PS-05-III (1)

Institute of Distance and Open Learning

Gauhati University

MA in Political Science

Paper III

Politics in India (1)

Block 1

Nature of Indian State

Contents:

Block Introduction–

Unit 1 : Legacy of Colonialism and Freedom Movement

Unit 2 : Constitutional Framework of the Indian State

Unit 3 : Socio-Economic Foundation and Ideological Bases of the Indian State

Contributors:

Rumi Roy (Units 1 & 3)	:	Research Scholar JNU, New Dehi
E.K. Shantha (Unit 2)	:	Development Consultant

Course Co-ordination

Dr. Kandarpa Das	:	Director IDOL,GU
Barnalee Choudhury	:	Lecturer in Political Science IDOL, GU

Editorial Team

Barnalee Choudhury	:	Lecturer in Political Science IDOL, GU
Format Editing	:	Prasenjit Das Editor in Charge IDOL, GU
Language Editing	:	Sanghamitra De Lecturer in English IDOL, GU

Cover Page Designing:

Kaushik Sarma	:	Graphic Designer CET, IITG

July, 2010

© Institute of Distance and Open Learning, Gauhati University. All rights reserved. No part of this work may be reproduced in any form, by mimeograph or any other means, without permission in writing from the Institute of Distance and Open Learning, Gauhati University. Further information about the Institute of Distance and Open Learning, Gauhati University courses may be obtained from the University's office at BKB Auditorium (1st floor), Gauhati University, Guwahati-14. Published on behalf of the Institute of Distance and Open Learning, Gauhati University by Dr. Kandarpa Das, Director and printed at Maliyata Offset Press, Mirza. Copies printed 1000.

Acknowledgement

The Institute of Distance and Open Learning, Gauhati University duly acknowledges the financial assistance from the Distance Education Council, IGNOU, New Delhi for preparation of this material.

Block Introduction:

We already know that India was under the domination of the British Colonial rule for more than 200 years. On 15th August, 1947 India attained its freedom and the 26th January of 1950 marks a great event in the history of India since the Constitution of India is brought into force on that day. However, the impact of the British rule is visible on Indian political system even today. This block makes an attempt to analyze the impact of the British rule on contemporary Indian political and governmental system. Here we shall also discuss some important ideologies which are followed by the freedom fighters and their role in our present system. In this block we are going to analyze the basic structure of Indian Constitution. We shall also focus on the various development schemes that the Government of India has implemented as its welfare principle for the benefit of the poor. In this block we are going to analyze such developmental programmes and role of the Indian Constitution to promote harmony, equality and fraternity among the Indian citizens. Caste has been playing a crucial role in the stratification of Indian society. Besides caste, class and gender are also contributing to increase grave social inequalities. In this block we shall also discuss the role of caste and class in Indian political system with reference to the reservation policy for minorities and women. Thus, this block aims to help you explore the basic structure of Indian Political System, its past, present and future in three units.

Unit 1 deals with the legacy of colonialism and freedom movement. The influence of the past cannot be negated in the formulation of a nation's history. Hence, the British rule in India has significantly influenced the present political system of the nation. Their arbitrary rule forced Indian people to organize a mass movement against them and finally under the guidance of Gandhi, Nehru and other nationalist leaders India got its freedom. These past legacies have shaped the present Constitution of India. In this unit, we shall discuss the past legacies of our present system and ideology of freedom struggle followed by the framers of Indian Constitution.

Unit 2 deals with the Constitutional framework of India. Indian Constitution is one of the lengthiest constitutions dealing elaborately with Fundamental Rights and the Directive Principles. Again, like the British pattern, Indian Constitution also provides the Rule of Law. In this unit we shall discuss the Rule of Law, the Fundamental Rights and its limitations by the intervention of the State. In this context, it is pertinent to mention here that without having an independent judicial system it is impossible to achieve the desired goals of the people. In this unit we shall discuss the role of the apex courts as an instrument of checks and balances on the power of the State and thus ensuring constitutional rule. The unit also deals with the implementation of Directive Principles with reference to different development activities done and implemented by the Indian Government.

Unit 3 discusses the socio-economic foundation and ideological bases of the Indian state. Caste, class and gender play a crucial role in Indian society. It is not wrong to say that the present Indian political system is running on the basis of these there phenomena. In this unit, we are going to discuss the history of social relations and the process of how social relations become shaped in India. The unit also deals with the social ills that have become important factors in propagating inequality in the modern world.

Thus this block helps you to explain the basic structure of Indian State and its sociological framework along with the important provisions of Indian Constitution. Here, we shall discuss the dynamics of Indian political system in the following units.

This block has the following units:

Unit 1 : Legacy of Colonialism and Freedom Movement

Unit 2 : Constitutional Framework of the Indian State

Unit 3 : Socio-Economic Foundation and Ideological Bases of the Indian State

Unit 1
Legacy of Colonialism and Freedom Movement

Contents:

1.1 Introduction
1.2 Objectives
1.3 Contending Views on Indian State
1.4 Continuity of Colonial Foundation of Indian State
  1.4.1 Police Administration
  1.4.2 Bureaucracy
  1.4.3 Coercive Laws
  1.4.4 Territorial Integrity
1.5 Political Values Promoted by the Freedom Struggle and Indian State
  1.5.1 Democracy
  1.5.2 Social Justice and State Responsibility
  1.5.3 Secularism and Gandhian Values
1.6 Summing up
1.7 References and Suggested Readings

1.1 Introduction

Indian society is noted for its diversity and heterogeneity. The diversity represented by Indian society is apparent in terms of the people, society, geography and resources. Yet the country shares common characteristics inherited from their colonial pas in the form of language, culture, and institutions. The legacies in India which evolves out of the peculiar historical background as a mixture of indigenous and colonial elements have given the country its unique feature. While few educated South Asians will deny that British Colonial rule is detrimental to the interests of the common people of the sub-continent, some people think that the rule of the British can also be seen in a positive sense. This unit aims to examine the legacy of colonialism and freedom movement in India.

This unit will help you to make a brief survey of the British legacy bequeathed to India. Our aim is to help you see the legacy of the British in India after their departure in clear light. This unit will help you take into account some of the important values relevant for the British Rule which still play important role in the Indian Administration.

1.2 Objectives

India administration is the relic of its past as it has a glorious past. However, British colonial rule improvises the nature of Indian administration. After reading this unit you will able to

- *examine* the patterns of colonial legacy
- *explain* the effects of colonization
- *describe* the rationale for the continuance of the colonial foundation in various apparatus of modern India.

1.3 Contending Views on Indian State

The British as a colonial master has contributed a lot towards the history of India. Colonialism is nothing but a theoretical framework developed to understand the relation between European and native Indians. The mutual contact between them leads to a relation and this relation has continued and contributed towards building a new reality for both the Europeans and native Indians.

It is important to know here that the East India Company has established its rule in India in the 18th century. During the time, the political power in India is found divided among various princely states. After witnessing the First War of Independence in 1857, Queen Victoria takes the administration of India in her own hand in the year 1858. Consequently, the British administration starts collecting revenue and for this purpose they evolve an integrated administration in India. The Indian elites regard it as the first attempt at state formation. But the British have kept the princely states as a

separate entity under the rule of the supreme power and they gradually start to build the state machinery with the help of Indian Civil Service.

It needs to be mentioned here that there are two institutions in British colonial state which play influential role in Indian society. These are the British education system and the legal system. The missionaries have come to India with the purpose of popularising Christianity and consequently they set up various schools and colleges. The government offices and the companies start recruiting the people who have studied in these schools and colleges and such recruitments introduce a sense of great relief in Indian society.

Again, the introduction of the *zamindari* system and *ryotwari* system requires an army of surveyors and record-keepers to demarcate agricultural land and legitimise property rights to determine the extent of revenue. This in turn requires the establishment of courts of law to settle property disputes and here lies the importance of the British legal system. The new legal and judicial system gradually limits the operation of the prevailing systems of law in the Indian society. These new systems are based on convention, customs as well as codes. Like the bourgeoisie system of law, they too have discriminatory class, caste, and gender bias as experiences of the past have influenced them.

There are two views regarding the formation of state in India after independence. One group of people advocates the centralising tendency whereas the other group is in favour of decentralised authority. When the the reformers come to the scene they think that the Indian people owe the idea of political unity to the British. But they fail to realize the fact that the basis of state formation can vary to a great extent. Moreover, they also ignore the fact that diffused power can act as a basis for decentralized authority. But the nationalistic leaders take this unity as a positive sign and the Congress later on also adopts a strong centralizing tendency. Nehru in his *Discovery of India* also advocates for a state with centralizing tendencies. According to him, this centralizing tendency has its root in Indus valley civilization and Ashoka also favours a centralized state. Indira Gandhi uses this view to its fullest possibility. During her regime, we can see an

authoritarian centralising tendency. But Mahatma Gandhi has adopted the other view and he is in favour of the decentralized authority. This view is visible now in the demands for state autonomy.

We should remember here that the colonial state has certain features that distinguish it from the state in Europe and the post-colonial state in the developing countries. It is an instrument of control and oppression over the local inhabitants. To achieve this end it establishes strong bureaucracies, police, and military forces to maintain order. Thus, the colonial state is an authoritarian and not a liberal democratic state. Highly centralized and modern systems of administration are also established in the colonial state.

Stop to consider:

British Educational and Legal System in the Colonial State

The British introduces the English education which is a prominent feature of colonial states in India. This education provides for a common language and a class of intelligentsia emerges in India. But, at the same time the English education has two negative consequences. Firstly, it creates a wide gap between the educated people and the masses. And secondly, the popularization of English education has led to the devaluation of the local Indian languages. Another important change is made in the legal system of India during the colonial rule. There is no separation of power between administration and judiciary. Under the colonial rule, the same civil servant administers the state as the district collector as well as takes judicial decisions as the district magistrate. Again, though the legal system provides for equality of all in the colonial state but it still carries some discriminatory principles. For example, different treatment is meted out to Indians and Europeans during trial and it always favours the Europeans.

The state that emerges after colonial rule, therefore, necessarily includes all the values and institutions contributing to the anti-colonial movement. Therefore, it can be said that the post-colonial Indian state does not come out of vacuum. It is shaped by various historical forces. Here, we must remember that the post-colonial state does not imply the establishment of a

state after end of colonial regime. It refers to the stronger sense to mean that some of its characteristic features have arisen from the particular colonial history.

SAQ

How far Government of India has been successful in implementing decentralisation policy? Discuss. (60 words)

. . . .

. . . .

. . . .

. . . .

1.4 Continuity of Colonial Foundation of Indian State

We have already learnt that the pattern existing during the British rule has continued in the Indian administration after 1947. There are several reasons for this continuity. The sudden and peaceful transfer of power is one of the most important reasons. Again, migration of people between two countries India and Pakistan, is another reason. To elaborate, these people migrate from one country to another mainly due to two reasons- firstly, the communal violence and secondly, the willingness of people to settle in other country. After long struggle, though India achieved independence it also resulted in the partition of the country. Consequently, the civil service in India went through a worn out stage as most of the European and the Muslim civil servants left the country. As a result there is scarcity of resources as well as people to set up new administrative machinery. India faces the dire need of a stable administrative organization comprising departments and civil services. Therefore the existing system continues even after the independence. But we should remember here that India has adopted its own constitution after 3 years of independence and it is totally different from the constitutional acts.

In needs to be mentioned here that the administrative organizations of central as well as state governments were unbroken or intact before independence. This has led to the peaceful transfer of power from British to Indian hands. There is no change in security, law and order, finance, communication system, education etc. and it continues as before. These departments still follow the pre-independence manual with slight modification.

But we should remember here that the European states still dominate the modern Indian states in the context of organising the social life through politics and making the society state-centred. Though the colonial state has ended in 1947, we still feel its impact. The British administration has introduced several institutional machineries and these are expanded to a large extent. It also brings the notion that modernisation has to be experienced through states.

Now we will discuss how this continuity unfolds in the various apparatus of the Indian government after Independence.

Police Administration

We have already learnt that although the forms taken by police, paramilitary organizations, and armies are locally determined, the forms are often shaped by colonial heritage. The police as an organized institution in this country comes into existence with The Police Act of 1861. This legislation is passed in the wake of the Indian Sepoy Mutiny of 1857 when the Indian soldiers in the colonial army revolt against their British commanders. The advent of independence has changed the political system, but the police system remains almost unaltered. The Police Act of 1861 continues to govern the police administration. The post- independence police administration continues with the managerial philosophy, value system and ethos practiced during colonial period. The powers granted to politicians and bureaucrats to exercise control and supervise the police remains the same.

It is strange that after experiencing more than 60 years of independence, both the centre as well as the states in India follow the same Police Act of 1861. There is no initiative to change this law in accordance with the requirements of democracy.

In this context it needs to be mentioned here that the British has used the police administration mainly to suppress the Indians. The government of India has adopted this policy with slight modification. But the basic provisions remain the same. The police administration in the colonial states lacks sense of justice, protection of human rights, service mentality, scientific methods of enquiry, etc. These deficiencies are also the common features of the police administration of independent India. It is essential that the police force, apart from being a force to ensure law and order in the society, has to maintain the democratic system with a sense of service and dedication.

Bureaucracy

We already know that India was under British rule for about two centuries. During this period, the bureaucracy was fashioned as a highly efficient instrument of the British power. Its efficiency consisted mainly in serving the interests of the foreign power and not the people of India. The bureaucracy tended to acquire powers of its own. Thus the interests of the bureaucracy were largely different from those of the people of India. Its role during British rule was narrow and objectives were largely negative, rather than positive as it aimed at maintenance of law and order rather than improvement of the living conditions of the people. After Independence, the bureaucracy is expected to play a new and positive role in ensuring development. While nobody denies the desirability of such change in its role, it is not easy to introduce change. There are several reasons and one of the reasons can be seen in the fact that social change is generally a slow process. The development of new values and attitudes take time.

Secondly, it should be remembered that the transfer of power in 1947 was not accompanied by a social or economic revolution. Even the political

change was peaceful. Hence, socially, economically and politically, the society remained, to a large extent, unchanged. Thus many of the social, economic and political institutions did not undergo much change. Since the bureaucracy was merely a part of the society, it could not change as expected when the society as a whole remained largely unchanged.

Thirdly, the organization and procedures of public administration remained largely the same.

Finally, the system of personnel administration, or control over the bureaucracy, itself remained largely unchanged. The Constitution of India provided that the Central government and State governments could make laws to regulate the recruitment and conditions of service of personnel in their public services. Some laws, like the All India Services Act, 1951, were passed. However, personnel administration, by and large, continues to be governed by rules. Some of these rules were new while some others were just the continuation of the British rule. It is true that no law, rule, order, whose provisions are contrary to those of the Constitution, can have validity. Still, we can say since many of the pre-independence rules continue to operate, personnel administration, to some extent, bears the mark of colonialism.

Corrective Laws

During the British rule, the law empowered the executive to use extensive powers during the emergencies. After the 1857 uprising, the British law has authorized the Governor General to legislate outside the ordinary law-making process in emergency situations. The law has allowed the Governor General to issue ordinances to ensure the 'peace and good government' of India. But the British has unlimitedly used this power in non- emergency periods also. They have extensively used those laws which authorize them to use the power of preventive detention by extending their extraordinary powers from wartime emergency to non-emergency periods.

It is worth mentioning here that before the end of World War I, the British begin to explore the ways to preserve the wartime emergency powers authorized by the Defence of India Act even during peace. A government committee has recommended that several wartime powers can be maintained during peace, and in response, the government in 1919 enacts the Anarchical and Revolutionary Crimes Act, known as the "Rowlatt Act". Both the substantive provisions of the Rowlatt Act and the circumstances surrounding its enactment emerge even in the post-independence period leading to issues that have arisen in recent years under TADA and POTA. The Act has conferred tremendous power upon the government to combat "anarchical and revolutionary movements," a term the law does not define.

Despite the lapse of the Defence of India Act and the end of World War I, the Rowlatt Act has preserved detention orders and other restraints on freedom of movement. The Act has also conferred new authority to order 'preventive detention' or other restrictions on freedom of movement up to two years to any individual who, the government has reasonable grounds to believe are involved in an anarchical or revolutionary movement and are also suspected of connection to certain specified criminal offenses.

Here, it needs to be mentioned that the Government of India Act, 1935 mainly follows and maintains the basic pattern of British system like the establishment of elected, semi-autonomous provincial governments etc. This law empowers the provincial governments to enact preventive detention law of their own. The Congress government also gradually begins to rely upon those laws to maintain order and exercise social control. During the period 1947-75, Indian government basically follows this pattern.

Stop to Consider

Some other Legacies of Indian Political System

The Indian political system that we have today is a continuation of the British system to a large extent. Therefore, legacies like leadership, poverty, casteism, regionalism etc. can be found in India even today. During the colonial period,

the Indian National Congress provides leadership to the people of India and it continues even after the independence. The Indian National Congress comes to power after the first general election, and it still plays a dominant role in Indian politics. Poverty is a major consequence of the British legacy as India has suffered from the menace of poverty under British rule and the colonial rulers have exploited the Indian economy leading the common people of the country to impoverishment. During the post-independence period, various poverty alleviation schemes have been introduced by the government in India. The other legacies include casteism and regionalism. The British has taken advantage of the presence of caste system in Indian society and adopted the policy of divide and rule. This policy has a great impact on the states.

We have already learnt that Indian Constitution, following the colonial framework, empowers the government to use the preventive detention during ordinary, non-emergency periods but with some limited procedural safeguards. Again, influenced by the Rowlatt Act, the Indian government punishes the criminal offences against the state. In some cases, some laws even establish special rules to arbitrate those offences. The Parliament can impose restrictions on freedom of speech, expression, right to assemble peacefully, and association in the interest of the sovereignty and integrity of India. The Parliament has also enacted the Unlawful Activities (Prevention) Act of 1967. This law is still in effect.

It is worth remembering here that the politicized violence has dominated the Indian political scenario during the 1980s. This has impelled the government to enact anti-terrorism laws. Since then these laws are enacted and revoked in a recurring pattern. There are several anti-terrorism laws that have been enacted since 1980. These are the Terrorist and Disruptive Activities (Prevention) Act, the Prevention of Terrorism Act, and the Unlawful Activities (Prevention) Amendment Act.

Public debate over these laws has been vigorous and ongoing and each subsequent law has incrementally improved the previous laws.

SAQ

Do you think there is a need for reformation of the police administration in India? Give reasons in support of your answer. (40 words)

. . . .

. . . .

. . . .

. . . .

Territorial Integrity

A debate has started on the issue whether the term India applies to all surrounding civilizations with the political and cultural components or it merely refers to multiplicity of distinctive political and cultural regions within a defined geographical location. By the 1880's, this debate has emerged clearly. John Strachey in his book *India*, mentions that the most essential thing to learn about India is that: "There is not and never was an India, or even a country of India, possessing, according to European ideas, my sort of unity: physical, political, social or religious". (adapted from http://www.scribd.com/doc/18643436/problems-of-national-unity-a-colonial-heritage)

But various Indian writers like D.R. Bhandarkar, Bankim Chandra Chatterjee, Swami Vivekananda, Sri Aurobindo oppose this view. According to them, there has always been an India which is visibly characterised by its political, social, physical, and cultural unity.

From the above discussion we have come to know that though India has a long history of religious toleration and cultural assimilation, yet no one can deny the fact that India as a nation in the true sense of the term has never existed before the British colonial rule. British rule has given continuity to the history of India.

After the 1857 uprising, the gulf between Hindu and Muslims develops into a different ideology and politics. This has led to communal politics and communal ideology in India.

We have already learnt that the British rule introduces the 'Divide and Rule' policy which acts as a support to the separatist tendencies. On the contrary, the states are now adopting policies of secularism and trying to remove the social and economic imbalances. But this is not an easy task. An economic balance is necessary for the purpose of adopting secularist policies. All the states, irrespective of their size and their distance from the centre, shall enjoy economic opportunities. Social imbalances can be removed by giving equal educational opportunities to all. Again, opportunities should be given for the equal development of all the languages. No language should be imposed on the people belonging to other linguistic communities.

Stop to consider

Factors Contributing Towards National Unity

There are various factors which help in the creation of national unity in India during the British Rule. These include modern means of communication, English education, socio-religious movements etc. The modern means of communication like railway, bus, postal system, telegraph, telephone, etc are narrowing the gulf between the places. It has given a unifying effect to India. The English education also contributes significantly in uniting the people of different parts of India who speak different languages by providing a common language for expressing their views. People start recognizing the problems of various regions and consequently it helps to instill a sense of mutual identification. All these factors have contributed significantly towards the emergence of unity in India in the colonial period.

As mentioned above the process of mutual understanding and accommodation can reduce the linguistic barriers. If a language is forcefully imposed it may evoke an equally forceful counter reaction and go against the interest of national unity. Most importantly, the government should not exploit the separatist tendencies like regionalism, religion, casteism etc. for election purposes and similar gains. The people should be made aware of the importance of national unity as we can prevent the recurrence of the

fatal consequences of the demolition of Babri Masjid in Ayodhya on December 6, 1992 with the sense of national unity.

Check Your Progress:

1. Discuss the traces of colonial legacy existing in the institutional apparatus of modern India.

2. Do you think Indian bureaucracy exemplifies the continuance of colonial features? Discuss.

3. Write a note on the long history of India's cultural assimilation with special reference to the colonial period.

1.5 Political Values Promoted by the Freedom Struggle and Indian State

The struggle against British imperialism is the central theme of the national movement. But the basic essence of the movement is not confined only to anti-imperialism as it also upholds and preaches universally accepted values of secularism, socialism, democracy and humanism. It also simultaneously practices and thereby popularizes these values. A sustained propagation of these values finally leads to their incorporation in the Constitution of India.

Democracy

Fight for democracy is integral in the Indian freedom struggle. The British rule is by nature oppressive, and therefore, fighting for freedom from the despotism means fighting for democratic values. For this reason, the spirit of democratic culture is undoubtedly important. We shall discuss the nature of colonial state and the fight for democracy in the following points.

- **Nature of Colonial State:**

We have already learnt that the colonial state is basically repressive in nature. The legal and the political systems created by it are discriminatory and obstructive to the participation of the people in the governance of the country.

Combined with the police and army, the legal political system serves only the interests of the British rule. In this context, the suggestion made by some British scholars that democracy is a gift by the British to the Indians should not be accepted without criticism. The British does not train the Indians in self-governance through the Acts of 1909, 1919 and 1935. The Indians have struggled for democratic participation and at every step this attempt is truncated by limited concessions.

- **Nationalist Struggle for Democratic Rights**

In spite of stiff opposition, the nationalists have compelled the British to concede:

a. The right to vote,

b. The system of elections and representation to Indians.

At the same time the Congress conducts elections within its own organizational structure to inculcate the values of democracy and democratic functioning. Decisions to launch struggles are taken through open debates and struggles are conducted in open. Democratic right to dissent is granted in the Congress.

It needs to be mentioned here that when these procedures are applied in the context of non-violent mass struggles, the foundations of these procedures are tested. Although certain unilateral withdrawals like the 1922 withdrawal of Non-Cooperation or 1931 withdrawal of the Civil Disobedience Movement point to the weakness of these procedures, nonetheless, a definite beginning has been made by these procdures.

Social Justice and State Responsibility

The intervention of the State has been very significant either in the checking or in finding solution to the social problems in India. In the early colonial period, several steps are taken by the State to abolish the practice of *Sati* in 1829. In the later part of the 19th century, steps are taken to provide legal opportunities for inter-community and inter-caste marriages. In 1929,

the Sarada Act is passed to abolish child marriage. In the post-independence period, India resolves to constitute a democratic, sovereign, secular and socialist society. In the constitution, special provisions are made to safeguard the interests of the Scheduled Castes, Scheduled Tribes, Backward classes, women and children.

Again, the Indian Constitution has declared the practice of untouchability an offence. Some special measures-such as the Hindu Marriage Act and Succession Act are adopted to reform the Hindu society in general and the Hindu marriage system in particular. The welfare programmes have been launched for the upliftment of the youth, children, and physically handicapped. The Five Year Plans are launched for the socio-economic transformation of Indian society. After 1970, special attention is paid towards the removal of poverty, rural development and generation of employment opportunities in the rural areas.

Moreover, the states aim at a comprehensive form of justice, equality and dignity of the individual. It visualizes the people to be the ultimate source of its legitimacy and provides them with certain Fundamental Rights that cannot be alienated or abrogated even by the Parliament. However, these rights are subject to national security and general welfare. The constitution also contains the Directive Principles of State Policy under which the State strives to secure a social order oriented to welfare, ensure means of livelihood for all citizens, ensure the use of the material resources of the community to promote the common good, prevent harmful concentration of wealth, ensure equal pay for equal work for both men and women, and protect children and youth from exploitation. The impact of these programmes is visible on the socio-economic life of India.

Despite considerable achievements, India is still beset with various problems such as poverty, unemployment and sub-standard life conditions affecting a large section of the society. Colonialism has facilitated India's contact with the momentous changes affecting the western world and introduced Indian intellectuals to the radical and liberal ideals of democracy, popular sovereignty and rationalism.

Secularism and Gandhian Values

India is characterized by the existence of various major religions and has emerged as a truly plural society in terms of religious affiliation. Religion is an influential factor in India. In such a situation tolerance of religious differences can help us to avoid social disharmony and conflicts. In this context, the policy of 'Divide and Rule', a legacy of the British rule can engineer/aggravate feelings of religious conflicts and cleavages. The nationalist leaders have correctly responded to this challenge by strengthening the value of secularism in a multi-religious society. In the following points we shall discuss the emergence of modern concept of secularism in Indian society during the British rule as well as Gandhi's view on secularism.

Stop to Consider:

Meaning of Secularism

Secularism in India can be defined in terms of following four aspects:

Firstly, the nationalist leaders preach and try to promote the spirit of religious tolerance among the citizens.

Secondly, many reform movements are undertaken to remove superstition and blind faith among the believers.

Thirdly, the equality of all religions is emphasized by the nationalist leadership.

Lastly, separation of religion and politics must be emphasized.

- **Development of Secularism and British Legacy**

The concept of secularism is introduced to the Indians in nineteenth century under the influence of the British rulers. It is only in the late nineteenth century with the failure of the Sepoy Mutiny and the consolidation of British rule, Western influences are felt in the Indian society. But the Western ideas are popular only among a small section of Indians in urban areas. The British rule is essentially secular as they begin to impose secular laws replacing various religious laws. They also impose common criminal code, though

they do not interfere in personal laws. It is a new experience for the Indians as they have always followed religious laws and traditions so far. Any deviation from these laws and traditions is strongly condemned. It has even attracted punishments like social boycott and excommunication. In the case of Hindus, caste rules are followed rigidly.

In this context, we should remember here that the conflict between the State and the Church including the people has led to the development of secularism in the West. But there is no record of such oppression by any organized religious authority in India. In India neither the Brahmins nor the Muslim Ulemas have ever functioned as organized official clergy. Thus, in India there has never been such serious conflict between religious authorities and people. Hence we can say that India is characterized by the tradition of religious coexistence. (adapted from http://www.scribd.com/doc/18643425/multi-religious-society-the-secular-principle)

Secularism, in the Indian context, has very different connotation. It relates more to community and its secular interests rather than religion and its authority. Throughout the struggle for independence, we have faced the secular-communal dichotomy. But none of the political leaders in India have ever thought of challenging the religious authority, Hindu or Muslim. On the contrary, the leaders repeatedly assure that both Hindus and Muslims will be free to profess and practice their respective religions both in individual and collective sense. Moreover, the political leaders also use the existing religious institutions to include Hindu and Muslim population in the political processes.

We should also remember that Islam was never the official religion of India even during the Islamic rule. The Muslim rulers have always followed a policy of tolerance though there were some exceptions. Gradually the Hindus came to occupy important positions in the administration. The Muslims took the policy of 'live and let live'. When the British came to India they also adopted the same policy. They did not interfere in the religious matters and maintained neutrality in such matters. Most importantly, the British introduced the concept of equality before law. This concept provided for equal

enjoyment of rights irrespective of caste and creed. Thus along with the religious coexistence, the British rule introduced the two new elements - state neutrality towards religion and equality before law which served as the basis for secular modern India.

> **Stop to consider:**
>
> **Reasons for Adopting Secularism in India**
>
> The need for secularism arose in India and secularism was conceived accordingly in two related contexts – first, to counter the challenge of communalism to maintain national integrity and second, to provide a basis for nationalism or nationalist movement which should be shared by all Indians.
>
> The entire concept of Indian secularism was developed in the process of attempting to weld together a rather heterogeneous populace, divided on communal lines into a modern nation.

- **Gandhian Perspective**

As mentioned earlier, the concept of secularism is introduced to the Indians in nineteenth century under the influence of the British rulers. The concept of secularism in India has emerged in the context of religious pluralism, as against religious authoritarianism in the West. Secularism is emphasized by the Indian National Congress to allay the apprehension of religious minorities, particularly the Muslims. In Indian context, importance is given to religious community than religious authority. Gandhiji, too, uses the concept of "Ram Rajya" on the one hand, to draw Hindu masses and the Khilafat movement on the other, to attract the Muslim masses. Religion and religious institutions must be used repeatedly to inspire people towards political action. Thus, Indian secularism has never collided either with religion or religious authority. On the contrary, it draws on religion and its institutions to reinforce political processes.

