of

Hinduism and Islam. The missionary institutions were also dominated by Christianity. He was not satisfied with these institutions. So he evolved a new system of secular education.

The whole object of the institution, therefore, "Was to emphasize the study of English language and literature". At the initial stage the institution faced a strong opposition from the Orientalists and the missionaries. But soon it became a model institution to be followed by all quarters – the Company and the Indian private enterprise, because of its secular character and modernism. Hare also took keen interest in the establishment of the Calcutta School Book Society and the Calcutta Medical College. He established a school at Pataldanga which is now known as Hare School. Many other attempts were also made besides the establishment of the Hindu College. In 1817, the Calcutta School Book Society was formed with the object of printing school text-books and distributing those either free or at a nominal price. By 1921, nearly 1, 26,000 useful books were put into circulation. In that year, the Government gave a donation of Rs. 7,000 to the society.

In 1819, the Calcutta School Society came into existence with the object of establishing both English and Vernacular schools all over the Presidency of Bengal. It opened numerous schools and took steps for training teachers. Upto 1821, the Society founded 115 vernacular schools with a total strength of 3,828 children. It did appreciable work till 1833. David Hare was a non-official. So he enjoyed absolute freedom in carrying out his cherished educational programmes. But the officials of the Company had no such freedom. But they could undertake such educational activities to which the Company did not object directly in their individual capacity.

A good example of this type of work is provided in the life and work of John Elliot Drinkwater Bethune (1801 – 1851). He was educated at Trinity College, Cambridge. He was the Law-member of the Executive Council of the Governor-General and the President of the Council of Education from 1848 – 1851. Bethune favoured secular as well as vernacular education with emphasis on English teaching. He was keenly interested in the education of women.

He set up a secular school known as the Calcutta Female School for Indian girls in his own individual capacity and at his own expense. This school came to be known as the Bethune School after his death in 1851. In establishing the school Bethune was greatly assisted by Pandit Ishwar Chandra Vidyasagar, Pandit Madan Mohan Tarkalankar and Derozians like Ram Copal Ghosh and Dakshina Ranjan Mukherjee. The school began to function in May 1849 and achieved phenomenal success. Soon it developed into the Bethune College a pioneering institution for the education of Indian women.

It produced a galaxy of prominent women who actively participated in the later educational development of Bengal. Before his death in Aug. 1851 he bequeathed his entire property to the school. Bethune School was a representative of a group of institutions started and financed by British officials in their individual capacity. The broad-minded officials of the Company tried to develop private Indian enterprise apart from the missionaries and the Company.

5. INDIAN PRIVATE ENTERPRISE (1813 – 53)

Indian private enterprise in this period was chiefly represented by Raja Rammohan Roy, Pandit Ishwar Chandra Vidyasagar, Raja Radhakanta Deb and the Derozians. Indians at that time played a very minor role in educational development because the conservatives were not in favour of modern western education.

The number of Indians educated in the new system of education was limited in those days. Indian private enterprise was just developing. Raja Rammohan Roy (1772 – 1833) was a celebrated religious, social and educational reformer He is regarded as the first modern man in this subcontinent.

He introduced new and progressive ideas in every field of our national life. Rabindranath has rightly described him as the "Bharat Pathik". Raja Rammohan Roy was a nationalist in its truest sense. He had deep faith in our cultural heritage He had also international outlook as he sympathised the progressive reform movements in different parts of the globe. He is the first linguist in our country. He knew as many as nine languages. This greatly helped him to acquire firsthand knowledge of both the western and eastern cultures. He had profound knowledge in both the cultures. He wanted to synthesise the two He explained the East to the West and the West to the East. Thus he tried to create a bridge between the two and paved the way for Rabindranath Tagore.

He had synthetic view of life, religion and education. He firmly believed that this synthesis would bring cultural regeneration of India. He was a regular classical scholar 'i. Sanskrit, Arabic and Persian, but he embraced western science and education. Raja Rammohan Roy was the first Indian to appreciate the value of western science and education through which he wanted to effect complete harmonization and synthesis between the Oriental and occidental cultures. He was fully convinced that no regeneration of India was possible with the study of classical learning alone. This is why he objected to the establishment of Sanskrit College in Calcutta in his famous letter to the Governor-General of India 1823. With this end in view he helped David Hare and Sir Edward Hyde East in the establishment of the then Hindu College. He also helped immensely Alexander Duff in the establishment of the General Assembly's Institution (present Scottish Church College) in 1830.

He himself set up a modern type of school known as the Anglo-Hindu School in 1822. He at the same time patronised oriental learning through the establishment of Ved Vidyalaya or Vedantic College in 1826 at Manicktala. Besides Raja Rammohan Roy wanted to popularise western science and literature through the medium of English.

He greatly emphasised the study of English language. He even advocated introduction of English language in official business in place of Persian. By his advocacy of the study of English and western science and literature the Raja paved the way for T.B. Macaulay, the great occidentalist.

He interpreted to the West for the first time in most convincing and lucid manner the value of going through the great oriental learning. He firmly

established the fact that it would be wrong on the part of the Englishmen to condemn summarily the Eastern learning in its entirety and Eastern philosophy of life based on religion.

Another great contribution of Raja Rammohan Roy to the system of modern education was his emphasis on the study of vernacular language. He helped Dr. William Carey in his sincere attempts to develop Bengali language and literature. He himself wrote books in Bengali on Grammar, Geography and Astronomy.

He introduced rules of English and Sanskrit grammars to Bengali language. In his hands Bengali language received new impetus and dimension. He also edited a journal, Sambad Kaumudi, in Bengali in 1821. He is rightly called the "father of modern Bengali prose". The Raja was also an ardent advocate of women's education.

Women emancipation was the cherished mission of his life. In order to convince the conservatives in this regard he cited the examples of great women in ancient India. The Brahmo Samaj, which he founded in 1828, rendered splendid services in the field of women's education in Bengal and also outside Bengal. He was one of the earliest champions of women's rights in modern India.

Raja Rammohan Roy was a celebrated religious reformer. He had firsthand knowledge of Hinduism, Islam, Christianity, Buddhism and Jainism. He found several common elements in these religions. He had eclectic view regarding religion. He had deep faith in Upanishadic or Vedantic philosophy of monotheism. The Vedanta accepts all and rejects none. He embraced practically adherents of all religions with wide heart.

As a true Vedantist he vehemently attacked the Puranic idolatry. Monotheism means worship of one God, the Supreme Being or the Absolute, instead of many as Puranas advocate. He wanted to revive the tradition of Vedantic monotheism. With this end in view he established the Brahmo Samaj in 1828. The conservatives did not like this and as such they criticised him as anti-Hindu, deserter and heretic. But such criticism had no real foundation because Rammohan did not give up Hinduism. He remained within the fold of Hinduism and he wanted to reform it from within. In fact he started a purificatory movement within Hinduism.

Raja Rammohan Roy was also a great social reformer. He wanted to regenerate the Indian society by abolishing the cruel and heinous practice of "Sati" (Regulation XVII of 1829) and the other old and obsolete social customs like polygamy and child marriage. He was a pioneer among the nation-builders of modern India. He visualized an educated, cultured, rich and free India and tried to carry out certain social, political and administrative reforms in his time.

He demanded property rights for women, liberty of the individual and the press, separation of the executive from the judiciary, trial by jury, codification of civil and criminal laws, progressive land reforms in the interest of the raiyats and the appointment of Indians to important posts under Government.

He advocated these liberal reforms through his evidence before the select Committee of the House of Commons in 1833. Some of his proposals were

accepted in the Charter Act of 1833. Accordingly Macaulay came to India as the first Law-member of the Governor General's Council. As a journalist, the fame of Raja Rammohan knew no bounds in those days. He personally edited two journals – one in Bengali (Sambad Kaumudi – 1821) and the other in Persian (Miratul Akhbar – 1822). He for the first time demanded freedom of the Vernacular press. That is why he is regarded as the real "Founder of Modern Indian Press". It is for these progressive and liberal reforms with far-reaching effects and valuable services in different fields of national life that the Raja is called the "Father of Modern India". Priorto 1854, private Indian enterprise also worked in conducting indigenous institutions – higher and elementary

Bombay

These were the remarkable educational developments in Bengal. But the other parts of India did not lag behind in this respect. In the Bombay Presidency the movement of English education gained momentum in the hands of Mountstuart Elphinstone. Prior to his arrival in 1819 "the Bombay Education Society had been established in 1815 by members of the Church of England residing in Bombay". Its principal object was to educate the poor children of European soldiers. It depended mainly on voluntary donations and annual Government grants. The Society had founded several institutions at Surat, Thana and Bombay. By 1820, the society established four schools for Indian children having 250 students. In the same year a special committee was set up within the society through the efforts of Elphinstone.

Its main objects were:

(1) To improve existing schools for Indian children,
(2) To open new ones and
(3) To publish test-books for the Indian school children.

Later, in 1822, with the increase of activities, the said Committee was formed into a new Society called the Bombay Native School Book and School Society (better known as Bombay Native Education Society since 1827) to look after the education of Indian children.

Elphinstone was the President of this Bombay Native Education Society. The parent body, the Bombay Education Society, confined its activities to the education of European and Anglo-Indian children only. Because of the parental care and interest of Elphinstone, the Bombay Native Education Society soon developed into a leading institution and did appreciable work for the spread of education among Indian children.

This Society, under the leadership of Elphinstone, contributed greatly to the development of Indian private enterprise in modern education. The Society made suitable provisions for the publication of good text-books in vernacular and training of teachers in new methods of teaching.

The B.N.E. Society approached the Government for financial aid. On the basis of Elphinstone's Minutes in 1823 on Education, Government sanctioned a monthly grant of Rs. 600. The Bombay Native Education Society produced

more than forty publications in local languages. It published nearly 50,000 books at a cost of about two lakhs of rupees contributed by the Court of Directors. The society established some English Schools in the Presidency and started classes of Medicine and Engineering in Bombay in 1823 and 1826 respectively. The Elphinstone College was established in 1834.

Madras

In this Presidency the progress of English education was also commendable under Indian private enterprise. Many native princes patronised education. "The Raja of Mysore paid Rs. 350 annually for the English school at Bangalore. The Madras School Society was receiving an annual grant of Rs. 6000 from the Government. Special mention should be made here at Pachayappa's contribution to education. Pachayappa Mudaliar, a wealthy Hindu, had left, at the time of his death, a rich legacy of about four lakhs of rupees for charitable purposes". In 1842 the sum was utilised for starting a school in Madras with the object of providing free education to poor native children in elementary branches of English, Tamil and Telegu and science.

STUDY OF CONSTITUTIONAL LAW

The examples and perspective in this article may not represent a worldwide view of the subject. Please improve this article and discuss the issue on the talk page. *(December 2010)*

Constitutional law is a major focus of legal studies and research. For example, most law students in the United States are required to take a class in Constitutional Law during their first year, and several law journals are devoted to the discussion of constitutional issues.

THE RULE OF LAW

The doctrine of the rule of law dictates that government must be conducted according to law.

Dicey identified three essential elements of the British Constitution which were indicative of the rule of law:

1. Absence of arbitrary power;
2. Equality before the law;
3. The Constitution is a result of the ordinary law of the land.

THE SEPARATION OF POWERS

The Separation of Powers is often regarded as a second limb functioning alongside the Rule of Law to curb the powers of the Government. In most modern nation states, power is divided and vested into three branches of government: The Executive, the Legislature and the Judiciary. The first and the second are harmonized in traditional Westminster forms of government.

2

Constitution Law and Constituent Assembly

The Indian Constituent Assembly, thus elected, was criticised both by some Indians and the British, as unrepresentative of the Indian people. Sri Jaya Prakash Narain referred to it as "a restricted and curbed Constituent Assembly " a creation of the British imperialism and so unable to bring freedom to the Country. Churchill said that the Assembly represented "only one major community in India"; and for Viscount Simon, it was "a body of Hindus".

The working procedure, composition and status of the Constituent Assembly has been criticised on the following grounds:

Congress Domination: The Constituent Assembly was a one party body. The Assembly was the Congress and the Congress was India. The Congress had a, built-in-majority of 69 per cent in the Assembly and after partition, the congress majority jumped to 82 per cent. Prof. Shibban Lal Saxena complained that the Congress Party dominated the scene and the Constitution had very much suffered from it. "The Congress party meetings became meetings of the real Constituent Assembly, and this real Assembly became the mock Assembly where discussions arrived at by the Congress Party meetings were registered."

The Congress' overwhelming majority in the Constituent Assembly resulted from the December 1945 Provincial legislature elections and from partition, moreover, the Congress Working Committee directed the Provincial assemblies to elect some of the prominent non-congressmen so their experience and expertisation can be made available to the Assembly. Among them were A.K. Ayyar, H. K. Kunzru, N. G. Ayyangar, Ambedkar, K Santhanam, M.R. Jayakar

and K.M. Munshi. In the words of K. Santhanam, "There was hardly' any shade of public opinion not represented in the Assembly." The credit goes to the Congress Party for bringing into the proceedings of the Assembly a sense of order and discipline. As Dr. Ambedkar said, "It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly."

Was it a Sovereign Assembly: The Constituent Assembly was meeting with the permission of the British Government and a fourth of the nation was represented at the Assembly's deliberations. Had such a body any power or authority of its own? Could it speak and act for India? Was it sovereign? Maulana Azad, Nehru and Prasad believed that it was sovereign because the Assembly's authority came from the people of India although they recognised that the Cabinet Mission Plan placed certain limitations on its activities. The Assembly gave its own answer to these questions in its Rule when it arrogated to itself the authority to control its own being: "The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly." The Indian Independence Act passed by the British Parliament came into effect on 15th August; 1947, giving legally to the Constituent Assembly the status it had assumed since its inception. The Cabinet Mission Plan became outmoded, and the Constituent Assembly settled down to draft free India's Constitution. The Indian Independence Act of 1947 made it "the Sovereign Constituent Assembly for India". Pt. Nehru described it, on the midnight of August 14,1947, as "a sovereign body representing the sovereign people of India."

A Hindu Dominated Body: Although the Constituent Assembly enjoyed the confidence of a vast majority of people of India, yet some uncharitable critics dubbed it as the most unrepresentative of Constituent Assembly ever created in any democratic country of the world. British leaders like Churchill and Lord Simon named it as a Hindu Body representing the interests of the Hindus alone. Dr; Rajendra Prasad condemned this charge as baseless and irrational. He pointed out that except the representatives of the Muslim League, the Constituent Assembly of India represented all the communities and interest. The minority communities were fully represented in the Assembly, usually by members of their own choosing. The Indian Christians had 7 representatives in the Assembly, the Anglo-Indians 3, the Parsis 3 and so on. After partition, when the composition of the Assembly had become settled, the minorities had 88 of the 235 seats allotted to the Provinces, or 37 per cent of the Provincial membership. Additionally, the ideological spectrum of the Assembly was broadened by the inclusion of non-congress 'experts' as well as by the diverse nature of the Congress membership.

An Unrepresentative Body: Another charge generally levelled against the Constituent Assembly was that it had not been directly elected by the people on

the basis of universal adult franchise. As such, it did not reflect the aspirations of the masses. Socialist and Communist leaders of India attacked the unrepresentative character of the Constituent Assembly on this account Leaders of the Congress Party while refuting this criticism pointed out that the election of a new Constituent Assembly on the basis of universal adult franchise would have been a uphill task under the special circumstances created by the partition of the country. Otherwise, too, preparation of electoral rolls and holding of national elections in a big country like India was an impossible task. Any delay in framing a suitable constitution for India would have created unformidable problem for new India. It was further pointed out that even if there had been direct elections, the result would have been the same. The same persons who happened to be members of the Constituent Assembly would have been elected by an overwhelming majority. The general composition of the Constituent Assembly would not have changed much. The representative character of the Assembly is further proved by the fact that it included all the prominent leaders of major political parties of India. Dr. Ambedkar represented the depressed classes, Hansa Mehta represented the All-India Women Conference, the landlords of India were represented by Maharaja Darbhanga, and the Hindu Mahasabha was represented by Dr. Shyama Prasad Mukerji. Frank Anthony represented the Anglo-Indians and Jndian Christians were represented by H.C. Mukerji. So was the case with Sikhs and the Muslims.

It should not be forgotten, however, that India was not the only country to adopt indirect election in this respect. The delegates of the U.S., Convention:were chosen without any popular awareness; the South African Convention was also elected by the Provincial Legislatures. Moreover, if the father of the Indian Constituent Assembly opposed its election through universal suffrage, it was more due to the practical difficulties than any theoretical consideration.

Dominated by the Legal Luminaries: Then another criticism which is made against the Constituent Assembly is that it was an Assembly which was "dominated only by the politicians and lawyers. It did not give much representation to other sections of Indian Society. The net result was that this domination gave the country a very bulky document. According to some critics the Constitution of India is a lawyer's paradise. All said and done, the fact remains that the Constituent Assembly was guided and directed by the top leaders of the Congress. Stalwarts like Nehru, Patel, Prasad, Azad and Munshi dominated the scene. Although indirectly elected and therefore not responsible to the mass of Indians, the Constituent Assembly was a highly representative body.

DEVELOPMENT OF THE CONSTITUTION

The Constitution of the Indian Republic is the product not of a political revolution out of the research and deliberations of a body of eminent representative of the people (who sought to improve upon then existing system of administration). This very fact makes a retrospect of the constitutional development indispensible for a proper understanding of this Constitution.

GOVERNMENT OF INDIA ACT; 1858

The British Crown assumed sovereignty over India in 1858 and Parliament enacted the first salute for the governance of India under the direct rule of the British Government. By this Act, the powers of Crown were to be exercised by the Secretary of State for India assisted by a Council of fifteen members. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor–General, assisted by an Executive Council.

Indian Council Act 1861

The Indian Council Act of 1861 introduced a grain of popular element as it provided that the Governor General's Executive Council should include certain additional non-official members. The Act transact legislative business as Legislative Council. But this Council was neither representative nor deliberative in any sense.

Indian Council Act 1892

The Indian Council Act 1892 introduced two improvement namely (a) that the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal chamber of Commerce and the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities; (b) the Councils were to have the power the discussing the annual statement of revenue and expenditure, *i.e*., the Budged and of addressing questions to the Executive, But the Act retained the majority of official members.

Morley–Minto Reforms

The first attempt of introducing a representative and popular element was made by Morley-Minto Reforms which were implemented by the Indian Council Act, 1909. The size of Provincial Legislative councils was enlarged by including elected non-official members so then the -member of official majority had gone up. An element of election was also introduced in the Legislative Council at the Centre but the official majority was maintained.

The deliberative functions of the Legislative Councils were also increased by giving them the opportunity of influencing the policy of administration and on any matter of public interest except certain specified subjects, such as the Armed Forces, Foreign Affairs and the Indian States.

The positive vice of th Act of 1909 was that it provided for the first time for separate representation of Muslim Community and thus sowed the seeds of separatism.

Indian Council's Act of 1919

The next landmark in the Constitutional development of India is the Montagu–Chelmsford Report which led to the enactment of Government of India Act, 1919.

The Indian National Congress became more active during the first World War and started its campaign for self-government. In response to this popular demand the British Government made a declaration on August 20, 1917 that the policy of British Government was that of increasing association of Indians in every branch of administration and the gradual development of self governing institutions.

The then Secretary of State for India (Montagu) and the Governor – General (Chelmsford) entrusted the task and gave a legal shape to their recommendations as Government of India Act 1919.

The main features of the system introduced by this Act were as follows:

(a) *Dyarchy in the Provinces:* Responsible government in the Provinces was sought to be introduced for the administration of the Province, by resorting to device known as 'Dyarchy' or dual government. The subjects of administration were to be divided into two categories- Central and Provincial. The Central subjects were those which were exclusively kept under the control of the Central Government. The Provincial subjects were subdivided into 'transferred' and 'reserved' subjects. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to legislative Council. The reserved subjects were to be administered by the Governor and his Executive council without any responsibility to the legislature.

(b) *Relaxation of Central Control Over the Provinces:* Broadly speaking subjects, of all India importance were brought under the category of 'Central control over the provinces not only in administrative but also in legislative and financial matters.

This devolution of power to the provinces should not be mistaken for a federal distribution of powers. But provinces got power by way of delegation from the Centre.

(c) *The Indian Legislature was made more Representative:* The Indian Legislature was made more representative and for the first time, bi-cameral. It was to consist of an Upper House, named the Council of State, composed of 60 members of whom 34 were elected, about 144 members of whom 104 were elected.

But there were also certain shortcomings of the 1919 Act. Firstly the structure still remained unitary and centralized 'with the governor-general in Council as the keystone of the whole constitutional edifice; and it is through the governor-general in Council that the Secretary of State and ultimately, Parliament discharged their responsibilities for peace, order and good government of India. Secondly the great dissatisfaction was the working of Dyarchy in the provincial sphere. The Governor came to dominate ministerial policy by means of his overriding financial powers and control over the official block in the Legislature. The main defect of the system from the Indian standpoint was the control of the purse.

GOVERNMENT OF INDIAN ACT 1935

The failure of the Statutory Commission (Simon Commission) and the Round Table Conference led to the enactment of the Government of India Act 1935. The main features of the governmental system prescribed by the Act of 1935 were as follows:

(a) *Federation and Provincial Autonomy:* The Act of 1935 prescribed a federation taking the provinces and the Indian states as units. But through the part relation to the federation never took effect, the part relating to Provincial Autonomy was given effect. The Act divided legislative powers between the provincial and Central Legislatures, and within its defined sphere, the provinces were no longer delegates of the Central Government, but were autonomous units of administration.

(b) *Dyarchy at the Centre:*
The executive authority of the centre was vested in the Governor-General whose functions were divided into two groups:

1. The administration of defence, external affairs, ecclesiastical affairs, ecclesiastical affairs and of tribal areas was to be made by Governor-General in his discretion with the help of 'Counselors' appointed by him. They were not responsible to the Legislature of with regard to matters other than the above reserved subjects, the Minister' who were responsible to Legislature.
2. *The Legislature:* The Central Legislature was bi-cameral consisting of the Federal Assemble and the Council of States. The legislative powers of both the Central and Provincial Legislatures were subject to various limitations and neither could be said to have possessed the features of a sovereign Legislature.

(c) *Distribution of Legislative Powers between the Centre and the Provinces:* The Federal provision of Government India Act 1935 were in fact applied as between the Central Government and the Provinces.
A three-fold divisions was made in the Act:

- There was a Federal list over which Federal Legislature had exclusive powers of legislation.
- There was provincial list of matters over which the Provincial Legislature had exclusive jurisdiction
- There was a concurrent list of matters over which both Federal and Provincial Legislature had competence.

The Governor-general was empowered to authorize either the Federal of the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the Legislative lists (*i.e.*, residuary powers).

It should be pointed out that this Act went another step forward in Perpetuation the communal divide between the Muslims and the Non-Muslim communities. The Act provided separate representation not only for the Muslim, but also for the Sikhs, the Europeans, Indian Christians and thus created a serious hurdle in the way of the building up of national unity.

INDEPENDENCE ACT 1947

After the agreement on the Mountbatten Plan the British Parliament lost no time to draft the Indian Independence Act 1947.

The main features of the Act were as follows:

- *Abolition of the Sovereignty and Responsibility of British Parliament*: The Governor-general of India and Provincial Governors remained substantially under the direct control of the Secretary of State until the Indian Independence Act 1947. But the Independence Act 1974 altered this from the 15th August, 1947. India ceased to be a Dependency and the suzerainty of the British Crown over Indian States.
- *The Crown was no longer the source of authority*: So long as India remained a dependency of the British Crown the Government India was carried on in the name of this Majesty. But under the Act 1947, neither of the two Dominoes of India and Pakistan derived its authority from the British Isles.
- *Sovereignty of the Dominion Legislature*: From the appointed day and until the constituent Assemblies of the two Dominion were able to frame their new Constitutions and new Legislatures were constituted there under it was Constituent Assembly itself, which was to function also as the Central Legislature of the Dominion to which it belonged. In other words, the Constituent Assembly was to have a dual function, *i.e*., of 'Constituent' as well as 'Legislative'.

PREAMBLE OF THE CONSTITUTION

"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 though, expression, belief, faith and worship;

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

Raternity assuring the dignity of the individual and the unit and integrity of the Nation;

In Our Constituent Assembly this twenty-sixth day of November,1949, do Hereby Adopt, Enact and Give to Ourselves this Constitution".

The Preamble to our Constitution serves, two purposes:

(a) It indicates the source from which the Constitution derives its authority;
(b) Its also states the objects which the Constitution seeks to establish and promote.

The Indian Constitution begins with a meaningful preamble. It contains a pledged by the founding fathers to establish political democracy based on social and economic justice, liberty of the individual equality of status and of opportunity and integrity and unity of the nation. These are noble ideals and all government are expected to work in accordance with the values mentioned in the preamble.

The fundamental principles stated on the preamble are sought to be given legal form through the numerous provisions of the constitution. Our preamble does not seek to protect any particular class of people. It endeavors to protect the interest of the nation as whole. It is not covered by any article of the constitution.

Moreover it does not give any authority to any organ of the Government either at the centre or in the states. Nevertheless, it is a precious part of the constitution. Because, it unambiguously points at the basic ideals of the constitution and the aspirations of the people in India.

In the preamble and constitution we can find the vibration of the Gandhian concept of Independent India. The opening words of the preamble emphasize the ultimate authority of the people whose will is very important to evolve constitution.

The preamble is normally included in the constitution with three main objective. They are- (1) ideas of the founding fathers and ideals cherished by them at the time of adoption of the constitution (2) the type of government that is created by the constitution (3) sources of sovereign power in the country. Legally speaking the preamble has only limited purpose. It is not justifiable, but it helps in interpreting the text of the constitution.