The base of the freedom movement has widened in the 1920s with the advent of Mahatma Gandhi as he proceeds to apply the techniques of mass resistance developed in South Africa in Indian context. With the application of Gandhian techniques, the marginal groups are brought into the freedom struggle and Indian society becomes united under the influence of the overarching call for freedom. But, paradoxically, the same period also witnesses the advent of fundamentalist and rabid groups, both Hindu and Muslim, attempting to politicize religion and thereby divide Indian society. As we have seen in the contemporary world, religious identification is often the product of a political movement and not necessarily the precondition for such a movement. To summarize, we can cite the examples of parallel movements in India aiming to unite people on the lines of the anti-colonial struggle and also to divide them in the name of religion.

It needs to be mentioned here that Gandhi believes in spiritualization of politics, but he is firmly committed to the equality and tolerance of all religions. Gandhi derives his politics from religion but in struggling against religious divisions and fanaticism and in emphasizing the relationship between national unity and spirit of tolerance, he takes the struggle for secularism forward. He has made it clear that state should have nothing to do with religion, which is a personal affair. He entrusts the state with the responsibility of looking after secular affairs like welfare, health, communication, foreign relations, currency etc. Gandhi repeatedly affirms "India cannot cease to be one nation because people belonging to different religions live in it. If the Hindus believe that India should be peopled only by Hindus, they are living in a dreamland. The Hindus, the Mohammedans, the Parsis and Christians who have made India their country are fellow countrymen. In no part of the world are one nationality and religion synonymous terms, nor has it ever been so in India." we do not need to proclaim secularism in order to have religious freedom. This freedom can emerge from, and form part of the Fundamental Rights that are assured to every citizen. But a secular state cannot stop at granting the right to religion.

The principle of secularism goes further and establishes equality between all religious groups. The concept of equality or sameness of all religions that is prevalent today is inspired by the doctrine of *sarvadharma sambhava* that permeates Gandhi's understanding of religious toleration.

Check Your Progress

1. Write a note on the evolution of secularism as a legacy of British rule.
2. Discuss Gandhi's concept of secularism.
3. Name some laws which evolve out of the colonial nature of the state.

1.6 Summing up

After going through this unit you are now in a position to examine the patterns of colonial legacy. You have learnt that the two institutions of British colonial state viz, the British education system and the legal system had a great impact on the Indian society. However, the unit also highlights the idea that the colonial state is an instrument of control and oppression of the local inhabitants. The British has used strong bureaucracies, police, and military forces to maintain order in the society and oppress the people. Hence, the colonial state can be regarded as authoritarian and not a liberal democratic state. This highly centralized system of administration is distinguished from the systems of the states in Europe and the post-colonial states in the developing countries. Moreover, you have learnt that the post-colonial state is not a total departure from the colonial state and it has continued many of its policies and provisions. To elaborate, both the centre as well as the states in the independent India is following the same Police Act of 1861. Again, the system of personnel administration, or control over the bureaucracy, itself remains largely unchanged in the post-colonial period. Moreover, the political values promoted by the freedom struggle like democracy, secularism and Gandhian values are the major forces in contemporary Indian Political system. Some concepts and ideas evolved

during the Indian National Movement have become the legacy for the policy initiatives in the post-independence India. From this unit we have also learnt that the legacy of communalism and regionalism is inherited by the independent Indian state. This historical legacy has only got accentuated in recent years with the problems generated by economic development and the resultant social changes.

1.8 References and Suggested Readings

Singh, Yogendra. *Modernization of Indian Tradition*, Rpt. Jaipur: Rawat Publication, 1988

Mill, James. *The History of British India*. New York, 1968

Chatterjee, Partha. *The Nation and Its Fragments. Colonial and Postcolonial Histories* Princeton, 1993

* * *

Unit 2

Constitutional Framework of the Indian State

Content:

2.1 Introduction
2.2 Objectives
2.3 Rule of law and the Fundamental Rights in Indian Constitution
2.3 1 Rule of Law
2.3.2 Fundamental Rights
2.4 Directive Principles and Developmental Responsibility of the State
2.5 Judiciary as a Mechanism of Checking the State Power and Ensuring Constitutional Rule
2.6 Various Development Programmes of the Indian State: Rural Development Schemes
2.7 Summing up
2.8 References and Suggested Readings

2.1 Introduction

The 26th January of 1950 marks a great event in the history of India since the Constitution of India is brought into force on that day. The Constitution of India provides for Parliamentary Democracy where the ultimate power rests with the common people. Granville Austin, whose books and commentaries on Indian Constitution are considered seminal, commented on the importance of Fundamental Rights and the Directive principles of the Indian Constitution. Indeed, these are two important sections, in the sense that, the Part III contains the Fundamental Rights guaranteed by the Constitution (which are necessary for the overall development of human beings, irrespective of race, place of birth, religion, caste, creed or gender) Part IV contains the Directive Principles, though not legally enforceable but provide guidelines to the State for creating a just social order based on socio-economic and political justice in an unequal society.

This unit will provide you information on some of the important aspects of the Indian Constitution- Rule of Law, Fundamental Rights, Judiciary as a mechanism of checking the State power and ensuring constitutional rule, the Directive Principles of State Policy and the developmental responsibility of the State and the various Development Programmes initiated by the Indian State: especially, Rural Development schemes addressing the task of poverty alleviation and empowering the poor. Since this is a vast area, a reading list is provided at the end of the unit for further reference.

2.2 Objectives

After reading this unit you will be able to:

- *describe* the Rule of Law, Fundamental Rights and its limitations by the intervention of the State
- *examine* the role of apex courts as an instrument of checks and balances on the power of the State and thus ensuring constitutional rule
- *analyse* the role of the Directive Principles of State Policy and the developmental responsibility of the State and its obligation towards these directives while framing policies and enacting Laws
- *discuss* some of the important ongoing development schemes

2.3 Rule of law and the Fundamental Rights in Indian Constitution

It is known to us all that Rule of Law and Fundamental Rights are two basic and significant features of Indian constitution. In this section we are going to deal with both these features of the Indian constitution

2.3.1 Rule of Law

The most pronounced aspect of the Constitutional scheme is that it is based on the principle of the Rule of Law. The expression rule of law has been derived from the French phrase *'la principle de legalite'*, i.e. a government

based on the principles of law. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V. Dicey in his book *'The Law of the Constitution'* published in 1885. According to Prof. Dicey, rules of law contains three principles or it has three meanings

- Supremacy of Law
- Equality before Law
- Predominance of Legal Spirit

Here we need to remember that the rule of law means no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law of the land. Secondly, rule of law also implies equality before law. It means that no man is above law. Thirdly, rule of law also means the predominance of legal spirit. It denotes that law is the result of juridical decisions in particular cases brought before the law.

The Indian Constitution has adopted the doctrine of rule of law. The Constitution of India is the supreme law of the country and other laws are required to be in conformity with the constitution. Any law which is found in violation of any provision of the constitution is declared invalid. In simple language, it means that unlike the regimes in the pre-constitutional era, where some people are more privileged than others and hence are held outside the legal framework, the constitutional era is distinct because all are equal before the law in this scheme. Unlike the system where the will of the King or the Emperor is held as the law, the Republican Democratic system is guided by a framework where the Constitution is supreme. This is the premise on which the concept of Rule of the Law revolves and it functions on the principle of equality before the law. In other words, none can be privileged and exempted from the application of the law. The Constitution, hence, is supreme in this system. In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by the Parliament. It is also regarded as a part of natural justice.

2.3.2 Fundamental Rights

In the context of rule of law our own Constitution contains a set of rights that are listed or described as Fundamental Rights and these are contained in Part III of the Constitution in Articles 12 to 35. Article 12 is the definition of State and Article 13 is about the prescription that all the laws having to be consistent with the fundamental rights. The rights listed in Part III are those basic rights without which the overall developments of human- beings are impossible. These are inalienable rights too. Article 13(l) of the Constitution makes it clear that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provision of Part III dealing with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State should not make any law which takes away or abridges the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Constitution guarantees equality before law and equal protection of laws. Article 21 guarantees right to life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 19 (1) (a) guarantees the third principle of rule of law (freedom of expression).

We all are aware of the fact that at present our Constitution guarantees six Fundamental Rights to the citizens. These are ——

[1] Right to Equality (Article 14 -18)

[2] Right to Freedom (Article 19-22)

[3] Right against Exploitation (Article 23-24)

[4] Right to Freedom of Religion (Article 25-28)

[5] Right to Cultural and Educational rights (Article 29-30); and,

[6] Right to Constitutional Remedies (Article 32-35)

1. Right to Equality

Right to Equality embodied in the Article 14 of Indian Constitution is one of the important rights as it ensures equality before law to every individual in the country. It says: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Other important rights under the Right to Equality are: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; (Article 15); Equality of opportunity in the matters of public employment (Article 16); Abolition of Untouchability (Article 17) and Abolition of titles (Article 18). Thus, the Indian Constitution prohibits any kind of artificial discrimination before the law as well as for holding any public office within the territory of India.

2. Right to Freedom

Article 19 of the Constitution gurantees to the Indian citizens the substantial right in the form of the right to freedom. Right to freedom here includes the freedom of speech and expression, freedom to assemble peaceably and without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India and freedom to reside and settle in any part of the territory of India. Right to freedom also includes protection in respect of conviction for offences (Article 20) protection of life and personal liberty (Article 21) and protection against arrest and detention in certain cases (Article 22).

Stop to Consider:

Significance of Article 21

It is appropriate here to explain the significance of Article 21 at this stage. Dealing with the protection of life and personal liberty, it says: "No person shall be deprived of his life and personal liberty except according to procedure established by law". This specific constitutional guarantee has been chosen for some extensive interpretation by the higher judiciary (the High Courts and the Supreme

Court) for considerable expansion of its scope. For instance, in Francis Coralie v. Union of India (AIR 1978 SC 597), the Apex court interpreted Article 21 and expanded its scope as; "the right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings". In yet another remarkable judgement, Olga Tellis vs. Bombay Municipal Corporation (1985-3-SCC-545), the Supreme Court expanded the realm of Article 21 to include the right to livelihood. By the various judgments, Article 21 has been interpreted to guarantee such important rights as the right to education, right to livelihood, right to live with human dignity, right to healthy environment, right to health, right to shelter, right to privacy and right to free legal aid as Fundamental Rights of the people. In this context, it is important to mention the 86th Constitution Amendment Act of 2002 that made the right to education a fundamental right for all children between the age of 6 and 14 years. A new article, 21A, was added to the Constitution by this and it says: "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine.

3. Right against Exploitation

Right against Exploitation prohibits the trafficking in human beings and forced labour (Article 23) and employment of children below 14 years in factories, factory or mine or any other hazardous employment is prohibited by Article 24.

4. Right to Freedom of Religion

Article 25 of the Constitution guarantees the Right to Freedom of Religion by which everyone has the freedom to profess, practice and propagate the religion of their choice. Again, Article 26 guarantees to all the freedom to manage religious affairs from within the confines of public order and morality. Other religious rights guaranteed by the Constitution and part of the fundamental rights are freedom as to payment of taxes for promotion of any particular religion under Article 27. Article 28 provides for freedom as to

attendance at religious instruction or religious worship in certain educational institutions. However, this is restricted only to the private institutions. Again, Article 28 prohibits religious instruction in educational institutions maintained by the State's fund.

5. Cultural and Educational Rights

Article 29 of the Constitution guarantees protection of the Cultural and Educational Rights of the religious minorities across the country and linguistic minorities in the different states. Article 30 prohibits interference in the management of the affairs of the educational institutions of such minorities.

6. Right to Constitutional Remedies

Right to Constitutional Remedies is the core of all fundamental rights without which all other rights are meaningless. This gives every individual a right to move to the Supreme Court, in case any of the fundamental rights is violated. Article 32, thus provides for a writ by the Supreme Court to the executive to ensure the enforcement of the rights and it also states that the right guaranteed by this Article shall not be suspended except as otherwise provided for by the Constitution. However, on proclamation of an emergency, under article 352 of the Constitution, all the Fundamental Rights will be suspended including the right to constitutional remedies. The country experienced this during the national emergency (June 25, 1975 to March 21, 1977). Article 226 of the Constitution, similarly, guarantees the right to writ in the various High Courts for enforcement of constitutional rights.

Thus, the Indian citizens enjoy all the above mentioned rights in the normal circumstances. However, it needs to be mentioned here that the chapter on Fundamental Rights in the constitution has been the subject of criticism both in India and outside. The critics mainly fall into three groups. The first group of critics thinks that many Fundamental Rights like right to work, right to rest and leisure, material security etc. have been ignored. The second group of critics thinks that the spirit of the whole chapter is taken away by

the extraordinary provisions such as preventive detention, suspension of the right to constitutional remedies etc. these critics allege that what has been given by one hand has been taken away by the other. Thirdly, the critics say that so many limitations are imposed on the Fundamental Rights that it becomes very difficult to understand what exactly is available to the individual by way of fundamental rights.

Check Your Progress:

1) What is your understanding on Rule of Law?
2) Critically disccuss the Fundamental Rights incorporated under part III of the Indian Constitution.
3) Write a note on the safeguard against the violation of Fundamental Rights.

2.4 Directive Principles and Developmental Responsibility of the State

Part IV of the Indian Constitution deals with Directive Principles of State Policy which constitute another significant feature of Indian Constitution. The inclusion of these principles is inspired by the Irish Constitution. The Directive Principles, by and large, are social and economic in nature. As the name indicates, these are directives or guidelines to the State, to be taken into consideration, while enacting laws and making policies, for the welfare of the people. In other words, these are guidelines for building up a social order, which is based on socio-economic and political justice. It is the duty of the state to apply these principles in making laws though they are not binding on the state. They provide a direction and goal to the legislators of India while framing new laws for the country's administration. The fundamental rights and directive principles resemble each other on the ground that both aim at securing common good of the people of India Therefore, it can be said that the Part IV of the Indian Constitution is equally important

as the Part III. However, there exists some fundamental differences between these two.

Stop to Consider:

Differences between Fundamental Rights and Directive Principles-

Fundamental Rights are negative injunctions to the state restricting it to do certain things while the directive principles are positive instructions to state to work for the attainment of certain set objectives.

The Fundamental Rights are justifiable and can be enforced by law while the directive principles are non- justifiable. The courts cannot declare a law as void on the ground that it contravenes the directive principles.

In case of conflict between the fundamental rights and the directive principles, the former get precedence.

The fundamental rights are legal and political rights while the directive principles are social and economic in nature.

Thus we have seen that the Fundamental rights and Directive principles are closely related and both are complementary. The architects of the Constitution envisaged the Fundamental Rights and the Directive Principles as the two sides of the same coin. However, there have been debates over the supremacy of one over the other over the years. Few instances of such debates are given below. In Champakam Dorairajan vs. State of Madras (1951) SCR 525 case, the Supreme Court held the view that, "the directive principles have to conform to and run subsidiary to the chapter on fundamental rights." However, in N.M.Thomas vs. State of Kerala, 1976, the court was of the view that the Directive Principles and Fundamental Rights are complementary - "*neither part being superior to the other*". A resolution to this began with the Supreme Court's Full Bench opinion in the Keshavananda Bharati case (AIR-1973-SC-1461) in which it was held that there was nothing absolute about the fundamental rights and that the Directive Principles were not subservient to the Fundamental Rights. The

most important aspect of the judgment in that case was the reiteration that all Constitutional amendments, however, are subject to scrutiny by the higher judiciary. This was further clarified in the Minerva Mills (AIR 1980 SC 1789) case where, the court said: "Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19….." This has held the field since then and in many cases the apex court held the view that for "building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles".

Some of the decisions of the Supreme Court kicked off a dispute between the legislature and the judiciary over their respective powers and it also raised debates on the superiority of Directive Principles over the Fundamental Rights and vice versa. The political rulers argued that while enacting laws for the welfare of the majority, it may result in infringing upon the fundamental rights at times and that should be overlooked. And it was left before the apex court to settle the dispute; even while the courts intervened in this debate, the political rulers, meanwhile enacted several amendments to the Constitution to widen the powers of Parliament vis-a-vis the Judiciary. The most substantive among them was the 42nd Constitution Amendment of 1977 that raised the status of the Directive Principles by stating that "no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights". It made the Fundamental Rights subservient to the Directive Principles. However, the provision that Directive Principles take precedence over Fundamental Rights (in the 42nd Amendment) was revoked by the 43rd (1977) and 44th (1978) Constitution Amendments, during the Janata regime.

The removal of Right to Property from Fundamental Rights and its relegation to a mere Constitutional Right is an example of Directive Principles getting an upper hand on Fundamental Rights.

The Directive Principles are constituted by Articles 36 to 51 and we shall list out some of them.

- The State shall strive to work towards promoting the welfare of the people. It needs to promote a social order where social, economic and political justice inform all the institutions of life. (Article 38)
- The State shall regulate ownership and control of means of production and distribution and prevention of concentration of wealth and income, ensure their more equitable distribution and enacts laws to protect the interests of the workers.(Article 39). This is to reduce the existing economic inequality, and the inequalities in status and opportunity.
- The State shall work for organizations of village panchayats (Article 40)
- The State shall provide right to work, right to education and public assistance in case of unemployment, old age, sickness and disablement, etc.(Article 41)
- The State shall provide for just and humane conditions of work and maternity relief (Article 42)
- The State must ensure the living wage and proper working conditions for the workers.(Article 43)
- State shall secure a uniform civil code for all citizens (Article 44).
- Free and compulsory education for children between 6 and 14 years of age (Article 45) has been turned into a Fundamental Right by the 86th Constitution Amendment and is now incorporated in the Article 21 A of the Constitution.
- The State shall make the provision for the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections.(Article 46)
- It is the duty of the State to raise the level of nutrition and the standard of living and to improve public health. (Article 47)

- The State shall endeavour to organize agriculture and animal husbandry. (Article 48)
- The State shall endeavour to protect and improve the environment and safeguard the forests and wild lives.(Article 48 A)
- It shall be the obligation of the State to protect monuments and places and objects of national interests. (Article 49)
- The State shall take steps to separate the judiciary from the executive. (Article 50), and
- The State shall endeavour for the promotion of peace and security. (Article 51)

Taken together these principles lay down the foundations on which a new democratic India will be built up. They represent the minimum of the ambitions and aspirations cherished by the people of India. When the state in India translates these principles into reality, she can justly claim to be a welfare state.

The efforts of the state to translate the Directive Principles into reality are concentrated primarily in the national five years plan, the first of which was initiated soon after the inauguration of the constitution. It has guided the state in abolishing the hereditary institutions like *Zamindari System* and the *Jagirdari System*. The Indian government have also taken steps for nationalisation of life insurance as well as the key banking institutions in the country. The Directive Principles also helps the state in setting up *Panchayati Raj* institutions in the country. The state has also taken the responsibility of educating the children below the age of 14 years. The states in India also try to raise the living standard of the people of India. These are the clear proofs that though the directive principles are on binding on the government, the latter cannot ignore them while formulating policies.

Developmental Responsibility of the State

The successive governments in independent India have perceived the Directive Principles as a serious business and accommodated them while

framing policies and enacting laws for the welfare of the people. In other words, by and large, the Directive Principles are taken into account while making pro-poor policies. As a result, a number of welfare programmes/ schemes had been introduced for the socially and economically backward people– SGSY, PM, IAY, SGRY, NREG, PMGSY, Land development schemes- a) Integrated Wastelands Development Programme (IWDP), (b) Drought Prone Areas Programme (DPAP), (c) Desert Development Programme (DDP) for the development of National Social Assistance Programme (NSAP)- ensuring minimum national standard of social assistance to the poor households are few examples.

Similarly, the Supreme Court's landmark decisions in two cases, Mohini Jain vs. State of Karnataka (1992) and in Unnikrishnan J.P. vs. State of Andhra Pradesh (1993) holding primary education as a fundamental right led to the enhancement of this aspect of the Directive Principles to that of a Fundamental Right. In the Unnikrishnan case, the Supreme Court said "In order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and Part IV are supplementary and complementary to each other." And subsequently, Article 45, free and compulsory education for children was made as fundamental right (Article 21 A) by the 86th Constitution Amendment to ensure education for all children from the age group of 6-14, irrespective of his or her social status.

Likewise, the state fulfilled its commitment to article 40 that the State shall work for organizations of village panchayats, by enacting the 73rd Constitution Amendment in 1991.It not only provided a uniform structure to the Panchayati Raj Institutions but also provided 33.3 percent reservation for women in all the PRI bodies. Yet another example of the socio-economic reform is the implementation of NREG Act that assures 100 days work for a household in a year. Some of the important welfare schemes will be discussed in the section 2.6.

SAQ

Do you think that the directive principles can establish a welfare state in India. Give reasons in support of your answer. (20+60 words)

. . . .

. . . .

. . . .

. . . .

2.5 Judiciary as a Mechanism of Checking the State Power and Ensuring Constitutional Rule

One of the characteristics of a constitutional rule or the rule of the law is the central role of the judiciary. Articles 124 to 145 of the Constitution delimit and define the role and the powers of the Supreme Court as well as the appointment of the judges to this highest body of the justice system. Article 131 deals with Supreme Court's powers to settle disputes between the Union Government and another State as well as between two States. Article 141 deals with the ultimate authority of the Supreme Court in terms of declaring the law in an issue; in other words, any such law declared by the Supreme Court while interpreting the Constitution is binding on the High Courts of the various states and the executive. Article 143 of the Constitution deals with the power of the President to refer an issue of public importance involving a question of law or a fact for consideration of the Supreme Court; such reports by the Supreme Court are submitted to the President and are not binding. The President, to refer any such dispute to the court, shall do so only on the basis of a recommendation from the Union Cabinet to that effect.

In the Constitutional scheme, the higher judiciary (the High Courts and the Supreme Court), serves the essential purpose of interpreting all ordinary laws in relation to the Constitution. In our own constitution, the role for the higher judiciary is defined in Articles 32 and 226 dealing with the writ jurisdiction. While Article 32 pertains to the Supreme Court, Article 226

details the powers or the jurisdiction of the various High Courts in the constitutional scheme of things.

The writs, as such, fall under five categories

1) The writ of Habeas Corpus

2) The writ of Mandamus

3) The writ of Prohibibition

4) The writ of Quo Waranto

5) The writ of Certiorari;

All these writs can be obtained from the High Court and are dealt with in Article 226 of the Constitution. It is also possible to appeal against a verdict by the High Court, to the Supreme Court and this is defined under Article 32 of the Constitution. The salient feature of the writ jurisdiction is that it is intended and is meant to be a constitutional mechanism available to any citizen against the commissions or the omissions of the executive. For example, the writ of Habeas Corpus is a constitutional remedy available to the citizens in the event of a person being held in custody without the police informing the person or his kith and kin. In the event of someone being held in illegal custody by the executive, anyone can approach the High Court with an application/petition for a writ of Habeas Corpus (meaning produce the person physically) and where the judges before whom the case is taken is reasonably convinced that a person is held in custody without any definite charge against him and in violation of his Fundamental Right, the judge orders release of that person.

A writ of Mandamus, the most common of the writs, similarly is a useful constitutional remedy to seek action by the executive in an area where action is necessary but is not being taken by the concerned officer or a department. For example, a writ of Mandamus can be obtained by any citizen, seeking implementation of his right where it is violated. This is a very common writ that lies in instances of day to day commissions and omissions by the executive. And a writ of Certiorari is almost the same as a Mandamus

with the distinction being that a Certiorari is issued with a specific reference to an order by the executive that warrants quashing. For example, a specific Government Order, when it is established before High Court that it is violative of some provision of the Fundamental Rights, is quashed on being ultra vires of the Constitution and that constitutes a writ of Certiorari.

The writ jurisdiction can also be invoked where the action of an arm of the executive is considered violative of the constitutional provision and hence has to be stopped. This will come under the writ of Prohibition. To elaborate, we can take the example of an order by the courts where the animals shall not be used for entertaining people in the circuses or in zoological gardens.

Article 32 of the Constitution, while dealing with almost all these, is also one that grants wider powers to the judiciary and pertains to the Supreme Court. Under this, any law enacted by a State Legislative Assembly as well as by Parliament or an Ordinance (which in fact has the force of legislation) duly passed can be taken for challenge before the Supreme Court. And in that context, where a legislation is taken for challenge before the Supreme Court under Article 32 of the Constitution, the apex court has powers to study the said law from the point of view as to whether it is consistent with the constitutional provisions and either uphold it or strike it down as ultra vires of the Constitution. The enabling provision to this is Article 13 (2) of the Constitution that lays down that any law that violates any of the guarantees provided for in Part III of the Constitution will be ultra vires of the Constitution.

This applies to amendments to the Constitution too. Article 368 of the Constitution lays down the power of Parliament and the Legislatures of the various states in order to amend the Constitution. It also lays down the process to be followed for constitutional amendments. There was, however, a dispute as to whether this power was absolute or whether amendments to the Constitution too must be seen in the context of the restrictions laid out by Article 13 (2) of the Constitution. The history of this debate is chequered. It began with the Constitution First Amendment Act, which was, incidentally, passed by the Constituent Assembly itself. The Supreme Court upheld the

amendment and the power of Parliament to amend the Constitution as absolute in the Sankari Prasad vs. Union of India (AIR-1951-SC-458 case). However, the Supreme Court changed its opinion when it came to decide on the Constitution 17th amendment; in the Golaknath vs. State of Punjab case (AIR-1965-sc-845), the apex court held that amendments to the Constitution too were guided by Article 13 (2) and hence any amendment that infringed upon the fundamental rights were invalid and void.

The dispute raged further until a 13 member bench of the Supreme Court, in a reference, held that Article 368 gave ample powers to Parliament to amend the Constitution; that the Fundamental Rights were not absolute; that the Directive Principles were sacrosanct; and that any amendment to the Constitution will be subject to judicial review and can be set aside as null and void only where it affects or tampers with the basic structure of the Constitution. This verdict in the Kesavananda Bharathi vs State of Kerala (AIR-1973-SC-1461) holds the field till date. The apex court confirmed this position in the Minerva Mills vs Union of India (AIR-1980-SC-1789) and in the Waman Rao vs Union of India (AIR-1981-SC-271) in subsequent years. The effect of all these is that while Parliament's powers are extensive (and not absolute) insofar as enacting legislations and even amending the Constitution, the Judiciary keeps a check on Parliament's powers from within the concept of what has been termed as the Basic Structure of the Constitution.

2.6 Various Development Programmes of the Indian State: Important Rural Development Schemes

In this section, we will look into the various development schemes, especially rural development schemes, implemented by the government for the benefit of the poor. The schemes/ programmes are expected to empower the poor socially and economically over a period of time. A large number of schemes in the past are merged into new schemes and here we discuss some of the important schemes.

- **Swarnjayanti Gram Swarozgar Yojana (SGSY):**

The SGSY was launched in 1999 as a self employment programme for the rural poor. The SGSY was introduced after merging some of the existing programmes/schemes such as Integrated Rural Development Programme (IRDP), Development of Women and Children in Rural Areas (DWCRA), Supply of Improved Tool-Kits to Rural Artisans (SITRA), Training of Rural Youth for Self Employment (TRYSEM), Ganga Kalyan Yojana (GKY) and Million Wells Scheme (MWS). The objective of this programme is to assist the poor families to scale above the poverty line by ensuring appreciable sustained level of income over a period of time by investing on the potential of the rural poor. The programme provides for the formation of Self Help Groups (SHGs) from among the poor people. It also imparts trainings in income generation activities and also conducts other capacity building activities aimed at establishing large number of micro enterprises in the rural areas. The target population is the people Below Poverty Line (BPL). The beneficiaries are: 50% SCs/STs, 40% women and 3% for physically handicapped persons and 7% other backward persons. Funding is shared by the Central and State Governments in the ratio of 75:25.

This credit cum subsidy scheme, implemented through the District Rural Development Agency, was expected to empower the rural poor socially and economically and also improve their collective bargaining power. A good number of SGSY beneficiaries are women.

- **Pradhan Mantri Grameen Sadak Yojana (PMGSY)**

The PMGSY was launched in 2000. The objective of this centrally sponsored scheme is to provide access to unconnected habitations and thus enhance the economic growth of the rural sector. Every habitation with more than a population of 500 and was not connected so far by proper roads, will be connected with weather-proof metal roads. In respect of Hill States, Desert areas and Tribal areas, considering the nature of scattered population, villages that have a population of 250 or above will be connected by the scheme.

- **The National Social Assistance Programme (NSAP)**

The NSAP was launched in 1995. It consists of 3 programmes [1] the National Old Age Pension Scheme (NOAPS), [2] the National Family Benefit Scheme (NFBS) and [3] the National Maternity Benefit Scheme (NMBS). This address some aspects of welfare measures refer to in the article 41 of the Directive Principles: "The State shall provide right to work, right to education and public assistance in case of unemployment, old age, sickness and disablement, etc.

> **Stop to Consider**
>
> **Some of the important schemes under National Social Assistance Programme**
>
> **[a] National Old Age Pension Scheme (NOAPS)**: As the name indicates, the objective of the scheme is to provide a monthly pension of Rs.75 for the destitute above 65 years of old, having little or no regular means of subsistence from his/ her own sources of income or through financial support from family members or other sources. The pension amount was enhanced to Rs.200 per month per beneficiary in 2006-07.
>
> **[b] National Family Benefit Scheme (NFBS):** This scheme is to provide an amount of Rs. 5000 in case of the natural death of the main bread earner or Rs. 10000/- if it is an accidental death. The person, she/he should be primary bread earner whose earning contributed substantially to the household income and should be in the age group of 18 to 64 years.
>
> **[c] National Maternity Benefit Scheme (NMBS)**: The scheme provides assistance of Rs.300 to pregnant women who live Below Poverty Line ((BPL- according to the criteria prescribed by Government of India.), up to first two live births. The National Maternity Benefit Scheme is being implemented by the Department of Family Welfare

- **Indira Awaas Yojana (IAY)**

IAY is a rural housing scheme that was launched in 1996 to provide shelter to the people under BPL. The scheme has its roots in National Rural

Employment Programme (NREP) of 1980 and the Rural Landless Employment Guarantee Programme (RLEGP) of 1983. Construction of houses was one of the major activities under these schemes. The objective of the Indira Awaas Yojana is primarily to help construction/up-gradation of dwelling units of members of Scheduled Castes/Scheduled Tribes, freed bonded labourers and other below the poverty line non-SC/ST rural house holds by providing them a lump sum financial assistance.