The ideals of the preamble were first set out by Nehru in the first session of the Constituent Assembly in the form of the objectives Resolution. This was later adopted by the Assembly. The same resolution was given the shape of the preamble when the constitution was signed in November 1949. However some additions were made in the preamble by the 42nd amendment enacted in 1976. The Janatha party Government through the 44th amendment decided to retain the words socialist and secular in the preamble of the constitution. Thus the preamble declares India to be a Sovereign Socialist, Secular and Democratic Republic.

IDEALS OF THE PREAMBLE

(1) WE THE PEOPLE OF INDIA

It simply implies the people of India in their aggregate capacity. Its significance lies in the fact that the constitution eliminates the British King externally and the Indian princes internally if you read the first and the last parts of the preamble we find that we the people of India have adopted enacted and given to ourselves this constitution. The preamble insists that the sovereignty in India vests in the people. The constitution has its source in the people.

The people are the source of constitution. Therefore it is the product of the will of the people. Hence the authority of framing constitution belongs to the people who are ultimate source of all power and authority in India. But the people did not enact it directly. It has been adopted by the people in our constituent assembly. However the question has been repeatedly asked what is the actual role of the people in framing constitution? Did the constituent

Assembly actually reflect the will of the people. A member had tried to move resolution to the effect that the draft should not be discussed by a new constituent Assembly elected on the basis of universal adult franchise. But the resolution was not supported by anybody. The Assembly elected in 1946 in accordance with the Cabinet Mission Plan did adopt enact and give to ourselves.

The Constituent Assembly was elected by the members of the Provincial Legislative Assemblies Election of the Assembly directly on the basis of adult franchise would have delayed the setting up of Assembly. It would have involved preparation of fresh electoral rolls and many other problems. Moreover it would not have been possible to hold referendum in a vast country like India with a majority of illiterate people. The founding fathers convinced that the constitution had the full backing of the people. Dr. Ambedkar had himself asserted in the Assembly that the basis of the Constitution was the people and ultimate authority belonged to them.

The first general election was held on the basis of adult franchise in 1952. At that time several opposition parties told the people that if they came to power they could scrap the constitution and call a new Constituent Assembly. The opposition parties badly defeated. Most of the Members of the Constituent Assembly were elected by the people. Thus there was no ground to say that the constitution did not enjoy the popular support.

(2) SOVEREIGN STATE

Till 26th January 1950, India was not a full fledged. We were governed by the act of 1947. The preamble proclaims that India is a sovereign state-India is externally free and independent. Therefore it is not subservient to any foreign country. It has adopted its own economic and political system. India is free to take any decision and formulate any policy without interference from any country. Moreover it is internally supreme over all individuals and associations.

India's membership of the commonwealth of Nations does not affect her sovereign character. She considers the British Crown as the symbol of friendship. Thus India's membership of the Commonwealth of nations is based on an extra-constitutional contractual arrangement entered into at will and terminable at will. It is well known that it is open to any member nation to go out of the commonwealth if it so chooses.

(3) DEMOCRATIC

The constitution establishes representative democracy by ensuring universal adult franchise and free and far periodical elections. It also provides for the rule of law and independence of judiciary.

The state has been forbidden to make any discrimination as the grounds of religion, race, colour, places of residence, sex, *etc.*, however there is no provision for the agencies of direct democracy like initiative, referendum, recall and plebiscite. The entire authority of conducting the Government has been placed in the hands of representatives chosen by the people in a democratic manner.

Thus we have indirect or representative form of Government largely on the linguistic model. The vast electorate of the country shares the political power. At the same time electorate can not directly exercise any political function. They can act only through their representatives. It is the representatives of the people who will exercise the legislative functions and administration will be carried on with the advice of ministers responsible to the legislative body.

(4) REPUBLIC

The word republic has different meanings in the discipline of political science. For instance, Leacock says that it is simply opposition to Monarchy. According to Jellinek republic is a government by a collegial organization. Rourseau says that a republic is one that is based on the social contract.

In America Madison said that Republic is a government which derives its powers directly or indirectly form the great body of the people. In such governments, persons hold their offices during the pleasure of the people. Our founding fathers seem to have been guided by this statement. Accordingly India is Republic. Because the head of the state can not be a King. He can only be the President elected by the people indirectly. Therefore, republic means that the country has an elected President as head of the state. There is no monarch as head of the state.

(5) SOCIALIST

The preamble also declares that India is a socialist state. This implies that socialistic pattern of society should be established under this system, the ownership and management of all the means of production will be in the hands of society. But this has not yet been materialized. The Congress under Nehru's leadership had first declared Socialist pattern of society and then socialism as the basis of country's economy. The founding fathers themselves wanted to create a society on the basis of economic justice where distinction between the rich and the poor would be diminished.

The limited Right to property and directive principles of state policy indicate socialist objective. The preamble itself had the phrase justice, social, economic and political. Thus the addition of the word socialist has only psychological importance. Mr. Vasant Sathe member of the Swaran Singh committee agreed that the addition of the word socialist was not going to make any material difference. Mr. Singh also said that the conclusion of the word socialist was only to give a positive direction to the Governments in the formulation of its policy.

(6) SECULAR

Inclusion of the word Secular was also aimed at the creation of psychological impact. Even before 1976 there was ample emphasis in the constitution as Secularism. The preamble itself had assured liberty of factors, belief ad worship. Besides secularism is clearly provided in the part III dealing with fundamental

rights Equality before law, equal Opportunity to secure a job without discrimination as the ground of religion, freedom of religion and worship and right of the minorities to maintain their educational institutions are enough guarantees of secularism. The inclusion of the word Secular simply emphasizes that we do not have any state religion. This implies that stare is neither religious not anti-religious. It is neutral as far religious matters are concerned. It is not guided by any religion on the discharge of its functions. Therefore state is wholly detached by religions dogmas. It guarantees complete rights to all people to preach, propagate and practice any religion. No religion is to be given priority over the other. Hence India is a Secular state.

(7) JUSTICE

Justice implies the attainment of common good. Since India is a democratic state, it aims at promoting social, economic and political justice to all the people. Social justice can he ensured if no discrimination is made by the society on the basis of caste of colour. The constitution has provided for abolition of untouchability. It has also made provisions for certain privileges for S.C and S.T so that they can rise upto the level of the rest of the community.

Economic justice can be assured by equitable distribution of wealth, abolition of beggar and forced labour and avoidance of concentration of property. These guideline have been provided in the directive principles of state policy. The introduction of adult franchise, abolition of separate communal electorate and provision for securing jobs without any discrimination aim at political justice. Thus the preamble has emphasized the goal of justice in all its dimensions.

(8) LIBERTY

Liberty is an essential requirement of democratic and free society. Its aim is to ensure all round development of the individual and to ensure adequate rights to the people for this purpose. Liberty implies absence of arbitrary restrictions on the freedom of individual. It also implies the creation of conditions in which individual can freely develop his personality. The society is made up of individuals. Hence the social progress depends on the development of the personality of individual in a free atmosphere. The preamble has underlined the importance of liberty of thought and expression which is essential for the success of political democracy in the country. At the same time liberty of belief, faith and worship has been secured to provide religions freedom in our secular society.

(9) EQUALITY

Equality is an equally important concept. Liberty is a shame without equality. It does not mean that all men are physically materially or intellectually alike. Infact no two person can be alike. Equality actually implies equal opportunities and equal status. Equality of status is ensured by abolition of untouchability. Moreover in order to secure equality of status, no discrimination on the ground of religion race, sex, colour or places of residence will be made. The equality of

opportunity is secured by the principle of rule of law and non-discriminatior in the matter the matters of public appointments. All are equal in the eyes of law and all receive equal protection.

(10) FRATERNITY

Fraternity is another ideal mentioned in preamble of the constitution. The concept of Fraternity was first emphasized during the French Revolution. Preamble says that all human beings are born fee and equal in dignity and rights. They should act towards on another in a spirit of brotherhood. Fraternity implies brotherhood. In a vast country like India where people have different faiths, customs and traditions speak different languages the ideal of fraternity is significant.

The preamble refers to fraternity assuring the dignity of the individual and unity of the nation. These two principles are of great importance no individual should feel that he is interior to other. No on should be compelled to live to that dignity. Thus dignity of the individual must be respected so that natural fraternity can develop. At the same time unity and integrity of the nation must be ensured.

A country with numerous diversities can flourish only if there is a feeling of oneness. Unity in diversity is the beauty of Indian culture. This must be preserved. Integrity of the nation is of vital importance. No individual can live with dignity if the integrity of the country itself is threatened. At times separatist tendencies in the country are very dangerous. They must be nipped in the bud and integrity of the nation must be preserved at all costs.

STATE AND LEGAL STRUCTURE

Constitutional laws may often be considered second order rulemaking or rules about making rules to exercise power. It governs the relationships between the judiciary, the legislature and the executive with the bodies under its authority. One of the key tasks of constitutions within this context is to indicate hierarchies and relationships of power. For example, in a unitary state, the constitution will vest ultimate authority in one central administration and legislature, and judiciary, though there is often a delegation of power or authority to local or municipal authorities. When a constitution establishes a federal state, it will identify the several levels of government coexisting with exclusive or shared areas of jurisdiction over lawmaking, application and enforcement.

HUMAN RIGHTS

Human rights or civil liberties form a crucial part of a country's constitution and govern the rights of the individual against the state. Most jurisdictions, like the United States and France, have a codified constitution, with a bill of rights. A recent example is the Charter of Fundamental Rights of the European Union which was intended to be included in the Treaty establishing a Constitution for Europe, that failed to be ratified. Perhaps the most important example is the Universal Declaration of Human Rights under the UN Charter. These are

intended to ensure basic political, social and economic standards that a nation state, or intergovernmental body is obliged to provide to its citizens but many do include its governments.

Some countries like the United Kingdom have no entrenched document setting out fundamental rights; in those jurisdictions the constitution is composed of statute, case law and convention. A case named *Entick v.*

Carrington is a constitutional principle deriving from the common law. John Entick's house was searched and ransacked by Sherriff Carrington. Carrington argued that a warrant from a Government minister, the Earl of Halifax was valid authority, even though there was no statutory provision or court order for it. The court, led by Lord Camden stated that, "The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. By the laws of England, every invasion of private property, be it ever so minute, is a trespass... If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment."

Inspired by John Locke, the fundamental constitutional principle is that the individual can do anything but that which is forbidden by law, while the state may do nothing but that which is authorized by law. The commonwealth and the civil law jurisdictions do not share the same constitutional law underpinnings.

LEGISLATIVE PROCEDURE

Another main function of constitutions may be to describe the procedure by which parliaments may legislate. For instance, special majorities may be required to alter the constitution. In bicameral legislatures, there may be a process laid out for second or third readings of bills before a new law can enter into force. Alternatively, there may further be requirements for maximum terms that a government can keep power before holding an election.

CONSTITUTIONAL LAW: AN OVERVIEW

The broad topic of constitutional law deals with the interpretation and implementation of the United States Constitution. As the Constitution is the foundation of the United States, constitutional law deals with some of the fundamental relationships within our society. This includes relationships among the states, the states and the federal government, the three branches (executive, legislative, judicial) of the federal government, and the rights of the individual in relation to both federal and state government. The area of judicial review is an important subject within Constitutional Law. The Supreme Court has played a crucial role in interpreting the Constitution. Consequently, study of Constitutional Law focuses heavily on Supreme Court rulings. While the topic also covers the interpretation and implementation of state constitutions, without qualification it is usually understood as referring to the Federal Constitution. The Constitution establishes the three branches of the federal government and

enumerates their powers. Article I establishes the House of Representatives and the Senate. Section 8 enumerates the powers of Congress. Congress has specifically used its power to regulate commerce (the commerce clause) with foreign nations and among the states to enact broad and powerful legislation throughout the nation. The sixteenth Amendment gives Congress the power to collect a national income tax without apportioning it among the states. Section 9 of Article I prohibits Congress from taking certain actions.

For example, until the passage of the 16th Amendment Congress could not directly tax the people of the United States unless it was proportioned to the population of each state. Section 10 of Article I lists a number of specific actions that individual states may no longer take. Article II of the Constitution establishes the presidency and the executive branch of government. The powers of the President are not as clearly enumerated as those of the Congress. He is vested with the "executive" power by section 1. Section 2 establishes him as the "commander in chief" and grants him power to give pardons, except in cases of impeachment, for offences against the United States. Section 3 provides the power to make treaties (with the advice and consent of two-thirds of the Senate) and the power to nominate ambassadors, ministers, Judges of the Supreme Court, and all other Officers of the United States.

The role of the Supreme Court and the rest of the judicial branch of the federal government is covered by Article III. Article V of the Constitution provides the procedures to be followed to amend the Constitution. Currently, the Constitution has been amended twenty-seven times (including the Bill of Rights). Article VI of The United States Constitution states that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made or shall be made, under the Authority of the United States, shall be the Supreme Law of the Land." Furthermore, all federal, state, and local officials must take an oath to support the Constitution. This means that state governments and officials cannot take actions or pass laws that interfere with the Constitution, laws passed by Congress, or treaties. The Constitution was interpreted, in 1819, as giving the Supreme Court the power to invalidate any state actions that interfere with the Constitution and the laws and treaties passed pursuant to it. That power is not itself explicitly set out in the Constitution but was declared to exist by the Supreme Court in the decision of McCulloch v. Maryland.

The first section of the fourth article of the Constitution contains the "full faith and credit clause." This clause provides that each state must recognize the public acts (laws), records, and judicial proceeding of the other states. The Fourth Article also guarantees that a citizen of a state be entitled to the "privileges and immunities" in every other state. The power of the federal government is not absolute. The tenth Amendment specifically states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Specific provisions of the Constitution protect the rights of the individual from interference by the federal and state governments. The first ten amendments,

called the Bill of Rights, were ratified in 1791, providing a check on the new federal government. The first eight amendments provide protection of some of the most fundamental rights of the individual. For example, the First Amendment protects the fundamental civil rights of free speech, press and assembly. Subsequent amendments have also broadened the protection afforded the rights of the individual. The Thirteenth Amendment made slavery illegal. The Fourteenth Amendment prohibits the states from abridging "the rights and immunities" of any citizen without due process of law. The Supreme Court has interpreted the "due process" clause of the Fourteenth Amendment as affording citizens protection from interference by the state with almost all of the rights listed in the first eight amendments. The exceptions are the right to bear arms in the Second Amendment, the Fifth Amendment guarantee of a grand jury in criminal prosecutions, and the right to a jury for a civil trial under the Seventh Amendment. The Fourteenth Amendment also guarantees the equal protection of the laws.

CONSTITUENT ASSEMBLY

The Constitution was drafted by the Constituent Assembly, which was elected by the elected members of the provincial assemblies. Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee and Nalini Ranjan Ghosh were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi and R. K. Sidhwa.

The Chairman of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Ari Bahadur Gururng represented the Gorkha Community. Prominent jurists like Alladi Krishnaswamy Iyer, B. R. Ambedkar, Benegal Narsing Rau and K. M. Munshi, Ganesh Mavlankar were also members of the Assembly.

Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh and Rajkumari Amrit Kaur were important women members. The first president of the Constituent Assembly was Sachidanand Sinha later, Rajendra Prasad was elected president of the Constituent Assembly. The members of the Constituent Assembly met for the first time in the year 1946 on 9 December.

DRAFTING

In the 14 August 1947 meeting of the Assembly, a proposal for forming various committees was presented.

Such committees included a Committee on Fundamental Rights, the Union Powers Committee and Union Constitution Committee. On 29 August 1947, the Drafting Committee was appointed, with Dr. Ambedkar as the Chairman along with six other members. A Draft Constitution was prepared by the committee and submitted to the Assembly on 4 November 1947.

The Assembly met, in sessions open to the public, for 166 days, spread over a period of 2 years, 11 months and 18 days before adopting the Constitution. After many deliberations and some modifications, the 308 members of the Assembly signed two hand-written copies of the document (one each in Hindi and English) on 24 January 1950. Two days later, the Constitution of India became the law of all the Indian lands.

The Constitution of India has undergone 108 amendments in less than 60 years since its enactment.

STRUCTURE

The Constitution, in its current form, consists of a preamble, 22 parts containing 448 articles, 12 schedules, 5 appendices and 107 amendments to date. The Women's Reservation Bill, 2010, if passed by both houses of parliament and ratified by half of the states, would be 108th Amendment to the Constitution. Although it is federal in nature with strong unitary bias, in case of emergencies it takes unitary structure.

PARTS

Parts are the individual chapters in the Constitution, focused in single broad field of laws, containing articles that addresses the issues in question.

- Preamble
- Part I - Union and its Territory
- Part II - Citizenship.
- Part III - Fundamental Rights
- Part IV - Directive Principles and Fundamental Duties.
- Part V - The Union.
- Part VI - The States.
- Part VII - States in the B part of the First schedule *(Repealed)*.
- Part VIII - The Union Territories
- Part IX - Panchayat system and Municipalities.
- Part X - The scheduled and Tribal Areas
- Part XI - Relations between the Union and the States. Part XII - Finance, Property, Contracts and Suits
- Part XIII - Trade and Commerce within the territory of India
- Part XIV - Services Under the Union, the States and Tribunals
- Part XV - Elections
- Part XVI - Special Provisions Relating to certain Classes.
- Part XVII - Languages
- Part XVIII - Emergency Provisions
- Part XIX - Miscellaneous
- Part XX - Amendment of the Constitution
- Part XXI - Temporary, Transitional and Special Provisions
- Part XXII - Short title, date of commencement, Authoritative text in Hindi and Repeals

- Part XXIII - Temporary, Transitional and Special Provisions
- Part XXIV - Temporary, Transitional and Special Provisions.

SCHEDULES

Schedules are lists in the Constitution that categorizes and tabulates bureaucratic activity and policy of the Government.

- *First Schedule (Articles 1 and 4):* States and Union Territories – This lists the states and territories on of India, lists any changes to their borders and the laws used to make that change.
- *Second Schedule (Articles 59, 65, 75, 97, 125, 148, 158, 164, 186 and 221):* Emoluments for High-Level Officials – This lists the salaries of officials holding public office, judges, and Controller and Auditor-General of India.
- *Third Schedule (Articles 75, 99, 124, 148, 164, 188 and 219):* Forms of Oaths – This lists the oaths of offices for elected officials and judges.
- *Fourth Schedule (Articles 4 and 80):* This details the allocation of seats in the *Rajya Sabha* (the upper house of Parliament) per State or Union Territory.
- *Fifth Schedule (Article 244):* This provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions).
- *Sixth Schedule (Articles 244 and 275):* Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, Mizoram.
- *Seventh Schedule (Article 246):* The union (central government), state, and concurrent lists of responsibilities.
- *Eighth Schedule (Articles 344 and 351):* The official languages.
- *Ninth Schedule (Article 31-B):* This covers land and tenure reforms; the accession of Sikkim with India. It may be reviewed by the courts.
- *Tenth Schedule (Articles 102 and 191):* "Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.
- *Eleventh Schedule (Article 243-G): Panchayat Raj* (rural local government).
- *Twelfth Schedule (Article 243-W):* Municipalities (urban local government).

SALIENT FEATURES OF THE WORKING PROCESS OF THE CONSTITUENT ASSEMBLY

According to Granville Austin the success of the constitution lies principally in its having been framed by Indians, and in the excellence of the framing process itself. The members of the Assembly drafted a constitution that expressed the aspirations of the nation. They skilfully selected and modified the provisions that they borrowed, helped by the 'experts' among their number and the advice given by ministries of the Union and Provincial Governments. The Assembly members also applied to their task with great effectiveness two wholly Indian concepts, consensus and; accommodation. Accommodation was applied to the

principles to be embodied in the Constitution. Consensus was the aim of the decision-making process, the single most important source of the, Constituent Assembly's effectiveness.

DECISION-MAKING BY CONSENSUS

Consensus is a manner of making decisions by unanimity. It is a recognition that majority rule may not be a successful way to decide political conflicts. Assembly leaders understood this well and bent their energies towards this goal in the hope and expectation that the constitution, framed by consensus, would work effectively and thus prove durable. According to Austin, "Consensus thus had a general appeal in the Assembly; to the leadership an ethical and effective way of reaching lasting agreement and to the rank and file as an indigenous institution that suited the framing of an Indian Constitution.

Consensus approach was adopted in a variety of ways. Most important; among them were the Congress Assembly Party meetings where each provision of the Constitution was subjected to frank and searching debates and whose approval was in fact as important as that of the Assembly itself. Everyone elected to the Assembly on the Congress ticket could attend meetings, from party stalwarts to non-congressmen like Ayyar, Ambedkar and N. G. Ayyangar, who were brought into the Assembly because the leadership believed that their talents should not be wasted. Also a part of this' process was the Assembly's committee system, the dialogue between provincial and Union. Government leaders in the Assembly, the many inter-governmental communications and the off the record discussions between Assembly leaders and dissidents among the members.

The primary, examples of decision-making by consensus were perhaps the federal and language provisions. The language question strained the Assembly's decision-making machinery to the utmost. For nearly three years the members searched for a generally acceptable solution. The Munshi-Ayyangar formula was drafted almost in desperation. Opening the final Assembly debate on language, Prasad announced that he would not put the issue to a vote. If an agreement was not acceptable to the whole country it would be most difficult to implement.

THE PRINCIPLE OF ACCOMMODATION

According to Austin, the second of India's original contribution to constitution-making was the principle of Accommodation-the ability to reconcile apparently incompatible concepts. India's constitutional structure is a good example of the principle of accommodation on matters of substance. It has reconciled the federal and unitary system, membership of commonwealth and republican status of Government, Provisions for Panchayati Raj with the need for a strong Central Government.

THE ART OF SELECTION AND MODIFICATION

According to Austin, the Constituent Assembly had discovered a new principle-the art of selection and modification. The Assembly was not merely

imitative, the borrowing from different political systems did not relieve the Assembly of choice and that the borrowed provisions had to be adopted to suit Indian conditions. One example of selection and modification is the method of Constitutional amendment. The three mechanisms of the method devised by the Assembly have made the Constitution flexible while at the same time protecting the rights of the States. They have worked better than has the amending process any other country where federalism and the British Parliamentary System jointly form the bases of the Constitution. In brief, the Assembly selected and modified the provisions from other constitutions with a great deal of professional help.

CRITICISM OF THE CONSTITUENT ASSEMBLY

The Indian Constituent Assembly, thus elected, was criticised both by some Indians and the British, as unrepresentative of the Indian people. Sri Jaya Prakash Narain referred to it as "a restricted and curbed Constituent Assembly " a creation of the British imperialism and so unable to bring freedom to the Country. Churchill said that the Assembly represented "only one major community in India"; and for Viscount Simon, it was "a body of Hindus". The working procedure, composition and status of the Constituent Assembly has been criticised on the following grounds:

Congress Domination: The Constituent Assembly was a one party body. The Assembly was the Congress and the Congress was India. The Congress had a, built-in-majority of 69 per cent in the Assembly and after partition, the congress majority jumped to 82 per cent. Prof. Shibban Lal Saxena complained that the Congress Party dominated the scene and the Constitution had very much suffered from it. "The Congress party meetings became meetings of the real Constituent Assembly, and this real Assembly became the mock Assembly where discussions arrived at by the Congress Party meetings were registered."

The Congress' overwhelming majority in the Constituent Assembly resulted from the December 1945 Provincial legislature elections and from partition, moreover, the Congress Working Committee directed the Provincial assemblies to elect some of the prominent non-congressmen so their experience and expertisation can be made available to the Assembly. Among them were A.K. Ayyar, H. K. Kunzru, N. G. Ayyangar, Ambedkar, K Santhanam, M.R. Jayakar and K.M. Munshi. In the words of K. Santhanam, "There was hardly' any shade of public opinion not represented in the Assembly." The credit goes to the Congress Party for bringing into the proceedings of the Assembly a sense of order and discipline. As Dr. Ambedkar said, "It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly."

Was it a Sovereign Assembly: The Constituent Assembly was meeting with the permission of the British Government and a fourth of the nation was

represented at the Assembly's deliberations. Had such a body any power or authority of its own? Could it speak and act for India? Was it sovereign? Maulana Azad, Nehru and Prasad believed that it was sovereign because the Assembly's authority came from the people of India although they recognised that the Cabinet Mission Plan placed certain limitations on its activities. The Assembly gave its own answer to these questions in its Rule when it arrogated to itself the authority to control its own being: "The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly." The Indian Independence Act passed by the British Parliament came into effect on 15th August; 1947, giving legally to the Constituent Assembly the status it had assumed since its inception. The Cabinet Mission Plan became outmoded, and the Constituent Assembly settled down to draft free India's Constitution. The Indian Independence Act of 1947 made it "the Sovereign Constituent Assembly for India". Pt. Nehru described it, on the midnight of August 14,1947, as "a sovereign body representing the sovereign people of India."

A Hindu Dominated Body: Although the Constituent Assembly enjoyed the confidence of a vast majority of people of India, yet some uncharitable critics dubbed it as the most unrepresentative of Constituent Assembly ever created in any democratic country of the world. British leaders like Churchill and Lord Simon named it as a Hindu Body representing the interests of the Hindus alone. Dr; Rajendra Prasad condemned this charge as baseless and irrational. He pointed out that except the representatives of the Muslim League, the Constituent Assembly of India represented all the communities and interest. The minority communities were fully represented in the Assembly, usually by members of their own choosing. The Indian Christians had 7 representatives in the Assembly, the Anglo-Indians 3, the Parsis 3 and so on. After partition, when the composition of the Assembly had become settled, the minorities had 88 of the 235 seats allotted to the Provinces, or 37 per cent of the Provincial membership. Additionally, the ideological spectrum of the Assembly was broadened by the inclusion of non-congress 'experts' as well as by the diverse nature of the Congress membership.