In this, there is a grant of Rs. 20,000/- for the construction of a house. (It is Rs. 22,000/- in hilly/difficult areas). Similarly, there is a grant of Rs. 10,000 for the up-gradation of a unit from a *kutcha* house into in *pucca* house. IAY is a Centrally Sponsored Scheme funded on cost sharing basis between the Government of India and the respective state government in the ratio of 75:25. The scheme is implemented through the District Rural Development Agency (DRDA).

- **Sampoorna Grameen Rozgar Yojana (SGRY)**

The SGRY was launched in 2001 merging two existing schemes- the Jawahar Gram Samridhi Yojana and Employment Assurance Scheme. The objectives of the Programme is to provide additional wage employment in the rural areas as also food security, alongside the creation of durable community, social and economic infrastructure in the rural areas. The programme is self-targetting in nature with special emphasis to provide wage employment to women, Scheduled Castes, Scheduled Tribes and parents of children withdrawn from hazardous occupations. An annual outlay of Rs.10,000 crores was provided under the Scheme which include 50 lakh tonnes of food grains amounting to Rs.5,000 crores (at economic cost) provided every year free of cost to the State Governments and Union Territory. The remaining funds will be utilized to meet the cash component of wages and the material cost. Under the Scheme, about 100 crores mandays of wage-employment are envisaged to be generated

- **Annapurna Scheme**

Annapurna Scheme was launched in 2000. The objective of the scheme is to provide food security to meet the requirement of those persons above

65 years of old and no known source of income and was not covered under the National Old Age Pension Scheme. Under the Scheme, the beneficiaries are provided with 10 kgs of food grains per month at free of cost. The National Social Assistance Programme and Annapurna schemes were transferred to the State Plans from the year 2002-03. The funds for the operation of these schemes are released as Additional Central Assistance (ACA) to the States by the Ministry of Finance. The States/Union Territories have the discretion to decide on the implementation of these welfare schemes– only NOAPS(National Old Age Pension Scheme) or all NFBS (National Family Benefit Scheme) or Annapurna alone or taking up one or two or all of the three schemes or in any another combination in accordance with their own priorities and needs.

- **National Rural Employment Guarantee Scheme (NREGS)**

The National Rural Employment Guarantee Act was passed in 2005 and this was a positive intervention on the basis of Directive Principle (Article-41) - right to work. NREGS guarantees work, for the rural poor, on demand. The Act came into force in February 2, 2006. This programme tries to directly touch the lives of the poor and promotes inclusive growth. The Act aims at enhancing livelihood security of households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. The Act mainly aims at augmenting wage employment. Again, it tries to strengthen natural resource management through works that address causes of chronic poverty like drought, deforestation and soil erosion and so encourage sustainable development. The programme was to be implemented through different phases as it has a massive target. The first phase covered 200 most backward districts out of 604 districts in the country. The scheme was implemented in additional 130 districts in the phase II (2007-08). And due to the popular demand, in phase III, the scheme was extended to the remaining 274 rural districts from April 1, 2008.

- **The Drought Prone Areas Programme (DPAP)**

The DPAP was launched in 1994. The basic objective of the programme is to minimise the negative effects of drought on production of crops and livestock and productivity of land, water and human resources. It further seeks to promote the overall economic development and improve the socio-economic conditions of the resource poor and disadvantaged sections inhabiting the programme areas.

The community has a major role to play in this programme as this was planned to run by the participation of the community and also the community has to contribute for the maintenance of the assets created under this programme. The villagers will form watershed associations and committees among themselves and the government will impart training and provide technical support through project implementation agencies. The village panchayat will do the social auditing at time to time also maintain the assets.

Check Your Progress:

1. What is the importance of Directive Principles of State Policy?
2. What are the important writs?
3. What are the important rural development schemes?

2.7 Summing up

After reading this unit you have learnt some of the important provisions of the constitution, relating to the concepts of Rule of law, Fundamental Rights, Directive Principles of State policy. You are now in a position to distinguish between the Fundamental Rights and Directive Principles of State Policies. More importantly, the unit also discussed the developmental responsibility of the State Power in concurrence with the Directive Principles and the limitations of the State Power when it comes to confront with the Fundamental Rights. From this unit you have also learnt the role of Judiciary as a mechanism of checking the State power and ensuring constitutional rule.

Finally, various Development Programmes, especially Rural Development Schemes/Programmes, of the Indian State also were discussed briefly which help you to analyse critically the implementation of Directive Principle by the government for establishing a Welfare State in India.

2.9 References and Suggested Readings

Bakshi, P.M. *The Constitution of India*. Universal Law Publishing Co, 2009

Austin, Granville. *Working A Democratic Constitution: A History of the Indian Experience*. New Delhi, 1999

Chandra, Bipan et al., *India After Independence*. New Delhi, 1999

Website:

Ministry of Rural Development, Government of India www.rural.nic.in

* * *

Unit 3

Socio Economic Foundation and Ideological Bases of the Indian State

Contents:

3.1 Introduction

3.2 Objectives

3.3 Class, Caste and Gender basis of the Indian State

3.3.1 Caste and Class

3.3.2 Gender

3.4 The Oppressed Classes: The Policy of Representation in Indian State

3.4.1 History of the Practice of Policy of Representation

3.4.2 Reservations for the Oppressed Classes

3.5 Ideology of the State and Its Challenges

3.5.1 Nationalism and National Security

3.5.2 Developmentalism and Secularism

3.6 Summing up

3.8 References and Suggested Readings

3.1 Introduction

In India, caste, class and gender continue to be the important categories leading to grave social inequities in the modern world. The Indian society, as we all know, is a plural society with diversities and differences. The framers of the Indian Constitution made various provisions for bringing equality in the society. However, it is undeniable that the task of democratization of Indian society is incomplete as caste and gender discrimination continue to cause grave harm. To elaborate, we can take the example of the Adivasis, Dalits and women who face the trials and tribulations even today.

This unit will help you understand India's history of social relations and the process of how social relations are shaped in a certain way. The unit aims to help you to understand how the social ills have become important factors in propagating inequality in the modern world. It will facilitate the growth of alternative viewpoints not only in the realm of religious practice but also in the context of the norms of structuring the society.

3.2 Objectives

The Indian society is mainly stratified on the basis of caste. Originally caste was a occupational division which ultimately became hierarchical division which resulted in inequalities in Indian society. After reading this unit, you will be able to:

- *explain* the durability of caste system and the interconnections between caste and class and their consequences
- *analyse* the reservation policy for the oppressed classes and their effects
- *identify* the challenges to national security from the perspective of Hindu nationalism
- *examine* the challenges to secularism from a development perspective

3.3 Class, Caste and Gender basis of the Indian State

As mentioned earlier, caste is a very important basis of social stratification in India. Besides caste, class and gender also have significant role in the social order in India. Many social scientists have regarded caste system as one of the significant social ills of India. During the colonial period, the British took it as a point to criticise Indian social system and exaggerate the democratic character of their own societies. Many social reformers have fought against the practice of caste system, but no one has succeeded to eradicate it. Historians believe the notion that caste divisions in society are uniquely Indian feature and Indian society which can be traced back to the writing of the *Manusmriti* provides formal sanction to such social inequities.

Though, caste system was present from earlier time in Indian society, caste and gender discrimination appear to become more pronounced with the advent of hereditary and authoritarian ruling dynasties, a powerful state bureaucracy, the growth of selective property rights, and the domination of Brahmins over the rural poor in villages. It is experienced that the levels and degree of caste discrimination in India have undergone variation with time and there has been both upward and downward mobility of castes and social groups. Going by the structures outlined in the *Manusmriti,* we may conclude that caste distinctions are set in stone, rigidly enforced with the possibilities of caste mobility completely circumscribed. It is important to understand the different expressions based on these differences in a democratic system.

Stop to Consider

Role of Gandhi and Ambedkar in Abolishing the Caste System-

Dr Bhim Rao Ambedkar who was born in an 'untouchable' community called 'Mahar' in Maharashtra took a leading role in promoting the welfare of the untouchable castes and elevating their status. Ambedkar started the self-respect movement through which he wanted to instil the ideas of self- dignity, self-confidence and self- respect in the minds of the untouchables. He also established an institution called the 'Bahiskrita Hitakarini Sabha' which added momentum to this movement.

Gandhi also wanted to remove the evil of untouchability from the Indian society. He called the untouchables as '*Harijan'* meaning 'people of God'. As a servant of mankind, he preaches that all human beings are equal and hence the *harijans* too have a right for social life along with other caste groups. He advocated positive means for the upliftment of *harijans* and addressed various public meetings advocating the doctrine of Harijan welfare.

But the basic difference between Gandhi and Ambedkar regarding the caste system is that while Ambedkar wants total eradication of caste system from the Hindu society, Gandhi, on the other hand wants to reinstate the four fold Varna system and include the untouchables in the Sudra fold.

3.3.1 Caste and Class

We have already learnt that caste based discrimination and oppression has been a feature of Indian society for a long time. In the post-independence period, adoption of secular and modern democratic constitution has made it possible for hitherto oppressed caste-groups to be accorded political freedom. In India, members of some caste are supposed to form a social community that practiced same or similar occupation. Thus caste is mainly an occupational division. It further develops as endogamous groups where marriage within the same caste group is advised. It leads to the exclusion of and discrimination against the odd caste groups and encourages the inhuman practice of untouchability.

Many argue that the institution of caste as a hierarchy based on exploitation comes into existence only when classes based on appropriation of surplus and on exploitation emerge. By implication, class oppression comes before caste oppression; in fact the latter derives from the former. We cannot gain access to the pure category of class in isolation without paying attention to the operation of caste in our context. Even a cursory glance at modern Indian history will reveal that caste and class struggles seldom oppose one another but are closely interlinked making it difficult for us to view them as completely separate entities or even categories of analysis.

It needs to be mentioned here that casteism is laid on the foundation of the belief that caste is the sole basis of social community. The caste system which is based on the notions of purity and pollution, hierarchy and difference, has been oppressive towards the Sudra and the outcastes who suffered the stigma of ritual impurity and lived in abject poverty, illiteracy and denial of political power.

We should remember here that in the post-independence period, the provision of protective discrimination has led to the origin of confrontational identity politics based on caste. This group identity based on caste that has been reinforced by the emergence of political consciousness around caste identities is institutionalised by the caste-based political parties. During the colonial

period many social reformers like B.R. Ambedkar and Mahatma Gandhi, fought against such caste inequalities.

Over the years, it has been experienced that caste has become an important determinant in Indian society and politics. The increase of caste consciousness among different caste groups has transformed the contours of Indian politics where shifting caste-class alliances are being encountered. The mobilisations along caste-identities have resulted not only in the empowerment of newly emerging classes but has also increased the intensity of confrontational politics possibly leading to a growing crisis of governance.

Besides caste, there are several autonomous social categories such as, gender, community and religious identities and class to influence the contours of Indian society. The need to try to find out the inter-connections between these identities is felt as they overlap each other. The privileged castes get the opportunity to form the privileged class in the Indian society. Similarly, those belonging to the lower strata in the caste hierarchy form the oppressed and depressed classes. Now let us discuss the gender basis of Indian state.

Stop to Consider:

Difference between Caste and Class

Caste and class represent the two main forms of social stratification. They can be distinguished on the following grounds-

In the caste system, the status is ascribed to the individuals by birth whereas in the class system, status is achieved by the individuals.

Caste is a closed system as it restricts social mobility. On the other hand, class system permits social mobility and therefore it is an open system.

The caste ridden system tends to become conservative, orthodox and reactionary. But the class system is regarded as more progressive.

It is believed that the caste system has a divine origin. The class system on the other hand is secular.

The idea of purity and impurity is associated with the caste system. But there is no such concept in class system. Hence unlike the caste system, there is no practice of untouchability in the class system.

SAQ

Explain the system of class stratification of Indian society (80 words).

. . . .

. . . .

. . . .

. . . .

3.3.2 Gender

After reading the above sections, we already know that Indian society is a traditional and hierarchical social structure based on caste, community, and class. It has fostered numerous inequalities which affect both men and women. The social relation of gender is part of a historical inheritance. It is not based on biological facts but on social expectations and age-old stereotypes. Consequently, Feminist movements are triggered as a reaction against the age-old stereotypes and aim at equality in personal and family lives of women as it demands equal opportunities for woman and man. They challenge the existing patriarchal structures and systems.

The practice of patriarchy in Indian society is widespread and when we look back at the history of Indian society we find that most of the time women are encouraged to remain confined to the four walls of their houses. The social reformers have made some efforts to uplift the condition of women through their movements. However, it meets with little success and majority of women in Indian society are subjected to various restrictions. After independence also women's rights have been increasingly subjected to social and religious oppression to such an extent that they are unable to avail of the minimum protection given to them under existing secular civil and criminal laws. Here we can cite the examples of the revival of *sati*, witch hunting in rural areas, the resistance to the prohibition of dowry and a woman's right to maintenance. In fact crimes against women start before their birth with the practice of female foeticide. Other crimes affecting all the classes include female infanticide, rape, dowry, murder and child prostitution. The reasons

behind the increase in crime against women can be traced to the growth of consumerism, religious revivalism, and the hardening of feudal, sexist, and patriarchal values in society. In the media-the cinema and TV mainly, women are portrayed either as powerless commodities or parasitical consumers.

It is often said that the progress of a country is judged from the condition of the women of that country, and the progress of any nation will remain incomplete without women empowerment. Though changes are slowly taking place, India has still a long way to go in this context.

3.4 The Oppressed Classes: The Policy of Representation in Indian State

After the above discussion it is clear to us that caste system has led to the establishment of inequalities in Indian society. Therefore, the framers of the Constitution have taken certain measures for the upliftment of backward communities in the form of the policy of reservation. We should remember here that in Indian law reservation is a term used to describe policies whereby a portion of job positions, or college seats are set aside or *reserved* for a given group. It is often mistaken for affirmative action which is a related form of egalitarianism practised in many other countries. Again, it needs to be mentioned that reservation system in India is based on statutory quota. Reservations in India have traditionally been applied only in case of government aided educational institutions, and for jobs in the government or public sector. Currently there is an ongoing debate to expand the scope of affirmative action in India to the private sector.

The purpose of reservations in India resembles the practice of affirmative action in other countries. Reservations are intended to increase the social diversity in campuses and work places by lowering the entry criteria for certain identifiable groups who are grossly under-represented in proportion to their numbers in general population.

3.4.1 History of the Politics of Representation

If we analyse the history of India, it is found that for a long time the people of India are practicing a form of social hierarchy called the caste system. After six decades of independence and adoption of new Constitution, India is still divided into many endogamous groups or castes and sub-castes. The traditional caste system, as it is practised, leads to severe oppression and segregation of the lower castes and limits their access to various freedoms including education. Caste, according to ancient scriptures such as *Manusmriti*, is "Varnasrama Dharma", which is translated as "offices given according to colour". It is believed to be an occupational division which ultimately becomes very rigid making it difficult for a person to move from one class to another.

We have already learnt that during the British rule in India efforts were started with the aim of undoing centuries of oppression to the lower castes. In 1942, B.R. Ambedkar established the All India Depressed Classes Federation to support the advancement of the Scheduled Castes. He also demanded reservations for the Scheduled Castes in government services and education. After India attained independence, Dr. B. R. Ambedkar was appointed as the Chairman of the Drafting Committee for the Indian Constitution. The Indian Constitution prohibits any discrimination based on religion, race, caste sex and place and includes safeguards for depressed and other backward classes. But, while providing equality of opportunity for all citizens, the Constitution also contains special clauses to ensure reservation, "for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".

It is worth mentioning here that the Constitution initially requires the reservation of seats in state legislatures to end after 10 years. However, the Indian reservation system has been continuing till date, and applies to higher education and legislative office. Currently, 22.5% of the seats in higher education institutes under the central government are reserved for Scheduled Castes and Scheduled Tribes. In 1979, the government appoints the Mandal

Commission to assess the situation of the socially and educationally backward.

It should be noted that students from the reserved category are allowed to compete with students from the general category on merit as well. Since the implementation of Mandal report recommendations in 1990 for government jobs, the number of backward communities have grown due to continuous incorporation by various state governments. As of 2006, 2297 communities are listed as backward, which shows an increase of more than 90% from 1991. Moreover, no community has ever been removed from the list despite the progress made. A proposal to increase the reservation for backward groups in universities to 49.5% to include OBCs in all central government institutes of higher education in 2006 has resulted in controversy and protests by people from various sections of urban society.

SAQ

Critically discuss the constitutional provisions made for the upliftment of Indian women (80 words)

. . . .

. . . .

. . . .

. . . .

3.4.2 Reservation for the Oppressed Classes

We have already learnt that in a plural society such as India, the state generally faces demands from various castes, tribal, religious and gender groups for social justice. Amongst such groups, the Scheduled Castes and Scheduled Tribes (SCs & STs) are treated as deserving cases for historical reasons. In the following section four such categories namely, the SCs & STs, the Other Backward Classes (OBCs), the minorities, and women and the representation policies followed by the government of India are discussed.

Scheduled Castes and Tribes

To give protections to the Scheduled Castes and Tribes, the depressed classes mandated by the Constitution, Indian Parliament has passed two major laws. At first, The Untouchability (Offences) Act of 1955 (renamed as the Protection of Civil Rights Act in 1976) was intended to provide enforcement of Article 17 of the Constitution, outlawing untouchability.

Again, The Constitution of independent India that came into force made provisions for reservations in favour of the Scheduled Castes and Scheduled Tribes (SCs & STs) which constituted about 23% of the divided India's population. Besides reserving parliamentary seats for them, they were given advantages in terms of admission to schools and colleges, jobs in the public sector, various pecuniary benefits for their overall development, and so on. Moreover, the fundamental right of equality of all citizens before the law guaranteed by the Constitution lays down that nothing in the Constitution "shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedules Castes and the Scheduled Tribes".

We should remember here that a 1974 Government order has laid down that all such bodies which employ more than 20 people, and where 50% of the recurring expenditure is met out of grants-in-aid from the central government, and which receives annual grants-in-aid of at least Rs.200,000 should invariably provide for reservation of SCs and STs in various posts and services.

Stop to Consider

Protective Discrimination

Protective discrimination is one of the ways in which government attempts to deal with the problems confronting the dalits. There are several constitutional and other legal provisions which remove discrimination against untouchables and grant them the same rights as other citizens. Again, some benefits make only Scheduled Castes eligible for them and make other persons ineligible. To

elaborate, we can take the example of scholarship, loans and grants etc. Presenting certain certificates that the applicant belongs to one of the castes on the Schedule enable him to get the benefit but make non- members ineligible. Because of this protective character, the practice is called the 'protective discrimination'.

Other Backward Classes

Unlike the SC/ST there was no clear thinking about the backward classes in the pre-independence period. Yet in provinces such as Bombay, Madras and Mysore there was some reservation of jobs and seats for them in the field of education. After independence, Articles 15(4) and 16(4) of the Constitution did make some reference to them but no special provision was made for their upliftment.

In the 1970s and 1980s, however, the backward caste movements gathered momentum in several parts of India and a number of castes such as the Yadavs, Kurmis, Koiris, Vokkaligas, emerged as important political forces. Arguing that their lot was even worse than that of the SC/ST as they constituted 52% of the population while they accounted for only 4.69% of the Central Government jobs, they launched political agitation in the name of the OBCs (Other Backward Castes). It was against this background that the Second Backward Classes Commission was set up in 1978 under the chairmanship of B P Mandal. Popularly known as the Mandal Commission and its report was submitted on 31 December 1980.The report pinpointed social disabilities they confronted and their economic, social and educational backwardness.

For the upliftment of the OBCs the Mandal Report recommended a number of reforms including structural changes in oppressive production relations. But the most important and controversial recommendation was that 27% of jobs in government and public enterprises should be reserved for the OBCs. The report also specified the exact scheme and procedures to be followed to implement this recommendation:

- Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%.
- The above reservation should also be made applicable to promotion quota at all levels.
- Reserved quota remaining unfulfilled should be carried forward for a period of three years and de-reserved thereafter.
- Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner as for SC and ST members.
- A roster system should be maintained for the OBCs in the same manner as for SC and ST candidates.

The rationale behind the 27% formula was that since 22.5% reservation had already been made in favour of the SC/ST (in direct proportion to their number) and since the Supreme Court rulings had prescribed that the reservations should remain below 50%, it was not possible to reserve 52% of seats for the OBCs in direct proportion to their number. The government promulgation provided for a 27% quota in government jobs for people belonging to the OBC category. Implementation of the report led to violent protests from the upper castes and eventually resulted in the fall of the V P Singh government. But the movement has continued and at present no political party finds it possible to dissociate itself from the recommendations of the Mandal Report.

Reservations for Minorities

Lately, a new controversy has been added to the reservation debate with the demands from sections of the minorities for their inclusion in the category of affirmative action beneficiaries. The issue is politically sensitive and BJP, the principal opposition party in the Parliament is not in favour of this. While the policy of reservation for SCs and STs is enshrined in the Constitution

and reservations for the OBCs have gained political support over the years, the question of reservations on the basis of religious identity remains very controversial and generally leads to acrimony. As a self-proclaimed secular state India shows equal respect to all religions, or maintains an equal distance from all religions.

We should remember here that Hinduism as understood in India's constitutional parlance includes Sikhs, Buddhists and Jains. Therefore, the SCs belonging to these communities should have been granted the quota benefits as done in respect of Hindu SCs. But it was not the case to start with. In 1950 a Presidential Order made under Article 341 of the Constitution had declared that "no person who professes a religion different from Hinduism shall be deemed to be a member of a Scheduled Caste." In 1956 the Sikh religion was included with Hinduism as part of this order. Thus the Sikh SCs (Mazhabi and Ramdasias Sikhs) emerged. So far as the Buddhist SCs were concerned, they were granted limited benefits in UP and Maharashtra only till 1990 when this anomaly was rectified and they were brought at par with the Hindu SCs. So far as the Jain SCs are concerned they are either non-existent or are too minuscule to make any political demand in their favour.

In the contemporary scenario, "No scheme for minorities below the poverty line is being implemented in the country." Still, there is a standing instruction of the Government of India "to all the Ministries/Departments of Government of India that whenever a Selection Committee/Board exists or has to be constituted for making recruitment to 10 or more vacancies in Group C or Group D posts/services, it shall be mandatory to have one member belonging to SC/ST and one member belonging to minority community in such Committees/Boards. Where, however, the number of vacancies against which selection is to be made is less than 10; no effort should be spared in finding a Scheduled Caste/ Scheduled Tribes officer and a minority community officer for inclusion in such Committees/Boards.

Reservation for Women

We have already learnt that women are dominated by man for centuries. However, there are instances of women playing very important role in India's freedom struggle and they always regarded themselves as equals of their male counterparts. Even after independence it took many years for the demand for women's rights to crystallise. In the early 1960s the United Nations had asked member nations to "prepare reports on women's status." India responded to it only in the early 1970s, when the UN decided to observe 1975 as the International Year of Women. Prime Minister Indira Gandhi nominated the veteran freedom fighter from West Bengal Phulrenu Guha to prepare a report on the Status of Women in India. The report titled, *Toward Equality,* which includes 480 pages and is frequently termed as the "founding text "in feminist circles was tabled in Parliament in 1975.

In this context it needs to be mentioned here that neither the Kalelkar nor the Mandal commissions had a female member. Therefore, it did not represent the women as an underprivileged social category may have emerged. For the last couple of decades, primarily on account of the activities of women's organisations, considerable social consciousness has developed in favour of feminist demands. Sensitivity to the issue is manifest in the way cabinets or the working committees of different political parties are composed.

It is worth remembering that the United Front government, in keeping with its Common Minimum Programme has tabled the Constitution (81st Amendment) Bill (popularly known as Women's Reservation Bill) providing for reservation of one-third of the seats in the Lok Sabha and state assemblies for women. We know that already at the *panchayat* level 33% of seats are reserved for the women in India. Eversince the Bill was tabled, it raised a huge controversy in Indian politics. While on the one hand the women activists themselves are divided about its efficacy, it has vertically split the movement between depressed class women and those champions of the bill who see it primarily as one for gender justice.

Stop to Consider

Arguments against the Women's Bill

Several arguments were given against the Women's Bill. They are:

Political parties are talking in favour of Women's Bill only to appease and entice their voters.

It has been argued that no decisive transformation can take place unless such a measure is accompanied by structural changes in the nation's productive relations.

Our country is already divided in various groups. Women's Bill will further divide the population artificially.

It will affect the efficiency and working of the parliament as the women members are not active.

Women in parliament will take interest in women's problems only.

Reservation will generate conflicts and tensions.

Reservation Policy and the Inherent Contradictions

While discussing the policy of positive discrimination and reservation policy it is already said that these are meant for helping the marginalised groups to progress in the society. Now the fundamental question is how far the quotas and other privileges have helped the target groups. Whatever progress has been registered by the depressed classes it is more or less proportionate to the overall progress achieved by the nation. Since there is a separate provision for their upliftment, they should have shown a visibly better record, but this has not happened. In a country like India where poverty, illiteracy and deprivation are so widespread, it is a questionable proposition to think in terms of upliftment for particular social groups, that too by emphasising reservations alone. According to estimates only 6% of the SC families have benefited from the policy. It must, however, be admitted that even this small number has thrown up leadership for the community to bargain for the larger interests of the community at large. Moreover, it is also observed that the benefits of such policies are enjoyed by the elites of such depressed communities.

One common criticism against the reservation policy is that it has benefited only a small section of them. In India the process is on and only the future would tell whether its experiments were in the right direction or not. Usually, social categories are neither static nor monolithic. But in India the hierarchical stratifications have by and large survived for centuries and they continue to be politically relevant. In the given situation the policy of reservation seems to continue for an indefinite period, at least for the SC/STs.

The real challenge for the state should be to make the disadvantaged groups competitive through raising their standards so as to let them be at par with those groups traditionally enjoying higher social status. Change in the dynamics of power and coming of the disadvantaged to the fore of politics will help in changing the scenario to a large extent.

Regarding the implementation of the policy, the role of the state has to be examined. We all know that Indian society is plural and heterogeneous society. It has witnessed different violent and conflicting situations. To establish order state has used its enormous military power, both during the Mughals and the British period. The apologists for state power argue in favour of a militaristic role of the state to maintain societal order while the champions of civil society put the blame squarely on the state for the growing violence in the society. There is a need to examine this situation as well as the role of reservation policy in establishing equality in the society.

Check your progress

1. Discuss the reservation policy adopted by our policy makers for various oppressed groups.

2. Despite reservation there has been marginal improvement in the status of the oppressed groups. Explain.

3. What is the status of women in Indian politics after reservation?

3.5 Ideology of the State and Its Challenges

The ideological base of the Indian state was formulated at the time of independence like secularism, parliamentary democracy, Westminster model, egalitarian social order and basic liberties. There was no lack of consensus over these organizing principles of the Indian state.

The recent re-emergence of religion as an important political force constitutes a real challenge to the organizing ideology of the Indian state. In addition, a number of secessionist and the so-called revolutionary movements are operating in India today. Their goal could be to overthrow the government and bring about revolutionary changes in the structure and functioning of the state, or even secession from the Indian Union.

Ever since independence, India has been facing all types of violent conflicts based on religion, caste, language, ethnicity and regional loyalties.

3.5.1 Nationalism and National Security

Nationalism has emerged as a powerful force in the post-Cold War world. Far from the *End of History* as presaged by Francis Fukuyama, there has been a return to history in gory detail. The end of the Cold War restored a multi-polar world increasingly driven by nationalist rivalries. Thus nationalism has re-emerged as a critical factor in restructuring the international political scene in the post-Cold War era. Understanding the dynamics of nationalism will remain critical to regional security affairs. Security is a central concept in the theory and praxis not only of international relations but of local, inter-local and trans-local relations. Insecurities and the objects that suffer from insecurities are mutually constituted.

In both pre and post independent period, it has been observed that security is linked closely with identity politics in India. This can be illustrated through the case of Hindutva's politics of representation. Such crisis has arisen because of the growth of various fundamentalist parties and philosophies. It is seen as a threat to national, state and international security.

As mentioned earlier, India is a plural society and different linguistic and religious groups have been living here for centuries. Increase of communal feeling is always a danger to this society. The promotion of Hindu nationalism as a legitimate political and cultural force has consequences on the lives of India's lower castes and religious minorities. The country is also witnessing rise of Islamic militancy in India. The government's response to terrorism, in India and the world over, will also continue to ensnare many innocent civilians or dissenting citizens in its wake. Violence against Christians in 1998, against Muslims in Bombay in 1992 and 1993 or Gujarat in 2002, and in countless places before and in between these defining communal events, is easily depicted as riots posing security challenges to the country.

The need of the hour is to avoid these communal riots in the country and to establish peace. For that mobilization of civil society is necessary who can silence the dissent in the name of defending national security. The secular fabric is, however, beginning to tear, and its impact is being felt across borders. In a region prone to conflict, where military options are increasingly exercised in consultation with the religious right, the rise of fundamentalism and narrow nationalism cannot be ignored.

3.5.2 Developmentalism and Secularism

In the common parlance, the holistic commitment to economic improvement can be termed *developmentalism*, or the 'strengthening of the nation through economic growth attained by industrialization. Not only it features active government intervention to promote top-down industrialisation; it also entails crisis management by a strong state to deal with various domestic and international crises. As such, government intervention in the market economy was tolerated and accepted in the long run. In terms of the formation of the developmental state and its capacity to intervene, it is found that the state has adapted to an increasingly globalised world.

Secular concerns, it came to be argued, are of this world, and religion which is concerned with the unknown world was to be kept away from

this. However, this did not necessarily imply a hostile relationship between the two, only that both are exclusive. In sharp contrast with this position is the one that sees religion and secularism as being fundamentally opposed to one another, in the sense that the continued presence of religion in a society indicates its backwardness and that ultimately, human progress and prosperity, and the creation of a truly egalitarian society is possible only in the absence of religion. In India, secularism is popularly understood as the best philosophy that would enable people belonging to diverse religious backgrounds to live together in a harmonious manner, and create a state that would accord the same degree of respect and freedom to all religions.

We have discussed in the above that the secular state, its structures and secular politics itself are today severely challenged by the growing forces of communalism that has its roots in various social, political, historical, and economic. Uneven capitalist development has actually heightened the social problems widening the gap between the rich and the poor. Given the limited nature of opportunities that are available, politics and ideology promoting narrow and exclusivist interests direct this social tension against the minorities. Asish Nandy suggests that secularism as an ideology has failed because it is seen today as being a part of a larger package that consists of a set of standardised ideological products and social processes like development, mega science and national security.

Therefore, it can be said that though the Constitution of India describes India to be a secular state, in practice much is to be achieved in this regard. It also needs mention here that this type of secularism has been imposed on a people who never wished to separate religion from politics. This imposition had to be made as part of the requirements needed to fulfil the creation of a modem nation-state. However, historically also we have found existence of different religions in India and more importantly it has witnessed the emergence of new religions in the country. The people have been living with religious tolerance and therefore, it is believed that in the coming future ignoring all the differences and narrow nationalism India will emerge as a strong and united nation.

Check Your Progress:

1. Discuss briefly the strategy to fight against the communal challenges threatening our country today.

2. Discuss how has our national security come to be threatened by the rise of nationalism.

Answer in single sentences:

a. What is nationalism?

b. What is secularism?

c. Which article in the Constitution promotes secularism?

3.6 Summing up

After reading this unit, you are now in a position to understand that class, caste and gender provides the basis of social stratification in Indian society. These also provide the basis for the emergence of grave inequalities in the society. The four fold-division of caste and the system of untouchability existing in Indian society has created the problem of exclusion and discrimination. You have also learnt that in India, most of the times caste and class overlaps each other. The existence of caste has also led to the emergence of confrontational identity politics. It is also associated with the provision of protective discrimination ensured by the Indian Constitution. You have also learnt that though the constitution provides for reservation of backward communities for their upliftment and some measures have also been taken for the reservation of women, particularly in the political field, these groups continue to be suppressed.

This unit has also helped you in understanding the fact that India in recent decades has witnessed a number of causes of growing tensions in the polity with the rise of threat to secularism from development discourse and rise of communalism and nationalistic threat to security. These tensions are growing in such proportion that the unity of India appears to be threatened. The need of the hour is to have tolerant policies and attitudes. The government,

the political parties, and Indian citizens all must play their effective role in the fight against these challenges.

3.8 References and Suggested Readings

Subramanium, Garimella. "The Women's Bill," *The Hindu,* 30 August, 1997

Bayly, Susan. *Caste, Society and Politics in India*. Cambridge: Cambridge University Press, 1999

Niranjana, Tejaswini. "Class, Caste and Reservations" *Economic and Political Weekly*, Vol. 25, No. 46 (Nov. 17)

Bhargava, Rajeev (ed.). *Secularism and its Critics*. New Delhi: Oxford University Press, 1998

Ganguly, Sumit & Neil DeVotta (Ed). *Understanding Contemporary India,*

USA: Lynne Rienner Publishers, 2003

* * *

PS-05-III (2)

Institute of Distance and Open Learning
Gauhati University

MA in Political Science

Paper III
Politics in India (1)

Block 2
Parliamentary Democracy in India

Contents:

Block Introduction–

Unit 1 : President and Council of Ministers

Unit 2 : Indian Parliament: Rajya Sabha and Lok Sabha

Unit 3 : Issues of Accountability in India's Parliamentary Democracy

Contributors:

Chayanika Sarma (Unit 1)	:	Counsellor in Political Science IDOL, GU
Dipankar Saikia (Unit 2)	:	Counsellor in Political Science IDOL, GU
Rumi Roy (Unit 3)	:	Research Scholar JNU, New Delhi

Course Co-ordination

Dr. Kandarpa Das	:	Director IDOL,GU
Barnalee Choudhury	:	Lecturer in Political Science IDOL, GU

Editorial Team

Content Editing	:	Barnalee Choudhury Lecturer in Political Science IDOL, GU
Format Editing	:	Prasenjit Das Editor in Charge IDOL, GU
Language Editing	:	Sanghamitra De Lecturer in English IDOL, GU

Cover Page Designing:

Kaushik Sarma	:	Graphic Designer CET, IITG

June, 2010

© Institute of Distance and Open Learning, Gauhati University. All rights reserved. No part of this work may be reproduced in any form, by mimeograph or any other means, without permission in writing from the Institute of Distance and Open Learning, Gauhati University. Further information about the Institute of Distance and Open Learning, Gauhati University courses may be obtained from the University's office at BKB Auditorium (1st floor), Gauhati University, Guwahati-14. Published on behalf of the Institute of Distance and Open Learning, Gauhati University by Dr. Kandarpa Das, Director and printed at Maliyata Offset Press, Mirza. Copies printed 1000.

Acknowledgement

The Institute of Distance and Open Learning, Gauhati University duly acknowledges the financial assistance from the Distance Education Council, IGNOU, New Delhi for preparation of this material.

Block Introduction:

After attaining independence, India adopted the parliamentary form of government with the President as the constitutional or titular head and the Prime Minister and his cabinet as the real executive of the nation. It is pertinent to mention here that Parliamentary democracy stands for a system where political power is exercised by an elected parliament representing the people. In this system of government, the executive is responsible to the parliament and the executive and legislature are not independent of each other; instead the executive is a part of the legislature. Indian Constitution provides the basic structure of Indian Parliament. Indian Parliament consists of the President and two Houses viz. House of States (known as Upper House), which represents the Indian states and House of People (Lower House or Popular Chamber) represents the entire people of India. President of India plays an important role in the parliamentary affairs. However he is not a member of either House of the Parliament, but he has the power to address in the sessions of the Parliament. We all know that in Parliamentary Democracy, the Parliament make laws for the country. To implement any law made by the Parliament the assent of the President is must. However, the Parliament is the pivotal institution of India's representative democratic polity. Our executive body is responsible specially to the Lower House.

Thus, this block is an attempt to introduce you to the dynamics of Indian Parliamentary system. Attempt is also made to introduce you with the President of India, who is the titular executive of the nation and his relationship with the real executive Prime Minister and his cabinet. Again due to the advancement of science and technology and the unprecedented growth in the range and magnitude of the governmental activities, the responsibilities of the Parliament have increased. In this block we shall discuss the issue of accountability and ministerial responsibility in the context of India.

Unit 1 deals with the constitutional framework of Parliamentary Democracy in India which brings active participation of all sections of people in the Politics. In India we have two kind of executives, one is the nominal (President of India) and the other is the real executive (Prime Minister and his cabinet). In this unit we shall also discuss the role and functions of the President, the constitutional head of the nation and his relation with the real executive i.e. the Prime Minister and his Cabinet as well as his role in the Parliament.

Unit 2 deals with constitutional settings of Indian parliament and its law-making functions. In this unit we shall discuss the composition of Indian Parliament. We all know that Indian Parliament is a constitutional body and consists of two Houses. It is the supreme law-making authority of the nation. In this unit we shall discuss the role and functions of each House of the Parliament and the legislative procedures in terms of Money and Ordinary Bill. In this unit, an attempt is made to explore the powers of each House separately and make a comparative study of the two Houses.

Unit 3 deals with issues of accountability in India's Parliamentary Democracy. Accountability is the hallmark of the success of Parliamentary Democracy. The concept of parliamentary accountability is based on the notion that as the highest representative organ of government, Parliament has the duty to check on the activities of the executive through various measures. In this unit we shall discuss the measures taken by the Parliament to check the activities of the government.

This Block contains three units:

Unit 1: President and Council of Ministers

Unit 2: Indian Parliament: Rajya Sabha and Lok Sabha

Unit 3: Issues of Accountability in India's Parliamentary Democracy

Unit 1
President and Council Of Ministers

Contents:

1.1 Introduction
1.2 Objectives
1.3 Constitutional Framework of Parliamentary Democracy in India
1.4 The Office of the President: Powers and Functions
1.4.1 The President of India
1.4.2 Powers and Functions of the President of India
1.5 Relationship between the President and the Council of Ministers: Issues and Conflicts
1.6 Role of the President in the Circumstances of Hung Parliament
1.7 Summing up
1.8 References and Suggested Readings

1.1 Introduction

Parliamentary democracy stands for a system where political power is held by an elected Parliament representing the people. In this system of government the executive is responsible to the Parliament and the executive and legislature are not independent of each other; instead the executive is a part of the legislature and therefore, unlike in a Presidential system, conflicts are less likely to arise between them.

India, after attaining independence has also adopted the system of Parliamentary democracy. In this unit we shall discuss the constitutional framework of Parliamentary democracy in India. This unit will also help you in understanding the relation between the President and the Council of Ministers. We shall also analyze the office of the President in terms of his powers and functions. Our aim is to focus on the issues of conflict between the President and the Council of Ministers as well as the role of President in case of a Hung parliament.

1.2 Objectives

Parliamentary democracy is one of the important factors of Indian constitution. This unit is an attempt to

- *examine* the constitutional framework of Parliamentary democracy in India.
- *discuss* the office of the President and his powers and functions.
- *analyse* the relation between President and Council Of Ministers.
- *explain* the role of the President in the circumstance of a hung Parliament.

1.3 Constitutional Framework of Parliamentary Democracy in India

The founding fathers of Indian constitution face the challenge of adopting a system of governance that will ensure the active participation of all sections of people. This system will also have to reflect and represent the diversity of India by meeting the challenges faced by a newly independent nation. After a purposive and elaborate debate among the national leaders, the country adopts a parliamentary democratic system.

The decision to adopt the parliamentary form of government in India is influenced by both historical considerations and practical necessities. The earliest seeds of parliamentary democracy in India are sown under the Charter Act of 1833. This Act has separated the legislature and the executive. Thereafter the parliamentary democracy in India continues to grow under various council Acts like the Act of 1861, 1892 and the Government of India Act of 1919 and 1935 which grant greater powers to the legislative councilors. The base of parliamentary democracy is widened in India with the introduction of the universal adult franchise. The framers of the Indian Constitution also realize that a vast country like India can be best governed only through democratic principles.

Like any other parliamentary form of government the President of India is the titular head. Article 52 lays down that there shall be a President of India.

Article 53 of the Indian constitution further emphasizes that the executive power of the Union shall be exercised by the President either directly or through officers subordinate to him. The President of India is not directly elected by the people. He is elected by an Electoral College composed of members of the both the Houses of the Parliament (excluding the nominated members) and State Legislative Assemblies. Article 74 lays down that there shall be Council of Ministers with the Prime Minister at the head to aid and advice the President. Thus these articles clearly provide for a constitutional framework of parliamentary democracy in India.

1.4 The Office of the President: Powers and Functions

The office of the Indian President is of utmost importance as he is the head of the state in India. Though his office is not as powerful as the office of the American President, during the emergency he acts as the real head of the government and his act helps us to assess the position of his office. Now let us discuss the office as well as the powers and functions of the Indian President.

1.4.1 The President of India

As mentioned earlier, the executive power of the union is vested in the President which is exercised by him either directly or through officers subordinates to him in accordance with the constitution. Article 54 of the Indian constitution provides for the election of the President of India. The candidates must fulfill certain conditions to get elected as the President of India. Article 58 of the constitution of India prescribes for these qualifications.

We must remember that Article 56 provides that the President shall hold office for a period of five years and article 52(1) clause (b) provides that he can be removed from the office by an impeachment. Article 61 provides for the manner of impeachment of the President of India.

Stop to consider

Qualification for the presidential candidate in India:

The candidate for the post of President of India-

- should be a citizen of India.
- should have completed 35 years of age.
- should hold qualification to be elected as a member of the House of the People.
- should not hold any office of profit in India or abroad.
- should not be a member of any State Legislature or Parliament. If he is so at the time of his election, it will be presumed that he has vacated the seat after assuming charge as the President of the Republic of India.

1.4.2 Powers and Functions of the President of India:

Now let us discuss the powers and functions of the President. The President of India has been given various powers under the Constitution of India. He is the head of the nation, but unlike his counterpart in America he is not the head of the government. As the Prime Minister of India acts as the real executive, the President is constitutionally bound to act according to the advice of his Council of Ministers. Again in India, there is a wide gap between the powers the president possesses and the powers he exercises. So, the powers of the President in the true sense are exercised by the Prime Minister and his Cabinet. But, under article 352 to 360 the President can act as the real executive of the nation. These powers are known as the Emergency Powers.

The powers of the President may be broadly classified under six heads, viz., (a) executive powers, (b) legislative powers, (c) financial powers, (d) judicial powers, (e) diplomatic powers and (f) emergency powers. Let us discuss these powers and functions in the following section.

A. Executive Power

Article 53(1) of the Indian constitution has vested enormous powers in the hands of the President. The President may exercise these powers either directly or through subordinate officers. The President is the executive head

of the state and all the executive orders and instructions are issued and executed in the name of the President.

We have already learnt that the President of India is the executive head of the state. As the executive head he is the chief appointing authority in India. Under article 75, the President appoints the leader of the majority party in the Lok Sabha as the Prime Minister. He also appoints the Council Of Ministers and distributes portfolios among them. The Council Of Ministers remains in power during the pleasure of the President. But it is worth mentioning here that in reality these powers are exercised by the Prime Minister and his Council Of Ministers. In actual practice, the President appoints the Council of Minister on the advice of the Prime Minister. Again, the President cannot dismiss the Council Of Ministers as long as it commands the support of a majority in the Lok Sabha. If the President wants to dismiss the Council of Ministers on his or her own initiative, it may trigger a constitutional crisis. The President is also responsible for making a wide variety of appointments such as the Governor of States, the Chief Justice and the other judges of the Supreme Court and High Courts of India, the Attorney General, The Comptroller and Auditor General, The Chief Election Commissioner and other Election Commissioners, The Chairman and other members of the Union Public Service Commission, Ambassadors and High Commissioners to other countries, The Chiefs of the Army, Navy and Air Force, Commissioner for Scheduled Castes, Scheduled Tribes and Backward Classes, Members of Finance Commission etc. But the President has to consult the Prime Minister before making any appointment.

Here, we must also remember that article 243 empowers the President of India to administer the Union Territories through Chief Commissioner or other authority. He also enjoys power to give the administration of a Union Territory to the Governor of an adjoining sate. Under this circumstance, the Governor will act under the instruction of the President of India for the administration of Union Territory. In addition to this, the President also administers the scheduled tribe areas in India. He appoints the administrators for the proper administration of these areas.

Again, the President is the *de jure* Commander in Chief of the Indian armed forces. He confers titles on the armed forces personnel. He is the Supreme Commander of the defence forces. We have already learnt that he appoints the Chiefs of Army, Navy and Air Force. This provision is intended to integrate the civil and military power. However, it is important to mention here that the exercise of this power is regulated by law under the constitution. In this matter also the President cannot act independent of Parliament. He simply announces the decisions taken by the Cabinet and the Defence Ministry. The first President of independent India, Dr. Rajendra Prasad opines that the President as the supreme commander of the defence forces can send for the military chiefs and ask for information related to defence matters. But his view is not supported by Mr. Setalvad who is the Attorney General of India during that time. He is of the opinion that the President can send for the Defence Minister and ask him to make enquiries. Ever since, this has become a convention.

Stop to consider:

Privileges enjoyed by the President of India:

Article 361(1) provides that the President of India shall not be answerable to a court for the exercise and performance of the powers and duties of his office or any act done or purporting to be done by him in the exercise and performance of those powers and duties.

Article 361(2) provides that no criminal proceedings whatsoever shall be instituted or continued against the President in any court during his/her term of office.

Article 361(3) lays down that no process for the arrest or imprisonment of the President shall issue from any court during his/her term of office.

Article 361(4) provides that no civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity.

The reading of the privileges enjoyed by the President will help you understand the position of the President of India.

B. Legislative Powers

The Constitution of India makes the President an integral part of the Parliament and as such he enjoys extensive legislative powers. However, we must remember here that the President is not a member of the either House of the Parliament. He inaugurates the Parliament by addressing it after the general elections and also at the beginning of the first session each year. He is to convene, prorogue and adjourn the sessions of the Parliament. He also convenes joint session of Parliament to resolve differences between the two Houses of Parliament. He addresses both the Houses of Parliament and his address is generally meant to outline the new policies of the government. Every budget session opens with his addresses. It is also worth remembering that the President nominates 12 members for the Rajya Sabha from among persons who have distinguished themselves in various walks of national life.

Here we must learn that, to become an act, all the bills must have the approval of the President. Certain types of bills like the Money Bill or the bills affecting the boundaries of states cannot be introduced in the Parliament without the permission of the President. The President can return a bill to the Parliament (except Money Bill) for reconsideration. However, if the Parliament sends it back to him for the second time, the President is obliged to assent to it.

Again, Article 123 empowers the President to promulgate Ordinances when both the Houses of the Parliament are not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action. These Ordinances are submitted to the Parliament at its next session. They remain valid for not more than six weeks from the date the Parliament is convened unless approved by it earlier. But here we should remember that these powers are formal, and by convention, the President uses these powers according to the advice of the Council of Ministers headed by the Prime Minister. An issue is raised with regard to the Ordinance issuing power of the President in a democratic nation. It is feared that the President may misuse his power. But Dr. B. R. Ambedkar justifies this provision. He argues that during inter- session period certain unforeseen and unexpected

situation can arise and it may compel the President or the executive government to deal with them expeditiously. Therefore he feels that there should not be any objection to the provision contained in the Article 123. Since the inauguration of the constitution of India, the Ordinances are promulgated for several times.

SAQ

Do you think that the power of the President to make Ordinance strengthens his position? Give reasons in support of your answer. (60 words)

....

....

....

....

C. Financial Powers

The constitution has vested the President of India with certain financial powers. The President can exercise his financial power with regard to the Money Bill. Money Bills can be introduced in the Parliament only on the prior recommendation of the President. Again, all Money Bills passed by the Parliament require the consent and approval of the President. We must remember here that no taxes can be levied or withdrawn without his approval. Moreover, he also enjoys the power in regard to the Contingency Fund of India. He may sanction any amount from the Contingency Fund of India to meet out any unforeseen expenditure. Again, he also appoints the Finance Commission every five years to recommend the distribution of taxes between the States and the Union. Moreover, he decides the amount of grants-in-aid to be made to the state of Assam, Bengal, Bihar and Orissa in lieu of their share of jute export duty. Thus, we have seen that the President of India enjoys enormous power regarding the financial matters though he shall act in accordance with the advice of the Council of Ministers in most of the cases.

D. Judicial Powers

As we have already pointed out, the President appoints the Chief Justice and other judges of Supreme Court of India as well as the High Courts. But we must not forget that, in practice, these judges are actually selected by the Union Cabinet. The President dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present. He administers the oath of office to the Chief Justice and the judges of the Supreme Court. President is also empowered to accept the resignation of the judges of the Supreme Court as well as High Courts. He can also remove them from their office. The President consults the Supreme Court on any question of law or matter of public importance. The Supreme Court is bound to report back its opinion to the President. It is noteworthy that the opinion of the Supreme Court is not binding on the President of India.

We should also remember that the President of India enjoys legal immunity. He is not answerable to any court of law for the exercise of his official duties. He can neither be arrested nor can criminal proceedings be initiated against him during the term of office. Civil suits can however, be brought against the President only after giving him a written notice of at least two months.

Again one of the important judicial powers vested on the President of India is the power to grant pardon. The President of India can grant a pardon to or reduce the sentence of a convicted person for one time, particularly in cases involving punishment of death. The decisions involving the power to pardon and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. But this power of the President comes as an issue before the Supreme Court in Kuljeet Singh alias Ranga vs Lt Governor case in 1982. In this case the Supreme Court is of the view that the exercise of the power of the President to commute sentence awarded to a criminal by the court will have to be examined on the basis of the facts and circumstances of each case. Thus the court retains with itself the power of judicial review even with regard to the exercise of power of grating pardon by the President. Therefore, it is clear that the President of India cannot act

independently in this regard also. His power to grant pardon is limited by the power of judicial review of the Supreme Court of India.

E. Diplomatic Powers

The President of India enjoys some kinds of diplomatic powers also. Declaration of war and conclusion of peace is carried out in his name. He maintains healthy relation with all the foreign governments. In order to maintain close and friendly contacts with other countries of the world, the President appoints diplomats in other countries. He also receives diplomatic representatives of other countries in India. He can also ask the foreign diplomats to leave the country by declaring them as *persons a non- grata* which literally means an unwelcome person. All the international treaties and agreements are concluded by the President and are subject to his final signature. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the Parliament.

Check Your Progress

1. Write a note on the executive powers of the President of India.
2. Explain how the President of India exercises his power to pardon.
3. Discuss the role of the President in matters of law making.
4. What are the diplomatic powers of Indian President?

F. Emergency Powers

We have already learnt the various kinds of power exercised by the President of India. Now let us discuss the Emergency Powers exercised by the Indian President. Part XVIII of the Constitution of India deals with the Emergency powers of the President. These emergency powers were deliberately conferred by the framers of the constitution to ensure that the federal government shall be able to work as unitary system to deal with the extraordinary situation.

The President can declare three types of emergencies: national, state and financial. Let us discuss these three types of emergency in details.

- **National Emergency**

Under Article 352 of the India Constitution the President can declare national emergency on the basis of a written request by the Council of Ministers headed by the Prime Minister. National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such a proclamation must be approved by the Parliament within one month and can be imposed for six months. It can be extended by six months, by repeated parliamentary approval, up to a maximum of 3 Years. When national emergency is declared the fundamental rights of Indian citizens, except the right to life and personal liberty, are suspended. The six freedoms under the right to freedom are also automatically suspended.

It is important to mention here that in the history of independent India, there are three periods during which the national emergency is declared in India

- Between 26th October 1962 to 10th January 1968 during the India-China war — "the security of India" having been declared "threatened by external aggression".
- Between December 1971 to 1977 originally proclaimed during the India- Pakistan war, and later extended along with the third proclamation — "the security of India" having been declared "threatened by external aggression".
- Between 26th June 1975 to 21st March 1977 under controversial circumstances of political instability under the Indira Gandhi's Prime Ministership— "the security of India" having been declared "threatened by internal disturbances".

- **State Emergency**

Under Article 356 if the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the

governance in a state cannot be carried out according to the provisions in the constitution, he can declare a state of emergency in that state. The state emergency is also known as the 'President's Rule'. A state emergency is declared under two circumstances

- When the state fails to run constitutionally i.e. the constitutional machinery has failed.
- When the state is not working according to the given direction of the Union Government.

The state emergency must be approved by the Parliament within a period of six months. It can be extended to a maximum period of three years with repeated parliamentary approval every six months. A constitutional emergency is necessary to extend the state emergency for more than three years. It has happened in Punjab and Jammu and Kashmir. During the state emergency, the President takes over the administration and the Governor administers the state in the name of the President. The Legislative Assembly is either dissolved or remains in suspended animation. The Parliament also makes laws on the subject of the State List. This type of emergency has been declared 100 times in various states and Union Territories since the constitution came into force. For the first time state emergency is declared in Punjab in 1952. The states which come under the President's rule for maximum number of times are Kerala (nine times) followed by Punjab, Orissa, Uttar Pradesh etc.

- **Financial Emergency**

Under the Article 360 of the Indian constitution if the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, he can proclaim financial emergency. Such an emergency must be approved by the Parliament within two months. In times of financial emergency, the President can reduce the salaries of all government officials, including the judges of the Supreme Court and High Courts. The President can direct the legislature to observe certain economic measure relating to financial matters. However, financial emergency has not been declared in India till date. On a previous occasion, the financial stability or credit of

India has indeed been threatened, but a financial emergency is avoided through the selling off of India's gold reserves.

The provision of the emergency powers provides a powerful position to the President of India. But it is worth mentioning here that the constitution makes sufficient provision to impose checks on the misuse of powers by the President of India. The responsibility of the President to the Parliament is itself an adequate safeguard.

Stop to consider

Assessment of the Emergency Powers of the President

In the Constituent Assembly the emergency powers of the President have been criticized. People like H. V. Kamath, Prof. K T Shah express their doubts that the incorporation of the emergency power in the constitution has opened the door for an ambitious President to become a dictator. The members of the Assembly also criticize the right of the President to suspend the fundamental rights of the Indian citizens during emergency. Kamath describes this provision as autocratic. However, some scholars have commented that the rights of the citizens have no meaning when the very existence of the state is threatened. They believe that the state must get priority over the individual and there is nothing wrong to suspend the fundamental rights of the citizens in the interest of the state. Moreover, President's power to declare constitutional emergency in the states has been criticized on the ground that it is contrary to the spirit of federal system of government based on autonomy of states. But we must not forget that at the time of the drafting of the constitution, India was undergoing some disturbances like war in Kashmir, troubled condition in Hyderabad etc. These incidents have influenced the founding fathers of Indian constitution to incorporate the emergency powers.

SAQ

Do you think that the emergency powers of the President have strengthened the position of the President? Give arguments in favour of your answer. (80 words)

....

....

1.5 Relationship between the President and the Council of Ministers: Issues and Conflicts

We have already learnt that the President appoints the leader of the majority party of the Lok Sabha as the Prime Minister. Again, on the advice of the Prime Minister, the President appoints the Council of Ministers. During the first twenty seven years the country has had six general elections each followed by a reconstitution of the Council of Ministers. The situation, however, underwent a drastic change in July, 1979 when the ruling Janata Party collapsed and there was no political party with a clear majority in the Lok Sabha. This gave the President an opportunity for the first time to use his discretion and appoint a minister of his choice. But the Prime Minister appointed could not win the confidence of Parliament and subsequently the Lok Sabha was dissolved by the President and new elections were ordered.

It has already been mentioned that the President of India shall act in accordance with the aid and advice of the Prime Minister and his Council of Ministers. Before the passing of the 42nd Constitution Amendment Act it is not clear whether it is binding for the President to accept the advice of the Council of Ministers or not. The 42nd amendment act of 1976 makes it obligatory for the President to act on the advice of the Council of Ministers. The 44th Amendment Act of 1978 makes further modification regarding this and it improves the position of the President. The President can now return any proposed bill for reconsideration. But if the Council of Ministers again refers it to the President without modification, the President is bound to give his assent. Any minister of the Council of Ministers can inform him about the decision of his ministry on any particular measure, but the President has every right to suggest that the matter should be placed before the Council of Ministers whose approval should be sought. On the eve of the 1951-52 general elections in India, President Rajendra Prasad sent a message to the Parliament explaining his views on the Hindu Code Bill which was under its consideration. In that message he said that personally he was opposed to the passing of the Bill but if adopted by Parliament, he would give his assent to it, however reluctant that might be. President V. V. Giri also expressed his resentment against the Council Of Ministers. During his term in office, he suggested the railway minister to handle the railway workers who went on striking leniently. But his advice is not heeded by the Council Of Ministers.

During the period from 1985-91, there were a few occasions when the President did not act in accordance with the advice of the Council of Ministers. Here reference can be made to Rajiv Gandhi's Postal Bill which sought to curb individual freedom and permit government to impose a form of censorship on matters conveyed through the post. Undoubtedly the Bill was controversial and allegedly anti- democratic. However, the Bill was passed by Parliament, which is the only constitutional authority to enact laws. The Council Of Ministers, of which Rajiv Gandhi was the head, forwarded the Bill to the President, Giani Zail Singh, for his assent under Article 111 of the Constitution (when a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare that either he assents to the Bill, or withholds his assent). Zail Singh took the view that he could indefinitely defer assent to the Bill without returning it to the Parliament for reconsideration and he sat on the Postal Bill for a whole year. Parliament was thereafter dissolved and the Bill abated. In 1996 President Shankar Dayal Sharma declined to promulgate two Ordinances which were proposed by the government on the eve of the general election of 1996. These were related to the introduction of job reservation for Dalit Christians and shortening of the campaign period for the Lok Sabha poll. Sharma opined that it would be unconstitutional to issue the Ordinances on election-eve.

In 1997, President K. R. Narayanan sent back to the cabinet, headed by the Prime Minister I. K. Gujral, the proposal to declare constitutional emergency in Uttar Pradesh and dismiss the Kalyan Singh Ministry. The President was against the dismissal. Although the Cabinet could have reiterated its decision and presented the proposal again to the President for his approval (in such a situation the President was bound to sign it), the Cabinet in this case, accepted the President's advice and did not proceed further in the matter. Again in 1998, the President sent back the proposal of the Vajpayee government to declare constitutional emergency and dismiss the Rabri Devi Government of Bihar.