An Unrepresentative Body: Another charge generally levelled against the Constituent Assembly was that it had not been directly elected by the people on the basis of universal adult franchise. As such, it did not reflect the aspirations of the masses. Socialist and Communist leaders of India attacked the unrepresentative character of the Constituent Assembly on this account Leaders of the Congress Party while refuting this criticism pointed out that the election of a new Constituent Assembly on the basis of universal adult franchise would have been a uphill task under the special circumstances created by the partition of the country. Otherwise, too, preparation of electoral rolls and holding of national elections in a big country like India was an impossible task. Any delay in framing a suitable constitution for India would have created unformidable problem for new India. It was further pointed out that even if there had been direct elections, the result would have been the same. The same persons who

happened to be members of the Constituent Assembly would have been elected by an overwhelming majority. The general composition of the Constituent Assembly would not have changed much. The representative character of the Assembly is further proved by the fact that it included all the prominent leaders of major political parties of India. Dr. Ambedkar represented the depressed classes, Hansa Mehta represented the All-India Women Conference, the landlords of India were represented by Maharaja Darbhanga, and the Hindu Mahasabha was represented by Dr. Shyama Prasad Mukerji. Frank Anthony represented the Anglo-Indians and Jndian Christians were represented by H.C. Mukerji. So was the case with Sikhs and the Muslims.

It should not be forgotten, however, that India was not the only country to adopt indirect election in this respect. The delegates of the U.S., Convention:were chosen without any popular awareness; the South African Convention was also elected by the Provincial Legislatures. Moreover, if the father of the Indian Constituent Assembly opposed its election through universal suffrage, it was more due to the practical difficulties than any theoretical consideration.

Dominated by the Legal Luminaries: Then another criticism which is made against the Constituent Assembly is that it was an Assembly which was "dominated only by the politicians and lawyers. It did not give much representation to other sections of Indian Society. The net result was that this domination gave the country a very bulky document. According to some critics the Constitution of India is a lawyer's paradise. All said and done, the fact remains that the Constituent Assembly was guided and directed by the top leaders of the Congress. Stalwarts like Nehru, Patel, Prasad, Azad and Munshi dominated the scene. Although indirectly elected and therefore not responsible to the mass of Indians, the Constituent Assembly was a highly representative body.

ATTITUDE OF THE CONSTITUENT ASSEMBLY

Divergent views and attitudes were seen in the framing of the Constitution. The members of the Assembly had a variety of perceptions about the future Indian polity. Their divergent views on the major issue of the political system Were quite interesting.

Adult Franchise: Should adult franchise be introduced, involving an increase in the electorate from 35 million to 170 million? Maulana Azad advocated its deferment for 15 years. Prasad and Nehru plumped for adult franchise as an act of faith. The vote favouring it was carried amidst acclamation.

Jammu and Kashmir: Nehru favoured incorporation of a section establishing a special relationship with the state of Jammu and Kashmir, thus inferentially recognising the state's right to frame its own constitution within the Indian Union. Patel wanted the state to be fully integrated with the Union. The "Cabinet was divided on the issue and the trend in the Constituent Assembly favoured Sardar's stand. But when the matter came before the Assembly, Patelput the unity and solidarity of the, Government before everything else and backed the Nehru formula.

Reservation for Minorities: The most delicate issue related to safeguards for minorities. Azad wanted reservation of seats for the Muslims and other minorities within the framework of general electorates. Patel opposed such safeguards. Nehru left it to Patel to jump the hurdle as Chairman of the Advisory Committee on Minorities. Two women members played a key role in this high-strung drama. Amrit Kaur, speaking for the Indian Christians, said that reservation of seats and weightage based on religion or sect would lead to fragmentation of the Indian Union. The Sikhs demanded the same treatment as given to the Muslims.. After the Committee had-wrestled with the problem for weeks, Patel decided to clinch the issue at its final meeting. He called on Begum Aizaz Rasul of Lucknow to state the Muslim view. She was a zealous leader of Muslim League before partition and had even gone to the length of giving up Saree and adopting the costume worn by the Begums of Oudh. The Muslims left behind. in India, she said nervously, were an integral part of the nation and needed no safeguards.. Patel seized this crucial movement to declare that the Muslims-were unanimously in favour of joint electorates and adjourned the meeting.

Office of the President and Governors: Much heat was generated on _ whether the President of the Republic and Governors of the Constituent States should be elected by popular vote and whether they should have discretionary powers. Legal luminaries and constitutional experts had a field day, but Nehru and Patel brought a practical approach to bear on the issue. They opposed popularly elected heads. Indeed, Nehru as Prime Minister took steps to see that; the Union President even though chosen by an electoral college consisting of all the members of the Central and State Legislatures, would be a constitutional figure head. Patel as Home Minister made sure that Governor of a State was the nominee of the Union Government and had enough discretionary powers to act as the executive agent of the Centre in an emergency.

Link Language: The question of a national link language posed the most (j difficult hurdle. Swami Dayanand and Mahatma Gandhi, both from Gujarat and Tilak and Savarkar, from Maharashtra had zealously pleaded for Hindi as the symbol of nationhood. Prasad and Patel strongly supported Hindi, while Nehru left it to the Hindi lobby to work out a formula acceptable to the non-Hindi regions, especially Madras and Bengal. Finally, the formula providing for replacement of English by Hindi in fifteen years was embodied in the Constitution, along with each side did it with mental reservation.

Fundamental Rights: A great deal of excitement caused over the issue; should the Fundamental Right to be embodied in the Constitution guarantee fair payment for private property acquired by the state and should the right be made justiciable? Nehru was against making the right justiciable. Patel stood rocklike for the Fundamental Rights adopted by the Congress Party under his Presidentship in 1931 in Karachi. After a prolonged tug-of-war Patel won because he had the backing of the distinguished lawyers, who were fashioning the Constitution, and of the overwhelming majority of members of the Constituent Assembly.

Secular State: Another issue which the Assembly faced was about secular or non-secular character of the Constitution. There was a strong view point that after the partition of country secularism had no meaning. If the Muslims all over the world can have theocratic state, where they could preach and propagate their own faith, then why the Hindus of India cannot have their own Hindu State. On the other hand, there was predominantly Congress section in the Assembly which firmly believed that India should be a secular state.

Socialism: It was principally Patel's conservative influence that kept the Constitution from having a greater socialist content than it has; perhaps it was in deference to his wishes that Nehru omitted the world 'socialism' from the _Objective Resolutions.

Village Panchayat: The word Panchayat did not once appear in the Draft Constitution. Within a few months a reaction to this omission set in as Assembly members had time to consider the Draft. President Prasad was the most prominent among the critics. On 10 May, 1948, Prasad wrote to B. N. Rau that "I like the idea of making the Constitution begin with the village and go up to the Centre. The village has been and will ever continue to be our unit in this country." Prasad believed that the necessary articles could be redrafted, making the village Panchayats the electoral college for electing representatives to the Provinces and the Centre. But Rau rejected Prasad's suggestion. In his reply Rau said that the Assembly had already decided on direct election of Lower Houses both at the Centre and the Provinces and that he was doubtful. If the vote could be reversed a remark that indicated the general popularity of a Parliamentary constitution.

The Constituent Assembly (Legislative): When the Assembly met for purposes of ordinary law-making it was called the Legislative wing of the Constituent Assembly or the Constituent Assembly (Legislative), Presided over by the Speaker, it functioned as the Legislature of the country with the secretariat of the pre-independence Legislative Assembly as its Secretariat. The first meeting of the first session of the Constituent Assembly (Legislative) was held in the Assembly Chamber of the Council House (now called the Lok Sabha-Chamber of the Parliament House) on November 17,1947 at-11 a.m. with the I president of the. Constituent Assembly in the chair. G. V Mavalankar was declared duly elected for the office of the Speaker. Dr. Rajendra Prasad vacated the chair which was then occupied by Speaker Mavalankar. The Constituent Assembly in its capacity as Dominion Legislature was in existence for nearly two years and one month. Between November 17, 1947 and December 24, 1949 it had in all six sessions consisting of 226 days.

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Concept of Cooperative and Competitive Federalism

Federalism is derived from the Latin world foedus, which means agreement. In fact federation is an agreement between two types of governments sharing power and controlling their respective spheres. Thus a federation is a system of national and local governments, combined under a common sovereignty with both national as well as federating units having autonomous spheres assigned to them by the constitution.

India opted for quasi-federal structure after independence. The term "federal" has not been mentioned in the constitution but the working of Indian democracy is essentially federal in structure. However, it is the practical working style of federalism, which brought the concept of cooperative federalism and competitive federalism in India.

The present government is stressing on the need to leverage the potential of cooperative and competitive federalism for achieving all round inclusive development in India. In this context there is a need to examine the concepts of cooperative and competitive federalism.

FEATURES OF INDIAN FEDERALISM

India is not a true federation. It combines the characteristics of a federal government with those of a unitary government and is also known as a semi-federal or union-type federal polity. The union-type federal polity requires the essential balancing of two inherent tendencies, namely unionisation and regionalisation.

- Along with the principles of unionisation, the Indian constitution recognizes regionalism and regionalisation' as valid principles of nation-building and state formation.
- The unionisation process enables Indian federalism to adopt unitarian characteristics (commonly referred to as centralised federalism) when there is a perceived threat (internal or external) to the maintenance of national unity, integrity, and territorial sovereignty of India. However, this is subject to review by the Supreme Court.
- The Indian Constitution recognises and promotes the establishment of a multilevel or multilayered federation with multiple modes of political power distribution.
- A multilayered federation may include a union, states, substate institutional arrangements such as regional development/autonomous councils, and lower-level units of local self-government (known as panchayats and municipalities).
- Each unit carries out its constitutionally mandated federal duties almost independently of the others. For eg., the power jurisdiction of the centre and states is specified in the seventh schedule, while tribal areas, autonomous district councils, panchayats, and municipalities are specified in the fifth, sixth, eleventh, and twelfth schedules of the Indian constitution, respectively.
- The Centre has fiscal and political control over the states.
- In fact, India's constitution encourages both the symmetrical and asymmetrical distribution of competence.
- This varied system first establishes the general principle of power distribution, which applies symmetrically to all states of the Union.
- Asymmetrical refers to special rules established for a specific class of states. Our constitution contains numerous provisions such as Articles 370, 371, 371A-H, and the 5th and 6th schedules allow for a unique type of union-state relationship.
- Furthermore, the 73rd and 74th Constitution Amendment Acts federalize India's powers and authority at the village and municipal levels. Panchayati Raj Institutions (PRIs) are primarily concerned with development. Panchayats and municipal bodies, which are elected directly, are expected to
- To promote the development of village industry.
- To construct infrastructure for development projects such as roads and transportation.
- To build and maintain community assets.
- To manage and control health and education at the local level.
- To promote social forestry and animal husbandry, dairy, poultry, *etc.*

Two sets of Government

There are 2 sets of government in India and that is union government and central government. Central government looks after the whole country and state government mainly works for the states. Working of both governments are different.

Division of Powers

Powers between central government and state government have been divided by Constitution of India. The seventh schedule of the Indian constitution provides how the division of powers is made between state and central government. Both central and state governments have separate power and responsibilities.

The 7th schedule of Indian constitution consists of union list, state list, and concurrent list.

Union list:

- It contains all the matters on which only central government can make laws.

State list:

- It contains all the matters on which state government can make laws.

Concurrent list:

- It contains all the matters on which both central and state government can make laws.

Written Constitution

India has the one of the largest constitution in the world which consist of 395 articles 22 parts and 12 schedules. Every article of Indian constitution is clearly written down and has been discussed in full detail.

Supremacy of the Constitution

The Constitution of India is regarded as supreme law of land. No law can be made or passed against the constitution of India. The Constitution of India is above all citizens and organizations of the country.

Supreme judiciary

The Supreme Court of India is regarded as the superior court of the country. The decision of the Supreme Court is binding upon all courts and it has the power to interpret the articles of the constitution.

Bicameral-legislation

In India, the legislature is bicameral. It has two houses and that are Lok Sabha and Rajya Sabha. The upper house of the parliament which represents the states is Rajya Sabha and the lower house of the parliament which represents the people in general is Lok Sabha.

The constitution of India consists of federalism features such as division of power, supreme judiciary, two set of government, bicameral-legislation etc which clearly shows its Federal nature. The division of power between state and central government shows the federal nature of the India and supremacy of judiciary shows the absolute power of the supreme court that its decision is supreme and binding upon all courts. However, the powers given to the central government have more weight in comparison to the state government.

GST UNDERMINES THE FEDERAL STRUCTURE OF THE CONSTITUTION

The GST authorities have included all the indirect taxes under a single taxation regime. However, taxation is a sovereign function and is divided into 2 main parts collection and imposition.

As per GST, union collects the tax but will be redistributed to the states as per the recommendations of the council.

The federal feature of Indian constitution states that there must be distribution of powers between central and state government. Article 246 of constitution gives power to both union and state government to make laws in the respective matters provided in the union list, state list and concurrent list. But GST have taken away the freedom of individual states to levy taxes as per it own need and customer oriented tax, therefore it results the states with higher production will lose taxes.

FEDERALISM IN RESPECT OF GST AND TAXES ON ALCOHOL, PETROL, AND DIESEL

As per schedule 7 of Indian constitution the power to make laws and impose taxes divided between central and state government.

Under GST both center and state governments have been given up taxation powers and as a result following taxes have been eliminated.

Central Taxes that would fall under the ambit of GST are:

- Central Excise duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance)
- Additional Duties of Excise (Textiles and Textile Products)
- Additional Duties of Customs (commonly known as CVD)
- Special Additional Duty of Customs (SAD)
- Service Tax
- Central Surcharges and Cesses so far as they relate to the supply of goods and services.

State Taxes that would fall under the ambit of GST are:

- State VAT
- Central Sales Tax
- Luxury Tax
- Entry Tax (all forms)
- Entertainment and Amusement Tax (except when levied by the local bodies)
- Taxes on advertisements g. Purchase Tax
- Taxes on lotteries, betting, and gambling
- State Surcharges and Cesses so far as they relate to the supply of goods and services.

COOPERATIVE VS COMPETITIVE FEDERALISM

Based on the relationship between the central and state government–the concept of federalism is divided into- Co-operative federalism and Competitive federalism.

In Cooperative federalism the Centre and states share a horizontal relationship, where they "cooperate" in the larger public interest.

- It is an important tool to enable states' participation in the formulation and implementation of national policies.
- Union and the states are constitutionally obliged to cooperate with each other on the matters specified in Schedule VII of the constitution.

In Competitive federalism the relationship between the Central and state governments is vertical and between state governments is horizontal.

- This idea of Competitive federalism gained significance in India post 1990s economic reforms.
- In a free-market economy, the endowments of states, available resource base and their comparative advantages all foster a spirit of competition. Increasing globalisation, however, increased the existing inequalities and imbalances between states.
- In Competitive federalism States need to compete among themselves and also with the Centre for benefits.
- States compete with each other to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities.
- The investors prefer more developed states for investing their money. Union government devolves funds to the states on the basis of usage of previously allocated funds.
- Healthy competition strives to improve physical and social infrastructure within the state.

Competitive federalism is not part of the basic structure of Indian constitution. It is the decision of executives.

Constitutional Position

Article 1 of the Constitution states, "India, that is Bharat, shall be a Union of States". While the Constitution doesn't mention the term "federal", it does provide for a governance structure primarily federal in nature.

It provides for separate governments at the Union and in the states. Further, it specifies and demarcates the powers, functions and jurisdictions of the two governments. Lastly, it details the legislative, administrative and financial relations between the Union and the states.

The distribution of legislative powers has been divided into three lists: the Union List, the State List and the Concurrent List. The Union List, comprising the "vital interests of the State", is the longest.'

On the Union List, Parliament has exclusive powers to legislate. While the state has exclusive powers to legislate on the State List, in certain situations, Parliament can also do so.

As per the Concurrent List, the issue is more complex.

- In case of a conflict between a state and a Central legislation, the parliamentary legislation shall prevail.
- This, coupled with the fact that residuary powers of legislation are vested in the Union, gives a "unitary" tilt to federalism in India.

A disconcerting trend has been observed since 1950. While the Union and Concurrent Lists have expanded, the State List seems to have shrunk. This has led many to question the structure of Indian federalism and to propose its remodelling.

Steps towards Competitive Federalism

The acceptance of the 14th Finance Commission's recommendations, apart from significantly enhanced devolution (devolution of 42% of the divisible pool to states during 20015-16 to 2019-20, against 32% suggested by the previous commission), enables states to design and implement programmes better suited to their needs.

Competitive federalism is not yet embraced by all the states. But a handful of states are clearly taking steps to strengthen their business environments, including initiating difficult reforms on land acquisition and labour flexibility.

Federalism is no longer the fault line of Centre-State relations but the definition of a new partnership of team India.

The Central government has promised decentralisation of power and minimum interference in the State affairs.

- With the roll out of the GST, this federal structure is further cemented.
- Government has abolished Planning Commission and replaced it with NITI Aayog. One of the mandates of the NITI Aayog is to develop competitive federalism. Under it;
- State governments would not look towards centre for policy guidelines and fiscal resources.
- Share of states in central tax revenue has been increased from 32% to 42% after the recommendation of the finance commission.
- States have freedom to plan their expenditure based on their own priorities.
- States would work with centre on a shared vision of national objectives.
- Restructuring of centrally sponsored schemes.
- Financial sector bailout programme under UDAY scheme.
- Swachh Bharat Ranking system.
- Most of the state now organizes investors meet to showcase facilities in their state to attract business and investment. This has lead to improvement in business environment in various states.
- State wise Ease of Doing Business ranking to build a huge sense of competition.

Hindrances for Competitive Federalism

Several issues such as trust deficit and shrinkage of divisible pools plague Centre-State relations. Together, they make total cooperation difficult.

Trust deficit between Centre and States is widening. Most state governments believe the thrust on federalism is limited to lofty ideas and big talks. Many States have shown their displeasure with the way the Centre has been dealing with the States.

On one hand the Centre has increased the States' share of the divisible pool but in reality States are getting a lesser share. The allocation towards various social welfare schemes has also come down, affecting the States' health in turn.

The present inter-state competition in attracting investment is too early to determine whether it will really encourage competitive patterns of investment on a continuous basis.

The socio-economic parameters and development of each State in India is different and while a few have made substantial progress in terms of employment, literacy and creating a conducive environment for doing business and investments, there are a few which are lagging.

There are varied economic patterns in different states. There are deficit states or the backward regions or the states under debt. Those states should not be treated on par with the well-off states.

The states like West Bengal, Bihar, Orissa, and Assam have protested against the uniform approach in funding because of their special situations in which the central government has to provide special funds to these states. Without special funding these states cannot imagine their participation in competitive federalism.

Though the states are provided with financial independence, it is a fallacy to assume that all the states would perform uniformly in the process of development because while some states have favourable factors like skilled labour, capital and infrastructure, innovative service industries other states lagging behind.

The opposition of few well-off states with respect to revenue loss in implementation of GST system points that there is a lack of will in participating in the process of competitive federalism.

Cooperative Federalism

- Federal and state governments working together for the overall development of the country is known as cooperative federalism.
- Under cooperative federalism, the federal government and the states do engage in horizontal cooperation for the benefit of the general public.
- It requires that all states take part in the creation and execution of the nation's national policy.
- It is a crucial instrument for enabling the state to take part in the creation and execution of national interest policies.
- In accordance with the constitution, the union and the states must work jointly to address the issues listed in Schedule VII.

- This calls for cooperation between state, federal, and other government organizations in order to accomplish a common objective.
- Cooperative federalism is a top-down strategy in which the federal government provides the policy framework and inputs but leaves it up to the states to carry them out.
- Cooperative federalism is a core component of the Indian constitution.
- For instance, the GST, NAM, land reforms, model APMCs legislation, 73rd and 74th CAA 1992, the Centre-State Investment Agreement (CSIA), and the 42% devolution recommended by the 14th Finance Commission.

Challenges to Cooperative Federalism

- The Centre has greater legislative powers due to residuary and legislative precedence, notwithstanding the constitution's provision for a separation of powers between the center and the states.
- The Union is given more authority under the Constitution. It has regularly weakened the state's legislative authority.
- The exercise of these powers by the central government breeds mistrust and, in some instances, a lack of trust amongst parties.
- On taxing authority, the federal government and the states frequently disagree.
- The bulk of tax disputes between the Center and the States have been won by the Center due to constitutional provisions.
- States can voice their opinions on tax-related topics by voting in the GST Council.
- On the other hand, Articles 270(1) A and 270(2) state that the Finance Commission, not the GST Council, would decide how the GST levies are distributed.
- As a result, there is a conflict over the duties and authority of the GST Council and the Finance Commission.
- In truth, the GST Council, where the States have more sway over tax policy, is not in charge of revenue sharing rather, it is the Finance Commission and Parliament.
- When the Finance Commission requests forced implementation of the recommendation, there are no provisions for the affected governments to object.

Competitive Federalism

- This strategy gained popularity during the 1990s economic shifts.
- There was more competition for scarce resources among the states once India opened its doors to globalization. As a result, there is currently an imbalance and injustice among the states.
- Competitive federalism has lately been shown to be a successful strategy for accelerating the economic growth of particular states.

- Competitive federalism pits the states against the federal government in a bid to gain economic advantages.
- Under competitive federalism, the connection between state governments is horizontal, but the relationship between the federal government and the states is vertical.
- States engage in rivalry to entice capital and investment, which enhances administrative effectiveness and spurs economic projects.
- The constitution does not mandate cooperation between the union and the states on the matters covered in Schedule VII. The choice is made by executives.
- States must compete fairly on a range of social and development metrics in order to achieve this.
- Horizontal component to enable states to develop in accordance with their objectives and local circumstances, the "one-size-fits-all" approach is adjusted. The term Bottom-Up Methodology is also used.
- Competitive federalism is not a fundamental component of the Indian constitution.
- For instance, "Vibrant Gujarat," "Resurgent Rajasthan," and other NITI-developed indexes.

Challenges to Competitive Federalism

1. The states are receiving less money than they anticipated despite a rise in Central Tax collection. Funds for welfare services have diminished as a result.
2. The difference between established and developing states is getting wider as a result of interstate competition.
3. Because their economies are less robust than those of other states, governments like West Bengal, Assam, Bihar, and Orissa are opposed to a universal financing framework and are now asking for specific funds to boost their economic growth and draw in investors.
4. To increase their participation in competitive federalism, some states require assistance from the federal government.
5. India's economic progress and growth are not dispersed equally. They differ from state to state.
6. Giving states more financial autonomy does not ensure that they will function well. Others may be able to draw investors into their jurisdiction by making use of their already well-developed skilled labour force, capital, infrastructure, and other resources while some may be falling behind in terms of literacy, employment rate, and other factors.
7. To put it another way, this results in uneven economic progress and national development.
8. Given the aforementioned constraints, states with low levels of economic growth are unable to participate in competitive federalism.

9. The Cooperative and Competitive Federalism: Strengthening Steps within India
10. The central government has committed to decentralize power and to intervene minimally in domestic affairs.
11. The federal structure is further strengthened with the introduction of the GST.
12. The NITI Aayog organization has replaced the Planning Commission, which has been abolished. It is part of the NITI Aayog's mandate to create competitive federalism. Below it:
    a. The Finance Commission's recommendation has resulted in an increase of the states' share of central tax revenue from 32% to 42%.
    b. Governments have the freedom to prioritize their spending however they see fit.
    c. States and the center would work together to develop a common understanding of national objectives.
    d. The government-sponsored programmes are being reorganized.
    e. UDAY is a banking industry bailout plan.
    f. Swachh Bharat Ranking
    g. State-by-state Ease of Doing Business rankings will be utilized to foster a strong feeling of competition.
13. Not all states have adopted competitive federalism yet. Yet, a few states are undoubtedly improving their business climates, especially by launching challenging changes regarding land acquisition and labour flexibility.
14. Federalism is now the definition of a new team India connection rather than a source of conflict in interactions between the Centre and the States.

4

Judicial Activism

INTRODUCTION

Judicial activism is a dynamic process which allows the judiciary to depart from the existing laws and precedents to encourage the formulation of new social policies which fulfil the need of the hour.

Justice P.N. Bhagwati laid the foundation of this concept by allowing the citizens to initiate a PIL on the basis of a postcard or letter, in order to promote the socio-economic development of the society.

Though the concept of judicial activism has received criticism on account of overthrowing the principle of separation of powers and allowing the judges to rewrite policies as per their whims and fancies, its importance cannot be undermined. It allows the judiciary to correct the injustice when other branches of the government fail to do so, particularly in issues like protection of civil rights, political unfairness, *etc.* It also allows judicial scrutiny into the working of hospitals and prisons which help in upholding basic human rights.

This can also be understood by looking at the case of Francis Coralie v. Union Territory of Delhi wherein the court interpreted the word 'life' in Article 21 (Right to life) and said it is not restricted to mere existence, but it also includes the right to live with human dignity and have the basic necessities which include adequate nutrition, clothing, shelter, freedom to move, *etc.*

JUDICIAL REVIEW AND JUDICIAL ACTIVISM

Judicial Review is the power of judiciary to review any act or orders of the Legislative and Executive wings and to pronounce upon the constitutional

validity when challenged by the affected person. While reviewing such enactment, the Supreme Court will examine whether jurisdictional limits have been transgressed. This power is based upon a simple rationale that the constitution is the supreme law of land and any authority, if it ventures to go beyond the limitation laid down by the constitution, will be curbed. The doctrine of judicial review is a contribution of American constitutional system. This was acquired by the American Supreme Court in Marbury v. Madison case of 1803 when Chief Justice Marshall announcing the verdict remarked that any law violating the constitutional provision is null and void. Since then it got strongly embedded in the constitution and judicial supremacy got established.