It was also noteworthy that in 2006 president Abdul Kalam sent back the Office of Profit Bill that was passed by Parliament and sent to him for his assent. The President's message to Parliament was to reconsider the Bill

with a view to effect certain changes which he had suggested in his message. He had given his reasons in support of his suggestions. The Parliament, however, after considering the views of the President passed the bill again without any changes and sent it for the assent of the President. This time he was bound to give his assent.

We have also learnt that in Indian parliamentary system, the Council of Ministers holds the office not because of the pleasure of the President but because of the confidence of the Parliament enjoyed by them. They enjoy their office because they enjoy the confidence of the Parliament to which they are jointly and directly responsible. Thus, the President does not have the power to dissolve the Council of Ministers. President Giani Zail Singh creates a difficult situation over his right to dismiss a member of the Council of Ministers. Prof. K. K. Tiwari, one of the ministers of the Council of Ministers, criticizes the President and this has led to a rift between the President and Council of Ministers. The President ultimately suggests the Prime Minister to drop him from the Council of Ministers. Zail Singh has threatened to dismiss the minister on his own if the Prime Minister does not do so. Sensing the seriousness of the situation, the Prime Minister removes Prof. Tiwari from his Council of Ministers.

Again, it is the duty of the Council of Ministers to keep the President informed of its decisions. The decisions of the Council of Ministers are communicated to the President through the Prime Minister. Giani Zail Singh accuses the Council of Ministers of not keeping him informed about the affairs of the state. The differences are so wide that the President once threatens to dismiss the government, though the Prime Minister enjoys the confidence of the Lok Sabha.

There are also serious differences between the Chandra Sekhar Ministry and President Venkataraman during the time when the ministry is functioning as a caretaker government in 1991.

However these are only exceptions which make the constitutional character of the President's office clear to us.

Check Your Progress

1. Critically analyse the Emergency powers of the President of India.

2. Discuss the relation between the President and the Council of Ministers after 1989.

3. What is the Postal Bill?

1.6 Role of the President in the Circumstances of Hung Parliament

The Oxford Dictionary defines Hung Parliament as Parliament in which no party has clear majority. In a parliamentary democratic system, Hung Parliament implies that no political party has an outright majority. It generally means that the House is equally balanced. A Hung Parliament generally results in a coalition government or minority government or dissolution of the Parliament. In the era of modern democracy, the regional parties are giving tough challenge to the national parties. In India, the Ninth Lok Sabha election of 1989 first invokes the concept of Hung Parliament. Ever since, India is experiencing the problem of Hung Parliament.

We should remember here that in case of a Hung Parliament, the President has to invite the leader of a party which will secure the confidence of the Lok Sabha to form the government. The President normally invites the leader of the single largest party. But when it is clear that the leader of the majority party will not be able to gather support, the President may not invite him. In such a situation, the President will have to invite a person who seems to be able to form a government with a reasonable prospect of enduring. In doing this, the President must act fairly without any preferences and to stand above the dust and din of politics. The President has the power to decide who should be given the first opportunity to form the government and the amount of time to be given to prove majority on the floor of the House.

Reference can be made to the 1989 election when the President R. Venkataraman faces with a Hung Parliament. He invites the Congress, the single largest party in the Lok Sabha to form the government. But the leader of the Congress party Rajiv Gandhi declines the offer as he knows that the Congress will not be able to gather support. The offer then goes to V. P.

Singh and he forms the National Front Government with the support from the Left and the BJP.

Again, the 1996 election also results in a Hung Parliament. The then President Shankar Dayal Sharma invites Atal Bihari Vajpayee to form the government as leader of the single largest party. Vajpayee takes up the offer. But unfortunately he cannot get the numbers in the Lok Sabha. This one is the shortest Central Government ever in India.

It is essential to know that K. R. Narayanan has set a precedent in 1998 and follows it in 1999 too. He argues that the claimants to the Prime Minister's seat are required to produce evidence that they can provide a stable government. He believes that the President can use full discretion in appointing the Prime Minister.

Stop to consider

Reasons for Hung Parliament

If we analyze the election results of Lok Sabha from 1989, we will see that with time the regional parties are going stronger in the national politics resulting in Hung Parliaments in the India. In 1989 general elections, state or regional parties had 27 seats; in 1991 it increased to 51. 1996 elections saw a steady increase in number of seats of regional parties and they got 129 seats. In 1999 elections, regional parties played a crucial role and they landed up getting 158 seats. In 2004, Lok Sabha elections, the regional parties got 159 seats. So hereby we can see how regional parties are playing a dominating role in the national politics and as a result the national parties are not being able to form the majority marks. Even coalition with these regional parties does not help at times. The year 2009 has proved all the calculation wrong when UPA alliance led by Indian National Congress almost reaches the majority mark in the Lok Sabha on its own. Congress lands up getting 206 seats and the UPA with 262 seats falls short of 10 seats to reach the magic figure. Subsequently there has been a downward trend in number of seats won by regional parties. Another factor which is the prime cause of Hung Parliament is that the election turnout percentage in the elections is very low.

It is worth mentioning here that President of India R. Venkataraman proposes a simplistic rule of inviting the leaders on the basis of the strength of the political parties in a Hung Parliament. He believes that calling parties on the basis of their strength is the most prudent and non- controversial course of action. While inviting the leader of the largest party, the President shall not look to the quantum of support to the leader at the time of invitation but supporters of this leader shall demonstrate that in the House. President Venkataraman applies this rule twice- in 1989 when he invites V. P. Singh and in 1991 when he invites Narasimha Rao to form the government.

But we must remember that Venktaraman's view cannot be applied in all the circumstances. It will be highly risky to invite the leader of the single largest party in a highly fractured House without ascertaining his likely support in the Parliament. In the two cases of 1989 and 1991 it is reasonably clear that the other parties will not at least immediately out vote the government. Venkataraman is, therefore, on fairly safe ground.

Again in 1996, President Shankar Dayal Sharma invites A. B. Vajpayee, the leader of the largest party with its allies in the 11th Lok Sabha to form the government. But unfortunately Vajpayee government has fallen down as it loses the vote of confidence in the Lok Sabha.

The 1998 election result again presents a Hung Parliament. This time President K. R. Narayanan carefully ascertains that the BJP with the support of the parties will be able to secure the confidence of the House. Narayanan lays down the convincing guiding principles which can be adopted for the future. He states: *When no party or pre-election alliance of parties is in a clear majority, the head of State, in India and elsewhere, gives the first opportunity to the leader of the party or combination of parties that has won the largest number of seats, subject to the Prime Minister so appointed obtaining majority support on the floor of the House within a stipulated period of time*. This procedure is not, however, an all-time formula because situations can arise when MPs not belonging to the single largest party or combination can, as a collective entity, outnumber the single largest claimant. The President's choice is pivoted on the would-be Prime Minister's claims of commanding majority support.

The 14th Lok Sabha election has also resulted in a Hung Parliament. The results on May 13, 2004 reveal that the BJP-led NDA secures 187 seats while the Congress and its pre-poll allies secure 216 seats. Congress is the single largest party with 145 seats and BJP the next with 138 seats. Apart from the support of its pre-poll allies, Congress is assured of outside support from the Left having 61 seats. It assures that the Congress will get 277 seats, a majority in the Lok Sabha with the strength of 543. On the basis of this calculation, the President APJ Abdul Kalam invites Sonia Gandhi of Congress to form the government. This time he does not direct the Prime Minister to seek a vote of confidence as the government is assured of majority support. Thus, in every case of a Hung Parliament, except in 1996, the President's invitation to form a government has been made after consultations assure that the largest party or political formation supporting the largest party will command the majority support in the Parliament for a reasonable period of time.

It seems strange that the formation of the democratic government by an electorate of 714 million voters should rest on the discretion of a single individual. However, instead of going for another election which involves huge amount of money and services of the people, this power of the President can give stability to the political system of the country. It is also cost – effective for a developing country like India.

SAQ

Do you think that the Hung Parliament provides an opportunity to the small parties (regional parties) to participate in the Union Government? Give arguments in favour of your answer. (50 words)

....

....

....

....

....

....

....

1.7 Summing up

After reading this unit you have learnt that India has adopted the parliamentary system of government. In Indian parliamentary system of government, the executive is responsible to the Parliament and the executive and legislature are not independent of each other. In India, the President is the nominal head of the state and he is indirectly elected by an Electoral College. We have also learnt that the President as the head of the state enjoys powers like executive, legislative, judicial, financial, diplomatic etc. But in reality, the Council of Ministers under the leadership of the Prime Minister exercise the power vested in the hands of the President. He also enjoys emergency powers like national emergency, state emergency and financial emergency. We must remember here that the President shall act according to the advice of the Council of Ministers. He is bound to act according to their advice. But in some exceptional cases, the Indian Presidents show resentment against the Council of Ministers. With regard to some issues like the passing of Hindu Code Bill, the Office of Profit Bill, the declaration of emergency in Bihar, Uttar Pradesh etc., the President has come into conflict with the Council of Ministers. This unit has also helped you in understanding the role of President in case of a Hung Parliament. In such a situation the President appoints the leader of the single largest party as the Prime Minister. Indian democracy is experiencing the problem of Hung Parliament since the 1989 General Election.

In the next two units of this block we shall discuss the Parliament of India, its composition, powers and functions as well as issues of accountability which will give you a comprehensive view of the Indian President as well as the Parliament.

1.8 References and Suggested Readings

Chander, Prakash. *Indian Government and Politics*. Gurgaon: Cosmos Bookhive (P) Ltd.

Mahajan, V.D. *Select Modern Governments*. New Delhi: S. Chand & Company Ltd, 1998

Agarwal, R.C. *Constitutional Development and National Movement Of India*. New Delhi: S. Chand & Company Ltd, 2002

Sikri, S.L. *Indian Government and Politics*. New Delhi: Kalyani Publishers, 1999

Pylee, M.V. *India's Constitution*. New Delhi: S. Chand & Company Ltd, 2008

Links

http://en.wikipedia.org/wiki/President_of_India

http://www.indiastudychannel.com/resources/9424-Power-functions-President-India.aspx

http://en.wikipedia.org/wiki/Hung_parliament

* * *

Unit 2

Indian Parliament: Rajya Sabha and Lok Sabha

Contents:

2.1 Introduction
2.2 Objectives
2.3 Indian Parliament: An Introduction
2.4 Rajya Sabha
    2.4.1 Composition of Rajya Sabha
    2.4.2 Powers and Functions of Rajya Sabha
2.5 Lok Sabha
    2.5.1 Composition of Lok Sabha
    2.5.2 Powers and Functions of Lok Sabha
2.6 Rajya Sabha and Lok Sabha
    2.6.1 Relationship between Rajya Sabha and Lok Sabha
    2.6.2 The privileges of Lok Sabha and Rajya Sabha
2.7 Legislative Procedure in the Parliament: Enactment of Ordinary Law
2.8 Legislative Procedure in the Parliament: Enactment of Money Bill
2.9 Summing up
2.10 References and Suggested Readings

2.1 Introduction

In the previous unit of this block, we have learnt that parliamentary democracy is widely practiced in the world at the present time. This is a form of governance where people rule through their representatives in the parliament chosen by adult suffrage through fair and free election. We also know that in India we have a parliamentary form of government and the Federal Legislature of India is known as the Parliament. It is one of the unitary features of Indian Constitution, that despite having Federal Structure of Government, India has only one Parliament which makes laws for the entire country. We also know that the Parliament of India consists of the President and two Houses- Rajya Sabha and Lok Sabha. The Rajya Sabha is known

as the Upper House, while Lok Sabha is known as the Lower House of the Parliament.

In this unit we shall discuss the legislative system in India, viz, the Parliament, the supreme law making body of the nation, its composition, powers and functions. As we all know, the Indian Parliament has two Houses; both of them act according to the provision of the constitution and enjoy the privileges as mentioned in the constitution. This unit is an attempt to bring out the different activities of these two Houses and their functions. The basic function of the Parliament is to make laws for the nation. Here in this unit, we shall discuss the provisions of enacting laws by these two Houses. Here we shall also discuss the relationship between these two Houses and the legislative procedures taken in enacting different laws like Money and Ordinary Bills.

2.2 Objectives

In a democratic country like India the Parliament plays a vital role in its administration. It represents the people as the supreme law making body of the nation. After reading this unit you will able to:

- *discuss* the parliamentary system of India
- *analyse* the composition and power and functions of the Indian parliament
- *discuss* the legislative procedures in the enactment of Money and Ordinary Bills
- *examine* the status and position of Rajya Sabha and Lok Sabha
- *describe* the relationship between the two Houses of the Parliament

2.3 Indian Parliament: An Introduction

The Parliament of India is the federal and supreme legislative body in the country. Chapter II, Part V of the Indian Constitution provides for the composition of the Parliament. Article 79 of the Indian Constitution states that, there shall be a Parliament for the Union of India. The federal or Union legislature or the Parliament of the Indian Union consists of two Houses

and the President of India. We have also learnt that the Upper House is known as the Rajya Sabha and the Lower House is called Lok Sabha. It is important to mention here that although the President is not a member of any House of the Parliament, he is considered an integral part of the Parliament, because no union law can have validity and force without his signature. Similar provisions exist in the British Parliament, where the King is an integral part of the Parliament but not a member of both Houses.

It needs to be mentioned here that though the general pattern of the Indian parliament resembles the British parliament, it follows the system of America while making laws. Its legislative authority is circumscribed by the written provisions of the constitution. The laws that are passed by the Parliament are subject to judicial review by the Supreme Court of India. Thus we can say that India has adopted the British pattern of Parliamentary sovereignty and the American system of judicial supremacy.

It is known to us that the Parliament is the supreme law making body in India and the President of India is an integral part of it without having a membership of any of the Houses. However, the President summons each House of the Parliament which meets from time to time. But there is a provision that the gap between the two sessions must not exceed six months. In case of conflicting situation between the two Houses, the President calls a joint session which is presided by the Speaker of the Lok Sabha.

As we know, people are ruled through their representatives in the parliament chosen by the system of adult suffrage through free and fair election. It is important to mention here that along with the elected members there is also a provision of nominated candidates. The President of India can nominate 12 members to the Rajya Sabha and 2 to the Lok Sabha. The Parliament can be regarded as the watchdog of the Government's action as it is responsible to it for the works. Various parliamentary procedures evolved in the course of the time, have made the executive more accountable, responsive and responsible to the Parliament. The methods like questioning, adjournment motions, no-confidence motion, call attention notice etc. not only control but also restrain the government from being arbitrary.

As the supreme law making body, the Parliament enjoys enormous power and it has to perform various duties. The Parliament legislates on all the subjects of the Union List, the Concurrent list and in special circumstances, on the subjects, mentioned in the State List. Some critics point out that it is a unitary feature of Indian constitution, because constituent states have lost its autonomy when the Parliament formulates laws on behalf of any state. As known to us the cabinet has the responsibility of formulating policies, but these are discussed and debated on the floor of the Parliament. Thus, the Parliament can control the government or prohibit it from enacting any arbitrary law.

As the supreme law making authority of the country the Indian parliament has enormous powers and responsibilities towards its citizens. Let us briefly discuss its power and functions.

Functions of the Parliament

- The most important function of the Parliament is to legislate i.e. make legislations for the development which benefits the society.
- Another important function is to exercise control over the Executive.
- It has financial control over the Executive. The Parliament is the sole authority to raise taxes.
- It provides an opportunity to deliberate on various policies and measures before their implementation. Thus, the Parliament is also an authoritative source of information collected and disseminated through the debates and through the specific medium of 'Questions' to the Ministers.

Besides these the members of the parliament have the power to elect the President and the Vice-President. The elected members of both the Houses can participate in the election of the President and the Vice-President. The members of the Parliament may also remove the President from his office.

Thus, it is clear that as a representative body of the people, the Parliament is the supreme law making authority of India. It makes laws both in internal and external matter of the nation. Our foreign as well as the domestic policies depend on it. It is the watchdog of the governmental activities. But in most

of the time due to the majority support in the Parliament, it fails to check governmental decisions properly.

Stop to Consider:

Adjournment Motion:

The Legislature carries on its business according to the given agenda, but a matter of urgent public importance can be brought before the Legislature and discussed through Adjournment Motion by interrupting its regular business. An Adjournment Motion should be supported by not less than 50 members of the House for acceptance. If accepted, it results in the interruption of the ongoing business of the House and discussion of the matter raised in the Adjournment Motion. The basic idea behind this motion is to give an opportunity to the House to discuss a matter of urgent public importance. The matter should be of definite nature and should have factual basis. The discussion on the matter takes place at 1600 hours and continues for two and half hours. At the end of the discussion, voting takes place. Since voting exposes the strength of the Government in the House, the ruling party tries not to allow the acceptance of the Adjournment Motion in the House.

It is one of the way by which the Parliament can discuss any mater of urgent public importance. Thus, the reading of this section helps us to know the role and function of the Parliament to attract the attention of the government in an urgent situation.

2.4 Rajya Sabha

We have already got an idea of the Indian parliament in the previous sections. The Indian Parliament consists of the President and the two Houses. The upper House of the Parliament is known as the Council of States or Rajya Sabha. It is the representative body of Indian States. The Vice-President of India is the ex-officio Chairman of the House. In addition, the House elects a Deputy Chairman form its members. As the Rajya Sabha is a part of the Parliament, it is also responsible for the formulation of laws and is accountable to the public. Rajya Sabha is a constitutional body which consists of 250 members and enjoys a vast number of powers. In the following section, we will discuss its composition, powers and functions

2.4.1 Composition of Rajya Sabha

Article 80 of the Indian Constitution provides for the composition of Rajya Sabha. The Council of States or Rajya Sabha consists of 250 members. Here 238 members represent the States and Union Territories and 12 members having special knowledge or practical experiences of different fields (literature, science, art and social services) are nominated by the President of India. The members of the Rajya Sabha are not directly elected by the people. The members of the Rajya Sabha are elected by the elected members of the state legislative assemblies in accordance with the principle of proportional representation by means of single transferable vote. On the other hand, the representatives from the Union Territories are chosen in a manner prescribed by the Parliament by law. In 2003, some changes are made in the voting system through the Representation of the People (Amendment) Act. It has removed the residence requirements of a candidate for Rajya Sabha and provided for open voting system instead of secret ballot system.

But the system of representation or the composition of Rajya Sabha is not free from criticism. Critics point out that it is not a proportionate representative body of States like the Senate of USA, where all states have the power to send two members to it. But in India, all states have not been given equal representation in the Rajya Sabha, for example, Uttar Pardesh has 31, representatives in Rajya Sabha, while Assam has only 7 representatives. Moreover, Rajya Sabha does not exclusively contain the representative of States alone, because there are 12 nominated members as well. But it maintains the supremacy of states to some extent as the nominated members are barred form voting for the President and the Vice-President.

Qualification:

From the previous sections, we know that Rajya Sabha consists of 250 members, where 238 represent states and 12 are nominated by the President of India. Here we shall discuss the qualification for a member of Rajya Sabha. A person seeking membership of Rajya Sabha must possess the following qualifications

(a) He must be a citizen of India.

(b) He must not be less than 30 years of age.

(c) He must be parliamentary elector in the State from which he is seeking election.

(d) He must have a sound mind, and not having a post of profit.

Term:

Unlike Lok Sabha, Rajya Sabha is a permanent House of the Parliament and is not subject to dissolution. But one third of its members retire after every two years in accordance with the provisions made by the Parliament by law. Thus the members of the Rajya Sabha are elected for a term of six years. This arrangement ensures continuity as well as representation of the changing public opinion. For its Quorum it needs one tenth of the total members of the House.

SAQ

Do you think that Indian states have got true representation in Rajya Sabha? Give arguments in your favour. (80 words)

....

....

....

....

....

....

....

....

2.4.2 Powers and Functions of Rajya Sabha:

In the previous section we have discussed the composition of Rajya Sabha. Here we shall discuss the powers and functions of Rajya Sabha. We know that Rajya Sabha is the upper House of the Parliament, so it has many

powers and functions to perform. The powers and functions of Rajya Sabha are discussed below:

- **Legislative Power**: As the upper House of the Parliament, Rajya Sabha enjoys the legislative powers along with the Lok Sabha. A Non-Money Bill can originate in the Rajya Sabha and it cannot become a law unless it is passed by the Rajya Sabha. It can pass Bills on subjects included in the Union and Concurrent Lists. But it is important to remember that Lok Sabha enjoys more power than Rajya Sabha regarding the legislative matter. For example, Money Bill cannot be introduced in Rajya Sabha. It has no power over money Bill except discussing it.
- **Financial Power:** As we know that no money Bill can be introduced in the Rajya Sabha, a Money Bill passed by Lok Sabha is sent to it only for consideration. The Rajya Sabha must give its opinion on the Bill within 14 days. However Lok Sabha may or may not accept its opinion. If the Bill is not sent back by the Rajya Sabha, it is declared as passed by the Rajya Sabha and sent to the President for his assent. Thus we find that in the matter of passing Money Bill Rajya Sabha has only limited power.
- **Executive Powers:** like Lok Sabha, Rajya Sabha can also control the government. It may ask questions, table adjournment motion, introduce resolutions and call attention motions and demand half hour discussions. It can also criticize the policies and activities of the government. But Rajya Sabha cannot pass a vote of no-confidence against the ministry as we know that the Council of Ministers is responsible only to the lower House of the Parliament, i.e. Lok Sabha. So, its control over ministry is limited.
- **Amendment of the Constitution:** The amendment Bill of Indian Constitution may originate in this House. Without its consent no amendment Bill can be passed by the Parliament. In this context, Rajya Sabha is equally powerful like the Lok Sabha. An amendment Bill must be passed by both the Houses sitting separately.
- **Miscellaneous Powers:** Besides these powers, Rajya Sabha has many other functions to perform. As learnt earlier, the elected members from

Rajya Sabha can participate in the election of the President and the Vice-President and they also take part in voting for the removal of the President, Vice-President, Chief Justices and Judges of the Supreme Court and High Courts. It shares power with the Lok Sabha in setting up special courts. Besides these, annual reports of various commissions are considered by it. We have learnt that the Indian President has three emergency powers. A proclamation of emergency must be approved by Rajya Sabha. In this context, when emergency is in action, every order passed by the President suspending fundamental rights must be approved by this House. But in this matter both the Houses are equally powerful.

- **Special Powers of Rajya Sabha:** Though Rajya Sabha enjoys enormous power, these powers are not absolute, and Lok Sabha has same powers with Rajya Sabha in the above mentioned matters. In cases of conflicts, the decisions of Lok Sabha prevail over the decisions of Rajya Sabha. Now, here we shall discuss some powers enjoyed exclusively by the Rajya Sabha.

a. Under article 249 of the Indian constitution, Rajya Sabha may pass a resolution by 2/3 majority to shift an item of the State List to the Concurrent List or the Union List on the plea that it is in the national interest.

b. Under article 312 of the Indian Constitution, the Rajya Sabha is empowered to propose one or more All India Services by adopting a resolution by two-third majority of its members for national interest.

c. Rajya Sabha can check the President's power of emergency when Lok Sabha is dissolved.

d. Rajya Sabha alone can initiate the proposal for removing the Vice-President of India.

Thus, as the upper House of Indian parliament Rajya Sabha enjoys enormous powers and functions. However, Rajya Sabha is criticized from the point of its composition and functioning. Already we have learnt that the representative system in Rajya Sabha is not free from criticism as it gives more attention to

the bigger states than smaller states. Another point of criticism is that its financial power is so limited or insignificant that it appears to be useless in this regard as the framers of Indian Constitution deliberately gave less power to the Rajya Sabha. The reason lies in the fact that in a parliamentary government, the Lok Sabha is the popular chamber and represents the people. Many people are of the view that Rajya Sabha is powerless and it is of no use in a poor country like India.

However, it is not correct to say that Rajya Sabha is useless. In a vast country like India, the union legislature should be bi-cameral where the second chamber acts as a check on party influenced actions of the Lok Sabha. It can remove the faults found in the Bills sent to it by the Lok Sabha. Hence we can say in the words of Morris Jones, "The Rajya Sabha has not surprisingly failed to evolve a distinct role for itself and that it may be beginning to try its wings as a forum for grand and soaring debate."

Stop to Consider:

Number of Representative of States/Union Territories to Rajya Sabha

Name of the State/Union Territories	Members in Rajya Sabha
Andhra Pradesh	18
Arunachal Pradesh	1
Assam	7
Bihar	16
Chhattisgarh	5
Delhi	3
Goa	1
Gujrat	11
Haryana	5
Himachal Pradesh	3
J&K	4
Jharkhand	6
Karnataka	12
Kerala	9
Madhya Pradesh	11

Maharashtra	19
Manipur	1
Meghalaya	1
Mizoram	1
Nagaland	1
Orissa	10
Punjab	7
Rajasthan	10
Sikkim	1
Tamilnadu	18
Tripura	1
Uttaranchal	3
Uttar Pradesh	31
West Bengal	16
Pondicherry	1

Now, you are in a position to find out the difference between representations among the Indian states. In North East, Assam has the highest number of representative in Rajya Sabha. And Uttar Pradesh has the highest number of representative in Rajya Sabha. Thus we find that Rajya Sabha does not represent the state equally.

Check Your Progress:

A. Write True or False

1. The nominated members of the Rajya Sabha have the power to participate in Presidential elections.
2. Article 80 of the Indian Constitution provides for the composition of Rajya Sabha.
3. Rajya Sabha has 238 elected members. (True/False)
4. Chapter II, Part V, of the Indian Constitution provides for the composition of the Parliament.
5. Uttar Pradesh has 31 representatives in Rajya Sabha.

B. Write a note on the composition of Indian Parliament.

C. Critically analyze the powers of Rajya Sabha.

2.5 Lok Sabha

In the previous sections we have learnt that Indian Parliament has two Houses and Lok Sabha is the lower House of the Parliament. In the previous unit we have discussed that the Council of Ministers is responsible to Lok Sabha. It has the power to remove the government from power. Lok Sabha or House of People is the popular House of the Indian Parliament and contains the elected representative of the people. Let us discuss its composition, powers and functions in the following section.

2.5.1 Composition of Lok Sabha

Article 81 of the Indian Constitution deals with the composition of the Lok Sabha. The strength of this House is now 547, out of which 2 are nominated by the President of India from the Anglo Indian community, if it is found that they have not representative in this House. Out of these 542 seats, 525 are allotted to the states and 17 seats have been allotted to the Union Territories. But its maximum strength as mentioned by the Indian Constitution is 550. The strength is fixed by the Goa, Daman and Diu Reorganization Act 1987 which came into force on 11th may, 1987. The number of members each state is expected to elect is determined on the basis of population. For equal representation within the state many constituencies are drawn. Hence, it is clear that unlike Rajya Sabha, Lok Sabha represents the people and consists of 545 members elected directly and 2 nominated members.

Election of the Members:

Already we have learnt that Lok Sabha consists of 545 elected members and the seats to the various states and union territories are allotted in proportion to their population. Indian constitution also provides for the reservation of seats for Scheduled caste and Scheduled tribes. For the election of the members the whole country is divided into certain constituencies according to the number of seats fixed for the purpose and from each constituency one member is elected directly on the basis of universal adult suffrage for five years term. Hence, it is clear that the members

of Lok Sabha represents the people and responsible to the voters. So, it is known as the popular House of the Parliament.

Qualification:

In the previous section we have discussed the qualification for a member of Rajya Sabha. The same qualification is needed for the member of Lok Sabha. A person seeking membership of Lok Sabha must possess the following qualifications:

- Must be a citizen of India.
- Must be above 25 years of age.
- Must posses all the other qualifications prescribed by the parliament.
- He should have a sound mind.

Here it is important to mention that no person can be a member of either House of parliament and of state legislature at the same time.

***Disqualifications**:*

after knowing the qualifications, we should also know that there are some disqualifications too. Persons having such disqualifications lose his membership from the House. Article 102 of the Indian constitution mentions certain disqualifications of members as follows

- He must not hold an office of profit
- He must not be a man of unsound mind
- He should not be an alien

Besides these a member of the House, who, remains absent continuously for more than 60 days without information may be disqualified. The Representation of the People Act of 1951 also lays down certain conditions for disqualifications. According to this act one can lose his membership if he has been found guilty by a court or an election tribunal of certain election offences or corrupt practices in the elections. It important to mention here that the question whether a member has incurred disqualification or not is to be decided by the President in accordance with the opinion of the Election Commission under article 103 of the Indian constitution.

Term:

the normal term of the Lok Sabha is 5 years and it begins from the date of its first meeting. The President of India has the power to dissolve it any time and the action of him cannot be challenged in the court of law. Again the term of Lok Sabha may be extended by the President during national emergency. For example in 1976, its term was extended by one year. It is important to mention here that such extension is possible if the Parliament passes a Bill to that effect. Such a law shall remain in force for one year, and there is a provision of its continuation through regular periodical renewal. But elections must be held for the formation of new Lok Sabha within a period of six months from the declaration of emergency.

Presiding Officer:

It is known to us that the Vice-President of India presides over the meeting of Rajya Sabha. The presiding officer of Lok Sabha is known as Speaker. He is elected by the House at its first meeting from amongst its members, especially from the majority party who form the government. In addition the House also elects a deputy Speaker who discharges his duties during the absence of the regular Speaker. The basic duty of the Speaker is to conduct the proceedings of the House and preside over the sessions of the Lok Sabha.

Hence we can say that Lok Sabha is the popular House of the Parliament and the government is responsible to it and consists of 545 directly elected members. As the government is responsible to it, the Lok Sabha enjoys enormous power and functions in the context of the formulation and implementation of public policies.

Stop to Consider:

The System of Universal Adult Franchise:
Universal Suffrage (also Universal Adult Suffrage, General Suffrage or Common Suffrage) consists of the extension of the right to vote to adult citizens (or subjects) as a whole. It has two necessary components, the right to vote and opportunities to vote. The term Universal Suffrage is associated only with the right to vote and ignores the other aspect. The system of Universal Adult Franchise is the base of

effective democracy. Democracy is incomplete without the proper participation of the people in politics. But it is pertinent to mention here that even in some of the western countries which are ardent supporters of democracy, Universal Adult Franchise was absent for a long time. For example, in England only in 1928 Universal Suffrage for all was granted and women were given right to vote. In India this right was granted by the new constitution in 1950 to all adult citizens irrespective of race and gender. However, this system was practiced in India since the British Colonial period. This system is older than the systems practiced in many western countries.

In a democratic country, all the adult citizens are given the right to vote without any distinctions of caste, creed, colour, religion or sex. This is called Adult Franchise. The prescribed minimum age for the citizens to avail the voting right may differ from country to country. For example, it is 18 years in USA and Russia. The minimum age has been reduced in India from 21 years to 18 years by the 61st Constitutional Amendment. The assumption behind prescribing the minimum age is that after this age a person gets discretionary capacity to exercise his/her vote in a prudent manner. In a way the Adult Franchise is also a universal franchise as there is no distinction with respect to giving the voting rights to all the adult citizens.

Hence it is clear that the members of Lok Sabha represent the people because they are the chosen public representatives to represent them in the Parliament.

2.5.2 Powers and Functions of Lok Sabha:

We have already learnt that Lok Sabha enjoys enormous powers since the executive is responsible to it. It is important to mention here that Lok Sabha is more powerful than Rajya Sabha. In the financial matter it enjoys absolute authority. So, undoubtedly it enjoys more privileges than the Rajya Sabha. Let us discuss the power and functions of Lok Sabha in the following section:

- **Legislative Powers:** The principle function of Lok Sabha is to make laws. But while making laws it needs the cooperation of Rajya Sabha on all the matters mentioned in the Union and Concurrent Lists. It can also legislate on residuary matters and in special circumstance also legislates on the matter of the State List. No Bill can be passed without the assent of Lok Sabha. Thus it is clear that Lok Sabha is the supreme law making body of the nation.

- **Control over executive:** It is laid down in the constitution that the Council of Ministers shall be responsible to the Lok Sabha. The Council of ministers will have to resign in case a vote of censures is passed. It amounts to loss of confidence in the government. If the Lok Sabha rejects a government Bill or a budget, or disapproves official policy or

shows its lack of confidence in the government by making alterations in the policies of the government, it shall amount to a vote of no-confidence. The Lok Sabha may remove the ministry by adopting a no-confidence motion. It can criticize the government and ask questions and supplementary questions. In short Lok Sabha can make and unmake the government.

- **Electoral Powers:** Like the Rajya Sabha, the members of Lok Sabha can also participate in the election of the President and the Vice-President. They can also take part in the removal of the President and Vice-President and Judges of the Supreme Court and High Court along with the Rajya Sabha.
- **Financial Powers:** The Lok Sabha has complete control over the state exchequer. Under Article 90 of the Indian Constitution, Money Bill can be introduced only in the Lok Sabha. No tax can be imposed and curtailed without the approval of it. In the passing of Budget the Lok Sabha is all in all. The reports of the Finance Commission and the Comptroller and Auditor General of India are also placed in this House for discussion. Beside these, it exercises control over the Contingency Fund of India.
- **Miscellaneous Powers:** We have already studied the various powers and functions of Lok Sabha. It is known to us that Lok Sabha has to do many functions as the government is responsible to it. Besides the above mentioned functions, it can perform and enjoy the following powers:

  a. With Rajya Sabha it can amend the constitution.

  b. It can approve the proclamation of emergency.

  c. It may send a person to jail.

Thus we find that Lok Sabha is the stronger House of Indian Parliament. Lok Sabha is responsible to translate the aspirations of the people into actuality. It represents the people and works on behalf of them. But it is important to mention here that if the ruling party enjoys majority within the House, it become weak in controlling the Government. In such a situation,

the ruling party can pass a Bill without facing any difficulty because of their numerical advantage. In India one of the burning problems lies in the lack of strong opposition in the Parliament, for which no Bill can be discussed and criticized properly in the floor of the House. However, Lok Sabha has played its role effectively since its inception and continues to do so.

Stop To Consider

The tenure of the various Lok Sabha since the inauguration of the constitution:

1st:	1952 to 1957
2nd:	1957 to 1962
3rd:	1962 to 1967
4th:	1967 to 1970 (3 years 9 months)
5th:	1971 to 1977
6th:	1977 to 1979 (2 years 5 months)
7th:	1980 to 1984
8th:	1984 to 1989
9th:	1989 to 1991 (1 year 3 months 11 days)
10th:	1991 to 1996
11th:	1996 to 1997 (1 year 6 months 19 days)
12th:	1998 to 1999 (1 year 1 month and 16 days)
13th:	20th October 1999 to 6th February 2004
14th:	2004 to 2009
15th:	2009 to till date

From the data it is evident that though the normal term of Lok Sabha is 5 years, its continuation depends on its numerical strength. If the ruling party has lost its majority in the Lok Sabha, the house is dissolved at any time and thus the term of the Lok Sabha also ends.

2.6 Rajya Sabha and Lok Sabha

In the previous sections we have discussed the powers and functions of Lok Sabha and Rajya Sabha. We have already learnt that the Lok Sabha is the "mouth piece" of the people of India. It is also known as popular House as its members are directly elected by the people and the government is responsible to it. On the other hand, Rajya Sabha represents the Indian states and it is less powerful than the Lok Sabha and its members are indirectly elected. Hence it is clear that as the representative body of people, Lok Sabha must get more privileges than the Rajya Sabha. But here we must remember that the Rajya Sabha has not been constituted to protect the interest of the states, but to act as a revisory chamber. For the administration of the government, the cooperation between the two Houses is important. Now in the following section, we will discuss the relationship between Lok Sabha and Rajya Sabha and the privileges the Houses enjoy.

2.6.1 Relationship between Rajya Sabha and Lok Sabha

The framers of the Indian constitution did not intend to place the two Houses of the Parliament at per and intended the Rajya Sabha to be merely a revising chamber. However, in the legislative sphere both the Houses of the Parliament have enjoyed equal position. For example, an Ordinary Bill can be originated in either House, but must be approved by both the Houses to become law. If conflicting situations arise between these two Houses, a joint sitting presided over by the Speaker of Lok Sabha is called by the President of India. In the joint sitting, the decisions are made on the basis of the majority vote. However, in the joint sitting, Lok Sabha may get extra privileges due to its large membership. Moreover, it is presided over by its Speaker. At the same time, Rajya Sabha can also get privileges if the members of Lok Sabha are divided into various groups. For the first time, the joint sitting took place on the matter of "Dowry Prohibition Bill" in 1961. As discussed earlier, the elected members form both the Houses participate in the election of the President and the Vice-President of India and also work together to remove them.

In the case of Impeachment against the President of India, the proceedings can be initiated in either House. While one House presses the charges, the other House investigates this charge, and passes the necessary resolutions. Hence it is clear that in Indian parliamentary democratic system where the Council of Ministers is responsible to Lok Sabha, Lok Sabha cannot pass any law without the approval of Rajya Sabha. Though, Rajya Sabha faces criticisms as the useless chamber, in a Federal set up the second chamber is necessary. Every decision taken by the Government should be ratified by this House. Lok Sabha gives importance to the recommendations made by Rajya Sabha despite having limited powers in the financial matters. Rajya Sabha works as a watchdog of the government. For the smooth running of the administration cooperation between these two Houses is very essential.

SAQ

Do you support the existence of Rajya Sabha in India? Give arguments in support of your argument. (80 words)

....

....

....

....

....

....

....

....

....

2.6.2 The Privileges of Lok Sabha and Rajya Sabha

We know that the Lok Sabha or House of People represents the people of entire India while Rajya Sabha represents the states. From our earlier discussions it is clear that Lok Sabha enjoys more powers than the Rajya Sabha. There are certain powers which are exclusively exercised by the Lok Sabha. The Rajya Sabha either has no role at all or only has a very marginal role to play which may be rejected by the Lok Sabha.

The privileges of Lok Sabha:

- Lok Sabha can elect its Speaker and Deputy Speaker without prior approval of the Rajya Sabha. Article 93 of the Indian Constitution gives Lok Sabha this power. It can also remove them from the office.
- Again in the matter of control over the executive, the Rajya Sabha enjoys an inferior position. As we know the Council of Ministers are collectively responsible to the Lok Sabha, Lok Sabha has the power to remove or dissolve the Council of Ministers by passing a vote of no- confidence without the permission of the Rajya Sabha.
- Besides these, in the financial matter the Indian Constitution clearly accords a position of pre-eminence to the Lok Sabha. Money Bill can be originated in the Lok Sabha. It is sent to the Rajya Sabha only for considerations. Rajya Sabha can only forward some suggestions and the suggestions are not binding on the Lok Sabha.

Thus it is clear that basically in the financial matter Lok Sabha enjoys a superior position as Lok Sabha is responsible to the people and its members are directly elected by the people.

The Privileges of the Rajya Sabha:

In the above sections we have discussed the special powers of the Lok Sabha. We have learnt that Lok Sabha is superior to the Rajya Sabha in every sphere as the Council of Ministers is responsible to it. We have also learnt that in many spheres the Rajya Sabha enjoys equal status with Lok Sabha and in some cases it enjoys some extra privileges than the Lok Sabha. Let us discuss the privileges of the Rajya Sabha

- Under article 249 of the Indian Constitution, Rajya Sabha may pass a resolution by a 2/3 majority to shift an item of the State List to the Concurrent List or the union list on the plea that it is so expedient in the national interest.

- Again article 312 of the Indian Constitution empowers the Rajya Sabha to propose one or more all-India services if it adopts a resolution by a 2/3 majority for national interest.
- In the case of emergency, Rajya Sabha alone can exercise a democratic check on the exercise of emergency powers of the President in case the Lok Sabha stands dissolved.
- It can alone initiate the proposal for the removal of the Vice-President of India.

As we know the Rajya Sabha is the permanent House of the Parliament, which cannot be dissolved by the President. So, it can maintain the continuity of legislation, while Lok Sabha is not permanent and stands on the confidence of majority.

Stop to Consider:

Utility of the Rajya Sabha

It is said that in a Federal Constitution the second chamber is a necessity. It plays an important role in the matters of legislation and therefore it should be retained. The Rajya Sabha is desirable because it fulfils the following purposes:

1. It is considered useful because the senior politicians can be the members of this House without undergoing the ordeal of contesting general elections. Thus, it gives a platform to the experienced and the talented persons of the country to take part in the administration of the country. In turn, the people are also benefited by their valuable contributions.
2. The Rajya Sabha acts as a revising House over the Lok Sabha which, being a popular House may be tempted to act rather hastily keeping in view the public opinion.
3. The Rajya Sabha is a House where the States are represented, keeping with the federal principles.

2.7 Legislative Procedure in the Parliament: Enactment of Ordinary Law

The most important function of the Parliament is the making of laws. The legislative procedure is initiated in the form of a Bill. It is important to address the difference between Bill and Law. A Bill is a proposed legislation. It becomes a law when the President gives assent to it. These Bills are classified as— Ordinary, Financial, Money and the Constitutional Amendment Bills. The Ordinary Bills are of two types-the Government Bills and the Private Member's Bills. Money, Financial, and an Ordinary Bill, are essentially the Government Bills because these can only be introduced on the recommendation of the President.

Let us discuss the procedures for the Enactment of Ordinary Bill. Both the Houses are equally powerful in respect of passing an Ordinary Bill. There are different stages in passing a Bill and the following is a discussion of the stages

First Reading: At this stage, a Bill is introduced in a House with the permission of respective presiding officer and the purpose is to read out the Bill by the presenter. With the approval of the House the Bill is published in the official gazette of India. But in this stage no discussion is made on the Bill.

Second Reading: After the first reading, the second reading of the Bill starts and in this stage the presenter of the Bill may propose

- That the Bill may be taken for consideration at once
- That it may be referred to a selection committee
- That it may be circulated for eliciting public opinion, and
- That the Bill may be sent to a joint committee with the approval of the other House

This stage is called the Committee stage as it is normally sent to a committee for consideration. When the draft of the Bill is completed it is laid before the chairman of the House and circulated among the members. Then the mover of the Bill proposes that the Bill has to be discussed. This stage is very important because at this stage every clause of the Bill is discussed and

necessary amendment is included. When the Bill is approved, the stage is over and it is passed to another stage.

Third Reading: It is the last stage of an Ordinary Bill. Here, general discussion takes place and the main purpose of this stage is to accept or reject the Bill.

If the Bill is approved by the House, then the third reading is over and the Bill is regarded as passed by the House.

The Bill in the Other House: After adopting a Bill by one House through the above stages, it is sent to the other House. It must undergo the same stages in that House too. If the Bill is passed by that House in the original form it is sent for the assent of the President. But, the other House may refuse to pass the Bill or suggest amendments. In the mean time the other House may not accept the suggestions and approve it in the original form and keep the Bill with it without giving its opinion. Thus in this rift situations Joint Sitting of both House may be summoned by the President where the Speaker of the Lok Sabha is the presiding officer. In this sitting, the Bill is put to the vote. If it is accepted by the majority of the members present, it is sent for the assent of the President. After getting the assessment of the President the Bill becomes a law.

Check Your Progress:

1. What is Private Bill?

2. What is the difference between Bill and Law?

Fill in the Blanks:

1. The Ordinary Bills are of two types-the ———————— and the Private Member's Bills.

2. In ——————— reading, the general discussion takes place on a Bill.

3. The ____________ is a House where the States are represented.

2.8 Legislative Procedure in the Parliament: Enactment of Money Bill

We have already learnt the legislative procedures of the Parliament in the enactment of an Ordinary Law. The procedure of the enactment of a Money Bill or Financial Bill is different from the procedure of the enactment of an ordinary Bill. A Money Bill can be introduced only in the Lok Sabha on the recommendation of the President. It is important to mention here that only a minister can introduce a Money Bill.

The Money Bill, like the ordinary Bills, has to go through three readings. After it is passed by the Lok Sabha it is transmitted to the Rajya Sabha for its recommendation. As studied earlier, the Rajya Sabha is obliged to make these recommendations within a period of fourteen days. If the Rajya Sabha fails to make any recommendations within this allotted period or does not take any decisions, the Bill is considered to have been passed by both the Houses and is transmitted to the President for his assent. However, if the Rajya Sabha returns the Bill to the Lok Sabha with some recommendations, Lok Sabha is not entitled to accept these decisions and again sends it to the Rajya Sabha. The assent of the President in the case of Money Bill is just a formality and he hardly takes any decision in this regard.

Stop to Consider

Elements of Money Bill:

A Money Bill contains the following provisions or any one of these provisions:

1. Imposition, abolition, remission, alteration or regulation of any taxes.
2. The regulation of the borrowing of money by the government.
3. The custody of the consolidated fund or the Contingency Fund of India, the payment of money or withdrawal of money from such funds.
4. The receipt of money from the account of the consolidated fund of India or the public account of the India or the custody of issue of such money or the audit of the accounts of the Union or the States.

Thus you can easily find out the differences between a Money Bill and an Ordinary Bill.

2.9 Summing up

Thus after reading this unit you are now in a position to find that Article 79 of the Indian Constitution lays emphasis on the Constitution of the Parliament which consists of the President and the two Houses known respectively as the Council of States (the Rajya Sabha) and the House of the People (the Lok Sabha). Though the President is not a member of either House of the Parliament, yet like the British crown, he is an integral part of the Parliament and performs certain functions relating to its proceedings. The most important function of the Parliament is the making of laws. Through different stages the Parliament passes a Bill and a Bill becomes law when it is passed by the both Houses and gets assent from the President. You have also learnt that Rajya Sabha is the permanent House of the Parliament while the Lok Sabha is not permanent. The original Constitution, under Article 83 envisaged the normal tenure of the Lok Sabha to be 5 years. However, by the 42nd Amendment, the Parliament extended it to six years, but the 44th Amendment Act again fixed the original normal tenure of five years. Our constitution gives more power to the Lok Sabha as it represents the people. Rajya Sabha also has some privileges but being the permanent House of the Parliament, Lok Sabha maintains the continuity of the administration.

2.10 References and Suggested Readings:

Agarwal, R. C. *Indian Political System*. Delhi: B. Chand. 2007

Banerjee, A. C. (Ed.) *Indian Constitutional Document*.

Chandra, Prakash. *Indian Government and Politics*. Delhi: Cosmos Bookhive's, 2007

Hard Grave R. L. *Indian Govt. and Politics*. Harcorrt-Braco Cap World Inc. 1970

Tones Morris. *Indian Parliament*. London: Oxford, 1970

* * *

Unit 3
Issues of Accountability in India's Parliamentary Democracy

Contents:

3.1 Introduction
3.2 Objectives
3.3 Concept of Accountability
3.4 Parliamentary Democracy in India
3.5 Accountability of the Executive to the Parliament
3.6 Accountability Institutions
3.7 Privileges of the Parliament
3.8 Summing up
3.9 References and Suggested Readings

3.1 Introduction

In most of the countries throughout the world, there has been a marked expansion in the profile and significance of Parliaments in governmental frameworks in the last 15-20 years. As the complex governance web of interacting institutions and social forces has expanded and deepened in many societies, Parliaments have often become the key bridging structures that contribute linkages amongst the disparate actors now involved in shaping the decisions and directions of nations and regions.

The focus of this unit is the parliamentary oversight process and the way it functions within the democratic set up of the country, the instruments that Parliament can use for accountability—motions on the floor, oversight powers, the committee system. This unit makes an attempt to assess the various kinds of accountability functioning under the parliamentary democracy in India. Moreover, we plan to deal with the privileges and the performance of the Parliament of India in this unit.

3.2 Objectives

India is the largest working democracy of the world. Parliament is the pivotal institution of India's representative democratic polity and accountability is the hallmark of the success of Indian parliamentary democratic system. In this unit, we will address the issues of accountability in India's parliamentary democracy. After reading this unit you will be able to

- *analyse* the various kinds of accountability in India's parliamentary democracy
- *examine* the performance of the Executive's accountability to the Parliament
- *describe* the internal workings of the Parliament as an institution

3.3 Concept of Accountability

The Oxford English dictionary defines 'accountable' as 'liable to be called to account, responsible (to, for)'. The Webster's dictionary provides the similar meaning when it explains accountability as the liability to be called on to render an account. Though accountability and control are used as synonyms, actually 'control' goes simultaneously with an action or event whereas accountability comes in only after an act is accomplished. Only when one does a job or an act, one is called upon to render an account of it. Accountability in the positive sense means achieving results. Accountability also means the ability to provide an explanation or justification and accept responsibility for events or transactions and for one's own actions in relation to these events or transactions. In terms of the parliamentary system of government, the concept of parliamentary accountability is based on the premise that Parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures. Thus, accountability in case of parliamentary democracy can be understood in the following ways—

- Accountability means the ability to provide an explanation or justification and accept responsibility for events or transactions and for one's own actions in relation to these events or transactions.
- The concept of parliamentary accountability is based on the premise that Parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures.
- The mechanisms employed to achieve the responsibility has been referred to as parliamentary accountability in modern literature.

3.4 Parliamentary Democracy in India

India has the distinction of being the largest working democracy in the world and can take legitimate pride in the impressive record of the uninterrupted continuity of its hallowed parliamentary tradition for over half a century. The march of parliamentary democracy in the country had witnessed seventeen successive general elections. Today, when the country has traversed six decades of long, arduous and eventful journey in sustaining and deepening parliamentary democracy.

In the previous unit of this block we have discussed in detail the composition, powers and functions of both the Houses of the Parliament. The Parliament is the pivotal institution of India's representative democratic polity. Over the years, it has assumed a multifunctional role. The changing needs of the people warranting legislations in newer areas have made the legislative and surveillance role of the Parliament more complex and diversified. The unprecedented growth in the range and magnitude of the governmental activities has increased the responsibilities of the Parliament.

SAQ

Comment on the working of the Parliamentary Democracy in India in last six decades (80 words).

....

....

....

....

....

....

....

....

3.5 Accountability of the Executive to the Parliament

The Westminster model of Parliamentary government is the major feature of the Indian constitution. We have learnt that the Parliamentary government seeks to control the exercise of power by making the executive directly responsible to the legislature. The fact that the executive is represented within the Parliament obviously assists the passage of government legislation. The ability of the legislature to scrutinize the executive is, however, problematic when the latter has a dominant position not only in relation to the substantive business and proceedings of Parliament, but also in relation to the organisation and operation of the Parliament. The Parliament is described as "sovereign" which means in law nothing is superior to Acts of Parliament, and the courts cannot avoid legislation.

- ***Ministerial Responsibility***

The convention of collective ministerial responsibility is central to the Indian system of parliamentary government. A minister, by convention, must be a Member of the legislature but constitutionally his appointment and dismissal is made by the Prime Minister, who can also reshuffle his cabinet at any time. The convention of individual ministerial responsibility is also part of the constitution.

Ministerial responsibility is interpreted in broad terms to mean that each minister is responsible for his private conduct, the general conduct of his department, and acts done (or left undone) by officials in his department although much depends on the personalities involved and their interpretation of what the doctrine of ministerial responsibility means. The Prime Minister's power within the British system can also be demonstrated by the fact that he or she can make changes to the machinery of government. Finally, the government is constitutionally required to retain the confidence of Lok Sabha. Convention dictates that the government resigns or the Parliament is dissolved if defeated in a vote of no-confidence.

Stop to Consider

The Role of the Electoral System in Bringing Accountability

The electoral system also plays an important role in bringing accountability in a parliamentary democracy since the system stands for representative democracy. The Political parties are shaped not only by a country's political structure, but also by its electoral system. It has been argued that the popular legitimacy of the electoral process underpins the acceptance of the political system and the parliamentary system. In this view the electorate is not so much a positive driving force as an endorsing body. The electorate assents (or withholds its assent) to the party in government. The relationship between parliament and government continues to be shaped by the constitutional norms that pre- dates the growth of the franchise. Through popular election, the people are endorsing executive dominance and do so through Parliament. Moreover, the members of the Parliament are responsible to the people for their actions and they may be voted out of the power by the people in the next election. This is how electoral system plays a significant role in bringing accountability in a parliamentary democracy.

- ***Party Dynamics***

In most of the liberal democracies, demands on the political system are aggregated into a programme for action by political parties. Political parties are distinguished by permanence of structure, a deliberate attempt to win membership, and orderly procedures for recruiting leaders. In a representative democracy, the central purpose of political parties is to organise accountable and effective governance. Parties have key representative functions of interest articulation and aggregation and have traditionally taken responsibility for political communication fostering political participation. We already know that a predominantly multi-party system prevails in India and we are also

aware of the fact that parties have long mattered a great deal in Indian politics as they form a crucial part of the context within which the constitution operates.

Check Your Progress

1. What do you understand by accountability?

2. What do you mean by parliamentary democracy?

3. Comment on the accountability of the executive of India to the parliament.

3.6 Accountability Institutions

In the previous unit we have discussed the powers and functions of the Parliament of India. We have found that as a law-making body of the country it assumes significant position in the administration of the country. The growth and expansion of the modern state and the wide range of state activities have reinforced the need for a robust system of horizontal accountability with a strong Parliament at its centre sharing the burden of accountability along with other agencies or "constitutional watchdogs". "Constitutional watchdogs" are defined as bodies with powers of persuasion and publicity to alter the actions of the executive in areas characterized as constitutional. These include human rights, electoral matters, the redress of grievances and the voting of supply. Let us now discuss different bodies considered as accountability institutions.

- ***The Committee System***

Various Committees play important role in the parliamentary system since specialization often takes place principally through committees. Therefore, committee development is a common component of much legislative strengthening programmes.The main purpose of these committees is to ensure the accountability of Government to Parliament through more detailed consideration of measures. The intention is not to weaken or criticize the

administration but to strengthen it by investing it with more meaningful parliamentary support.

It is pertinent for us to know that there are two kinds of committees in the Indian Parliament: standing and ad hoc. Ad hoc committees are usually appointed for a specific purpose and can be either select or joint. Select committees include only members of one House, while joint committees include members of both the Houses. These committees are elected by both the Houses of Parliament and vary in size and composition. These Committees are entrusted with the following functions:

- To consider the Demands for Grants of the related Ministries/ Departments and report thereon;
- To examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- To consider the annual reports of the Ministries/Departments and report thereon;
- To consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.

In theory, parliamentary committees are a much-needed institutional innovation that can allow the parliament to exercise its role more effectively. Special parliamentary committees—joint parliamentary committees—have been instituted to investigate large-scale allegations of corruption and mismanagement, such as the investigation of the corruption allegations surrounding a large arms deal, the Bofors scandal, or the various banking and stock market scams. India has witnessed several major financial scandals in recent years, two of which—in 1992 and 2001—are investigated by a joint parliamentary committee, a large and unwieldy committee with 30 members from both the Houses.

SAQ

Critically analyse the role of Committee system in the parliamentary democracy of India. (60 words)

....

....

....

....

- ***Parliamentary Questions (and Answers)***

Parliamentary questions are often visualized as the best means of seeking information. Oral and written parliamentary questions are raised to the ministers. A minister is personally responsible for both oral and written replies. Parliamentary Questions are "a vital part of the Parliamentary process and help facilitate effective scrutiny of the prevailing government of the day". The Question Hour is practiced in both the Houses of the Parliament- the Lok Sabha and Rajya Sabha at the start of each sitting.

At present the procedure for asking questions in Parliament is as follows: Members are required to give a minimum of 10 and maximum 21 days clear notice of a question. When a session is called, the two Houses issue bulletins listing out the dates on which each Ministry/Department is scheduled to answer questions. Each Ministry/Department has a specific 'Question Day' in each House every week. The Two Secretariats ballot the notices of questions received 21 days in advance of each day allotted for questions and prepare the list of Starred and Unstarred Questions. Here we should know that the concept of Starred and Unstarred questions comes into being in 1921. While the Starred questions warrant oral answers, the Unstarred questions merit only written replies. Representatives of the ministries are permitted through an informal arrangement to collect advance copies of admitted questions. Ministers get printed lists of questions from the Lok Sabha and Rajya Sabha Secretaries five days before the due date for answers so that they know the admitted version of the questions and prepare their answers.

- ***The Opposition***

It is known to all that in a parliamentary democracy opposition plays a vital role. It is opposition, the constituent part of Parliament that has the most incentive to use the statutory powers of the Parliament to keep the government accountable. In general, if the government commands a large share of the seats with unchecked majority control of the legislature, policy outcomes will reflect the government's position. If the government has relatively fewer seats and the opposition has bargaining resources, then policy-making can be shaped by the opposition. The opposition's ultimate sanctioning weapon is that it may be a credible alternative in the next general election. But it can be argued that in the practice of parliamentary opposition in India, the opposition uses the Parliament more to impugn the credibility of governments than to exercise accountability for the sake of good governance. Most commentators on Parliament agree that the opposition parties in the Parliament are relatively weak at generating accountability of government. This results from a number of structural reasons.

First, the effectiveness of the opposition simply depends upon the party composition of the Parliament. Where governments have a comfortable majority, there is not much that the opposition can do to censure government.

Second, opposition parties are unable to generate new information about government activities that can allow them to take the executive to task. Virtually all opposition parties are reactive rather than proactive, reflecting the extreme organizational weakness of Indian political parties.

Third, unsurprisingly, opposition parties tend to focus on issues judged to have significant immediate political pay-offs rather than on the day-to-day functioning of government.

- ***Debates***

Another very significant mechanism for bringing accountability is the parliamentary debates. It is the oldest method for subjecting the executive to critical scrutiny. There are a variety of types of debates. In all debates, members can speak freely as they are protected by parliamentary privilege

from possible actions of defamation although reference should not be made to any matters.

> **Stop To Consider:**
>
> **Adjournment Debates**
>
> A Member can use a motion to adjourn the legislature to raise issues relating to his or her constituency or matters of public concern and a relevant minister will reply. If allowed by the presiding officer, an immediate debate takes place on the matter raised, thus suspending the normal business of the House. In practice, it has been seen that the Speaker has shown a consistent tendency not to interpret the term 'urgent nature' and of 'public importance' liberally.

- ***Zero Hour***

A second major indicator of legislative decline is that the attendance of parliamentary sessions is highest during what is known as 'zero hour'. This allotted time in parliamentary proceedings allows members, with the permission of the speaker, to raise and debate unlisted matters. There is no written procedural requirement for 'zero hour', though it seems by common consent and attendance figures to be the most popular process.

- ***Motion of Confidence***

In this section we have been discussing various institutions and mechanisms for ensuring accountability of the Parliament. Now, it needs to be mentioned here that the foremost mechanism of accountability is the availability of a no-confidence motion. Legislators can introduce a motion of no-confidence in the government, which, if sustained, will result in the fall of the government. But the effectiveness of no-confidence motions as a disciplining device depends upon the alternatives available to replace a sitting government. In a very simple sense, a government with a substantial majority in the Parliament is unlikely to be much deterred by the introduction of no-confidence motions.