In India, the Government of India Act, 1935, gave the power of judicial review to the federal Court, but its scope was limited to the extent that it could review only the provisions of the act which provided for distribution of powers between the Union and Provinces. The Constitution provides for distribution of power among states and the centre, separation of powers among governmental organs and Fundamental Rights, which has widened the scope of judicial review. The constitution does not refer to the concept of judicial review because the framers realized that there were inherent drawbacks of this doctrine. In the first place, it may set at naught the will of the people expressed through the Parliament: Secondly, judicial review inevitably opens the floodgates litigation involving huge expenditure and loss of time and consequent delay in the implementation of government programmes, and, thirdly, the judiciary is responsible to none and is not answerable for consequences of its decisions. Justice Patanjali Shastli states: "our constitution contains express provision for judicial review of legislation as to its conformity with the constitution, unlike.in America, where the Supreme Court has assumed extensive powers of reviewing legislative acts under 'due process' clause in the Fifth and Fourteenth Amendments". This is especially true as regards the Fundamental Rights as to which this court has been assigned the role of sentinel; while the court naturally attaches great weight to the legislative judgement, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.

There are specific provisions in the constitution which provide for judicial review, though the Supreme Court has enumerated certain rules for applying this doctrine. According to H.M. Seervai, they are:

(1) There is a presemption in favour of constitutionality and a law will not be declared unconstitutional unless the case is free from all doubts and onus to prove that it is unconstitutional lies with the petitioner who has challenged it.
(2) When the validity of law is questioned, it should be upheld to protect parliament sovereignty.
(3) The court will not constitutional questions if a case is capable of being decided on other grounds.
(4) The court will not decide a larger constitutional question when is required by the case before it.

(5) The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.
(6) A statute cannot be declared unconstitutional merely because it is not consistent with the split of the constitution.
(7) In assessing the constitutionality of a statute the court Is not concerned with the motives-bonafides or malafides-of the legislature but the law must be upheld whatever a court may think of it.
(8) Courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force because till then the question of validity would be merely academic.

The independent India had to go through many controversies leading to institutional rivalry between the legislature and judiciary. Though the power of judicial review had its limitations, it was viewed as a challenge to the supremacy of legislature leading to may constitutional amendments. Dr. Ambedkar had earlier remarked, "The Constituent Assembly In. making the constitution has no partisan motive. Beyond securing a good and workable constitution, it has no axe to grind. In considering the articles of the constitution, it has an eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the constitution to facilitate the passing of party measures which they have failed to get through in Parliament by reason of some article of the constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none".

But Pandit Nehru, a staunch supporter of parliamentary sovereignty has remarked with a different tone, "No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament, representing the will of the entire community…Ultimately, the whole constitution is a creation of Parliament. By interpretation and amendment, the constitution underwent many vital changes. The process got started with the First Amendment Act, 1951, which abolished the zamindari system. This act was challenged in the Shankari Prasad case on the ground that this has infringed Fundamental Rights. The Court rejected the petition and stated that Parliament is authorized to amend any part of the constitution including the chapter on Fundamental Rights. This was upheld by a majority judgement in the Sqjjan Singh case where the 17th Amendment Act 1964 was challenged on the ground that it violated Fundamental Rights under article 31A. The landmark judgement professing judicial activism came in 1967, when the 1st, 4th and 17th amendments were challenged in the Golaknath case. The court by majority of 6-5 held that Parliament does not possess the authority,to amend the chapter on Fundamental Rights with respect to Article 13(2) embedding the doctrine of judicial review and giving way to due process of law.

In fear of non-implementation of its social legislations, the Parliament through an ordinance in 1969 nationalized 14 banks under Banking Companies (Acquisition and Transfer of Undertakings) Ordinance. This Act was challenged

by R. C. Cooper on the ground that it violated Article 14 and 31(2). Once again in 1970, the President by an executive order abolished-the institution of ruler's privy purses. This was challenged by Madhav Rao Scindia. Both these ordinances were declared unconstitutional by the court. In response to these setbacks the Parliament framed the Constitution (Twenty Fourth) Amendment Act, 1971, and due amendments were made in articles 13 and 368 to provide the authority to Parliament to amend any part of the constitution. By the (Twenty-Fifth) Amendment Act, 1971, Article 31 was amended to remove obstacles laid down by the court in the Bank Nationalization case. Further, the Tewenty-Sixth Amendment Act, 1971, was made to abolish the institution of rulers privy purses. The government defended its action by stating that these were necessary amendments which would transform socio-economic structures of the society.

In the Keshvanand Bharati case, the constitutional validity of the twenty-fourth, twenty-fifth and twenty-ninth amendments-came up for judicial review. The court by limiting the power of amendment, held that Parliament does not possess the authority to amend the basic structure of the constitution though the concept of basic structure was not explained. The Supreme Court was moved to review its decision but the bench was abruptly dissolved by the chief justice. In 1975, the Thirty-Ninth Amendment Act, relating to electoral matter, was challenged in the historic election case. The court dismissed the petition and it was held that they had adhered to the theory of basic structure.

The 42nd amendment of the constitution placed limitations upon the exercise of the power of judicial review. They were:

(1) The power of centre was increased by transferring certain provisions from State List to the Concurrent List.
(2) The power of the Supreme Court and High Courts were curtailed. With respect to Article 14, 19 and 31, Parliament can make any law to implement Directive Principles of State Policy.
(3) The powers of the Supreme Court was further curtailed by stating that no amendment of this constitution made or purporting to have been made under this article shall be called in question in any court on any ground.
(4) The validity of central law was to be decided by the Supreme Court (Art. 141A) and not by High Courts (Art. 228A) and subsequently the validity of the state law could be decided only by High Courts.
(5) The power of issuing writs for implementation of Fundamental Rights were curtailed to the effect that these writs will not be issued unless substantial injury has taken place and also if alternative remedy is provided under any law;
(6) Minimum seven judges of the Supreme Court should sit for the purposes of determining constitutional validity of central law and it cannot be declared unconstitutional unless two-thirds majority of judges decide and for the High Court there had to be five judges to determine the constitutional validity of a law.

(7) Further, the appointment procedure of High Court were dealt extensively.
(8) It was also stated that the decisions of any administrative tribunals can be questioned or challenged only in the Supreme Court under Article 323B.

The subsequent amendments, the 43rd and 44th amendments, did restore the lost glory of judiciary and the threat of judicial supremacy got lessened, the judiciary was forced to look into the democratic values of the constitution and interpret them more generously. The 44th amendment:

(1) Deleted Right to Property from the chapter as Fundamental Rights and placed it under article 300A.
(2) Fundamental Rights were to be duly protected.
(3) The powers of judiciary were partially restored by repealing article 131A and 226A and restored the power of judicial review to the courts.

In the Minerva Mills case the court struck a balance between Fundamental Rights and Directive Principles of State Policy by placing Article 39B and C above the chapter on Fundamental Rights. It was further held by Justice Bhagwati that, "It is for the judiciary to uphold the constitutiona1 values and, to enforce constitutional limitations".

The court has also been called upon to exercise its power of judicial review in cases relating to presidential rejection of clemency for sentence of death. The court has upheld the decisions of the President.

Justice Krishna Iyer, spoke of judicial review in the following words, "No power in the republic is irresponsible or irresponsive, the people in the last resort being the repositories and beneficiaries of public power. But two constitutional limitations exist in our constitutional system. The court cannot intervene everywhere as an omniscient, omnipotent or omnipresent being. And when the constitution has empowered the nation's executive, excluding by implication judicial review it is presumptuous this court to be a super power unlimited. The second limitation conditions all public power, whether a court oversees it or not. That trust consists in the plurality of public authorities. All power, howsoever,majestic and dignified weilding it, shall be exercised in good faith with intelligent and informed care and honestly for public well being". Further he held that the magnificent concept of judicial review is at its best when kept within the framework of broad principles of public policy and tested by the intentionability of the statute.

The working of the Supreme Court during the first three decades can be described as an arena of struggle between the legislature and the judiciary in relation to Fundamental Rights and power of amendment. The Maneka Gandhi case gave new impetus to the concept of liberty. During this period the court adopted a strategy of coordination enhancing the glory of the institution and practised self-restraint. Many political observers and jurists have held that judiciary will always avoid a confrontation between popular sovereignty and independent judiciary. The institutional rivalry dominated the Indian political process and judiciary till 1980s and the advocates of parliamentary sovereignty

blamed the judiciary for non--implementation of their programmes aimed at weaker sections of the society-the poor and distressed. This led to the outflow of new ideas and dimensions in the minds of the socially progressive judges like Justice Krishna Iyer and Justice P.N. Bhagwati. They led the movement to protect the socially oppressed with programmes like legal aid as provided in article 39A of the constitution inserted by the 42nd amendment and institutions like Lok Adalat and public interest litigation. This added a new dimension in an already existing jurisdiction and power of the judiciary.

JUDICIAL ACCOUNTABILITY

Judicial accountability in India is a critical aspect of ensuring the proper functioning of the judicial system and upholding the rule of law. Here's an overview of judicial accountability in India:

JUDICIAL INDEPENDENCE

Constitutional Safeguards: The Indian Constitution provides for the independence of the judiciary as a fundamental feature. Judges are provided with security of tenure and conditions of service to safeguard them from external pressures.

ACCOUNTABILITY MECHANISMS

In-House Mechanism: The judiciary has an in-house mechanism for dealing with complaints against judges. The Chief Justice of India and other senior judges constitute the in-house mechanism to inquire into allegations of misbehavior or incapacity against judges.

Judicial Standards and Accountability Bill: The Judicial Standards and Accountability Bill, 2010, was introduced to lay down judicial standards, establish a mechanism for investigating complaints, and provide for the accountability of judges.

NATIONAL JUDICIAL APPOINTMENTS COMMISSION (NJAC)

The National Judicial Appointments Commission (NJAC) was proposed to replace the collegium system of appointing judges. However, the Supreme Court, in the case of Supreme Court Advocates-on-Record Association v. Union of India (2015), struck down the NJAC Act, stating that it would compromise judicial independence.

COMPLAINTS AND INQUIRIES

Complaints to the Chief Justice: Any person can make a complaint against a judge to the Chief Justice of India. The Chief Justice has the discretion to decide whether the complaint warrants an inquiry.

Impeachment: The process of impeachment is outlined in Article 124(4) and Article 124(5) of the Constitution. A judge can be removed by an impeachment motion in Parliament for "proved misbehavior or incapacity."

PUBLIC SCRUTINY AND MEDIA

Role of Media: The media plays a crucial role in highlighting issues related to judicial accountability. Media scrutiny can sometimes bring attention to instances of judicial misconduct or irregularities.

CHALLENGES AND CONCERNS

Delayed Justice: One of the challenges is the delay in the resolution of complaints and inquiries, leading to a perception of a lack of accountability.

Lack of Transparency: The functioning of the in-house mechanism and the collegium system has been criticized for lacking transparency.

REFORMS

Need for Reforms: There is a constant debate on the need for reforms to enhance transparency and accountability in the judiciary. Suggestions include establishing a more robust and independent mechanism to deal with complaints against judges.

In conclusion, while the Indian judiciary is independent, ensuring judicial accountability remains a complex task. Balancing the independence of the judiciary with the need for accountability is an ongoing challenge, and reforms are continuously debated to strengthen the accountability mechanisms.

MEANING

By the term judicial accountability, it means that the judges are responsible for the decisions they deliver all by themselves. It is the transparency in the decision-making process that helps in bringing the accountability. Every public body is responsible for answering the public for the decision they take and the function they carry out.

The extent of accountability differs in terms of the work being carried out and the functions that are discharged by the public body or institutions. Similarly, the judiciary which is one of the wings of the government is to be held accountable as well. But the judiciary is not subject to the same level of accountability as the executive or the legislative wings of the government.

The judiciary is supposed to be an independent body responsible for delivering justice and holding the integrity of the Constitution and therefore it has to be impartial in its action as well. But all seems to be not well in the judiciary as well. Conflicts associated with appointment procedure, execution of the functions and powers are arising between the judges or between the judges and the Chief Justice of India which have become a common sight nowadays.

Judicial accountability takes place by means of the provisions that have been laid down relating to the review, appeal and revision. The Constitution of India provides for the removal of the judges of the Supreme Court of India as well as the High Courts for misbehaviour and arbitrary regulation of power by means of impeachment. The provisions for the removal of judges rests on Articles

124(2) and (4) for the judges of the Supreme Court whereas for the judges of the High Courts the removal provision rests on Article 217. The removal is carried out by two-third of the votes provided by the members of each House of the Parliament.

To date, only one impeachment proceeding was initiated against a Supreme Court judge but the procedure failed as the limit of the two-thirds vote was not achieved as one of the political parties in the parliament abstained from casting vote against the judge. This incident reflected that the procedure to carry out impeachment was indeed filled with several stumbling blocks in the form of political, social, economical aspects that harmed the independence and the integrity of the judiciary. This became a reason to bring a stronger system of judicial accountability.

Judicial independence provides the judges with an ample amount of freedom but does not provide them with the authority to misuse the freedom affecting the public interests. Whenever judges or judicial officers are found to regulate corrupt practices in delivering justice or carrying out the legal procedure which results in contravention with public trust, the same must be subjected to investigation by a fair procedure to prohibit and restrict the judge from doing so.

Article 124(5) of the Constitution of Judges (Inquiry) Act, 1968 came into force in order to regulate the investigation procedure and to find proof showing incapacity and misbehaviour on the part of the judges of the Supreme Court and the High Courts which are supposed to be presented in front of the Houses of Parliament while they cast a vote. But a fact not to be ignored is that the implementation of this Article is subjected to several loopholes as well.

Requirement

India is a democratic country and the Preamble in the Constitution is painted with the word called justice which has been guaranteed to all citizens of the country in terms of social, political, and economical. The people of this democratic country are entitled to certain rights which include the right to be informed as well.

Accountability is necessary for those possessing power and a dignified position and therefore is a need in order to maintain democracy and prevent it from getting eroded. In any democracy, power and position are associated with responsibilities otherwise the same goes against the very establishment of the democracy. Judges are the representatives of law holders in the courts which is an agency of the judicial system. The credibility of the judicial system, therefore, lies in the hands of these judges.

Due to several loopholes and drawbacks of the court system recent instances that have taken place in India reflect the frustration and distress the public have developed towards the courts. Judiciary which is one of the most important wings of the government should, therefore, be held accountable for the evolving derogative values within it that are causing severe effects on the country and its

people. Several countries all across the world have the provision for accountability of the judiciary and therefore this concept of judicial answerability is not a new one. Several renowned judges themselves have held that as every profession has some ethics and values to be abided with, the profession of a judge should also have ethics and morality that every judge mandatorily should follow while conducting in the court. Some of these ethics have been listed below:

Honest decisions: The whole question of judicial accountability arises due to the influence and biases involved in judicial pronouncement. A judge has to be neutral in his approach thereby ensuring that justice is provided to all. Any wrong decision by the judge that has been made with honesty, good faith, and fairness can no longer remain wrong.

Abiding by the principle of natural justice: The two basic rules of the principle of natural justice that are Audi Alteram Partem and Nemo judex in causa sua should be applied in every decision taken by the judges. This eliminates any kind of irrational and arbitrary action on the part of the judges along with being impartial.

Administration of justice: One of the most recognised ethics of all judges is to administer proper justice without any kind of fear or influence. In a recent incident that took place in Bihar which involved the killing of the person under trial during the court session which was followed by the lynching of a person who was suspected of being a thief shows that the administration and regulation of justice are not taking place in a correct manner and the same should be put under check.

These codes help in moving a step forward towards the attainment of judicial accountability. A judge is also said to avoid too much socializing in terms that prohibits the judge from functioning independently for being social, making the judge be influenced to a greater extent. Although this should not be counted as an ethical value to be followed by the judges, the Supreme Court in the case of Ram Pratap Sharma v. Dayanand opinionated that a judge should avoid accepting invitations from any business, political party, commercial entities to avoid getting influenced in any way. It is rather an act of caution that needs to be followed.

At present, the judges of the Supreme Court and the High Courts are appointed by a collegium system which includes all the senior judges of the Supreme Court. Although there have been many debates associated with this method of appointing judges, the collegium system is one where transparency is absent in totality.

Some refer to this system as a system of bias as well for the credentials of the judges are not taken into concern in this system. Therefore the courts in India are provided with an excessive amount of unchecked powers compared to any other court in the world. Removal of judges can take place in no way other than impeachment which again depends on the majority of votes of both the Houses of the Parliament.

Therefore the need for stronger judicial accountability is increasing on an everyday basis. Whenever an allegation that is supported by documents as evidence, is brought against a judge, the same gets very less coverage by the media for there exists the fear of contempt of court. The judges of the Supreme Court and the High Courts are manifested with the power to charge any person for the criminal contempt of court and subsequently send him behind bars. Setting up of judges associations with a strong framework can help the judges to deliver judgment with independence but with a check in the same.

Challenges

Accountability can be considered as one of the cornerstones for establishing good governance. Judicial accountability can be termed as a corollary to judicial independence. Some of the challenges in implementing judicial accountability are listed below:

The most important challenge for the regulation of judicial accountability is that the judiciary is an independent organ and the independence of the judges cannot be done away with. Article 235 of the Indian Constitution provides for the authority any High Court has over the Subordinate Courts which clearly hints on the effective mechanism necessary to enforce accountability.

There exists no other way in which a judge can be removed except through impeachment. Impeachment is a process that involves a lot of hurdles. This is the other challenge faced by the judiciary in bringing in judicial accountability.

The influence of politics in the judicial system is another challenge for the judiciary to perform with integrity. The judges failed to make decisions with transparency and fairness if they are dominated largely by the political bodies in the country. This indeed becomes a challenge for the judiciary to implement accountability alongside securing the independence of the judiciary.

NATIONAL JUDICIAL APPOINTMENTS COMMISSION

National Judicial Appointments Commission was introduced by 99th Amendment Act in 2014. As a result of which, two Acts were born, one of them stated the removal of the collegium system and the introduction of the National Judicial Appointments Commission and the second Act gave the process of the appointments mentioned in the first Article. This Amendment Act introduced Article 124A, Article 124B and Article 124C of the Constitution. It was passed by both the Houses of the Parliament in August 2014 while it received the assent of President in December 2014.

Many petitions were filed against this Amendment with the contention that it was against the separation of powers and it questions the independence of the judiciary as the members of the Executive were present in the NJAC.

After this, the case was referred to a five-judge bench that struck down the Amendment Act on the basis of unconstitutionality by a ratio of 4:1.

THE PROVISIONS OF THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION

[ARTICLE 124A]

The 99th Amendment Act introduced a new Article 124A in the constitution. This Article mentioned the members who would form the composition of the National Judicial Appointment Commission.

According to this Article, the National Judicial Appointment Commission will consist of the following people:

- The Chief Justice of India
- Two senior-most judges of the Supreme court
- The Union Law Minister
- Two eminent people nominated unanimously by the Chief Justice of India, the Prime Minister and leader of the opposition of the Lok Sabha

One member out of the two eminent people will be either be a woman or one belonging to the minority section or to the backward classes such as SC, ST, OBC, *etc.* They will be nominated for a period of three years and cannot be renominated again.

FUNCTIONS OF NATIONAL JUDICIAL APPOINTMENTS COMMISSION [ARTICLE 124B]

Along with Article 124A, the 99th Amendment Act also stated for the insertion of Article 124B.

This Article provided for the functions of the National Judicial Appointments Commission(NJAC) which are as follows:

- This body will recommend people for the position of the Chief Justice of India, judges of the Supreme Court, Chief Justice of the High Court, and judges of the High Court.
- This body will also recommend the transfer of the Chief justice of the different High courts from one High Court to the other.
- It will thoroughly ensure that only the people who are capable to be promoted to these designations, get promoted.

PROCEDURE FOR APPOINTMENT TO BE REGULATED BY THE PARLIAMENT

[ARTICLE 124C]

Article 124C states the following:

- Parliament may enact any law to amend the provisions of the appointment of the Chief Justice of India, the judges of the Supreme court, or the Chief justice of the respective High Courts and the judges of the High Court.

- This Article enables the NJAC to enact by regulation any law that governs the functions of the NJAC, selection of the people for the post or any other matter that concerns the functioning of the NJAC.

Well, this article is considered as a contentious Article on the ground that, it allows the Parliament to appoint the judges of the Supreme court and the High Court which was against the concept of Separation of Powers. Besides, it gives the Nation Judicial Appointment Commission the power to make rules for itself.

[Supreme Court Advocates-on-Record Association v. Union of India, 2015]

In 2015, petitions were filed by the "Supreme Court Advocates on Record Association" and some of the senior advocates which challenged the constitutional validity of the National Judicial Appointment Commission and the 99th Amendment Act. The contentions were regarding the independence of the Judiciary that it violated the provision of the constitution according to which the judiciary was kept independent to ensure bonafide acts.

Main Points of Judgment of Justice Jagdish Singh Khehar – Fit to hold the Office

This case was heard by the bench of five judges that involved Justice Jagdish Singh Khehar, Justice J Chelameswar, Justice Madan B Lokur, Justice Joseph and Justice Adarsh Kumar Goel. it was decided by the ratio of 4:1 with Justice J Chelameswar giving a dissenting opinion.

Justice Jagdish Singh Kehar gave the opinion that the clause (c) of Article 124A(1) is ultra vires with the basic elements of the constitution that is "Separation of Powers" and the "independence of the Judiciary". He also stated that clause (d) of the same Act which talks about the appointment of two eminent persons is violative of the elements of the constitution and the basic structure for many reasons.

Seniority: Section 5(1) of the NJAC Act

Section 5(1) of the National Judicial Appointment Commission says that if the senior-most judge of the Supreme Court is fit to hold the office then he will be chosen as the Chief Justice of India. This section makes sure that the possibility of a junior judge superseding the senior-most judge is mitigated. Whereas, Section 5(2) of the NJAC of the National Judicial Appointment Commission says that the appointment of judges of the Supreme Court will be done on the basis of merit and other criteria specified in clause 3 of Article 124.

Veto Power to any Two Members of NJAC: Section 6(6) of the NJAC Act

In this article, we have learned that two eminent people will be appointed in the NJAC who will be a part of appointing the Chief Justice of India. Now, think about two people who are not accustomed to the judicial procedure and are a layman in the field of law, are appointed as the two eminent people by the

reason of which they get to decide the next Chief Justice of India. Also, they have been given the veto power through which they can supersede even the judgment of the present Chief Justice of India, who is also a member of the NJAC.

This was contrary to the provisions given in Section 6(6) of the National Judicial Appointment Commission. This Section stated that if any of the two members of the Commission disagree on the matter concerning the appointment of Chief Justice of the High Court then the commission will not recommend the person to that post.

NJAC Act could not come into Effect Prior to the Coming into Operation of the Ninety-ninth Amendment Act of the Constitution

Ninety-ninth Amendment came into existence in 2014, three new Articles were inserted in Section 2 which were Article 124A, Article 124B, and Article 124C.

Herein, the provision for the NJAC was laid down. The National Judicial Appointment Commission Bill was passed by the Lower House on August 13, 2014, and by the Upper House on August 14, 2014. After which it received the assent of the President in December.

But both the 99th Amendment Act and the National Judicial Appointment Commission were struck down on the basis that it was violative of the basic elements of the Constitution.

For the Enactment of NJAC Act Procedure Provided under Article 368 need be Followed

In the Kesavananda Bharati v. Union of India, it was stated that any changes made in the constitution, through amendments, should only be to an extent that it does not violate the basic structure of the Constitution.

In order to enact the NJAC Act, it was necessary to take into consideration the basic structure provided under Article 368. On consideration of the same, it was found that it was hindering the basic structure of the constitution which was the concept of 'separation of powers'. Therefore the NJAC Act was made null.

An Ordinary Legislation can be Invalidated for Violating the Constitutional Provisions

The Forty-second Amendment which came in the year 1976 introduced various new Articles.

Article 32A disabled the Supreme Court to decide the constitutionality of any state law until it involves the constitutionality of any central law. Furthermore, through Article 131A, the Supreme Court was given the exclusive jurisdiction to check the constitutionality of the central law.

Whereas under Article 228A, the High Court was given a right to decide the constitutional validity of any state law. This law had to be decided by the High Court through a five-judge bench.

Any Act of legislation not found to be consistent with the provisions of the constitution will be stated as unconstitutional.

ARTICLE 124-A IS THE EDIFICE OF THE CONSTITUTION (NINETY-NINTH AMENDMENT) ACT

Article 124A of the 99th Amendment Act is the edifice of the whole 99th Amendment Act, as it carries the entire structure of the Amendment Act and if it is rendered negatory then the Articles 124, 124B, 124C, Article 127, Article 128, Article 217, Article 222, Article 224, 224A, Article 231 will be restored back.

To give an example, Article 124A(1) provides for the formation and the composition of NJAC, so if it is rendered invalid then the whole NJAC will be rendered unconstitutional and the 99th Amendment Act will be of no value.

Justice Madan B. Lokur

In his judgment, Justice Madan B. Lokur said that Article 124A was against the basic structure of the Constitution and without it, the other provisions can not stand.

Further, he pointed out that it also affected the President and the Chief Justice of India as the President was only left to take the recommendations whereas the CJI had to take into consideration the opinion of other people of the Commission.

Justice Kurian Joseph

Well, the eminent Judge stated a maxim in his judgment which was *"Entia Non Sunt Multiplicanda Sine Necessitate"* which literally means that things should not be multiplied without necessity.

He emphasized delivering his judgment in simple language, through which he stated that involvement of any non-judicial body which here is the Executive will follow many structured bargains and if not that, it could lead to anything more worse.

He further added that anything which dilutes the supremacy of the constitution should be nullified at its beginning.

Justice Adarsh Kumar Goel

The learned judge stated that the role of a non-judiciary post and the judges of the High Court and the Supreme Court is very different and they can be compared, therefore giving the veto power in hand of the non-judicial person who can overrule the power of the CJI is completely arbitrary.

INDEPENDENCE OF JUDICIARY

THEORY OF JUDICIAL INDEPENDENCE

Importance

Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevents executive and legislative encroachment upon those rights. It serves as a foundation for the rule of law and democracy. The rule of law means that all authority and power must come from an ultimate source of law. Under an independent judicial system, the courts and its officers are free from inappropriate intervention in the judiciary's affairs. With this independence, the judiciary can safeguard people's rights and freedoms which ensure equal protection for all.

The effectiveness of the law and the respect that people have for the law and the government which enacts it is dependent upon the judiciary's independence to mete out fair decisions. Furthermore, it is a pillar of economic growth as multinational businesses and investors have confidence to invest in the economy of a nation who has a strong and stable judiciary that is independent of interference. The judiciary's role in deciding the validity of presidential and parliamentary elections also necessitates independence of the judiciary.

Disadvantages

The disadvantages of having a judiciary that is seemingly too independent include possible abuse of power by judges. Self-interest, ideological dedication and even corruption may influence the decisions of judges without any checks and balances in place to prevent this abuse of power if the judiciary is completely independent.

The relationship between the judiciary and the executive is a complex series of dependencies and inter-dependencies which counter-check each other and must be carefully balanced. One cannot be too independent of the other. Furthermore, judicial support of the executive is not as negative as it seems as the executive is the branch of government with the greatest claim to democratic legitimacy. If the judiciary and executive are constantly feuding, no government can function well.

Also, an extremely independent judiciary would lack judicial accountability, which is the duty of a public decision-maker to explain and justify a decision and to make amendments where a decision causes injustice or problems. Judges are not required to give an entire account of their rationale behind decisions, and are shielded against public scrutiny and protected from legal repercussions.

However judicial accountability can reinforce judicial independence as it could show that judges have proper reasons and rationales for arriving at a particular decision. While judges are not democratically accountable to the people, the key is for judges to achieve equilibrium between the two to ensure that justice is upheld.

ECONOMIC BASIS

Constitutional economics studies issues such as the proper distribution of national wealth including government spending on the judiciary. In transitional and developing countries, spending on the judiciary may be controlled by the executive. This undermines the principle of judicial independence because it creates a financial dependence of the judiciary on the executive. It is important to distinguish between two methods of corruption of the judiciary: the state (through budget planning and privileges) being the most dangerous, and private. State corruption of the judiciary can impede the ability of businesses to optimally facilitate the growth and development of a market economy.

In some countries, the constitution also prohibits the legislative branch from reducing salaries of sitting judges.

DEVELOPMENT OF THE CONCEPT

National and International Developments

The development of judicial independence has been argued to involve a cycle of national law having an impact on international law, and international law subsequently impacting national law. This is said to occur in three phases: the first phase is characterized by the domestic development of the concept of judicial independence, the second by the spread of these concepts internationally and their implementation in international law, and the third by the implementation in national law of these newly formulated international principles of judicial independence.

A notable example illustrating this cycle is the United Kingdom. The first phase occurred in England with the original conception of judicial independence in the Act of Settlement 1701. The second phase was evident when England's concepts regarding judicial independence spread internationally, and were adopted into the domestic law of other countries; for instance, England served as the model for Montesquieu's separation of powers doctrine, and the Founding Fathers of the US Constitution used England as their dominant model in formulating the Constitution's Article III, which is the foundation of American judicial independence. Other common law countries, including Canada, Australia, and India, also adopted the British model of judicial independence.

In recent decades the third phase of judicial independence has been evident in the UK, as it has been significantly influenced by judicial independence principles developed by international human rights constitutional documents. The European Court of Human Rights (ECtHR) has had a significant impact on the conceptual analysis of judicial independence in England and Scotland. This process began in the 1990s with the ECtHR hearing UK cases and, more significantly, in the application of the European Convention on Human Rights in British law through the Human Rights Act 1998, which came into force in the UK in 2000.

Where British national law had previously impacted the international development of judicial independence, the British Constitutional Reform Act 2005 marked a shift, with international law now impacting British domestic law. The Constitutional Reform Act dramatically reformed government control over the administration of justice in England and Wales; importantly, it discontinued the position of the Lord Chancellor, one of the country's oldest constitutional offices, who was entrusted with a combination of legislative, executive, and judicial capacities. The Lord Chancellor served as speaker of the Upper House of Parliament, the House of Lords; as a member of the executive branch and member of the senior cabinet; and as the head of the judiciary. Historically, the appellate function had a connection with the executive branch due to the types of cases typically heard – impeachment and the hearing of felony charges against peers. The Constitutional Reform Act established new lines of demarcation between the Lord Chancellor and the judiciary, transferring all the judicial functions to the judiciary and entrusting the Lord Chancellor only with what are considered administrative and executive matters. In addition, the Constitutional Reform Act replaced the Lord Chancellor by the Lord Chief Justice as head of the judiciary, separated the judicial Appellate Committee of the House of Lords from the legislative parliament, reforming it as the Supreme Court, and creating a Judicial Appointments Commission. The creation of the Supreme Court was important, for it finally separated the highest court of appeal from the House of Lords.

Thus, the United Kingdom, where judicial independence began over three hundred years ago, illustrates the interaction over time of national and international law and jurisprudence in the area of judicial independence. In this process, concepts and ideas have become enriched as they have been implemented in successive judicial and political systems, as each system has enhanced and deepened the concepts and ideas it actualized. In addition to the UK, similar developments of conceptual cross-fertilization can be seen internationally, for example in European Union law, in civil law countries such as Austria, and in other common law jurisdictions including Canada.

International Standards

The International Association of Judicial Independence and World Peace produced the Mt. Scopus International Standards of Judicial Independence between 2007 and 2012. These built on the same association's New Delhi Minimum Standards on Judicial independence adopted in 1982 and their Montréal Universal Declaration on the Independence of Justice in 1983. Other influences they cite for the standards include the UN Basic Principles of Judicial Independence from 1985, the Burgh House Principles of Judicial Independence in International Law (for the international judiciary), Tokyo Law Asia Principles, Council of Europe Statements on judicial independence (particularly the Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges), the Bangalore Principles of Judicial Conduct 2002, and the American Bar Association's revision of its ethical standards for judges.

The Justice System

In recent years, the principle of judicial independence has been described as one of the core values of the justice system.

Australia

There was a struggle to establish judicial independence in colonial Australia, but by 1901 it was entrenched in the Australian constitution, including the separation of judicial power such that the High Court of Australia held in 2004 that all courts capable of exercising federal judicial power must be, and must appear to be, independent and impartial.

Writing in 2007 Chief Justice of Australia Murray Gleeson stated that Australians largely took judicial independence for granted and the details were not matters of wide interest. No federal judge and only one supreme court judge has been removed for misconduct since 1901. Immunity from suit for judicial acts, security of tenure, and fixed remuneration are all established parts of judicial independence in Australia. The appointment of judges remains exclusively at the discretion of the executive which gives rise to concerns expressed that judicial appointments are political and made for political gain. Issues continue to arise in relation to dealing with judicial misconduct not warranting removal and incapacity of judges. In 2013 Chief Justice of NSW Tom Bathurst identified the way in which judicial and court performance was measured as one of the most substantial risks to the separation of powers in Australia.

Canada

Canada has a level of judicial independence entrenched in its Constitution, awarding superior court justices various guarantees to independence under sections 96 to 100 of the Constitution Act, 1867. These include rights to tenure (although the Constitution has since been amended to introduce mandatory retirement at age 75) and the right to a salary determined by the Parliament of Canada (as opposed to the executive). In 1982 a measure of judicial independence was extended to inferior courts specializing in criminal law (but not civil law) by section 11 of the Canadian Charter of Rights and Freedoms, although in the 1986 case Valente v. The Queen it was found these rights are limited. They do, however, involve tenure, financial security and some administrative control.

The year 1997 saw a major shift towards judicial independence, as the Supreme Court of Canada in the Provincial Judges Reference found an unwritten constitutional norm guaranteeing judicial independence to all judges, including civil law inferior court judges. The unwritten norm is said to be implied by the preamble to the *Constitution Act, 1867*. Consequently, judicial compensation committees such as the Judicial Compensation and Benefits Commission now recommend judicial salaries in Canada. There are two types of judicial independence: institutional independence and decisional independence. Institutional independence means the judicial branch is independent from the

executive and legislative branches. Decisional independence is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns sway their decisions, and without fearing penalty in their careers for their decisions.

Hong Kong

In Hong Kong, independence of the judiciary has been the tradition since the territory became a British crown colony in 1842. After the 1997 transfer of sovereignty of Hong Kong to the People's Republic of China pursuant to the Sino-British Joint Declaration, an international treaty registered with the United Nations, independence of the judiciary, along with continuation of English common law, has been enshrined in the territory's constitutional document, the Basic Law. However, since the enactment of the National Security Law on the 30th June, 2020, judicial independence diluted significantly.

Singapore

Judicial independence in Singapore is protected by the Constitution of Singapore, statutes such as the State Courts Act and Supreme Court of Judicature Act, and the common law. To safeguard judicial independence, Singapore law lays down special procedures to be followed before the conduct of Supreme Court judges may be discussed in Parliament and for their removal from office for misconduct, and provides that their remuneration may not be reduced during their tenure. By statute, judicial officers of the State Courts, and the Registrar, Deputy Registrar and assistant registrars of the Supreme Court have immunity from civil suits, and are prohibited from hearing and deciding cases in which they are personally interested. The common law provides similar protections and disabilities for Supreme Court judges.

The Chief Justice and other Supreme Court judges are appointed by the President of Singapore acting on the advice of the Cabinet of Singapore. The President must consult the Chief Justice when appointing other judges, and may exercise personal discretion to refuse to make an appointment if he does not concur with the Cabinet's advice. Supreme Court justices enjoy security of tenure up to the age of 65 years, after which they cease to hold office. However, the Constitution permits such judges to be re-appointed on a term basis.

UNITED KINGDOM

England and Wales

During the middle ages, under the Norman monarchy of the Kingdom of England, the king and his Curia Regis held judicial power. Judicial independence began to emerge during the early modern period; more courts were created and a judicial profession grew.

By the fifteenth century, the king's role in this feature of government became small. Nevertheless, kings could still influence courts and dismiss judges.

The Stuart dynasty used this power frequently in order to overpower the Parliament of England. After the Stuarts were removed in the Glorious Revolution of 1688, some advocated guarding against royal manipulation of the judiciary. King William III approved the Act of Settlement 1701, which established tenure for judges unless Parliament removed them.

Contemporary usage

Under the uncodified British Constitution, there are two important conventions which help to preserve judicial independence. The first is that the Parliament of the United Kingdom does not comment on the cases which are before the court. The second is the principle of parliamentary privilege: that Members of Parliament are protected from prosecution in certain circumstances by the courts.

Furthermore, the independence of the judiciary is guaranteed by the Constitutional Reform Act 2005. In order to try to promote the independence of the judiciary, the selection process is designed to minimize political interference. The process focuses on senior members of the judiciary rather than on politicians. Part 2 of the Tribunals, Courts and Enforcement Act 2007 aims to increase diversity among the judiciary. The pay of judges is determined by an independent pay review body. It makes recommendations to the government after taking evidence from a variety of sources. The government accepts these recommendations and will traditionally implement them fully. As long as judges hold their positions in "good order," they remain in post until they wish to retire or until they reach the mandatory retirement age of 70.

Until 1 January 2010, the legal profession was self-regulating; with responsibility for implementing and enforcing its own professional standards and disciplining its own members. The bodies which performed this function were the Bar Council and the Law Society.

However, this self-regulation came to an end when approved regulators came under the regulation of the Legal Services Board, composed of non-lawyers, following the passage of the Legal Services Act 2007. This saw the establishment of the Solicitors Regulation Authority to regulate solicitors and the Bar Standards Board to regulate barristers.

UNITED STATES

Federal courts

Article III of the United States Constitution establishes the federal courts as part of the federal government.

The Constitution provides that federal judges, including judges of the Supreme Court of the United States, are appointed by the President "by and with the advice and consent of the Senate." Once appointed, federal judges:

...both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Federal judges vacate office only upon death, resignation, or impeachment and removal from office by Congress; only 13 federal judges have ever been impeached. The phrase "during good behaviour" predates the Declaration of Independence. John Adams equated it with *quamdiu se bene gesserint* in a letter to the Boston Gazette published on 11 January 1773, a phrase that first appeared in section 3 of the Act of Settlement 1701 in England.

The President is free to appoint any person to the federal bench, yet typically he consults with the American Bar Association, whose Standing Committee on the Federal Judiciary rates each nominee "Well Qualified," "Qualified" or "Not Qualified."

State Courts

State courts deal with independence of the judiciary in many ways, and several forms of judicial selection are used for both trial courts and appellate courts (including state supreme courts), varying between states and sometimes within states. In some states, judges are elected (sometime on a partisan ballot, other times on a nonpartisan one), while in others they are appointed by the governor or state legislature. The 2000 case of Bush v. Gore, in which a majority of the Supreme Court, including some appointees of President George H. W. Bush, overruled challenges to the election of the George W. Bush then pending in the Florida Supreme Court, whose members had all been appointed by Democratic governors, is seen by many as reinforcing the need for judicial independence, both with regard to the Florida Supreme Court and the US Supreme Court.

This case has increased focus and attention on judicial outcomes as opposed to the traditional focus on judicial qualifications.

LOK ADALAT

Lok Adalat is a voluntary agency. It settles disputes' between the parties outside the courts with the hip of public spirited lawyers and like-minded citizens. It was established by Legal Services and Authorities Act, 1987. It has been given the widest possible jurisdiction and it and take up and any matter, pending in any court including the apex court. The Lok Adalat is guided by legal principles including principles of justice, equality and fair play. The judicial officers of the area and other such members possessing such qualifications conduct the affairs of Lok Adalat. It is being urged by many that Lok Adalat has therapeutic role to fulfil in aid of justice. So the legal system must encourage the government and voluntary agencies should reach out to aid them and the parties must trust them so that it can share the burden of accumulated litigation of the courts.

PUBLIC INTEREST LITIGATION

PIL, or Social Action Interest Litigation as termed by Upendra Baxi, is an offshoot of liberalized rule of locus standi. The traditional rule of locus standi was based on the fact that judicial remedy can be sought only by those who have suffered an injury on account of violation of a legal right by some public

authority. The PIL chose to liberalize this rule by making it clear that any person who suffers an injury but is unable to reach the court is helped by public-minded citizens to reach the court to seek justice. The institution of PIL originated in the U.S., in mid-1960s and legal aid to these litigations were provided by private foundations. The PIL cases centered around issues relating to civil rights, liberties and problems of the distressed and this provided representation to those previously unrepresented groups.

The PIL is considered to be an off shoot of social forces where freedom suffered in the cruel hands and public participation was required to check the system. It was an opportunity for like-minded citizens to participate and reaffirm their faith in the legal process. The petition can be filed by any voluntary agency or a member of the public. However, the court must satisfy itself while accepting the petition and see that the person is acting bona fide and not for personal gain or profit. The PIL involves issues connected with environmental protection, and a set of evolved fundamental rights like right to free legal aid, right against torture, right to humane treatment in prison, *etc.*, reflecting the human dimension of the PIL. Further, it extended its domain in a delicate task of mediating between social actualities and social change. Issues like degraded bonded labour, humiliated inmates of protective homes, women prisoners, custodial violence, and other victimised groups are attracting remedial attention of the courts. For this, article 32 emerged as a forum of PIL in recent years and it has become a byword for judicial involvement in social, political and economic affairs of the society.

The movement of liberalization of locus standi started with the Bar Council of Maharashtra v. M. V. Dabholkar where the Bar Council was stated to be an aggrieved party. Further, the judiciary directed the government agencies to be responsive to public grievances. In the Fertilizer Corporation Case it was held that, 'in a society where freedom suffers from atrophy activism is essential for participative public justice. Some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pendantry now surrounding locus standi.

As litigations became very expensive the affected persons joined together to fight for a common cause. Justice Krishna Iyer has observed in Akhil Bhartiya Shoshit Karmachari Sangh (Railway) case that our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is people-oriented and envisions access to justice through class actions, PIL and representative proceedings. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings instead of being driven to an expensive plurality of litigations is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdiction.

The PIL got the required recognition in S.P. Gupta case who was not an aggrieved person. The court observed that the basis of judicial redressal was

personal injury but today where there is public wrong or injury caused by an act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.

The Asiad workers case further strengthened the rule of locus standi in the PIL. The PUDR was an organization for the protection of human rights which sought to enforce labour laws for the unorganised construction workers of projects concerning Asiad Games. Justice Bhagwati held that strategy has to be evolved for relaxing the traditional rule of locus standi so that justice becomes, easily available to the lowly and the lost. Judicial activism has become the root of PIL and this was reflected in various other cases.

The Supreme Court with its wide jurisdiction and powers reflects the concern with providing social equality and rule of law. In India, the apex court has acted judiciously in changing socioeconomic structure and the progress of a nation has been dependent on its decisions. The existence of this court gives a feeling of security among the citizens. It acts as an independent authority which puts check on extreme actions and upholds the constitutional values. It has adhered to values enshrined in the minds of the framers of the constitution.

Unfortunately, the apex court has not escaped controversy because of various reasons. Lately, the contempt of court cases have shown the sensitivity or the highhandedness of the Judges. The court has at last woken up to the repeated charges of human rights violations by law-enforcing agencies. Further, loads of cases and delays in judgement have reflected the loopholes of the judicial system. As a democratic institution, the judiciary is answerable to the people. As Justice Krishna Iyer observed that all public power is people's trust and so even judicial power has a fiduciary component... Executive power is accountable to the Parliament and Parliament to the people, judicial power is not accountable to the executive nor to the Parliament in any direct sense.

The judiciary by deriving its power from the constitution, its accountability to people cannot be negated. Unfortunately, these ethnics have not been adhered to by judiciary and therefore whenever natural calamities struck the different parts of the nation it remained a spectator and could not reach the people at the grassroots level, be it Bhopal tragedy or Narmada andolan. Many areas of the court need to be reformed like the code of conduct of judges, transfer of judges, and rigidity of the system to ensure and preserve its position as the guardian of the constitution and the protector of the basic rights of the individual and society at large.

There is a great need to revamp the judicial system so that people can get access to justice and speedy justice. The experiment of Lok Adalat has met only with a limited success. Most cases referred to Lok Adalat are those where the state has to pay and it agrees to pay for an early settlement. The Supreme Court of India should inspire alternate dispute settlement machinery where public can redress its grievances and not burden it with special leave petitions. The

Judges should write brief judgements and give early decisions. In a few cases judgments are pronounced only when a judge is to, retire, otherwise they remain reserved for unlimited period. Quality of judges and ability to handle cases with speed and honesty should be the criterion in selection. Unfortunately, politics has entered even in appointments. One finds that judges like ministers also come from different High Courts representing different castes, class, or religious backgrounds. It would be worthwhile to restrict the time for arguments. It need not be stressed that a lot of time is wasted by a few senior lawyers who keep arguing for days and many other cases suffer. There is need to reform even the legal profession, which has made access to Supreme Court virtually impossible for millions in this country. Long and tardy procedure with further uncertainty whether the matter would be taken up or not on a particular day keeps the poor away from approching the Supreme Court.

Time has come when either we reduce the cases that can come up before the Supreme Court or have its benches in different regions. The sitting judges should not be appointed for commissions of inquiry. There is need to have a fresh took at Advisory jurisdiction also. The recent reference on Ram Janam Bhumi-Babri Masjid dispute will not end the controversy even after the decision.

THE UNION JUDICIARY IN INDIA

124. *Establishment and constitution of Supreme Court:*

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that-

(a) A Judge may, by writing under his hand addressed to the President, resign his office;

(b) A Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) *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 a 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 of two or more such Courts in succession; or

(c) Is, in the opinion of the President, a distinguished jurist.

Explanation I.-In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.-In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

125. *Salaries, etc., of Judges:*

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. *Appointment of acting Chief Justice:* When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. *Appointment of ad hoc Judges:*

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. *Attendance of retired Judges at sittings of the Supreme Court:* Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. *Supreme Court to be a court of record:* 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.

130. *Seat of Supreme Court:* The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131. *Original jurisdiction of the Supreme Court:* Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) Between the Government of India and one or more States; or

(b) Between the Government of India and any State or States on one side and one or more other States on the other; or

(c) Between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been

entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

131A. [Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 4 (w.e.f. 13-4-1978).

132. *Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases:*

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation: For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. *Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters:*

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-

(a) That the case involves a substantial question of law of general importance; and

(b) That in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. *Appellate jurisdiction of Supreme Court in regard to criminal matters:*

(1) *An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court:*

(a) Has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) Has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) *Certifies under article 134A that the case is a fit one for appeal to the Supreme Court:* Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1)of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

134A. *Certificate for appeal to the Supreme Court:* Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,-

(a) May, if it deems fit so to do, on its own motion; and

(b) Shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

135. *Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court:* Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

136. *Special leave to appeal by the Supreme Court:*

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137. *Review of judgments or orders by the Supreme Court:* Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

138. *Enlargement of the jurisdiction of the Supreme Court:*

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the

Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

139. *Conferment on the Supreme Court of powers to issue certain writs:* Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

139A. *Transfer of certain cases:*

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

140. *Ancillary powers of Supreme Court:* Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141. *Law declared by Supreme Court to be binding on all courts:* The law declared by the Supreme Court shall be binding on all courts within the territory of India.

142. *Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.:*

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India,

have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

143. *Power of President to consult Supreme Court:*

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

144. Civil and judicial authorities to act in aid of the Supreme Court.-All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

144A. [Special provisions as to disposal of questions relating to constitutional validity of laws.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 5 (w.e.f. 13-4-1978).

145. *Rules of Court, etc.:*

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including-

(a) Rules as to the persons practising before the Court;

(b) Rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) Rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) Rules as to the proceedings in the Court under article 139A;

(d) Rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) Rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) Rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) Rules as to the granting of bail;

(h) Rules as to stay of proceedings;

(i) Rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) Rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. *Officers and servants and the expenses of the Supreme Court:*

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct: Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

147. *Interpretation:* In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

5

Executives under the Indian Constitution

Executive body is one of the important organs of our country in which they play a vital role in the execution of the laws and acts formulated by the legislative body. The part 5 of our Indian constitution deals with the 'The Union' of our country. The president and vice-president play an important role in executive functions of the union government whereas the executive functions of the state is vested in the hands of governor. The executive functions of president and vice-president are discussed under the article 52-78 & 123 of our Indian constitution.

EXECUTIVE POWER OF THE PRESIDENT

Article 53 of our Indian constitution deals the executive power of the president. As per this article the president plays the major role in the executive functions of the central government and his functions can be done directly or indirectly through his sub-ordinate authority. He is aided by prime minister and council of ministers while taking important decisions.

OFFICE OF THE PRESIDENT

Since India is a Republic, the Constitution provides for a President of India and the executive power of the Union Government, including the supreme command of the defence forces, is vested in him. The Constitution prescribes only simple qualifications for a presidential candidate. He should be a citizen of India who has completed the age of 35 years and is qualified to be elected as

a member of the House of the People. No person who holds any office of profit under the Government of India or any State Government or local authority is eligible for election as President.

But there are certain positions in the Government, which are excluded from the scope of this provision. These are the offices of the President, Vice-President, Governors and Ministers of the Central and State Governments. The President cannot be a Member of Parliament or a State Legislature. Any member of a legislature who is elected as President shall cease to be such a member on the date he assumes the office of President. Further, the President is prohibited from holding any other office of profit. He is entitled to have his official residence tree of rent. He is also entitled for such salaries, allowances, and privileges as may be determined by Parliament. His salaries and allowances cannot be diminished during his term of office.

ELECTION

The President is elected for a period of five years by an Electoral College, which is, composed of (a) the elected members of Parliament and (b) the elected members of the State Legislative Assemblies. With a view to ensuring uniformity of representation of the different States at the presidential election and parity between the States as a whole and the Union, the Constitution has prescribed an ingenious method. Normally it should have been possible to achieve this uniformity by the simple device of assigning each member of the Electoral College one vote. Such uniformity would, however, have been invidious because in different States different ratios prevailed between the population and the number of legislators for example, in one State it may be one representative for every 50,000 of the population while in another the proportion may be one to 75,000 or more. The most populous State in the Union, Uttar Pradesh, has only 425, members in the Legislative Assembly for a population of over 160 million while Assam has 108 members for a population of about 23 million. That being so, the problem was to ensure that the votes would have a value in proportion to the population that the votes represented.

According to the special method devised to ensure this, each elected member of the State Assemblies has a certain number of votes on the basis of the relation between the total number of the elected members of the State Assembly and the total population of the State. The number is worked out in the following manner: Divide the total population of the State, first by the total number of elected members in the Assembly. Divide the quotient obtained by the above division by 1,000. Fractions of half or more should be counted as one and added to the quotient which will be the number of votes each member of the Assembly will have in the Presidential election.

The number of votes each elected member of Parliament is entitled to in the Presidential election is arrived at by dividing the total number of votes given to all the elected members of the State Assemblies by the total number of elected members of both Houses of Parliament. The election is held in accordance with

the system of proportional representation by means of the single transferable vote. The voting at the election is by secret ballot On the whole, this is a unique system of presidential election and one is tempted to ask what prompted the Constitution-makers to adopt such a system. First, in view of the adoption of a Cabinet system of government under which the President was to function as constitutional head of the State, direct election by the entire electorate as in the case of the President of the United States (in practice) was considered neither necessary nor advisable. Yet, it was thought desirable to have the President elected by as popular a body as possible. Both these purposes are realized under the present system.

The election becomes indirect and also simple when the electorate consists of only the elected members of the State Legislative Assemblies and Parliament. The elected members of the State Assemblies are themselves elected on adult suffrage. The House of the people of Parliament is also elected on the same basis. The council of states is elected by the State Assemblies, which are also elected on adult suffrage. The Electoral College is thus not only broad-based but also is substantially large in size.