Narrowly divided, the Parliament with coalition governments—the prevailing situation in India in the last decade—gives small parties a good deal of sanctioning power. They can hold the government accountable by threatening to withdraw and ensure the success of a no-confidence motion. On the

other hand, this leverage can also be used to attract substantially greater resources for particular parties. Thus, in principle, because of the threat of no-confidence motions, a government can respond to the pressure of particular groups within the Parliament, even as it becomes less accountable to the Parliament as a whole. The net effect depends upon the particular ends for which these parties exercise their bargaining power. Thus, the manner in which a no-confidence motion produces accountability depends in part upon the incentives under which particular political parties are operating.

Recent debates in India on the use of no-confidence motions in Parliament have led some to suggest that parties should be allowed to vote out governments only if they commit themselves to an alternative and credible coalition before doing so. Thus, while no-confidence motions are a critical mechanism of the executive's accountability to the Parliament, they can sometimes have perverse consequences. In our judgment, in the case of the Indian Parliament this mechanism has resulted in strengthening the bargaining power of small parties' vis-à-vis the government of which they are a part rather than enhancing accountability to the Parliament as a whole.

Hence from the above discussion, we can summarise the following points:

- The committees in the Parliament are central to ensure efficiency, transparency and accountability of the Parliament and other executive institutions.
- The work of the committees is to systematically sustain the scrutiny of the executive, ensuring government accountability and transparency to the Parliament.
- Question periods are the strong mechanism for compelling the executive to account for how it has administered the state.

Check Your Progress

1. Explain in brief the different parliamentary tools.
2. Assess the role of the various tools for securing accountability to the Parliament.
3. What is Question Hour?

4. Do you think parliamentary questions act as instruments of accountability?

5. Examine the challenges faced by the parliament in ensuring accountability.

6. State true or false:

a. Question Hour is the period of answering questions by ministers________.

b. Opposition party plays an important role in policy making_________.

c. Ad hoc committees are important tools of parliament_________.

d. Starred questions require written answers________.

e. No-confidence motion results in the fall of the government__________.

3.7 Privileges of the Parliament

According to Erskine May, parliamentary privilege can be defined as the sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they cannot discharge their functions, and which exceeds those possessed by other bodies or individuals. Thus, privilege, though part of the law of the land is an exemption from the general law to certain extent. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by the members. The term parliamentary privileges are used in Constitutional writings to denote both these types of rights and immunities. The privileges are as follows:

- Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of the Parliament, there shall be freedom of speech in the Parliament.
- No member of the Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of the Parliament of any report, paper, votes or proceedings.
- In other respects, the powers, privileges and immunities of each House of the Parliament, and the members and the committee of each House, shall be such as may from time to time be defined by the Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution 44th Amendment Act, 1978.
- Article 194, which is an exact reproduction of Article 105, deals with the State Legislatures and their members and committees. To enable the Parliament to discharge the functions properly, the Constitution confers on each member of the Houses certain rights and immunities and also certain rights and immunities and powers on each House collectively.

Article 105, clause (1), safeguards freedom of speech in the Parliament. It says: "there shall be freedom of speech in Parliament". Clause (2) further provides that no member of the Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Parliament or any committee thereof. No action, civil or criminal, will therefore lie against a member for defamation or the like in respect of things said in the Parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech will extend to other acts also done in connection with the proceedings of each House, such as, for notices of motions, questions, reports of the committee, or the resolutions.

Freedom of speech in the Parliament will not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1). The freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to reasonable restrictions under clause (2) of Article 19. The term freedom of speech as used in this article means that no member of the Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof. The freedom of speech conferred under this article cannot therefore be restricted under Article 19 (2). Clauses (1) and (2) of Article 105 protect what is said within the House and not what a member of the Parliament may say outside. Accordingly, if a member publishes his speech outside the Parliament, he will be held liable if the speech is defamatory. Besides, the freedom of speech to which Article 105 (1) and (2) refer, will be available to a member of the Parliament when he attends the session of the Parliament, no occasion arises for the exercise of the right to freedom of speech, and no complaint can be made that the said right has been invalidly invaded. Once it is proved that the Parliament is sitting and its business is transacted, anything said during the course of that business is immune from proceedings in any court. This immunity is not only complete but it is as it should be. It is one of the essence of parliamentary system of government that people's representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of the Parliament, the good sense of the members and the control of the proceedings by the speaker. The courts have no say in the matter and should really have none.

To elaborate, in a much publicized matter involving former Prime Minister, several ministers, members of the Parliament and others, in the case of P.V.Narsimha Rao v. State it is held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of the Parliament for the purpose of voting in a particular manner

in the Parliament. There was no unanimity amongst the judges as the three majority judges do not agree with the two minority judges regarding the meaning of the words in respect of Article 105 (2). The court is however unanimous that the members of the Parliament giving bribes, or taking bribes but not participating in the voting cannot claim immunity from court proceeding's under Article 105 (2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

Clause (2) of Article 105 expressly declares that no person shall be liable in respect of the publication by order under the authority of a House of Parliament, of any report, paper, votes or proceedings. Common law accords the defence of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere.

Clause (3) of Article 105, as amended declares that the privileges of each House of the Parliament, its members and committees shall be such as determined by the Parliament from time to time and until the Parliament does so, which it has not yet done, shall be such as on 20th June 1979 i.e., on the date of commencement of Section 15 of the 44th Amendment. A general warrant of arrest issued by the Parliament in India cannot claim to be regarded as a court of record in any sense.

In India freedom from arrest has been limited to civil causes and has not been applied to arrest on criminal charges or to detention under the Preventive Detention Act. There is also no privilege if arrest is made under 151 Criminal Procedure Code. In India, the rules of procedure in the House of People give the chair the power, whenever it thinks fit, of ordering the withdrawal of strangers from any part of the House and when the House sits in a secret session no stranger is permitted to be present in the chamber, lobby or galleries. The only exceptions are the members of the Council of States and the persons authorized by the Speaker.

Now Article 361-A inserted by the 44th Amendment with effect from June 20, 1979 provides that no person shall be liable to any proceedings-civil or criminal for reporting the proceedings of the Houses of the Parliament or a State Legislature unless the reporting is proved to have been made with

malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

In India, the House also has the right to regulate its own constitution. When a seat of a member elected to the House becomes vacant, the Election Commission, by a notification in the Gazette of India calls upon the parliamentary constituency concerned to elect a person for the purpose of filling the vacancy. In India, Article 103 expressly provides that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred to the President whose decision shall be final. The President is however required to act according to the opinion of Election Commission.

As far as the right to regulate internal proceedings is concerned, Article 122 expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure, and no officer or member of the Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

A House of the Parliament or Legislature cannot try anyone or any case directly as a court of justice can, but it can proceed quasi judicially in cases of contempt of its authority or take up motions concerning its privileges and immunities in order to seek removal of obstructions for the due performance of its legislative functions. If any question of jurisdiction arises as to a certain matter, it has to be decided by a court of law in appropriate proceedings. For example, the jurisdiction to try a criminal offence such as murder, committed even within a House vests in ordinary courts and not in the Parliament or in the State Legislature. Also, a House of the Parliament or State Legislature cannot exercise any supposed powers under Articles 105 and 194, decide election disputes for which special authorities have been constituted under the Representation of People Act, 1951 enacted in compliance with Article 329.

Check Your Progress

1. What are the privileges granted to the members of the Parliament in India?

2. Do you think the privileges granted to the members can be used to guard against misuse.

3. Fill in the blanks:

   a. Article__________ deals with the parliamentary privileges of the Parliament.

   b. In a parliamentary form of government the ___________ is the most important organ.

   c. The Parliament has two Houses__________ and _______________.

   d. Two privileges, namely, ______________ and______________ of proceedings, are specifically mentioned in clauses (1) and (2).

3.8 Summing up

By now you have understood that in terms of the parliamentary system of government, the concept of parliamentary accountability is based on the premise that Parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures. You have learnt that the capacity of the Indian Parliament to hold the executive accountable is determined by its external environment, but there are many internal variables, such as the committee system, the administration and financing of the parliament which can determine whether the legislature can influence government and reinforce the accountability of the ministers for their policies and the conduct of their office.

You have further learnt that in India, Legislative Assemblies and the Parliament never discharge any judicial function and their historical and constitutional background do not support their claim to be regarded as courts of record in any sense. Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights. It is also a duty of the members to properly use these privileges and not misuse them for alternate purposes that is not in the favour of general interest of

nation and public at large. Thus what we must keep in mind is the fact that power corrupts and absolute power corrupts absolutely.

3.9 References and Suggested Readings

Jones, Morris W.H. *India's Parliament.* London: Allen and Unwin, 1957

Prakash, Surya A. *What Ails India's Parliament?* New Delhi: Harper Collins, 1995

Kashyap, Subhash C. *A History of the Parliament of India 1980–1989*, Volume 5. New Delhi: Shipra Publications, 2000

* * *

PS-05-III (3)

Institute of Distance and Open Learning

Gauhati University

MA in Political Science

Paper III

Politics in India (1)

Block 3

Nature and Functioning of Indian Federalism

Contents:

Block Introduction–

Unit 1 : Federal Structure and its Dynamics

Unit 2 : Centre-State Relations

Unit 3 : Centralization vs. Decentralization

Contributors:

Barnalee Choudhury &	:	Lecturer in Political Science IDOL, GU
Dipankar Saikia (Unit 1)	:	Cousellor in Political Science IDOL, GU
Rumi Roy (Unit 2)	:	Research Scholar JNU, New Delhi
Chayanika Sarmah (Unit 3)	:	Cousellor in Political Science IDOL, GU

Course Co-ordination

Dr. Kandarpa Das	:	Director IDOL,GU
Barnalee Choudhury	:	Lecturer in Political Science IDOL, GU

Editorial Team

Content Editing	:	Jonaki Dutta Counsellor in Political Science IDOL, GU
Format Editing	:	Prasenjit Das Editor in Charge IDOL, GU
Language Editing	:	Sanghamitra De Lecturer in English IDOL, GU

Cover Page Designing:

Kaushik Sarma	:	Graphic Designer CET, IITG

August, 2010

© Institute of Distance and Open Learning, Gauhati University. All rights reserved. No part of this work may be reproduced in any form, by mimeograph or any other means, without permission in writing from the Institute of Distance and Open Learning, Gauhati University. Further information about the Institute of Distance and Open Learning, Gauhati University courses may be obtained from the IDOL Office. Published on behalf of the Institute of Distance and Open Learning, Gauhati University by Dr. Kandarpa Das, Director and printed at Maliyata Offset Press, Mirza. Copies printed 1000.

Acknowledgement

The Institute of Distance and Open Learning, Gauhati University duly acknowledges the financial assistance from the Distance Education Council, IGNOU, New Delhi for preparation of this material.

Block Introduction:

After Independence, India adopted the system of parliamentary government with a federal structure. The Indian Constitution however does not regard India as a federation. The framers of Indian Constitution have adopted the Canadian structure of federation with the inclination towards a strong centre. This block is an attempt to introduce you to the dynamics of Indian federation. Our aim in this block is to help you understand the unique nature of Indian federal structure as well as the reasons behind adoption of such a unique model. It is known to us that one of the striking characteristics of any federal country is the existence of two sets of governments—central and state governments. For smooth running of administration it is necessary to have a cordial relation between these two sets of governments. In this block we are going to discuss the relationship between Indian central government and the state governments in terms of distribution of power. We know that India is not a true form of federation like USA and the Indian central government is more powerful than the state governments. So, the demand for more autonomy and decentralization of power is often raised in India. The block also deals with ethnic movements, which are now playing a crucial role in demanding decentralization of power in India.

Unit 1 of this block discusses the federal structure of India and its dynamics that includes different aspects of Indian federalism and constitutional provisions. In the first block of this paper we have learnt that there are various legacies of the British rule in the present Indian political system. In this unit we shall discuss the impact of the Government of India Act, 1935 which introduces a federal structure in India. Hence this unit will provide you a clear idea of Indian federalism with its past history, present picture as well as the future perspectives.

Unit 2 discusses the centre-state relations in India. The Constitution of India distributes powers and functions between the two sets of government. Again, the Constitution regards India as the 'Union of states' rather than a federal structure. After going through this unit you will be able to analyze the relationship between these two sets of government as it highlights the

provisions of Indian Constitution through which it distributes its power and makes the centre stronger than the states.

Unit 3 deals with the issues of centralization vs. decentralization in India. We know that unlike the pure form of federation as existing in USA, Indian states do not enjoy the power to secede from the federation. Moreover, Indian central government is more powerful than the state governments. So, in different periods India witnessed different kinds of autonomy movements along with some violent ethnic movements to secede from the Indian union. In this unit we shall discuss the causes of and consequences for the emergence of such movements with special reference to Bodo movement in Assam.

This block includes the following units.

Unit 1: Federal Structure and its Dynamics

Unit 2: Centre-State Relations

Unit 3: Centralization vs. Decentralization

Unit 1
Federal Structure and Its Dynamics

Contents:

1.1 Introduction
1.2 Objectives
1.3 1935 Indian Act and Indian Federalism
1.4 Federal Features of Indian Constitution
1.5 Distribution of Power between Central and State Governments
  1.5.1 Distribution of Executive Powers
  1.5.2 Distribution of Legislative Powers
  1.5.3 Distribution of Financial Powers
1.6 Emergency Provisions in the Constitution
1.7 All India Services and Commissions
  1.7.1 All India Services
  1.7.2 Union and State Public Service Commission
1.8 Special Provisions for J&K and Extra-Constitutional Provisions: The Planning Commission
  1.8.1 Special Provisions for J&K
  1.8.2 Extra-Constitutional Provisions: The Planning Commission
1.9 Summing up
1.10 References and Suggested Readings

1.1 Introduction

Federalism refers to a political system in which powers are divided between two sets of governments – national government and the other constituent units. In India, we have two sets of governments: central and state governments. Federal structure is necessary for the country considering its vast size and presence of diversities. However, Indian federalism has certain distinctive characteristics.

In this unit, we shall make an attempt to introduce you to the Indian federal structure and its dynamics. While doing so, we shall try to trace the history of the Indian federalism in the light of 1935 Indian Act. We shall also discuss distinctive characteristics of Indian federalism like emergency powers, All India Services and commissions, special provisions for J&K etc.

1.2 Objectives

It is known to us that the Constitution of India does not regard India as a Federation. However, the circumstances prevailing at the time of the drafting the Constitution and the memories of the partition convinced the framers of the Constitution that adequate precautions should be taken to ensure the unity of the country and check the fissiparous tendencies. After reading this unit you will able to:

- *examine* the evolution of the Indian federal system
- *describe* the federal structure of India
- *explain* the distribution of powers between the central and state governments
- *examine* the emergency provisions of Indian constitution
- *discuss* special provisions for J&K and some extra-constitutional provisions
- *analyze* the role of All India Services

1.3 1935 Indian Act and Indian Federalism

We know that a federal system is one in which there is a division of powers between the central and several regional authorities, each of which, in its own sphere, performs its administrative functions. These units act in coordination with each other. Though, Article 1 of the Indian Constitution provides that India is a Union of a states rather than a federation, it provides a federal structure for the Indian Union. As mentioned earlier, we have two

sets of governments: central and state governments and the Indian Constitution clearly divides power between these two sets of government. In this context, it needs to be mentioned here that, even before independence, the British wanted to establish a federal structure in India. This effort is evident from the Government of India Act, 1919. In this regard 'The Government of India Act 1935' deserves special mention which is considered as the pillar of Indian Federation. Let us discuss this Act now.

The Government of India Act 1935 known as the mini constitution of India is a lengthy document consisting of 321 Sections and 13 Schedules. The Act came into force on 1st April, 1937. It provides for a highly complex type of federal government and legal safeguards to restrict the activities of the Indian minorities as well as the legislators. In this section we are going to study only the federal provisions as outlined in this Act.

For the first time the Government Act of 1935 provides for an All India Federation consisting of eleven Governors Provinces, six Chief Commissioners Provinces and those Indian States who agreed to join the federation. In this context, it is pertinent to mention here that our present federal structure is not based on any agreement as it is in the USA. Unlike the USA, Indian States do not have the right to secede from the federation. This provision is similar to the Canadian system. Again the Government of India Act of 1935 creates a Federal Executive authority. In this system, the Federal authority is vested in the King of Britain. The King exercises his power through the Governor-General who is expected to act with the aid and advice of the Council of Ministers similar to the present Indian Parliamentary system. In our present federal structure we know that the executive authority of the Indian States is vested in the President and he rules through the Governors. We also know that like the executive of the 1935 Act, present President of India is the Federal Executive of the country. Thus, it can be said that the root of our federation can be raced back to the Act of 1935.

Besides these the Government of India Act of 1935 also creates a federal legislature for India. We know that bicameral legislature is one of the striking features of federation. The Government Act of 1935 creates two chambers known as Council of States (the upper House that represents the states) and the Federal assembly (the Lower House of the Parliament that represents the people). If we compare our present structure, we find that after independence following the provision of the Government of India Act, India creates bi-cameral legislature, where the House of States is its Upper House and represents the Indian States and the House of the People its Lower House and represents its people. Again following the provision of the Act, Indian Constitution regards the Upper House as the permanent chamber of the Parliament.

The 1935 Act of India has also made provision for granting large autonomy to the provinces of India (during the British period) and establishment of a Federal Court. According to the Act the degree of autonomy introduced at the provincial level is subject to important limitations: the provincial Governors retain important powers and British authority retains the power to suspend responsible government.

Now we shall discuss the present Indian federal system. Though India is described as 'Union of States' by the constitution, it has provided for various federal provisions for smooth functioning of the administration. There are various grounds for the introduction of federal provisions in India. The major reasons are

a) **Size:** India is a vast country. Because of its vastness it is difficult to run the administration of the entire country from one centre. That is why it was decided to divide the administrative powers between two sets of governments for administrative convenience.

b) **Diversities:** In India, one can find diversities in terms of religion, race, language and culture. It is difficult to rule such a complex and heterogeneous society by one government. The framers of the constitution feel that to represent the interests of all and to address the problems of different sections and groups of the society a federal structure is necessary in India.

So, the framers of Indian Constitution adopt federal structure for India. However, it is not a true form of federation. As we mentioned earlier unlike USA which is regarded as the model federation, in India the component states have no right to secede from the federation. Moreover, Indian federation is not the result of any agreement. Above all, the residuary powers are vested in the states in USA while in India these powers are vested in the central government who makes law on this regard. We can say that like the Government of India Act 1935, Indian constitution provides for a strong central Government for maintaining integrity of the nation. In this context some critics regarded India as a unitary state. This statement is true to some extent, because the Parliament is the supreme law making authority of the nation. Again some critics argue that India is a 'Quasi-Federal State" because of the presence of both unitary and federal features.

Hence it is clear that we find the root of Indian federalism in the Government of India Act of 1935. Most of its provisions are still present in our system with some modifications. The vision behind the establishment of federation is same in both British and present Indian Constitution as they aim at establishing a strong center with some provincial autonomy.

SAQ:

Do you think that the present Indian federation is the relic of its past. Give arguments in support of your answer (50 words)

. . . .

. . . .

. . . .

. . . .

1.4 Federal Features of Indian Constitution

By now we all have learnt that the constitution of India adopted in 1950 introduces various federal provisions in India with strong centralizing tendency. Let us discuss the federal features of Indian constitution in this section.

- **Written Constitution**: Written constitution is one of the important features of any federation. The Constitution of India is not only a written document but also the lengthiest constitution of the world. Constitution clearly provides the basic structure of the federation and divides the power between its two sets of governments. Again the Constitution is the supreme law of the nation. Each government and even the President of the country is bound to obey the provisions of the Constitution.
- **Dual Polity**: Indian Constitution provides for two sets of governments. We have the central government at the union level and state governments in the respective states.
- **Division of Powers**: As mentioned earlier, the Constitution of India has divided the powers between the two governments in three lists viz,– Union, State and Concurrent List.
- **Rigid Constitution**: Another feature of federation is the rigid Constitution for maintaining stability and integrity. The Indian Constitution is rigid to the extent that those provisions which are concerned with the federal structure can be amended only by the joint action of the central and state government.
- **Independent Judiciary**: For fair judgements, Indian Constitution made the judiciary independent of the government through various measures, like security of tenure to judges, fixed service condition etc.
- **Bicameralism**: The most striking feature of any federation is its bi-cameral legislature. As we mentioned earlier Indian Parliament has two Houses-Rajya Sabha (Upper House) and Lok Sabha (Lower House). While the Upper House represents the Indian states, Lok Sabha represents the entire people of India.

These are the basic federal features of Indian Federalism. However there is a tendency to make central government stronger than the state governments. For example in the allocation of powers through three lists, central government gets more powers than the state governments. Moreover, the residuary powers are in the hands of the central government. Again some other features

of Indian constitution such as single citizenship, single constitution make India a unitary state. However, for the above mentioned characteristics, it can safely be said that India is a federation of its own kind though it has been defined as 'Union of States' in the Constitution.

Stop To Consider:

Unitary Features of Indian Constitution:

Despite regarded as the federal country, India has many unitary features in its Constitution which are as follows:

1. A strong Centre: In the first instance, the Constitution of India provides for a strong centre which is a feature of unitary government. In the division of power we find that while Central list includes 97 subjects, State list includes only 66 items. Besides, the residuary powers are exercised by the central government.

2. Single Citizenship: Unlike USA. which follows strict federal principles, in India the Constitution provides only single citizenship right to its people. People belonging to different states of India are regarded as Indian citizen only. There is no separate state identity for the people.

3. Existence of Union Territory: The existence of Union territories is another feature of Indian Constitution which clearly points out its unitary tendency. These units are directly governed by the central government and do not enjoy any independent powers or autonomy.

4. Appointment of Governor: Appointment of Governor by the President of India is also a unitary feature of Indian Constitution. Governor is the agent of central government who can use his discretionary powers in terms of state administration.

Apart from the above features, some other unitary features of Indian Constitution are

(a) Single Judiciary

(b) Emergency provisions

(c) All India Services

(5) Flexibility of the Constitution etc.

Hence, from this discussion we can easily analyze Indian federal structure in the light of its unitary characteristics.

1.5 Distribution of Power between Central and State Governments

As we mentioned earlier one of the striking features of Indian federation is division of powers between the central and the state governments. The Constitution of India clearly distributes administrative, legislative and financial powers between these two sets of governments. The Seventh Schedule of the Indian Constitution through three lists, i.e. Central List, State List and Concurrent List clearly distributes such powers. Now let us discuss the distribution of powers between centre and the states.

1.5.1 Distribution of Administrative Powers

We have learnt that the Seventh Schedule of Indian Constitution distributes the powers between central and the state government through three lists. It needs to be mentioned here that the Union List comprises of 99 subjects, State List has 61 subjects and Concurrent list has 52 items. The Indian Constitution clearly mentions that on the basis of these lists, both governments can exercise their administrative powers over the subjects. For example, central government has its administrative authority over the subjects of Central List, and on the subjects of State List, state government has its administrative authority. On the other hand, both governments can exercise their administrative authority over the subjects of Concurrent List. In this context it is necessary to mention here that if both the governments want to exercise their administrative authorities over the subjects of Concurrent List, then the decision of central government will retain. Again as mentioned earlier all the residuary powers are vested in the central government.

Again, Article 256 of the constitution says that the executive power of the State "shall be so exercised as to ensure compliance with the laws made by the Parliament". It further states that "the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose". Thus, the Constitution envisages a 'co-operative federalism'. The Union executive has the power to enter into any international treaties or conventions. On the

other hand, the Governor of the state acts as a representative of the Union in the State government. The Governor is appointed as the head of the state by the President of India. Thus, he has to ensure that the administration of the state is run in compliance with the provisions of the Constitution of India. If there is any administrative breakdown in the state, the Governor should report it to the President of India. Following the recommendation of the Governor, the Union government may declare emergency in the state under Article 356. This is one of the unique and the most criticized provisions of the Indian Constitution which makes the system more unitary than federal. This is also considered to be one of the misused provisions of the constitution by the central government.

Though the areas of administrative powers or authority of the Union and the States have been clearly defined by the Constitution, the states become subservient to the centre on account of colossal power of direction, superintendence and control entrusted to the central government.

Check Your Progress:

1. Define Federalism.

2. Make a comparative analysis of the federal systems of India and USA.

3. Do you think India is a Federal Country? Give reasons.

4. Examine the unitary features of Indian Constitution.

5. Critically describe the federal features of the Government of India Act 1935 as compared to the present Indian Federalism.

1.5.2 Distribution of Legislative Powers

Like the distribution of administrative authority or powers, the Indian Constitution also demarcates jurisdiction between Union and the State Governments which is carried out in three lists as mentioned earlier. However, like administrative powers, laws made by the Parliament prevail

over the laws made by the state legislatures. Again like the administrative power, Parliament also enjoys a superior status than the state legislature in sphere of legislation. Article 200 of the Constitution grants the Union an executive power to intervene in the legislative process of states. Again, Article 249 to 253 authorizes Parliament to legislate on the state subjects.

It is pertinent to mention here that Indian Constitution authorizes the Parliament to make laws for the whole country. Article 253 of the Indian Constitution authorizes the Parliament to make any law for the whole or any part of the country for the implementation of treaties and international agreements of which India is a party. Under Article 356 which relates to the breakdown of the Constitutional machinery in the state, in this situation Parliament can legislate on the matters enumerated in the state list.

On the provision of Presidential veto on a state legislation, again we find the provision of a strong central government in terms of distribution of legislative powers. When a state legislature passes a Bill, there is a provision of scrutinizing by the President of India. To become an Act, the Bill must get the assent of the President. Thus it can be said that though India is a federation of states, the Indian state do not have full autonomy in sphere of legislation and it is subject to the central government.

SAQ:

Do you think that the appointment of Governor prohibits the state government to enjoy its autonomy? Give reason to support your answer. (80 words)

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

1.5.3 Distribution of Financial Powers

We have already discussed the distribution of administrative and legislative powers between central and the state governments. Now in this section we are going to discuss the distribution of financial powers between central and the state government. Like administrative and legislative powers, central and state government can exercise their financial authority over the subjects of their concerned list. For example, on the subjects of State List, the state government has the power to levy and collect taxes. However, like the above mentioned powers, central government has also a superior status in terms of financial powers. Let us discuss the distribution of financial powers between the central and the state government.

We should know here that the federal system will not be successful, if both union and the state governments lack adequate financial resources at their disposal to enable them to discharge their duties and responsibilities properly. In India the provision of distribution of revenue is based on the system of The Government Act of 1935 and the provision of review after every five year by the Finance Commission.

It is known to us that the State and the Union possess exclusive jurisdiction over levying of taxes enumerated in the State and the Union List respectively. However it is pertinent to mention here that the Concurrent List does not include any subject relating to levying of taxes. It needs special mention here that while the proceeds of some taxes within the State List are exclusively retained by the states, the proceeds of some taxes in the Union List may be earmarked wholly or partially for the states. For example, the stump duties are (in Union List) levied by the Union but collected and wholly appropriated by the States.

Though, in the financial sphere the state governments enjoy some autonomy but in some context the central government can enjoy monopoly over the state government. For example, Article 288 specifies that without the consent of the President, a state may not levy tax on water or electricity supplied or controlled by the authority established for regulating or developing any inter

state-river or river valley. Article 148 deals with the appointment of Comptroller and Auditor General of India who is known as the guardian of Indian national finance. Article 149 empowers him to examine the accounts of Union and the State government. Again Article 273 provides the provision for grants-in-aid for some states.

Thus we find that in terms of financial power the state government has some autonomy. But, for financial assistance it depends on the central funds.

Check Your Progress:

1. Critically examine the distribution of administrative powers between the central and state government in India.
2. Make a comparative study of distribution of legislative powers between the central and state governments.
3. Analyze the constitutional provisions of India which make the central government stronger than the state government of India in terms of distribution of financial powers.

Stop To Consider:

Some Important Subjects of Union, State and Concurrent List:

As known to us, Indian Constitution distributes the administrative, legislative and financial powers between the central and the state government through the Seventh Schedule. The Union List contains 99 subjects, State List contains 61 subjects and the Concurrent List contains 52 subjects. Here, we shall mention some important subjects from these three lists separately to help you understand the relationship between the central and the state governments.

Union List: Foreign Affairs, Defense, Banking, Currency Coinage etc.

State List: Public Order and Police, Local Government, Public Health, Agriculture, Forests, Education, etc.

Concurrent List: Marriage, Divorce, Civil and Criminal law, News Papers, Books and Printing Presses etc.

In this context it needs special mention that formerly Union list contains 97, State List 67 and Concurrent List 47 subjects.

1.6 Emergency Provisions in the Constitution

We have discussed Indian federal structure in the previous sections. Indian has a unique federal structure with its own norms and we are aware of the most striking characteristics of any federation i.e. the distribution of powers between central and the state governments. In India we find that the Constitution creates a strong central government through various provisions, basically in terms of allocation of powers between its two governments. In this context, the emergency provisions of Indian Constitution need special mention.

Part XVIII of the Constitution of India deals with the emergency provisions. It is the exclusive power of the Central Executive. These emergency powers are deliberately conferred by the framers of the Constitution to ensure that the federal government is able to work as unitary system to deal with the extraordinary situation. Indian Constitution specifies three types of emergency exercised by the President. These are: national, state and financial emergency. Let us discuss these provisions briefly.