The significance of an Electoral College composed of not only the members of both Houses of Parliament but also those of the various State Assemblies needs emphasis. In an election where the Head of the Nation is chosen, if the members of Parliament alone participate, it is possible that a party that has a clear majority in Parliament can easily see its candidate elected. But when the members of the State Assemblies also participate in the election, the picture is likely to undergo a substantial change. For, it is quite possible that the party, which has won a majority in Parliament, may be a minority in many State Assemblies or even in most of them. Under such conditions, a party supported by a majority of members in Parliament will not by itself be able to get its candidate elected.

The use of the term "proportional representation" was objected to in the Assembly because only one person was to be elected as President. Critics asked: "What significance has it in the absence of 'a multi-member constituency?" It is significant because, first it ensures that an absolute majority of the total number of votes are polled for a candidate to be elected, instead of a simple majority or a plurality of votes as in the elections of Parliament and the State Legislative Assemblies.

Since the President is the head of the State and represents the nation which includes all parties and groups, and since he should stand above party considerations, it is desirable that he is elected with as large a majority as possible.

But under the simple majority of the total number of votes is polled for a candidate to be elected election with at least an absolute majority. Secondly, it often helps the smaller parties in Parliament or regional parties who are strong only in some State Assemblies to have some voice in the election of the President. If no party can claim an absolute majority of the total votes of the Electoral

College, a candidate, to win the election, has to seek the support of two or more parties. This gives an opportunity to smaller parties to influence the election.

Although, on paper, the presidential election is a complicated process, in practice it is a comparatively simple one. Moreover, this method of electing the President seems to be much more in consonance with the federal principle than that which obtains in the United States, where the President is supposed to be elected by the electors but, in reality, directly by the people. The election of the American President raises the greatest political battle in the world for the election of any Head of State. But, in India, such a contest will pass off without a ripple of popular excitement. I No doubt, it is a matter of all-India significance. And yet, since those who directly participate in it number just a few thousands (about 4,000) it passes off in a quiet business-like manner.

Normally, the President's office becomes vacant in three ways: death, resignation or removal by impeachment. The Constitution lays down a detailed procedure for the impeachment President, which is almost identical to that in the United States exception of one major difference.

In India the charge may be preferred by either House of Parliament while in the United States the House of Representatives alone has the power to try the impeachment. The President can be impeached only for the violation of the Constitution, a form that is comprehensive enough to cover crimes such as treason, bribery and other crimes. Before either House of Parliament prefers the charge, the proposal should be embodied in a resolution moved after a notice of at least fourteen days. The notice must be signed by at least one-fourth of the total membership of the House. The charge shall be preferred only if such a resolution is passed by a two-thirds majority of the total membership of the House. Once the charge has been so preferred in one House, the other House will investigate the charge or appoint a special body for such investigation. If the result of such investigation is that the charge against the President has been sustained and to this effect a resolution is passed by the House with a two-thirds majority of its total membership, the President ceases to hold the office of President of India from the date of passing such resolution.

When a vacancy arises in the office of the President owing to anyone of the above causes, the Vice-President will fill it until a new President is elected. But the new President should be elected before six months elapse after the vacancy has occurred. When a new President is elected in this manner he will hold office for the full term of five years. There is no constitutional bar against the President's re-election. Every doubt and dispute arising out of the presidential election shall be finally decided by the Supreme Court of India.

ELECTION OF PRESIDENT

Article 54 deals the election of president. Accordingly, he is elected by the members of an electoral college which consists of:

- The elected members of both houses of parliament and
- The elected members of the legislative assemblies of the states.

MANNER OF ELECTION OF PRESIDENT

Article 55 deals with the manner of election of president. The members of electoral college are responsible for the election of president. He is elected indirectly by the elected members of legislative assembly of each and both the houses of parliament.

He is elected through proportional representation by means of single transferrable vote by secret ballot.

TERM OF OFFICE OF PRESIDENT:(ARTICLE 56)

- The president shall the hold for 5 years from the date on which he holds the office.
- In case of resignation before the end of 5 years, he should give his resignation letter to the vice-president.
- He can be also removed from the office through the process of impeachment under article 61.
- He can also hold the office beyond 5 years until the new successor holds the office.

Eligibility for re-election

According to article 57 of the Indian constitution, the president can participate in the election with no limit. There is no limitation to contest in the election.

Qualifications for Election as President

Article 58 states the qualifications of president for election. According to this, he should be the:

- Citizen of India.
- He has to be completed 35 years of age
- He should be qualified for election as a member of the house of people
- He should not hold any office of profit under the government of

Conditions of President's Office

Article 59 states certain conditions of the president's office. Accordingly:

- He should not be a member of house of parliament or a house of legislature of any state. In case, he should resign the post before holding the office of president.
- The president is entitled for the official residence without payment of rent.
- He also entitled to emoluments, allowances and privileges as determined by the parliament by law.
- Such emoluments and allowances of the president shall not be diminished during his term of office.

Oath or Affirmation by the President

Article 60 of our Indian constitution deals with the oath of the president before holding the office. That is,

Every president and every person who is acting as president or discharging the functions of the president should take oath before entering the office in the presence of Chief Justice of India. In his absence, he should take affirmation before the senior most judge of the supreme court.

Impeachment

Article 61 deals with the procedure for impeachment of president. Here the president is removed from the office incase if does any act which leads to the violation of the constitution.

The prior notice should be given to the president before 14 days and the resolution must be passed by majority not less than 2/3 of the total membership. It should signed by ¼ (not less than) of the total members. The resolution can be passed by any house and investigated by other house.

Filling of Vacancy

Article 62 deals with the time of holding election to fill vacancy in the office of president and the term of office of person to fill casual vacancy. As per this, the elected president can hold the office until the new president takes charge.

The casual vacancy should be filled within 6 months incase of impeachment, resignation or if the election was disqualified by the supreme court.

Vice-president

The article 63 says that "There shall be a vice president of India". He is the second highest constitutional office after president.

Article 64 says that the vice president is the ex-officio chairman of the council of states and he should not any other office for profit. According to this, when vice-president acts as president he should not perform the duties of ex-officio chairman of the council of states and he is not entitled to any allowances, emoluments and salaries of the chairman.

When can Vice-president Acts as President?

Article-65 says when the vice-president can discharge the functions of president. Accordingly, the vice-president can acts a president if he:

- Resigns the post
- In case of the death or illness of president
- In the absence of president
- During casual vacancy.

Here, the vice-president has all powers and immunities of president and he his entitled to all the allowances, emoluments and privileges of the president.

Election of Vice-president

Article 66 deals with election of vice-president. He is elected in the same manner as that of president and he is eligible only if he fulfills the eligibility of the election of president.

Term of Office of Vice-president

As per article 67:

- He should hold the for a term of 5 years from the date on which he enters his office. He can also hold the office beyond 5 years until his successor holds the office.
- He can also resign his post and the resignation should be addressed to the president.
- He can also be removed through the process the impeachment as that of president.
- Election to fill vacancy of vice-president:
- According to article 68- the election to fill the vacancy caused by the expiration of the term of office of vice-president should be completed before the expiration of the term.
- A vacancy can be occurred in case of his resignation, death or removed from office and the newly elected person can hold the hold the office for 5 years from date on which he enters upon his office.

Oath of Vice-president

Article-69, any person who holds the office of vice-president shall take the oath before entering the office.

UNION COUNCIL OF MINISTERS

THE COUNCIL OF MINISTERS

Article 74 of the Indian constitution states that:

- There should be a Council of Ministers to aid and advise the president;
- The Council of Ministers must have a Prime Minister at the head to aid and advise the President;
- The President should exercise his functions and act in accordance with advice rendered by the Council of Ministers;
- The Council of Ministers should reconsider any advice sent back by the President;
- The President is bound to act in accordance with the advice tendered by the Council, after reconsideration.

SIZE OF MINISTRIES

The executive powers in India are exercised by the Council of Ministers. These ministers constitute ministries having cabinet minister, junior minister, *etc.* Before 2003, the size of ministries was not specified under any provision

leading to a lot of chaos. After the 91st amendment Act of 2003 came into existence, it marked a ceiling limit to the size of the ministries. The amendment stated that the strength of the Council of Ministers cannot exceed more than 15% of the total number of members of the Lok sabha or relevant Legislative Assembly of the state.

An exception was provided to the smaller states like Sikkim, Mizoram, and Goa, having a strength of lesser than 40 members in the legislative assemblies.

DISQUALIFICATION ON DEFECTION ON THE GROUND OF SPLIT IN A POLITICAL PARTY

Article 102(2) and Article 191(2) provides for Anti-Defection laws regarding the members of Lok sabha. According to this law, a member of a House, belonging to any political party, shall be disqualified as a member of the House on the following basis:

- If the person voluntarily gives up his/her membership of the political party to which he/she belongs; or
- If the person votes or abstains from voting in contrary to any direction issued by the political party or by any person or authority authorized to give directions.

In either case, the prior permission of such political party, person or authority must be sought. The voting or abstention must be approved by the political party, person or authority within fifteen days from the date of voting or abstention.

When a member of a House claims that he and any other members of his party have formed a group representing a faction emerging as a result of a split in his original political party. If such a group consists of one-third or more of the members of such a political party then the ministers cannot be disqualified under Anti-Defection laws.

A NON-MEMBER CAN BECOME A MINISTER

Article 75 of the Constitution of India provides for provisions relating to the appointment of the Union Ministers.

At first, the Prime Minister is appointed by the President and then the President appoints other ministers on the advice of the Prime Minister.

The provision clearly states that any minister, who is not a member of either House of the Parliament, shall cease to be a minister after the period of six months from the date of his appointment. The non-member must get elected to either House of the Parliament in order to continue as a Minister of Lok Sabha.

A CONVICTED PERSON CANNOT BE APPOINTED CHIEF MINISTER

When the question arose whether a convicted can be appointed as Chief Minister or not.

The issue was decided in the negative by the Supreme Court in the famous case of B.R. Kapoor v State of Tamil Nadu and Anr (Famously known as Ms. J.

Jayalalitha Case). It was held that any person who is convicted for a criminal offense and sentenced to imprisonment, for a period of two years, or more, cannot be appointed the Chief Minister of any State under Article 164(1) of the Indian Constitution.

DISSOLUTION OF PARLIAMENT

In our country, the Lok Sabha has a five-year term but it can be dissolved earlier. Article 83(2) of the Indian Constitution states that at the completion of five years term, from the starting date of Lok sabha meetings, it can be dissolved. In such cases, an election is held to elect the new Members of Parliament.

The Lok Sabha can also be dissolved by the President on the advice of the Prime Minister before the expiry of its term.

The President can also dissolve the Lok Sabha, if he feels that a viable government cannot be formed, after the resignation or fall of a regime, as the case may be.

PRINCIPLE OF COLLECTIVE RESPONSIBILITY

The principle of Collective Responsibility means that the Council of Ministers is collectively responsible as a body for all the actions, omissions and conduct of the government. It states that all ministers stand or fall together in Parliament. The Government is considered as a unity of ministers instead of single individuals. It means that the minister should publicly support the decisions made by the cabinet, even if they disagree privately. This support even includes voting for government in the legislature.

MINISTER'S INDIVIDUAL RESPONSIBILITY

The Ministerial Individual Responsibility means that a cabinet minister is ultimately responsible for all the actions of his ministry or department.

Whenever there is an individual ministerial responsibility, the party to which the minister is a part is not answerable for the failure of the minister. The minister shall himself take the blame for the actions of his ministry and resign.

GOVERNOR

153. GOVERNORS OF STATES

There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

154. EXECUTIVE POWER OF STATE

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) *Nothing in this article shall:*
   (a) Be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
   (b) Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

155. APPOINTMENT OF GOVERNOR

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. TERM OF OFFICE OF GOVERNOR

(1) The Governor shall hold office during the pleasure of the President.
(2) The Governor may, by writing under his hand addressed to the President, resign his office.
(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

157. QUALIFICATIONS FOR APPOINTMENT AS GOVERNOR

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

158. CONDITIONS OF GOVERNOR'S OFFICE

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
(2) The Governor shall not hold any other office of profit.
(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

159. OATH OR AFFIRMATION BY THE GOVERNOR

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say-

"I, A. B., do swear in the name of God (or solemnly affirm) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of ……(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of ……..(name of the State)."

160. DISCHARGE OF THE FUNCTIONS OF THE GOVERNOR IN CERTAIN CONTINGENCIES

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

161. POWER OF GOVERNOR TO GRANT PARDONS, ETC, AND TO SUSPEND, REMIT OR COMMUTE SENTENCES IN CERTAIN CASES

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

162. EXTENT OF EXECUTIVE POWER OF STATE.

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

APPOINTMENT, TENURE AND REMOVAL OF A GOVERNOR

Appointment of a Governor is talked about under Article 155 and information regarding his tenure and removal are provided under Article 156. It states that the President appoints the Governor by warrant under his hand and seal *i.e.*, bearing his seal and signature. The Governor shall hold office as long as he/she enjoys the pleasure of the President. The Governor may resign his office by writing under his hand *i.e.*, a written letter undersigned by him addressed to the

President. In accordance with the foregoing provisions of this article, the Governor's term of office shall be five years from the date on which he/she enters upon his office, provided that the Governor shall continue to hold office until his/her successor enters upon his office, notwithstanding the expiration of his term.

Qualifications

Article 157 states the two qualifications to be fulfilled for a person to be appointed Governor. The two provisions are:

- He/She should be an Indian citizen.
- He/She should have completed 35 years of age.

Conditions of Governor's Office

Along with the above mentioned preliminary qualifications, there are a set of other criteria which need to be met. These are stated under Article 158. They are:

- He/She should not be holding any office of profit.
- He/She should not be a member of the Parliament or any other State Legislature. However, if someone holding these positions is appointed Governor, he/she would have to vacant their previously held office.
- He/She is provided with such allowances, emoluments and privileges which the Parliament provides by law and in case these provisions are absent, they are provided to him/her as per Schedule II.
- The above mentioned allowances, emoluments and privileges would not be diminished during his term. Further, if two states come under him/her, such expenses would be shared between them in accordance with the President's decision.

Oath

Every Governor, before entering his office is bound to take an oath before the Chief Justice of the High Court or the senior most judge, in the former's absence. This is mentioned under Article 159. The oath is as follows:

"I, A. B., do swear in the name of God that I will solemnly affirm faithfully execute the office of Governor (or discharge the functions of the Governor) of ……(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of……(name of the State). "

Can the Governor be Dismissed Arbitrarily?

As per Articles 155 & 156 of the Constitution, the Governor is an appointee of the President and holds office as long as he continues to enjoy his pleasure. This essentially means that the Governor can hold his office for the prescribed term of 5 years if he continues to enjoy the pleasure of the President. Article 74 states that the President is bound to act upon the aid and advice of the Council

of Ministers.Therefore, the President's decision to remove the Governor, in effect, is actually the decision of the Centre. In the case of B.P. Singhal vs UOI (2010), the Hon'ble Court's constitutional bench held that even though the Central Government holds the power to remove the Governor, they cannot do so arbitrarily and would have to prove the facts of the case and grounds for his/her removal. Thus, the Governor cannot be removed simply because the Union government has lost confidence in him/her.

B.P. Singhal VS Union of India (2010) Case

The circumstances leading to this case revolve around the removal of the Governors of Uttar Pradesh, Gujarat, Haryana and Goa after the 14th Lok Sabha elections. The writ petition was filed by a former member of Parliament, B.P. Singhal and the matter was referred to a five judge constitution bench consisting of the then Chief Justice K.G. Balakrishnan and Justices S.H. Kapadia, R.V. Raveendran, B. Sudershan Reddy and P. Sathasivam.

Quoting Justice Raveendran, "What Article 156 (1) of the Constitution dispenses with, is the need to assign reasons or the need to give notice, but the need to act fairly and reasonably cannot be dispensed with by Article 156(1)."

The bench clarified that the exercise of powers by the President under Article 156(1) should not be arbitrary. In case the President withdraws his pleasure, the court will assume that it is for compelling reasons and where the aggrieved person is unable to point out mala fide reasons for his/her removal, the court won't interfere. But, in cases where the said person is able to prove that there existed a mala fide intention behind his/her removal, the court would cause the Union government to produce records/material to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What constitutes good and compelling reasons would depend upon the facts of the case. Thus, there won't be any interference from the judiciary unless the executive makes a strong case based on malafide intentions.

In summary, the Court made it clear that even though the Union and the President held the power to remove the Governor, such could not be effected in an arbitrary manner or in bad faith even if his/her policies and ideologies were different from those of the Union Government.

DISCHARGE OF HIS FUNCTIONS IN CERTAIN CONTINGENCIES: ARTICLE 160

The article means that in case there's a certain eventuality where the President thinks the Governor needs to discharge certain duties not mentioned in this chapter, then the President can do so via this provision.

POWERS OF GOVERNORS

As it has already been made clear in the beginning of the article, the position, power and functions of the Governor are analogous to that of the President. His/Her powers are discussed below under four heads.

EXECUTIVE POWER

Under Article 154(1), the executive powers have been vested to the Governor and he can choose to exercise them either directly himself or indirectly through his Council of ministers.

- As such, the Governor makes important appointments of the state such as the Chief Minister and Council of Ministers, Chairman and members of State Public Service Commission, State election commissioner, Advocate General, Chief Justice of the High Court, District judges and the Vice chancellors of Universities.
- Under Article 356, the Governor can recommend the President for the imposition of a State Emergency and during such emergency he/she enjoys extensive executive powers as an agent of the President.
- He/She runs the state administration by extending control over the subjects in the state list and deciding the policies and portfolios of the various ministers.

Financial Power

- A money bill cannot be introduced in the state legislature without prior approval of the Governor.
- The state Contingency Fund is at his/her disposal and he/she can make withdrawals out of it to meet unforeseen expenditures.
- He/She makes sure that the Annual state budget is discussed and put before the State Legislature.

Legislative Power

- The Governor has the power to summon and prorogue both houses of the Legislature. He/She has to make sure that the maximum gap between the two sessions of the houses is 6 months.
- Under Article 192, the Governor has the authority to disqualify any legislator who fails to comply with the conditions given under Article 191.
- The Governor has to address the state legislature at the beginning of the first session every year and after the state assembly elections.
- The Governor can hold a bill and send it to the President for his consideration. Other than this, the Governor can either give assent to a bill or withhold it or send it back for reconsideration (except for money bills).

Pardoning Power

According to Article 161, the Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence relating to matters under the state executive power, exception being cases decided by a court martial. However, in cases where a death penalty has been granted the Governor cannot pardon it.

Is this Power Subject to Judicial Review?

According to the Constitution, the judiciary should not encroach upon the powers of the executive. However, in certain cases this has been seen.

In the case of Epuru Sudhakar & Anr. v. Govt. of AP & Ors., the issue of whether the pardoning power of the Governor is subject to judicial review or not came up.

The Hon'ble Supreme Court set aside the decision of the then Andhra Pradesh Governor, Sushil Kumar Shinde. The Governor had advised for remitting the punishment of a Congress activist in connection with the murder of two persons, one of whom was a TDP activist. The division bench consisting of Justices S.H. Kapadia and Arijit Pasayat expressly mentioned that the exercise of the pardoning power should be in compliance with the Rule of Law.

"Rule of Law is the basis for evaluation of all decisions (by the court)… That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent," the bench warned.

Justice Kapadia, while concurring with the main ruling delivered by Justice Pasayat, sought to remind "exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege.

It is a matter of performance of official duty… the power of executive clemency is not only for the benefit of the convict but while exercising such a power the President or the Governor as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future." He also said "An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are fraught with discrimination".

Thus, this judgment gave a final conclusion that the settled position of law that exercise or non-exercise of the pardoning power by the Governor would not be immune from judicial review.

ORDINANCE MAKING POWER OF THE GOVERNOR

Under Article 213, the Government can issue an ordinance if the circumstances compel him to do so, when either houses of the legislative assembly are not in session.

However, there are two circumstances under which the Governor cannot issue an ordinance. They are:

- If the ordinance has certain provisions which the Governor would have reserved for the President in case it were a Bill.
- If the State Legislature has an act with similar provisions and the same would be declared invalid without the President's assent.

DISCHARGE OF PRESIDENTS FUNCTIONS IN OTHER CONTINGENCIES

Article 70 of Indian Constitution States that

A parliament may make provision, if it thinks fit for any other contingency to discharge the functions of president, not provided for in this chapter.

Election of President or Vice-president

Article 71 deals with the matters relating to, or connected with the election of president and vice-president.

- If any disputes arises in the election of president, the decision of the supreme court is final.
- Even if the election of president or vice-president is declared void by the supreme court, acts done by him before the date of decision of the supreme court shall not be invalid.

Powers of President

- Article 72 deals power of president to grant pardons, *etc.*, and to suspend, remit or commute sentences in certain cases. According to this
- The president has the power to grant pardon to all convictions and he can completely disqualify the punishments/sentences.
- He has the power to commute the punishment that is, he can substitute one punishment to another.
- He also has the power to give remission that is he can reduce term of the same punishment. Example, from 10 years to 5 years.
- He has the power to respite *i.e.*, reducing sentences for special reasons such as pregnancy, disability.
- He also has the power to reprieve e. temporary stoppage of punishment for taking decisions on pardon.

Article 73 of our Indian constitution deals with the extent to which the union has the executive power. As per the executive power extend to the matters with respect to which parliament has power to make laws and to exercise such rights by the government of India.

According to article 74 the prime minister and his council of ministers should aid and advise the president in order to exercise his functions

Article 75- Other provisions s to ministers. As per this article.

- The president appoints the prime minister and council of ministers on the advice of prime minister.
- The ministers should hold the office during the pleasure of president and they are responsible to the house of the people.
- A minister who fails to be a member of either of for 6 consecutive months shall ceased to be a minister
- The salaries and allowances of the ministers are determined by the parliament from time to time.

ATTORNEY GENERAL

Article 76- attorney general of India:

- A person who is qualified to be the judge of SC can be appointed as the attorney general of India by the president.
- The duty of the attorney general is to give advice to the government of India on legal matters.
- He should discharge his duties as conferred by the constitution or any law being in force at that time.
- He also have the right of audience in all courts in the territory of India while performing his duties
- He shall hold the office during the pleasure of president and receive remuneration as determined by president.

CONDUCT OF BUSINESS

Article 77- conduct of business of the Government of India. As per this article, All executive functions of the government are expressed in the name of president.

- Orders and others instruments is made and executed in the name of president and its validity cannot be questioned on that ground that it is not an order or instrument made or executed by the president.
- The president shall make rules for convenient transaction of the business of government of India and for the allocation among ministers for said business.

DUTIES OF PRIME MINISTER

Article 78 deals with the duties of prime minister as respects the furnishing of information of president, *etc.*

The prime minister has the duty to communicate and furnish the decisions of the council of ministers related to the affairs of the administration and proposals of legislations to the president.

Power to make Ordinances

Article 123- power of president to promulgate ordinances during recess of parliament. As per this article, the president has the power to make ordinances. In the absence of 2 houses of the in houses in session the president can make ordinance and it has the same power as enacted by parliament.

- It becomes law only after it is approved by both the houses of parliament within six weeks after the commence of parliament.
- If it is not accepted means then it becomes invalid. Hence the validity of an ordinance is only 6 months and 6 weeks until it is accepted by the parliament.

THE UNION EXECUTIVE AND COUNCIL OF MINISTERS

In India, the constitution establishes a Parliamentary sort of government. The essence of the Parliamentary type of government is that the head of the state is the constitutional head of the real Union Executive powers are vested in

the council of Ministers. The prime minister is the head of the Council of Ministers. Though the Union Executive power is vested in the President he exercises the power with the aid and advice of the council of Ministers.

THE UNION EXECUTIVE

In Article 52 to 78, the principal of Executive of the union are:

THE PRESIDENT

Article 52 provides that there shall be a President of India. Article 53 provides that the Executive power of the union shall be vested in the President and it shall be exercised by him in accordance with the con Constitution either directly or through officers subordinate to him. In Rao v/s Union of India, 1971, the supreme court held that the Executive power must be exercised in accordance with the provision of Article 14.

Election

The President of India isn't directly elected by the people Article 54, provides that the President shall be elected by a body consisting of:

1. The elected members of both Houses of parliament.
2. The elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of a single transferable vote by secret ballot

70th Amendment Act of 1992

It added a replacement explanation to Article 54 which provides that the word state includes the capital Territory of Delhi and therefore the Union Territory of Pondicherry. Article 55 provides the way of election of President. The system adopted for voting is vote.

Term of the Office

Article 56 says that the President shall hold the office for a term of 5 years from the date on which he enters upon his office. This period can be shortened by:

1. Resignation- by writing under his hands addressed to the vice president.
2. Death Dr Zakhirhusain and Fa khuruddiniAli
3. By reprimand The President may, by infringement of constitution be expelled from office by the prosecution in the way gives in Article 61. In India, no President has been reprimanded.
4. Re-election- A person who holds or who has held office shall be eligible for re-election to that office (Article 51).

Qualifications for President

Article 58 lays down the qualification which an individual must possess for being elected to the office of the president of India.

1. He must be a citizen of India.
2. He must have completed the age of 35 years.

3. He must be qualified for election as a member of the House of the people, he must be registered as a voter in any Parliamentary constituency.
4. He must not hold any office of profit under the government of India or the government of any state or under any local or other authority subject to the control of the government of the union of any state.

Conditions of President's Office

Article 59 says that the President can't be a member of either House of Parliament or of a House of the legislature of any state. The President shall not hold the other office of profit.

Oath of the President

According to Article 60 before entering upon his office, the President has to take an oath or an affirmation in the presence of the Chief Justice of India, or in his absence, the Senior most Judge of the Supreme court available to preserve, protect and defend the constitution and the law and to devote himself to the service and well being of the people of India.

Salary of President

The President shall be entitled to use his official residence freed from rent. The President salary has been raised to Rs 1,50,000 per month from Rs 50,000 per month, His salary cannot be diminished during his term of office.

Procedure for Impeachment of the President

Article 61 of the constitution sets out the Procedure for the indictment of the President. The President is frequently faraway from his office by a procedure of prosecution for the infringement of the constitution.

Procedure:

1. The impeachment charge against him may be initiated by either House of Parliament.
2. The charge must come in the form of a proposal contained in a resolution signed by not less than one-fourth of the member of the members of the house and moved after giving a minimum of 14 days advance notice.
3. Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House.
4. The charge is then an investigation by the other House. The President features a right to seem and to be represented at such investigation.
5. On the off chance that the other House after examination passes a goal by 66% larger part pronouncing that the charge is demonstrated, such goals will have the impact of expelling the President from his office from the date on which the goals are so passed.

6

Legislature under the Indian Constitution

MEMBERS OF LEGISLATIVE ASSEMBLY

QUALIFICATIONS OF MEMBERS OF LEGISLATIVE ASSEMBLY

A person shall not be qualified to be selected to occupy a seat in the Legislature of a State unless he/she:

(a) Is an Indian citizen;
(b) Is 25 years or above for Legislative Assembly, and is 30 or above for Legislative Council, and
(c) Possess such other qualifications as may be prescribed by the Parliament.

Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council unless he is himself an elector for any Legislative Assembly constituency in that State.

A person can be disqualified for being selected as and for being a member of the Legislative Assembly or Legislative Council of a State if he/she:

(a) Holds an office of profit under GOI or any State Government, other than that of a Minister at the centre or any state or an office declared by a law of the State not to disqualify its holder (many States have passed such laws declaring certain offices to be offices the holding of which does not disqualify its holder for being a member of the Legislature of that States)

(b) Is mentally unsound as declared by a competent Court
(c) Is an undischarged insolvent
(d) Is not an Indian citizen or has voluntarily got the citizenship of a foreign State or is under any acknowledgement of adherence/allegiance to a foreign nation
(e) Is so disqualified by or under any law made by Parliament

Thus, the Representation of the People Act, 1951, has laid down some grounds of disqualification, like conviction by a Court, having been found guilty of electoral malpractice, being a manager or director of a corporation in which Government possesses a financial interest. Article 192 says that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned above, the matter will be referred to the Governor of the state who has to act in accordance with the opinion of the Election Commission. His decision is final and not liable to be questioned in Court.

Facts about Speaker & Deputy Speaker:

1. A Speaker vacates his office if he ceases to be a member of the Assembly.
2. He may also resign his office at any time.
3. A speaker may be removed from office by a resolution of the Assembly passed by a majority of all the then members of the Assembly after fourteen days' notice of the intention to move such a resolution.
4. Speaker does not vacate his office on the dissolution of the Assembly.
5. He continues to be the Speaker until immediately before the first sitting of the Assembly after the dissolution.
6. While the office of the Speaker is vacant, the Deputy Speaker performs his duties.
7. The duties and powers of the Speaker are, broadly speaking the same as those of the Speaker of the House of the People (Lok Sabha).

Facts about Chairman & Deputy Chairman:

1. The Council chooses from amongst its members a Chairman and a Deputy Chairman.
2. Both vacate their offices if they cease to be members of the Council or resign from its membership.
3. They can also be removed by a resolution of the Council passed by a majority of all the then members of the Council, provided fourteen days notice to move such resolution of removal has been given.
4. When the resolution for removal is under discussion against the Chairman or the Deputy Chairman, the concerned person shall not preside at the sitting of the Council, although he may be present at such a sitting and has the right to speak in, and otherwise to take part in the proceedings of the Council.
5. He shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings.
6. In case of an equality of votes, he does not exercise a casting vote to which he is otherwise entitled under Article 189.
7. The Chairman presides at all sittings of the Council and in his absence the Deputy Chairman.

8. During the absence of both the Chairman and the Deputy Chairman, such other person as may be determined by the rules of procedure of the Council shall preside; or, if no such person is present, such other person as may be determined by the Council shall act as Chairman.
9. While the office of the Chairman is vacant, the duties of his office are performed by the Deputy Chairman. If the office of the Deputy Chairman is also vacant, such member of the Council as the Governor may appoint shall perform all such duties connected with the office of the Chairman.

ANTI DEFECTION LAW (XTH SCHEDULE)

The Anti-Defection Law, enshrined in the Tenth Schedule of the Constitution of India, was introduced to address the issue of defection by legislators from one party to another, which often led to instability in governments. Here are the key features of the Anti-Defection Law:

DEFINITION OF DEFECTION

Disqualification: A Member of Parliament (MP) or Member of a Legislative Assembly (MLA) is disqualified if they voluntarily give up their membership of a political party or disobey the directives of the party leadership on a vote.

VOLUNTARILY GIVING UP MEMBERSHIP

If a legislator voluntarily gives up the membership of their party, they are deemed to have defected. However, if the member has resigned or has been expelled from the party, but the resignation or expulsion is not accepted by the party, it will not be considered as defection.

Disobeying Party Whips

If a legislator votes against the party whip on a crucial matter, they can be disqualified for defection.

This provision is to ensure that members vote in line with the party's decisions on important issues.

Exceptions

The law provides some exceptions where a member's defection is not considered grounds for disqualification. For example, if two-thirds of the members of a party decide to merge with another party, it would not be considered defection.

Role of the Speaker/Chairman

The Speaker of the Lok Sabha or the Chairman of the Rajya Sabha and the Speakers/Chairmen of State Legislative Assemblies/Councils are the final authorities to decide on disqualification under the Anti-Defection Law.

The decision of the Speaker/Chairman is subject to judicial review.

Impact on Majority

The Anti-Defection Law aims to prevent political defections that can lead to the fall of governments or the change in the composition of legislative bodies.

Amendment

The law has been amended to prevent defections in the form of a "split." A merger of two-thirds of the members of a party with another party is exempted from disqualification.

The Anti-Defection Law seeks to promote stability and ensure that elected representatives adhere to the party's line on significant matters. However, its application has been a subject of debate, with concerns raised about the discretion of the Speaker/Chairman and the potential for misuse for political purposes.

CHALLENGES OF ANTI-DEFECTION LAW

The anti-defection bill aims to keep the government stable by preventing legislators from switching sides

This statute, however, prohibits legislators from voting by their conscience, judgment, and the interests of their constituents

The anti-defection statute obstructs the Legislature's oversight duty over the government by assuring that members vote based on party leadership decisions In other words, if parliamentarians are unable to vote on legislation independently, they will be unable to serve as an effective check on the administration

In effect, the Anti-Defection Law implemented the separation of powers between the Executive and the Legislature, concentrating power in the hands of the executives

According to the legislation, legislators can be disqualified for defection by the Presiding Officer of a legislature based on a petition from any other member of the House

However, there are other cases in which presiding officials serve the entrenched interests of a ruling political party or government

Furthermore, the statute makes no provision for the Presiding Officer to decide on a disqualification plea within a specific time frame

As a result, the ruling sometimes relies on the presiding officer's whims and fancies

The Anti-Defection Law implemented a democracy based on parties and numbers rather than debate and discussion in India

It makes no distinction between dissent and defection in this way, weakening Parliamentary debates on any measure

Exceptions

On the other hand, the legislation does not bind politicians to their political parties indefinitely. In various conditions, legislators can switch parties without fear of being disqualified.

This law allows a party to merge with another if two-thirds of its members approve. In such an instance, none of the members face defection accusations. In other situations, if a person was elected as chairman or Speaker and was forced to resign from their party. As a result, they can rejoin the party after leaving that position.

The law originally stated that the Presiding Officer is immune from judicial review. The Supreme Court, however, overturned this in 1992. It was further specified that no interference would be made until the Presiding Officer issued his order.

In India, there have been numerous incidents of desertion. Several MLAs and MPs have switched parties. After combining his party, Jharkhand Vikas Morcha (Prajatantrik), with the BJP in Jharkhand, ex-CM Babulal Marandi is also facing proceedings under the Tenth Schedule. We trust that the preceding explanation clarifies the law for the readers.

91st Constitutional Amendment act -2003

Its goals were to reduce the size of the Council of Ministers, prevent defectors from entering public office, and improve the 10th Schedule of the Indian ConstitutionPreviously, a merger was defined as a defection of one-third of a political party's elected members. It was amended to at least two-thirds after the amendment.The court also affirmed the Speaker's broad power in considering cases of MLA disqualification.

LAW MAKING PROCEDURE

The lawmaking procedure in India involves several stages and requires the approval of both houses of Parliament (Lok Sabha and Rajya Sabha). Here is an overview of the lawmaking process:

1. *Proposal of Legislation:* A proposed law, known as a bill, can be introduced in either house of Parliament. It can be introduced by a minister or a private member (a member who is not a minister).
2. *First Reading:* The bill is introduced, and its title is read out. There is no debate at this stage.
3. *Second Reading:* The general principles and provisions of the bill are debated. Members can discuss the broad aspects of the proposed law.
4. *Committee Stage:* The bill is referred to a parliamentary committee (either a standing committee or a select committee) for detailed examination. The committee can suggest amendments and modifications.
5. *Report Stage:* The committee submits its report to the house. Members can further discuss and propose amendments to the bill.
6. *Third Reading:* The final version of the bill is presented for approval. Members can discuss the overall content of the bill but cannot propose amendments.

7. *Transmission to the Other House:* If the bill is approved by the first house, it is transmitted to the other house (Lok Sabha to Rajya Sabha or vice versa).
8. *Consideration in the Other House:* The bill goes through similar stages in the other house—first reading, second reading, committee stage, report stage, and third reading.
9. *If the Other House Amends the Bill:* If the second house makes amendments, the bill is sent back to the first house for consideration of those amendments.
10. *If There Is Disagreement:*
    — If there is a disagreement between the two houses regarding the bill, a joint sitting of both houses can be convened to resolve the issue. However, the decision is usually taken by a vote, and the opinion of the majority prevails.
11. President's Assent: Once both houses agree on the final version of the bill, it is sent to the President of India for assent.
12. Becoming Law: After receiving the President's assent, the bill becomes law and is known as an Act of Parliament.

This process ensures a thorough examination of proposed laws, encourages debate, and allows for the input of members and committees before a bill becomes law.

STEPS OF LAW-MAKING

Indian democracy has a federal structure of government. Here laws are made and interpreted at different levels by the Union and State governments. The lawmaking process in India is a seven-step law-making procedure. The legislative process in India is as below,

Introduction Stage, A minister or a member in charge of the Bill seeks the leave of the house to introduce a Bill.

Discussion Stage At this stage, three options are open to the house,

The Bill may be taken straight to consideration, or it may be referred to any of the Standing Committees or circulated for eliciting general opinion.

The next stage consists of clause-by-clause consideration of the Bill reported by the Committee.

Changes or amendments to the Bill can be made only at this stage.

Voting Stage

The next stage is the third reading. The debate on the third reading of a bill is of a restricted character. It is confined only to arguments either in support of the bill or for its rejection.

Rajya Sabha

At this stage, the Bill transmitted to Rajya Sabha; it goes through all the stages is in this house same as in the previous house

Joint Session

In case of deadlock between the two Houses or in the case where more than six months lapse in the other house, the President may summon a joint session.

President

When a bill has been passed, it is sent to the President for his/her assent. The President can assent or withhold his/her assent to a Bill, or he/she can return a Bill with his/her recommendation.

Bill Returned

If the President returns it for reconsideration, the Parliament must do so, but if it is passed again and returned to him/her, he/she must give his/her assent on it. In the case of the Constitutional Amendment Bill, the President is bound to give his/her assent.

President's Role in the Lawmaking Procedure

According to article 111 of the Indian constitution, once the Bill has been passed by both Houses of Parliament, the Bill comes to the President. The President can assent or withhold his assent to the Bill or return the bill with his recommendation. The President also has the power to refuse the Bill, this power of the President is called Pocket Veto.

TYPES OF BILLS ORDINARY, FINANCIAL, MONEY, AND APPROPRIATION

In the Indian parliamentary system, bills are categorized into different types based on their nature and purpose. Here are the key types of bills:

1. *Ordinary Bills:* Ordinary bills are the most common type of bills introduced in Parliament. They deal with general legislative matters that fall within the scope of ordinary legislation. These bills require approval from both houses—Lok Sabha and Rajya Sabha.
2. *Financial Bills:* Financial bills deal specifically with matters related to taxation or public expenditure. There are three types of financial bills:
   Money Bills: These exclusively deal with matters related to taxation and public expenditure. A money bill can only be introduced in Lok Sabha, and Rajya Sabha can only suggest amendments, which Lok Sabha may accept or reject.
   Finance Bills: These deal with other financial matters, including changes in tax laws. Finance bills can be introduced in either house.
   Appropriation Bills: These are a subset of finance bills and specifically deal with the allocation of funds from the treasury for various government expenditures. Like other financial bills, appropriation bills can be introduced in either house.

3. *Money Bills:* Money bills are a subset of financial bills and exclusively deal with matters related to taxation and public expenditure. A money bill can only be introduced in Lok Sabha. After Lok Sabha passes it, it is sent to Rajya Sabha for its recommendations, which Lok Sabha can either accept or reject. The President cannot withhold their assent to a money bill.
4. *Appropriation Bills:* Appropriation bills are a specific category of financial bills that deal with the allocation of funds from the treasury for various government expenditures. These bills are introduced to provide the legal authority for government spending. Like other financial bills, appropriation bills can be introduced in either house.

Each type of bill serves a specific purpose in the legislative process, and their introduction and passage follow distinct procedures as defined by the Constitution of India.

TYPES OF BILLS IN INDIA

Ordinary Bills

As per Articles 107 and 108 of the Indian Constitution, an ordinary bill is concerned with any matter other than financial subjects. An ordinary bill is introduced in either House of the Parliament. This bill is introduced by Minister or a Private member.

There is no recommendation of President in case of ordinary bill. Ordinary bill can be amended/rejected by Rajya Sabha and it can be detained by Rajya Sabha for a period of six months. After being passed by both the houses of Parliament, it is presented to the President for his approval or assent under Article 111 of the Indian Constitution. There is a provision of joint sitting in case of ordinary bill.

Money Bills

Money bills are those bills which are concerned with financial matters like taxation, public expenditure, *etc.* These are those bills that contain provisions that deal with all or any of the matters specified in Article 110 of the Indian Constitution. This bill is presented only in Lok Sabha. It is introduced only by the Minister. Money bill is introduced only after President's recommendation. This bill cannot be amended or rejected by Rajya Sabha. It can be detained by Rajya Sabha for the maximum period of 14 days. Money bill is then sent to the President for his approval only after being passed Lok Sabha. There is no provision of joint sitting in case of money bill.

Financial Bill

As per Article 117 of the Indian Constitution, financial bills are those bills which are concerned with financial matters but are different from money bills. Financial bills are further classified as Financial bills Categories A and B.

Category A Bills contain provisions dealing with any of the matters specified in sub- clause a to f of clause 1 of Article 110 Indian Constitution and Category B Bills involve expenditure from the Consolidated Fund of India.

Constitutional Amendment Bill

Article 368 of the Indian Constitution is concerned with the provisions of amendment of the Constitution.

Ordinance Replacing Bill

This bill is brought before Parliament to replace an ordinance with or without modifications promulgated by President under Article 123 of the Indian Constitution.

PRIVATE MEMBER BILLS AND GOVERNMENT/PUBLIC BILLS

In the Indian parliamentary system, bills are classified into different categories based on their sponsors or sources. Two main categories are Private Member Bills and Government/Public Bills:

PRIVATE MEMBER BILLS

Private Member Bills are bills introduced by Members of Parliament (MPs) who are not part of the government. These MPs are referred to as private members. Private members include MPs from opposition parties or those not holding any ministerial position in the government.

Private members get limited time to introduce their bills, and the process is known as Private Members' Business. The day allocated for Private Members' Business is usually Friday. This time is set aside to allow non-government members to contribute to the legislative agenda.

Private Member Bills go through the regular legislative process, including the stages of introduction, debate, committee scrutiny, and voting. However, given the limited time available, the progress of private member bills is often slower compared to government bills.

GOVERNMENT/PUBLIC BILLS

Government bills, also known as public bills, are bills introduced by ministers or government officials who are part of the ruling party or coalition. These bills reflect the legislative agenda of the government and cover a wide range of policy areas.

Government bills have a higher chance of becoming law because of the majority enjoyed by the ruling party. They receive priority in terms of time allocation and are often introduced during the regular business days of the parliamentary session. Public bills can further be categorized into different types based on their nature, such as ordinary bills, financial bills, money bills, and appropriation bills.

In summary, the main distinction between private member bills and government/public bills lies in their sponsorship. Private member bills are introduced by MPs who are not part of the government, while government/public bills are introduced by ministers or government officials as part of the government's legislative programme.

Private Member Bill

A Private Member Bill is introduced by a member of parliament (MP) who is not a minister. To introduce Private Member's Bill during a Parliament Session, a private member may provide a maximum of three notices. A Private Member Bill is intended to alert the government to problems with the current legal system that certain MPs believe call for legislative action.

Other than ministers, MPs are classified as private members.

Government legislation can be introduced and discussed on any given day as public bills. However, Private Member Bills can only be introduced and discussed on Fridays.

The Chairman of the Rajya Sabha and the Speaker of the Lok Sabha decide if a Private Member's Bill is admissible.

All such bills are examined by the Parliamentary Committee on Private Member's Bills and Resolutions, which classifies them according to their urgency and importance.

The House's rejection of it has no bearing on the government's departure or parliamentary confidence.

Tradition dictates that the Indian President can veto a Private Member Bill by exercising his absolute veto power.

Procedure to Introduce a Private Member Bill

Both Houses of Parliament follow a largely uniform process. The Private Member Bill cannot be scheduled for introduction unless the Member has given at least one month's notice. Before listing, the House secretariat checks to see if it complies with the constitution's requirements and legislative guidelines.

A ballot system determines the order of bills to be introduced when there are several measures.

AMENDMENT AND THE BASIC STRUCTURE DOCTRINE (PART XX)

The concept of the basic structure doctrine in the Indian Constitution is closely tied to the power of constitutional amendment, which is discussed in Part XX of the Constitution. Here's an explanation of these concepts:

AMENDMENT (PART XX)

Article 368: Article 368 of the Indian Constitution outlines the procedure for the amendment of the Constitution. It grants the power to amend various

provisions of the Constitution to Parliament. Amendments can be initiated only by the introduction of a bill for the purpose in either House of Parliament, and the bill must be passed by each House with a special majority.

Special Majority: The term "special majority" refers to a majority of the total membership of each house (Lok Sabha and Rajya Sabha) and a majority of not less than two-thirds of the members present and voting.

Amendment Procedure: While Parliament has the power to amend the Constitution, there are certain limitations. The procedure for amendment is rigorous, but it does not explicitly restrict the power to amend any part of the Constitution. However, this power is not absolute, as the doctrine of the basic structure places limitations on it.

BASIC STRUCTURE DOCTRINE

The basic structure doctrine, not explicitly mentioned in the text of the Constitution, was judicially evolved by the Supreme Court of India. The doctrine holds that while Parliament has the power to amend the Constitution, it cannot alter its basic structure or essential features.

Kesavananda Bharati Case: The basic structure doctrine was enunciated by the Supreme Court in the landmark case of Kesavananda Bharati v. State of Kerala (1973). The court held that there is an implied limitation on the amending power of Parliament, and certain features of the Constitution are so fundamental that they cannot be altered.

Examples of Basic Structure: The exact contours of the basic structure have not been precisely defined, but it includes principles such as federalism, secularism, democracy, the separation of powers, and the rule of law.

Judicial Review: The judiciary, particularly the Supreme Court, has the authority to review constitutional amendments. If an amendment is found to violate the basic structure, it can be declared unconstitutional and struck down.

In summary, Part XX of the Indian Constitution deals with the power of amendment, and the basic structure doctrine acts as a check on this power, ensuring that certain fundamental features of the Constitution remain unaltered. The doctrine has been instrumental in preserving the core values and principles of the Indian Constitution.

BASIC STRUCTURE DOCTRINE?

Indian Constitution is a dynamic document that can be amended according to the needs of society whenever required. Constitution under Article 368 grants power to the Parliament to amend whenever there is a necessity. The Article also lays down the procedure for amendment in detail.

The doctrine of basic structure is nothing but a judicial innovation to ensure that the power of amendment is not misused by Parliament. The idea is that the basic features of the Constitution of India should not be altered to an extent that the identity of the Constitution is lost in the process.

Indian Constitution upholds certain principles which are the governing rules for the Parliament, any amendment cannot change these principles and this is what the doctrine of basic structure upholds. The doctrine as we have today was not present always but over the years it has been propounded and upheld by the judicial officers of this country.

In this article, we would dwell in detail on the evolution of the doctrine of basic structure and what are the features of the Constitution of India that have been regarded as part of the basic structure by the hon'ble courts.

TIMELINE FOR EVOLUTION OF BASIC STRUCTURE

Timeline for Evolution of the Basic Structure of Indian Constitution.

Pre – Golak Nath Era

The Constitution of India was amended as early as 1951, which introduced the much-debated Article(s) 31A and 31B to it. Article 31B created the 9th Schedule which stated that any law provided under it could not be challenged for the violation of Fundamental Rights as per Article 13(2) of the Constitution. Article 13(2) states that the Parliament shall not draft any law which abridges the rights conferred under Part III and to that extent it shall be void.

A petition was filed in the Supreme Court of India challenging Article(s) 31A and 31B on the ground that they abridge or take away rights guaranteed under Part III of the Constitution which is against the spirit of Article 13(2) and hence should be declared void.

In this case, Shankari Prasad Singh Deo v. Union of India, the Hon'ble Supreme Court held that the power to amend the Constitution including the Fundamental Rights is conferred under Article 368, and the word 'Law' as mentioned under Article 13(2) does not include an amendment of the Constitution. There is a distinction between Parliament's law-making power, that is, the legislative power and Parliament's power to amend or constituent powers.

After this, several amendments were brought to the Constitution and once again the scope of amendments was challenged in the Sajjan Singh v. State of Rajasthan.

The five-judge bench in Sajjan Singh dealt with the validity of the 17th Constitutional Amendment which had added around 44 statutes to the 9th Schedule.

Though all of the judges agreed with the decision of Shankari Prasad but for the first time in the concurring opinion by Hidyatullah and Mudholkar JJ doubts were raised on the unfettered power of Parliament to amend the Constitution and curtail the fundamental rights of the citizens.

Golak Nath v. the State of Punjab

In this case, three writ petitions were clubbed together. The first one was by children of Golak Nath, against the inclusion of the Punjab Security of Land

Tenures Act, 1953 in the Ninth Schedule. The other two petitions had challenged the inclusion of the Mysore Land Reforms Act in the Ninth Schedule. It is an 11 judge bench decision, wherein the Hon'ble Supreme Court by a majority of 6:5 held that the fundamental rights were outside the purview of the amendment of the Constitution, based on the following reasoning:

The power of Parliament to amend the Constitution does not subside in Article 368 but it is derived from Article 245, read with Entry 97 of List I of the Constitution. It was very clearly stated that Article 368 only provided for the Procedure of Amendment and nothing more.

The Court also clarified that the word 'law' under Article 13(2) includes within its meaning an amendment to the Constitution. Therefore any amendment against the Fundamental Rights was void.

The argument that the power to amend the Constitution is a sovereign power, which is over and above the legislative power and hence outside the scope of judicial review was rejected.

However, the 1st, 4th, and 17th Amendments were not declared invalid by the Court as the ruling was given a prospective effect. This meant that no further amendments could be brought into the Constitution violating fundamental rights. But the cases of Shankari Prasad and Sajjan Singh were declared bad in law by the Court to the extent that Article 13(2) does not include a Constitutional amendment under Article 368.

Constitution 24th Amendment

The Golak Nath case left the Parliament devoid of its powers to amend the Constitution freely, therefore to restore the earlier position; the 24th Constitutional Amendment was brought forth. The Amendment Act not only restored the earlier position but extended the powers of Parliament. The following changes were made through the amendment:

A new clause (4) was added to Article 13 which stated that 'nothing in this Article shall apply to any amendment of this Constitution made under Article 368'.

The marginal heading of Article 368 was changed to 'Power of Parliament to amend the Constitution and Procedure, therefore' from 'Procedure for amendment of the Constitution.

Article 368 was provided with a new sub-clause (1) which read 'notwithstanding anything in this Constitution, Parliament may, in the exercise of its Constituent Power amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.

President was put under an obligation to give assent to any Bill amending the Constitution by changing words from 'it shall be presented to the President who shall give his assent to the Bill and thereupon' to 'it shall be presented to the President for his assent and upon such assent being given to the Bill'.

A reassuring clause (3) was also added to Article 368, which again clarified that 'nothing in Article 13 shall apply to any amendment made under this Article.

Kesvananda Bharati v. the State of Kerala

This case was initially filed to challenge the validity of the Kerala Land Reforms Act, of 1963. But the 29th Amendment of the Constitution placed it under the Ninth Schedule. The petitioner was permitted to not only challenge the 29th Amendment but also the validity of the 24th and 25th Amendments.

The historic judgment was delivered by a 13-judge bench and with a majority of 7:6; they overruled the Golak Nath case. It was held that the power of Parliament to amend the Constitution is far and wide and extends to all the Articles but it is not unlimited to an extent that it destroys certain basic features or framework of the Constitution.

The Hon'ble Supreme Court, however, held that the 24th Amendment was valid as it only states what was present before implicitly. It does not enlarge the powers of Parliament; Article 368 always included the power and procedure to amend the Constitution.

Evolution of Basic Structure Doctrine

Indra Nehru Gandhi v. Raj Narain was the case in which the faith in the doctrine was affirmed and established. In this case, the appellant had filed an appeal against the decision of Allahabad High Court invalidating her election as the Prime Minister. While the appeal was still pending at the Supreme Court, the 39th Amendment was enacted and enforced which stated that no court has jurisdiction over the election disputes of the Prime Minister.

The Hon'ble Supreme Court relying on the decision of Kesavananda Bharati stated that democracy was an essential feature of the Constitution and forms part of the basic structure. The bench added certain other features to the list of the basic structure, which was: Rule of Law and the power of Judicial Review.

The basic structure then came up in the case of Minerva Mills Ltd. v. Union of India, wherein the Supreme Court provided clarity to the doctrine and laid down that the power of amendment under Article 368 is limited and exercise of such power cannot be absolute. A limited amending power was very well part of the basic structure doctrine of the Constitution. Further, the harmony and balance between fundamental rights and directive principles are also part of the basic structure, and anything that destroys the balance is an ipso facto violation of the doctrine.

The case of L. Chandra Kumar v. Union of India again stated that the power of judicial review under Article 32 of the Supreme Court and Article 226 of the High Court is part of the basic structure doctrine and these powers cannot be diluted by transferring them to administrative tribunals.

THE STATE LEGISLATURE: ARTICLE 168 TO 212 UNDER INDIAN CONSTITUTION

The Constitution of India is regarded as one of the lengthiest written constitutions in the whole world. Our Constitution gives us a federal structure where the powers between the Central Government and the State Government

are divided. Most of us know about the working of the Central Legislature and the powers related to the Central Legislature. Part VI of the Constitution deals with the State Legislature.

BICAMERAL AND UNICAMERAL LEGISLATURE

Before discussing what is a bicameral and unicameral legislature, let us first discuss what is the legislature. The legislature is the law-making body of the State. It is first among the three organs of the state. It can make laws as well as administers the government. As mentioned in Article 168 of the Indian Constitution, a state can have a unicameral legislature (It should be Legislative Assembly) as well as a bicameral legislature (Legislative Council and Legislative Assembly). According to Article 168 of the Indian Constitution, there shall be legislature in every State and it shall consist of the Governor.

UNICAMERAL LEGISLATURE

Unicameral legislature refers to having only one legislative chamber which performs all the functions like enacting laws, passing a budget, and discussing matters of national and international importance. It is predominant in the world as most countries have a unicameral legislature. It is an effective form of the legislature as the law-making process becomes easier and reduces the possibility of obstacle in lawmaking process. Another advantage is that it is economically feasible to maintain a single chamber of the legislature. It is the most prevailing system in India as most of the States of India have a unicameral legislature. The members of the unicameral legislature (Legislative Assembly) elected directly by the citizens of the State.

BICAMERAL LEGISLATURE

By bicameral legislature, we refer to the State having two separate law-making Houses to perform the functions like passing the budget and enacting laws. India has a bicameral legislature at the Centre level while the State can make the bicameral legislature. In India, only 7 States have a bicameral legislature. It may be seen that a bicameral legislature may not be as effective as a unicameral legislature. However, it works as a barricade in some cases as it somehow makes the law-making process more complex.

ABOLITION OR CREATION OF LEGISLATIVE COUNCILS

In our country, the Legislative Council (also known as Vidhan Parishad) is the Upper House of a bicameral legislature. The creation of which is given in Article 169 of the Indian Constitution and can also be abolished according to Article 169 of the Constitution. Article 168 mentions about the Legislative Council in some of the States of our country. There is no rule of having a bicameral legislature in the State of India. It is because our Constitution framers knew that it will not be possible for every State to have a bicameral legislature (due to financial or any other reason).

Article 169 talks about the creation or abolition of the Legislative Council. For the creation or abolition of the Legislative Council, the Legislative Assembly must pass a resolution that must be supported by more than 50% of the total strength of the assembly. It must be supported by more than 2/3rd of the total members present in voting. Therefore it talks about the absolute and special majority. The resolution to create or to abolish the Legislative Council needs the assent of the President as well.

COMPOSITION OF THE HOUSES

Article 170 of the Indian Constitution talks about the configuration of the Legislative Assemblies. This Article simply put emphasis on what will be the structure of the Legislative Assemblies in the state. On the other hand, the configuration of the Legislative Council is given in Article 171 of the Indian Constitution.

LEGISLATIVE ASSEMBLY (VIDHAN SABHA)

According to Article 170, there should be a Legislative Assembly in every State of India. However, these assemblies should be according to the provisions of Article 333 of the Indian Constitution. The Legislative Assembly of state can have at most 500 constituencies and at least 60 constituencies. These constituencies would be represented by the members who would be selected through the process of direct election. However, the division of territorial constituencies would be determined in such a manner that it becomes dependent on the population of that constituency. Here by the term " population" we mean population which has been published in the precedent census. The composition of the Legislative Assembly in any state can change according to the change in the population of that state. It is determined by the census of population. However, there are several exceptions to the composition of the Legislative Assembly. Let's take the example of Mizoram, Sikkim, and Goa which has less than 60 constituencies.

The tenure or duration of the Legislative Assembly is mentioned in Article 172 of the Indian Constitution. The Legislative Assembly should work for a time period of five years. Its tenure starts from the day of its first meeting. However, it can be dissolved earlier by the special procedure established by the law. However, there can be an extension in the tenure of the Legislative Assembly. This can be done during the National Emergency. During the period of the National Emergency, the Parliament can extend the tenure of the Legislative Assembly for a period of maximum one year. Also, this extension should not be more than six months after the proclamation has ceased to operate.

LEGISLATIVE COUNCIL (VIDHAN PARISHAD)

The composition of the Legislative Council is given in Article 171 of the Indian Constitution. The total members in the Legislative Council should not exceed one-third of the total members in the state Legislative Assembly. There

is another criteria for the composition of the Legislative Council. The member in the Legislative Council should not be less than 40 in any case. There is an exception in the composition of Vidhan Parishad. The Legislative Council of Jammu and Kashmir has only 36 Member in Legislative Council, unlike the other Legislative Council.

The composition of the Legislative Council can be further divided in the following way:

- One-third of the members of the Legislative Council should be elected from the district boards, municipalities and other local authorities which is specified by the Parliament according to law.
- One-twelfth of its members shall be elected from the person who has been residing in the same state for the time period of at least three years and graduated from the university which is in the territory of India.
- One- twelfth of its total member should be elected from the person who is engaged in the teaching profession for at least three years in the educational institution of the state itself.
- One third should be elected by Legislative Assemblies and none of them should be a member of the Legislative Assembly.
- The remainder of the members should be nominated by the Governor according to the established law.

QUALIFICATIONS OF MEMBERSHIP

After this much of knowledge on both the Houses of Legislations, we can move further on the next topic.

The qualification of membership is given in Article 173 of the Indian Constitution. For the membership or for filling a seat in the legislature of the State, a person must be a citizen of India. A person will not be granted membership if he/she is not a citizen of that country. Also, the qualification of the membership is somewhat similar to the qualification to the membership of the center legislature. The member of the Legislative Assembly should be more than 25 years. For being a member of the Legislative Council one should be more than 30 years. Also, a necessary condition for being a member of legislatures includes that he/she must be a voter from any of the constituencies of the state.

Disqualifications of Membership

After being elected/nominated as a member of the legislature, one can not be a permanent member of the legislature. There are certain reasons mentioned in the Constitution by which a person may be disqualified from his/her membership to the Legislature. Article 191 talks about the disqualification of the members of the Legislature.

Disqualification of MLA/MLC can be made on the following grounds:

1. If one holds the office of profit under the state or central government.
2. If one is of unsound mind and is declared so by the competent court.

3. If one is an undischarged insolvent.
4. If one is not a citizen of the country anymore or when he/she voluntarily took the citizenship of another country.
5. If one is disqualified by the law of the Parliament. Example- Anti defection law.

Decisions on disqualifications

Article 192 of the Indian Constitution talks about the decision on the disqualification of a member of the state legislature. If any question arises about the disqualification of a member of the House of the legislature on any ground mentioned in Article 191 in the Indian Constitution, then Article 192 comes into play. Article 192 mentions that in such cases the decision about disqualification would be determined by the Governor of that state and his/her decision would be final. However, the Governor needs to consult the Election Commission for the same and he/she needs to act accordingly.

SESSIONS OF THE STATE LEGISLATURE

Moving further on the next topic we will discuss the sessions of these State Legislatures. Its time of prorogation and dissolution will also be discussed by us here. Also, one thing is quite clear after a lot of analysis of State Legislature is that the Legislative Assembly is somehow similar to the House of the People (Lok Sabha) while the Legislative Council is similar to the Council of State (Rajya Sabha).

Their sessions are also quite similar. Article 174 of the Indian Constitution gives the power to the Governor to summon these Houses of the State Legislature. He/She can summon these bodies to meet at places and at such times which he/she thinks fit or appropriate. But a necessary condition should be kept in mind is that the time period between the two sessions of these Houses should not exceed six months. Also as mentioned in Article 174 of the Indian Constitution, the Governor has the power to prorogue either House and to dissolve the Legislative Assembly.

SPEAKER AND DEPUTY SPEAKER

There is a need for head or in charge of every legislative part. The Speaker and Deputy Speaker serve the same purposes in the Legislative Assembly. Article 178 of the Indian Constitution talks about the same. According to this article, there should be a Speaker and Deputy Speaker should be chosen from the Legislative Assembly. In this, it is also mentioned that the condition where if the office of Speaker and Deputy Speaker becomes vacant then it becomes the duty of the Legislative Assembly to choose the new Speaker and Deputy Speaker respectively.

POWERS AND FUNCTIONS OF SPEAKER

Article 178 gives the power to Speaker to preside over the sessions of the Legislative Assembly of the state. Similar powers are given to the Speaker of

the Lok Sabha, as mentioned in Article 93 of the Indian Constitution. The power and position of an Indian Speaker are quite similar to the Speaker of the House of Commons in England.

The most important function of the Speaker is to preside over the sessions of the Legislative Assembly and also to maintain discipline and order in the assembly. Within the assembly, the Speaker is the master. He has the power to decide whether the Bill is a Money Bill or not. Also, the decision of Speaker cannot be challenged in a court of law. Money Bills are sent to the Legislative Council with the approval of the Speaker. The salary of Speaker is given from the Consolidated Fund of State.

The other functions/powers of the Speaker are as follows:

- He/she does not participate in the debate of the assembly.
- Only votes when there is a condition of a tiebreak.
- He/She sees whether there is a necessary quorum.
- He has the power to adjourn or suspend the sitting of the Legislative Assembly when there is not a necessary quorum and also to maintain the discipline of House.
- He/She has the power to suspend or to expel the member for his/her unruly behaviour.

UNICAMERAL AND BICAMERAL LEGISLATURES

BICAMERAL AND UNICAMERAL STATES

What is a Unicameral State?

It is a form of the legislature where only one house (one central unit) exists to make and implement laws for the state/country.

What is a Bicameral State?

It is a legislative body with two houses. India is one such example where there are two houses both at union and also at 6 of its 28 states. In a bicameral legislature, the function to administer and implement the laws are shared between the two houses.

Though a uniform pattern of Government is prescribed for the States, it is not so in the matter of the composition of the Legislature. While the Legislature of every State shall consist of the Governor and the State Legislature, in some of the States, the Legislature shall consist of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, namely the legislative assembly.

1. The constitution provides for the abolition of the second chamber in a state where it exists as well as for the creation of such a chamber in a state where there is none at present.

2. If a state Legislature passes a resolution by an absolute majority, together with not less than two-thirds of the members actually present and voting in favour of the creation of the second chamber and if Parliament gives concurrence to such a resolution, the concerned State can have two Houses in the Legislature.
3. Similar is the procedure for the abolition of the Upper houses. The State of Punjab and West Bengal abolished the second chambers in 1969 and 1970 respectively. Legislative Council in Tamil Nadu was abolished in 1986.
4. The State Legislature which has only one House is known as the Legislative Assembly (Vidhan Sabha) and in the State which has two houses, the Upper House is known as the Legislative Council (Vidhan Parishad) and the lower House is known as the Legislative Assembly (Vidhan Sabha).
5. Owing to changes introduced since the inauguration of Constitution, in accordance with the procedure laid down in Article 169, the States having two Houses are Bihar, Maharashtra, Karnataka, Andhra Pradesh, Telangana and Uttar Pradesh.

STATE LEGISLATURE – LEGISLATIVE ASSEMBLY

The Legislative Assembly is the popularly elected chamber and is the real Centre of power in a State. The maximum strength of an assembly must not exceed 500 or its minimum strength fall below 60. But some of the States have been allowed to have smaller Legislative Assemblies, *e.g.* Sikkim, Arunachal Pradesh, Goa, *etc.*

The territorial constituencies demarcation should be done as far as possible, such that the ratio between the population of each constituency and the number of seats allotted to it is the same all over the State. Apart from these general provisions, there are also special provisions with respect to the representation of SC and ST. In case the Governor feels that the Anglo-Indian community is not adequately represented, he can nominate one member of that community to the assembly.

STATE LEGISLATURE –LEGISLATIVE COUNCIL

The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members. However, in Jammu and Kashmir, the strength is only 36. The system of the composition of the Council as provided for in the Constitution is not final. The final power is given to the Parliament of the Union. But until the Parliament legislates on the subject, it shall be as provided for in the Constitution, which is described below:

Duration of Legislative Assembly & Legislative Council

It will be a partly nominated and partly elected body, the election being an indirect one and in accordance with the principle of proportional representation

by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition. Broadly speaking 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated.

The duration of the Legislative Assembly is five years. The Governor has the power to dissolve the Assembly even before the expiry of its term. The period of five years, may, while a proclamation of emergency is in operation, be extended by the Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after proclamation has ceased to operate (Article 172(1)). Unlike the Legislative Assembly, the Legislative Council is not subject to dissolution. It is a permanent body unless abolished by the Legislative Assembly and Parliament by the due procedure. But no person can be a permanent member of the Council as one-third of the members of the Council retire on the expiry of every second year. It amounts to a term of six years for each member. There is no bar on a member getting re-elected on the expiry of his term.

(a) One-third of the total number of members of the Council would be elected by electorates consisting of members of local bodies like the municipalities and the district boards.
(b) One-twelfth of the members would be elected by electorates comprising of graduates of the standing of three years dwelling in that particular state.
(c) One-twelfth of the members would be elected by electorates consisting of teachers who have been in the teaching profession for at least 3 years in educational institutes in that state, which are not lower than secondary schools in the standard.
(d) One-third would be elected by members of the Legislative Assembly from amongst people who are not Assembly members.
(e) The rest would be nominated by the Governor from persons having knowledge or practical experience in matters like science, literature, cooperative movement, art and social service. (The Courts can't question the propriety or bonafide of the Governor's nomination.)

COMPOSITION, POWERS, AND FUNCTIONS OF UNION LEGISLATURE (PART V, [CHAPTER]2)

The Composition, Powers, and Functions of the Union Legislature in India are outlined in Part V, specifically in Chapter 2 of the Indian Constitution. This chapter pertains to the Parliament of India, which is the supreme legislative body and is bicameral, consisting of two houses – the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Here's a breakdown of the key elements:

COMPOSITION OF PARLIAMENT

Lok Sabha: The Lok Sabha is composed of Members of Parliament (MPs) who are directly elected by the people of India. The total number of members is

not fixed and can vary, but it is subject to representation from states and union territories. The Lok Sabha represents the will of the people and is the more powerful house in terms of legislative functions.

Rajya Sabha: The Rajya Sabha is composed of members who are not directly elected by the people but are elected by the elected members of the State Legislative Assemblies, the members of the Electoral College for Union Territories, and members nominated by the President of India. The Rajya Sabha represents the interests of the states and union territories.

POWERS AND FUNCTIONS

Legislative Powers: The Parliament has the primary function of making laws. Both houses participate in the legislative process, and a bill needs to be passed by both houses and receive the President's assent to become law.

Financial Powers: The Parliament has the power to approve the budget, taxation, and expenditure of the government. The Lok Sabha has a special role in financial matters, as money bills must be introduced and passed in the Lok Sabha.

Executive Control: While the executive is distinct from the legislature, members of the Council of Ministers are drawn from Parliament. The Prime Minister and other ministers are collectively responsible to the Lok Sabha.

Constituent Power: The Parliament can amend the Constitution by a special majority. Certain amendments require ratification by a majority of states.

Judicial Powers: The Parliament has the power to impeach the President of India and remove judges of the Supreme Court and High Courts on grounds of proven misbehavior or incapacity.

Emergency Powers: The Parliament is given powers to declare a national emergency, state emergency, or financial emergency under specific circumstances outlined in the Constitution.

The Composition, Powers, and Functions of the Union Legislature are carefully delineated to establish a system of checks and balances, ensuring that no single branch of the government becomes overly dominant. The Parliament's role is central to the democratic governance of India, reflecting the principles of representation, accountability, and separation of powers.

Part V of the Constitution of India deals with the functions of the Union Parliament. These functions are written below:

Legislative Functions: Union Parliament works as the highest law-making body in the country. The seventh schedule of the constitution provides three lists i.e Union List, State list and Concurrent list. Union Parliament makes laws on the subjects mentioned in the Union list and Concurrent list. It also makes laws on the state list's subjects in some conditions.

Executive Functions: After making laws, the duty of implementation is on the executive branch of the government. Executive and legislative branches are interdependent. Parliament keeps checking on the executive and the executive keeps checking on the legislatures. For example, a no-confidence motion can be passed by the legislatures in the Union Parliament to remove the Prime Minister along with his cabinet.

Judicial Functions: Union Parliament also acts as a Judicial structure in a lot of matters. Legislatures have Parliamentary Privileges. If these privileges are breached, then the Union Parliament also has punitive powers to punish. Not only this, but it also plays a judicial function while removing the President, the Vice President, the judges of the Supreme Court or High Court, *etc.*

There are various other functions of the Union Parliament besides the above-mentioned functions. These are written below:

The Parliament has amendment powers. They can change the Constitution of India by following the established procedure.

The Parliament and its legislatures participate in the elections of the President and the Vice President.

They also have the power to remove the President and the Vice President bypassing the resolution.

Not only this, at the center level the Parliament is the only authority with respect to the finances of the country. Not even a single rupee can be spent by the executive without the approval of the Parliament.

The Union Parliament also presents the budget of the country before the end of the financial year.

The emergency is also implemented in the country with the approval of the Parliament.

FUNCTIONS OF A COALITION PARLIAMENT -

Part V of the Constitution of India deals with the functions of the Union Parliament. These activities are listed below:

(1) *Powers of the Law:* All the articles in our constitution are divided into a list of states, a union and a corresponding list in Schedule 7. The Union Parliament operates as the highest legislative body in the country. It makes laws about unions and related lists. In the corresponding list, the law of Parliament passes the law of the national legislature. The Constitution also has the power to make laws in relation to the national legislature under the following circumstances: It also makes laws on the subjects of the state list in some cases.

(2) *Executive Authority:* According to the form of government of parliament, the executive is responsible for the actions of parliament and its policies. Parliament, therefore, controls in various ways such as committees, question hours, zero-hours, *etc.*, ministers are jointly responsible to Parliament.

(3) *Financial Stability:* Includes budgeting, reviewing government performance in terms of expenditure by finance committees (back budget control)

(4) *Powers of the Constitution:* Union Only Parliament has the power to amend the Constitution.

(5) *Power of Justice- Includes:*
   (a) Accusing the President of violating the constitution
   (b) Removal of judges in both the Supreme Court and the Supreme Court

(c) Removal of Deputy President
(d) Punish members for violating rights such as living in a house where the member knows he or she is not a suitable member, acting as a member before swearing, *etc.*

COMPOSITION, POWERS, AND FUNCTIONS OF STATE LEGISLATURE (PART VI, [CHAPTER]3)

POWERS & FUNCTIONS OF STATE LEGISLATURE

The functions of the states' Legislative Council are only advisory in nature. If any Bill is passed by the Legislative Assembly and sent to the Council, and the Council refuses to give its approval, then the Assembly has the right to reconsider it.

The assembly may pass it with or without the amendments proposed by the Council, and again send it to the Council. When a bill approved by the Assembly is sent to the Council for the first time, it may retain it for three months, but in the case when it is sent for the second time and is kept in the Council for one month only, the bill is deemed as having been passed. This evidently demonstrates the Assembly's absolute superiority over the LC.

In the case of Money Bills, the State Assembly's powers are the same as those of the Lok Sabha. It is evident that the position of the Vidhan Parishad is haplessly weak. Even, in theory, it cannot be compared to the Rajya Sabha that, in spite of being the upper chamber of the Union Legislature, has some effective powers.

1. All the LC can do is delay the passing of a money bill by 14 days, a non-money bill by 3 months or a non-money bill that is sent back to it with recommendations by 1 month.
2. There is no provision in the Constitution for a joint sitting of the State Legislature. It is to be noted that while the Vidhan Sabha can override the Vidhan Parishad, the vice versa is never possible. A non-money bill that is passed by the Vidhan Parishad can be rejected by the Vidhan Sabha more than once.
3. The LC members do not participate in the election of the President of the country. Apart from that, they do not have any meaningful role in any bill's rectification nor in a constitutional amendment. In practical terms, the Legislature of a State implies its Legislative Assembly which possesses the following major powers and functions:
   — It can create laws on any subject in the State List; it can also create laws on the Concurrent List provided the law does not contradict or conflict any law already made by the Parliament.
   — The Assembly asserts control over the Council of Ministers. Assembly members can question the ministers, move motions and resolutions, and also pass a vote of censure in order to

dismiss the state government. The government ministry is collectively accountable to the Legislative Assembly. If the ministry is defeated in the Assembly, it amounts to the passing of a no-confidence vote against the government.

— The assembly controls the State's finances. A money Bill can emerge from the Assembly and it is considered passed by the LC after a lapse of fourteen days after reference made to it by the Sabha. It could reject or pass the grants or reduce their amount indicating rejection or adoption of the budget and hence, implying victory or defeat of the State Government. Therefore, no tax can be levied or withdrawn without the consent of the Vidhan Sabha.

4. The Assembly has constituent powers. With reference to Article 368, certain Bills of Constitutional amendment after being passed by the Parliament would be referred to the States for the process of ratification. In these cases, the Vidhan Sabha has a role to play. It should give its judgement by passing a resolution by a simple majority indicating approval or disapproval of the said Bill. There is a provision wherein the President shall refer to the state assembly of a state before he recommends the introduction of a bill which concerns with the alteration of the concerned state's boundary lines or its reorganisation in such a manner that its territory is increased or decreased.
5. *Some other powers of the State Assembly are as under:*
   — It elects its Speaker as well as Deputy Speaker. It can also remove them by a no-confidence vote.
   — It participates in the election of India's President.
   — It also considers reports presented by agencies such as the Auditor-General, State Public Service Commission, and others. Hence, it is evident that the Vidhan Sabha is the powerful and popular chamber of the State Legislature. In theory, it is somewhat parallel to the Lok Sabha.

Limitations on the Powers of State Legislature

- Certain types of Bills cannot be moved in the State Legislature without the previous sanction of the President of India
- Certain Bills passed by the State Legislature cannot become operative until they receive the President's assent after having been reserved for his consideration by the Governor;
- The Constitution empowers Parliament to frame laws on subjects included in the State List if the Council of States declares that it is necessary and expedient in the national interest that Parliament should Legislate on these subjects
- Parliament can exercise the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List, while a Proclamation of emergency is in operation

- The Legislative competence of Parliament can also extend to the subjects enumerated in the State List during the operation of a proclamation of the breakdown of the Constitutional machinery.

LEGISLATIVE PROCEDURE

The Parliamentary procedure followed in the Assembly and the Council is the same as in Parliament.

1. The State Legislature must meet at least twice a year and the interval between any two sessions should not be more than six months.
2. The Governor delivers the opening address at the beginning of a new session in which he outlines the policy of the State Government.
3. Any Bill may be introduced in either House of the Legislature except a Money Bill, which can be introduced only in the Assembly. It has to go through three readings, after which it goes to the Governor for his assent. The Governor may send it back for reconsideration but once it is passed again by the Legislature, he cannot withhold his assent.
4. He may reserve certain Bills for the consideration of the President, who may ask him to place it before the Legislature for reconsideration. When it is passed again with or without amendment it goes to the President for his consideration.
5. The President is not bound to give his assent even though the Bill has been considered and passed for a second time by the State Legislature. In case the Assembly is dissolved before a Bill is passed, or it is passed by the Assembly but is pending before the Council, it will lapse.
6. But in case of Bills which have been duly passed by the Assembly, if there is only one House in the State, and by the Assembly and the Council where there are two House, and is awaiting the assent of the Governor or the President it does not lapse.
7. A bill which has been returned either by the Governor or the President for reconsideration can be considered and passed by the newly constituted Assembly, even though the Bill was originally passed by the dissolved House.

CONSTITUTIONAL LAW

"Constitutional Law" offers a comprehensive exploration of the fundamental principles and doctrines that underpin the legal framework of a country's constitution. This essential text serves as a cornerstone for students, legal professionals, and policymakers seeking to understand the intricacies of constitutional governance. The book begins by providing readers with a historical overview of constitutional development, tracing the evolution of constitutional principles from their inception to contemporary interpretations. It then delves into the structural components of a constitution, including the separation of powers, federalism, and the protection of individual rights and liberties. Through detailed analysis and case studies, "Constitutional Law" examines key concepts such as judicial review, constitutional interpretation, and the role of the judiciary in upholding the rule of law. It also explores the relationship between the constitution and other branches of government, as well as the mechanisms for amending constitutional provisions. With its interdisciplinary approach, the book addresses issues of constitutional theory, comparative constitutionalism, and the application of constitutional principles in diverse legal systems. It equips readers with the knowledge and analytical skills needed to engage in critical discussions on constitutional matters and navigate complex legal challenges within constitutional frameworks. Whether used as a textbook in law schools or as a reference guide for practitioners and policymakers, "Constitutional Law" provides invaluable insights into the foundational principles of constitutional governance and the role of the constitution in shaping democratic societies.

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