- **National Emergency**

Under Article 352 of the India Constitution, the President can declare national emergency on the basis of a written request by the Council of Ministers headed by the Prime Minister. National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such a proclamation must be approved by the Parliament within one month and can be imposed for six months. It can be extended by six months, by repeated Parliamentary approval, up to a maximum of 3 Years. When national emergency is declared the fundamental rights of Indian citizens, except the right to life and personal liberty, are suspended. The six freedoms under the right to freedom are automatically suspended. In the history of independent India, there are three periods during which national emergency is declared in India.

Through the provision of national emergency central government can exercise its superior status over the state governments. When this provision is

exercised, the central government gets the power to legislate for the whole India. The autonomy of the state governments remains suspended. The Union Parliament enjoys the power to make laws for the state government.

- **State Emergency**

State Emergency also known as President's rule is another emergency provision of Indian Constitution. Under Article 356 President can declare state emergency for any one state or more than one states. President declares emergency if he is satisfied, on the basis of the report of the Governor of the concerned state that the governance in a state cannot be carried out according to the provisions in the Constitution. Hence, we can say that a state emergency is declared under two circumstances-

- When the state fails to run constitutionally i.e. constitutional machinery has failed.
- When the state is not working according to the given direction of the Union government.

During the state emergency, President takes over the administration and the Governor administers the state in the name of the President. The legislative assembly is either dissolved or remains suspended. Parliament enjoys the power to make laws on the subject of the State List. State emergency is declared in Punjab in 1952 for the first time.

Hence it can be said that through the provision of state emergency, the central government can suspend one state government. It is the supreme power in the hands of the central government to control the state governments. This power may be misused by the ruling party at the Center. There are some instances of misuse of this provision as evident during Indira Gandhi's Prime Ministership when she used this power as a tool to dissolve the non-Congress governments in some states. So this provision under Article 356 has faced with many criticisms. However it cannot be denied that to maintain internal stability the power is an effective tool.

- **Financial Emergency**

Financial emergency is the last emergency provision which is never used till date. Under Article 360 of the Indian constitution, the Union Executive (President) can exercise this power for the entire India or in any part of India. President can go for it if he/she is convinced that there is an economic situation in which the financial stability or credit of India is threatened or same may happen. Such an emergency must be approved by the Parliament within two months. In times of financial emergency, the President can reduce the salaries of all government officials, including the judges of the Supreme Court and High Courts. The President can direct the legislature to observe certain economic measures relating to financial matters.

Though the Indian Constitution enumerates various emergency provisions, it also makes sufficient provision to impose checks on the misuse of powers by the Central Executive. For example, the responsibility of the President to the Parliament is itself an adequate safeguard.

Check Your Progress:

1. On what ground the Union executive can proclaim a State emergency?

2. Discuss the consequences of Financial Emergency.

3. Critically examine the provision of national emergency.

4. How do the emergency provisions help the Central government to dominate the state governments?

1.7 All India Services and Commissions

In the previous sections of this unit we have learnt different aspects of Indian federation. We know that Indian Constitution distributes its powers between central and the state government through three lists. One important feature of the Indian Constitution is that it provides two separate services, one for the Union and one for the State, yet there are certain services common for

all. These are known as All India Services. For recruiting personnel for these services, the Constitution also provides for the creation of a commission namely Union Public Service Commission later used as UPSC. In this section we are going to discuss some All India Services and its recruiting agency UPSC.

1.7.1 All India Services:

Apart from the state services, Indian Constitution provides for All Indian Services which are common to all. It is pertinent to quote Dr B.R. Ambedkar here, “the Constitution provides that without depriving the states of their right to form their own civil services, there shall be an All Indian Service recruited on all India basis with common qualifications, uniform scale of pay and members of which alone could be appointed to these strategic post throughout the union. Hence it can be said that the All India Services are controlled and regulated by the central rules and their ultimate responsibility lies with the Government of India. Some of such services are Indian Administrative Services, Indian Police Services, Indian Economic Services etc. Article 312 of the Indian Constitution enjoins upon Parliament to create more of such services when it deems it expedient.

As specified earlier, the Indian Constitution provides for the constitution of All India Services. Article 309 to 314 relate to the Services under the Union and the States. However the issue of All India Services is always in debate since its inception during the British rule in India. With the establishment of responsible government in the provinces under the Government of India Act, 1919, the propriety of All India Services was questioned. Ambedkar and some other nationalist leaders opposed to the retention of All India Services. However, it was not accepted and after gaining independence Indian Constitution makes provision for such services.

In this context, is pertinent to mention here that the members of All India Services possesses an all India outlook which helps in the national integration and as the recruitment is based on merit and open for every national, it

attracts the attention of the best talent in the country. Again the need of All India Services is seen at the time of the failure of the Constitutional machinery of a state. At that time the officials (from All India Services) carry out the policies of Central government more effectively because they are placed under the direct control of the Central Government. However, it may also be pointed out that due to the All India Services the state government lost their autonomy in terms of administrative and legislative functions.

SAQ:

Comment on the necessity of establishing the All India Services in spite of the existence of State Services. (50 words)

. . . .

. . . .

. . . .

. . . .

1.7.2 Union and State Public Service Commission:

The Public Service Commission is a body created by the Constitution of India. The provisions relating to Public Service Commission have been laid down in Chapter-II of Part-XIV of the Constitution. The provisions in the Constitution ensure the competence of the Commission to deal with matter relating to the Union and State Service and enable them to discharge their duties in a fair and impartial manner free from influence from any quarter.

In the previous section, we have mentioned that for recruiting personnel for All India Services, Indian Constitution establishes a Public Service Commission. However, the notion of establishing a Public Service Commission (PSC) is not new for India. During the British period the Government of India Act, 1919 provided for the establishment of a PSC, but it was not implemented. Again the Lee Commission of 1924 raised the issue and it was in 1926 a PSC was established for Centre. After gaining independence, Indian Constitution, following the Act of 1935, provides for

a PSC for the Union and one for each state (Article 315). The Parliament can establish a Joint Commission for two or more states, if they want so.

Thus it is clear that PSC is a constitutional body. It has many functions to perform. Their functions have been mentioned in Article 320 of the Indian Constitution. According to this Article, basically the most important function of a PSC is to conduct examination for appointments to the services of the Union and the State respectively. In every matter of appointments to civil services and for civil posts they should be consulted by the government. Again it shall be the duty of PSC to advise on any matter referred to them or any other matter which the President or the Governor may refer to them. Under Article 321, the functions of the Union or State Public Service Commission may be extended by an act of Parliament or the State legislature in respect of the services of any local authority or any corporate body.

STOP TO CONSIDER:

State Public Service Commission with reference to Assam.

The Constitution of India provides for the establishment of state public service commissions for recruiting personnel for the state services. Article, 315 of the Indian constitution deals with the establishment of such Public Service Commissions. In this regard the Commission was framed by the Governor of Assam in exercise of the powers conferred by Article 318 of the Constitution of India and it came into force on 1st September 1951. In the same year the Assam Public Service Commission (Limitation of Functions) Regulation was promulgated in exercise of the powers conferred by the provision of clause II of Article 320 of the Constitution. The Assam Public Service Commission consists of one chairman and some other members. The Chairman and Members of the Commission are appointed by the Governor. The Chairman or any other Member of the Commission can hold office for a period of six years or till he/she attains the age of 62 years whichever is earlier. The commission is responsible to recruit personnel for the state services and conduct examination for this purpose.

1.8 Special Provisions for J&K and Extra-Constitutional Provisions: The Planning Commission

Though India has a common constitution for all its component units, there is a provision for a special provision for the State of Jammu and Kashmir. We can say that through Article 370 of Indian Constitution it provides a special status and a separate constitution for this state. Apart form that in India there is also a provision for the establishment of some extra constitutional bodies which help the government to run its administration smoothly. Again, these extra constitutional bodies help the government to control the state administration. In this section we are going to discuss the special provision for the state of J&K and Planning Commission as an extra constitutional body of Indian federation.

1.8.1 Special Provisions for J&K

The state of Jammu and Kashmir was acceded to the Indian Union on October 26, 1949 under some peculiar political circumstances. Article 370 makes special provision for determining the relationship between Jammu and Kashmir with the Indian Union. It allows Jammu and Kashmir to have its own constitution. Provision for this Article is made for a short period of time but it is still continuing. This provision has given a special status to the state by enabling it to have its own separate constitution, separate flag and separate law of citizenship.

Article 370 comes under part XXI of Indian Constitution under the heading 'Temporary and Transitional' provisions of the Constitution. According to the provisions of this Article, the Parliament of India can make laws for Jammu and Kashmir only in those matters in the Union and Concurrent Lists, which, in consultation with the Government of the State, are declared by the President to correspond to items specified in the schedule to Instrument of Accession. Besides, out of the 22 parts, 9 parts of the Constitution including the Preamble, Part II (Citizenship), Part III(Fundamental Rights), Part IV (Directive Principles of State Policy), Part

XIII (Trade and Commerce), Part XIV (Services under the Union and the States) and Part XVIII (Emergency Provisions) are made inapplicable to the State of Jammu and Kashmir. Again, the rest of the 13 parts of the Constitution are also partially applicable to the state. Article 370 assures the people of the Jammu and Kashmir to have their own constituent assembly to frame a separate constitution.

Accordingly, a separate constituent assembly has framed a separate constitution for Jammu and Kashmir which becomes effective from 26th January, 1957. This Constitution has 13 parts and 158 Articles and 6 schedules. There is a preamble to this Constitution which explains the relationship of the State with the Indian Union. Again, the Article 3 of the Constitution says that the State of Jammu and Kashmir shall be an integral part of Indian Union.

The incorporation of Article 370 thus gives a special status to the state of Jammu and Kashmir. Because of the separate constitution, the state enjoys the following special status:

a) While the Union Parliament by a unilateral action can increase/decrease the territory of the state, in the case of Jammu and Kashmir, no such bill can be introduced in Parliament unless the legislature gives consent.

b) The State legislature of Jammu and Kashmir also enjoys wider power in the field of law-making in comparison to the other state legislative assemblies. While the Union Parliament is empowered to make laws on residuary subjects in case of other states, in Jammu and Kashmir this power is enjoyed by the state legislature.

c) In the context of the proclamation of emergency, the state of Jammu and Kashmir enjoys special status. The President of India cannot declare a Proclamation of Emergency in this state on account of 'internal disturbances' unless the concurrence of the state legislature is taken. However, such a concurrence is not required while declaring emergency in other states. Moreover, the Indian Union shall have no power to make a Proclamation of Financial Emergency with respect to this State, nor

shall it have the power to suspend the Constitution of the State either on the ground of the constitutional breakdown in the State under Article 356.

d) As mentioned earlier, the Part II of Indian Constitution relating to citizenship is not applicable to the State of Jammu and Kashmir. The constitution of Jammu and Kashmir makes provision for special treatment of the permanent residents of the State. The citizens of the State enjoys special rights like employment under State government, acquisition of immovable property, settlement in the State and right to scholarships and any other aids from the State. These special rights are not enjoyed by the residents of other states in India.

Because of the above provisions, Article 370 has been criticized from many quarters and by some political parties. The opponents of this Article consider it detrimental to national integration. Further, they consider the idea of debarring the citizens of other states from purchasing land and property in Kashmir and settling there violates the principle of single citizenship. However, considering the peculiar situations in which the state of Jammu and Kashmir join Indian Union and also the peculiar situations existing in the state, Article 370 is essential in the state.

Though this Article provides for special status to Jammu and Kashmir, in certain important matters like Defence, Foreign Affairs, Finance and Communications the Indian Parliament does not need the concurrence of the state government.

Check Your Progress:

1. Write a note on the reasons necessary to grant special status to the State of J&K.

2. Which Article of Indian Constitution provides special status for the State of J&K?

3. Which Article of Indian Constitution provides for the establishment of All India Services?

1.8.2 Extra-Constitutional Provisions: The Planning Commission

In the previous section of this unit, we have mentioned that apart from the constitutional settings there is also a provision of establishing some commissions for the smooth running of the administration and for the effective control of the central government on the state governments. Here we shall discuss the Planning Commission as the machinery for planning.

The Planning Commission of India is established in the year of 1950 as an extra constitutional and non-statutory body by a resolution of the Government of India. The body is set up with a motive to make an assessment of the material, capital and human resources of the country and to formulate a plan for effective and balanced utilization of country's resources. However, the idea of making a plan of the economic resources of the country is not new. In 1876, Dada Bhai Naoroji in his Paper *Poverty of India* argues for undertaking some action to coordinate the economic field and at last in 1944 Department of Planning and Development is set up by the Government of India.

The organization and composition of the Planning commission has undergone several changes since its inception in 1950. It is because of that the Planning Commission is a not a statutory body and the government has the power to change its structure at any time. However, the Prime Minister of India is the ex-officio Chairman of the Commission. There is also a provision of appointing a Deputy Chairman and some other members. Apart from the formulation of a plan for the effective utilization of country's resources the Planning Commission makes assessment of the resources, determination of priorities for the allocation of the resources, formulation of the development plans of both the Central and the State Government and determines the machinery required for the implementation of the plan.

In this context it is evident to mention here that apart from the Central Planning Commission there is also a provision to establish state level planning body. The state planning boards are consisting of a chairman and a vice chairman and some other members. These bodies are responsible for the execution of plans and programmes in the state level.

Stop To Consider:

National Development Council as the Representative of States

We already know that in a federation it is imperative that there should be a close cooperation between the Planning Commission and the States. It is evident to mention here that there is no representative from the State in the Planning Commission. So to make the plans effective and successful, it is important to have close cooperation between the Planning Commission and the states. Hence to coordinate with the states, The National Development Council is set up as an adjunct to the Planning Commission (PC) on August 6, 1952. The main objective is to secure the cooperation of the states in the execution of the plan. For this purpose, all the Chief Ministers of the Indian states as well as the Prime Minister and the members of Planning Commission are considered to be the members of National Development Council. The body considers important questions of social and economic policy affecting national development and reviews the working of the national plan from time to time.

SAQ:

Do you think that the establishment of Planning Commission will help us to utilize the resources of the country properly? Give reason to support your answer. (60 words)

. . . .

. . . .

. . . .

. . . .

1.9 Summing up

From the above discussion it is clear that though Indian constitution never uses the word Federation, India possesses the qualities of federal structure. The root of India's present federal structure can be traced back to the Government of India Act 1935. Most of the striking features of present

Indian federation are drawn from this act. For example, provision for a strong center with the appointment of Governors in the states as the representative of Central government. Again, the Constitution of India has adopted the Canadian pattern of distribution of powers between the central government and the state governments in terms of the three lists to distribute all powers. In the words of Ivor Jennings we can say that with a strong centralized tendency India is a federal state. It is pertinent to mention here that though Indian federation has only a common constitution for all its component units, it also provides a special status to the state of J&K. This power grants J&K the right to make their own constitution and many provisions of Indian Constitution is not applied in this state. Again, apart from the constitutional bodies there is a provision to establish some extra-constitutional bodies for the smooth running of the administration. Basically the Planning Commission which is responsible to execute and implement the economic policies for the entire India is an extra-constitutional body. We also find some unitary prejudices in Indian Constitution. In this context, we can point out the provision of All India Services. These are common to all and the selection is done nationally through a recruiting body known as Public Service Commission. Through this services central government strengthens its control over the state administration. Hence it can be said that the divergence between the provisions of the Indian Constitution and other Federal Constitutions have many implications. It is not a true form of federation like USA. In reality, Indian federation is a federation with unitary bias and we can wind up by calling it "Quasi-Federal".

1.10 References and Suggested Readings

Bakshi, P.M. *The Constitution of India*. Universal Law Publishing Co, 2009

Austin, Granville. *Working Democratic Constitution: A History of the Indian Experience.* New Delhi, 1999

Ananth, Krishna. *India Since Independence. Making Sense of Indian Politics.* New Delhi: Pearson Longman, 2009

Bhagwan, V. & V. Bhushan. *Indian Administration.* New Delhi: S.Chand & Company Ltd. 2005

Unit 2
Centre-State Relations

Contents:

2.1 Introduction
2.2 Objectives
2.3 Article 356: An Introduction
2.4 Resource Dependence and Centre-State Relations
2.5 Sarkaria Comission and Centre-State Relations
2.6 Summing up
2.7 References and Suggested Readings

2.1 Introduction

Though Indian federal system is described as one of "Cooperative Federalism", it is in fact a federation with a strong centre and significant unitary features. It is so structured as to establish supremacy of the union government while providing autonomy to the states in certain fields. The scheme of distribution of powers in the legislative, administrative and financial fields under the seventh schedule of the Constitution is so effected as to make the Union Government more powerful than the states. In the name of emergency provisions even sweeping powers are given to the centre to exercise overriding legislative and executive authority to enable it to transform the federal system into virtually a unitary system.

In the fiscal domain too there has been a steady increase in the powers of the union government relative to the states. Fiscal crisis of the state governments forces them to depend increasingly on central support. The fiscal problems of state governments have their roots in decisions of the central government. In this unit, we shall discuss all these issues, their background, implications and future prospects.

2.2 Objectives

This unit deals with the areas of tension and cooperation that have emerged in India due to constitutional provisions and the working of centre- state relations taking in consideration the Sarkaria commission report. After reading this unit you will be able to

- *discuss* the implication of article 356 on centre –state relations
- *assess* the role of Governor in the present era of coalition
- *analyse* various recommendations and suggestions made for improvement or changes in the centre-state relations to reduce conflicts and tensions
- *examine* the working of Indian federalism

2.3 Article 356: An Introduction

Article 356 is one of the most debated provisions of Indian constitution which comes under the emergency powers of the Indian President. It carries the marginal heading "Provisions in case of failure of constitutional machinery in States". But neither clause (1) nor for that matter or any other clause in the article employs the expression "failure of constitutional machinery". On the other hand, the words used are similar to those occurring in article 355, namely, "a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution". If the President is satisfied that such a situation has arisen, whether on the basis of a report received from the Governor of the State or otherwise, he may, by proclamation, take any or all of the three steps mentioned in sub-clauses (a), (b) and (c). It is appropriate to read the entire clause (1) of article 356 at this stage:

"(1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation –

(a) assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;

(b) declares that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.".

Clause (2) says that such a Proclamation may be revoked or varied by a subsequent Proclamation. Clause (3) provides a check upon the power contained in clause (1). It says that "every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament" Clause (4) provides that "a Proclamation approved by both the Houses of Parliament shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation (The 44th Amendment Act reduces the period in this clause from one year to six months). The provision to clause (4), however, empowers such Proclamation to be extended, beyond six months subject to the approval of Parliament for a further period of six months at a time subject to an outer limit of three years. The second provision to clause (4) provides for a specific situation. The third provision to clause (4) is applicable to the State of Punjab and provides

for a particular situation and is of no general relevance. Clause (5) has been substituted altogether by the 44th Amendment Act. The said clause is in fact inserted by the Constitution (38th) Amendment Act, 1975 with retrospective effect. The clause inserted by 38th Amendment Act has barred judicial review of the Proclamation issued under clause (1). The present clause (5) provides certain details concerning the approval contemplated by clause (3) and is in fact a continuation of clause (4).

Article 356 of the Constitution of India dealing with the Presidential discretionary powers of emergency has long been the favoured topic of political debate.

The Governor

Governor is the executive Head of the State who has to act according to the advice of the Council of Ministers. Normally, each state has its own Governor, but under the Seventh Amendment Act, 1956, the same person can be appointed as Governor of one or more states. An executive action of the state is formally taken in the name of the Governor.

You should remember here that the office of the Governor has a dual role. He is the constitutional head of the State, and at the same time, an agent of the centre. He is appointed by the President .He normally holds office for five years but can be removed at any time before that by the President .i.e. the Governors remain in office during the pleasure of the President. Thus he is a nominee of the Union Government. He may be asked to continue beyond the normal five years, until the arrival of his successors. The Governor can also be transferred from one state to another by the President. In order to be appointed as the Governor: a person must be a citizen of India and must have completed the age of thirty five years .The Governor cannot be a member of Parliament or of a State legislature and if a person is found so at the time of the appointment as Governor, his seat in Parliament or the State legislature, as the case may be, will become vacant on the date he assumes office as Governor. The Governor cannot hold office of profit during the term of office

Stop To Consider:

Powers and Functions of the Governor

- The executive power of the State is vested in the Governor .The executive power of the State extends to all matters on which the State Legislature has the power to make laws.
- The Governor summons and prorogues the State Legislature and dissolves the legislative Assembly. No bill can become an act unless the Governor gives his assent. He may also reserve a money bill for the consideration of the President. He also can issue ordinance when one or both the Houses of the State Legislature are not in session.
- No Money Bill or Financial Bill can be introduced nor can any demand for grant be made in the Legislative Assembly except on Governor's recommendation.
- Like the President, the Governor has the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute sentences in certain cases in respect of cases over which the State legislature has the power to make laws.

The Governor exercises emergency powers according to the provisions of Article 356 (We shall address this issue in the unit)..

Article 356 and Office of The Governor

You have already learnt that the Governor acts as an agent of the central government in a state. As the agent of the centre, he is charged with the duty of seeing that the Government of the State is carried on in accordance with the provisions of the Constitution and he owes a duty to report to the President under Article 356 if the Government of the state cannot be carried in accordance with the constitutional provisions. Though the Constitution lays emphasis on the role of the Governor as the constitutional head of the state (Article 154) yet at times his role as an agent of the centre assumes greater prominence. This inevitably causes centre-state tension.

We have learnt that the Article 356 is meant to take care of a situation of failure of constitutional machinery. Article 356 authorises the President to issue a proclamation imposing President's rule over a State if he is satisfied

that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, Article 365 says that, "where a State fails to comply with Union directions it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". Article 356 is invoked on the basis of the report of the Governor. Given the circumstances of global nexus in activities of terrorism, insurgency, lawlessness, the material flowing from the source "otherwise" than the report of the Governor is equally germane to the scheme of invoking this provision. Thus, the Governor has a critical role in altering the nature of federalism through the use of emergency powers. The President, as discussed above, acts on the recommendation of the Governor in determining whether there is a breakdown of the state administration.

It has been suggested that provision for imposition of President's rule in States is made to deal with the serious situations as a life saving device to be used as a measure of last resort. However, in practice this provision has been used repeatedly and it has become the most contentious issue in Union-State relations. The provisions, apart from genuine cases of instability or national interest, have been used for:

a) Dismissing the state governments having majority in the Assembly.

b) Suspending and dissolving the Assemblies on partisan consideration.

c) Not giving a chance to the opposition to form government when electoral verdict is indecisive.

d) Denying opportunity to the opposition to form government when ministry resigned in anticipation of the defection on the floor of the House.

e) Not allowing the opposition to form government even after the defeat of the ministry on the floor of the House.

Controversy Related To Article 356 and The Role Of Governor

The role of the Governor has emerged as one of the key issues in Union - State relations. The Indian political scene was dominated by a single party

for a number of years after Independence. Problems which arose in the working of Union-State relations were mostly matters for adjustment in the intra-party forum and the Governor had very little occasion for using his discretionary powers. The institution of Governor remained largely latent. Events in Kerala in 1959 when President's rule was imposed brought the role of the Governor into prominence, but thereafter it did not attract much attention for some years. A major change occurred after the Fourth General Elections in 1967. In a number of States, the party in power was different from that in the Union. The subsequent decades saw the fragmentation of political parties and emergence of new regional parties. Sometimes unpredictable realignments of political parties and groups took place for the purpose of forming governments. These developments gave rise to chronic instability in several State Governments. As a consequence, the Governors were called upon to exercise their discretionary powers more frequently. The manner in which they exercised these functions had a direct impact on Union-State relations. Points of friction between the Union and the States began to multiply. The role of the Governor is attacked on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them. It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a vital link between the Union and the States. Many have traced this mainly to the fact that the Governor is appointed by, and holds office during the pleasure of, the President, (in effect, the Union Council of Ministers). The part played by some Governors, particularly in recommending President's rule and in reserving States Bills for the consideration of the President, has evoked strong resentment. Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Instances where the Union Government utilizes the Governor's office for its own political ends also add to the criticism. Many Governors looking forward to serve under the Union and aiming to participate actively in politics after their tenure have are visualized as agents of the Union.

Article 356 has been misused for partisan advantage when the centre has dismissed several state governments leading to the opposition of the political parties controlling the government. Perhaps the most egregious instance of dismissal of a state government under Article 356 occurred in 1992. After the 1991 elections, the Bharatiya Janata Party (BJP) came to power in four States in the Hindi-speaking areas of the country-Uttar Pradesh, Madhya Pradesh, Rajasthan, and Himachal Pradesh while the Congress-I minority government took office at the Centre. The BJP, playing with the religious sentiments of the Hindu majority made RamaJanambhumi a political issue. They were demanding the construction of a temple for the Hindu god Rama on the same premises in Ayodhya where the Babri mosque was built for the Muslims. The BJP's claim was that the mosque had been built by the Mughal ruler Babar in 1528 after demolishing a previously existing Rama temple believed to have been built by the Gupta king Vikramaditya. Hence, the argument that the mosque should be replaced by a new Rama temple led to an agitation between the Hindus and the Muslims. This agitation took an ugly turn on 6 December 1992, when following a large meeting of the BJP and other kindred parties and groups; the mosque was demolished by an unruly Hindu mob. Within an hour after the demolition of the mosque, the BJP government of Kalyan Singh in Uttar Pradesh had resigned. The next day the Congress-I central government of P.V. Narasimha Rao banned five religious organizations, which was followed by the dismissal of the other three BJP governments of Sunderlal Patwa in Madhya Pradesh, Shanta Kumar in Himachal Pradesh, and Bhairon Singh Sekhavat in Rajasthan. The President invoked Article 356 and declared an Emergency based on internal disturbances which were ratified by both the Houses of Parliament. Sunderlal Patwa, Chief Minister of Madhya Pradesh, challenged the dismissal of his government which had nothing to do with the events in Ayodhya in Uttar Pradesh, except that his government also belonged to the opposition BJP. The Madhya Pradesh High Court ruled in his favour on 2 April 1993. The Court admitted that only Parliament could review the actions of the President, "but the consequences which flow from the Proclamation under Article 356 [by the President] are drastic." It also observed that

“Article 356 of the Constitution authorizes serious inroads into the principles of federation....” The Court further said that “this extraordinary power should not be permitted to be used or abused to achieve the political ends.” It also argued that the failure of the state government to maintain public order itself was not a reasonable ground for suspension of the government. “Public disorder must be of such an aggravated form as to result in failure of entire law and order machinery of the State” to justify the invocation of Article 356. The Court concluded that “The Union of India has not been able to support on any material produced the imposition of the President’s rule only in the State ruled by Bharatiya Janata Party and the imposition of the President’s rule in that State was wholly uncalled for.” It also considered that the fact that both the Houses of Parliament had approved an invalid Proclamation did not make it valid, and quashed the Presidential Proclamation by adding that “consequential effects thereon shall follow”. The central government appealed the Court’s decision, and the Supreme Court in March 1994 consequently reversed it stressing the secular nature of India. While unanimously upholding the dismissal of the three state governments (of Madhya Pradesh, Rajasthan and Uttar Pradesh), the Court reaffirmed that a Presidential Proclamation of Emergency is subject to judicial review when found to be “malafide,” or based on “wholly irrelevant and extraneous considerations.” However, emphasizing that “politics and religion cannot be mixed,” they ruled that “any State Government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Article 356 of the constitution” (The Hindu, 1994). The worst damage may possibly have been done through the office of the Governor, because the Governor cannot be held responsible for his or her actions. The Governor can be removed only by the President and the President acts on the advice of the Council of Ministers. Hence the Governor remains in office as long as he enjoys the pleasure of the Union Executive This may act as a bias whenever the Governor’s duty requires him to go against the desires of the Union Executive.

SAQ

How do you assess the role of the Governor an area of tension between the Centre and States?

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

S.R. Bommai vs. Union of India :

S. R. Bommai vs. Union of India was a landmark in the history of the Indian Constitution. It was in this case that the Supreme Court boldly marked out the paradigm and limitations within which Article 356 was to function. The Supreme Court unanimously upheld the dismissal of the BJP state governments of Madhya Pradesh, Rajasthan and Himachal Pradesh in December 1992 because of their anti-secular actions were inconsistent with the secular Constitution. In the Bommai case, breaking radically with past interpretations of the constitutional provision, the apex court laid down new demanding and enforceable standards of rules against elected state governments and state legislative assemblies. Thus the President's power to issue under Article 356 proclamation must be understood to be a conditional power; action under the provision is judicially reviewable. The Presidents' satisfaction which is necessarily subjective must be formed on relevant material which can be scrutinised by the courts; no irreversible action like dissolution of legislative assembly, is permissible unless both the Houses of the Parliament approve the proclamation until then, the most the central executive can do is to keep the assembly in suspended animation and even after Parliamentary approval the courts can, restore the status quo. Thus the decision of the Supreme Court has placed significant restrictions on powers to proclaim President's rule.

Sarkaria Commission Report and Office of The Governor :

The Sarkaria Commission has suggested that a politician belonging to the ruling party at the centre should not be appointed as Governor of a state being run by some other party or by a combination of other parties. He must be appointed after consultation with the State concerned. A Governor should be an eminent person who has not taken active part in politics, generally and particularly, in recent past. Persons belonging to minority groups should also be given a chance. The system of Governor must retain the power to refer any Bill to the centre for assent.

According to the Commission's report in case of a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without delay, the report recommends that the Governor request the outgoing Ministry to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and agrees to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should merely carry on the day-to-day activity of the government and should desist from taking any major policy decision. Every Proclamation of Emergency is to be laid before each House of Parliament at the earliest, in any case before the expiry of the two-months period stated in Article 356(3). The State Legislative Assembly should not be dissolved either by the Governor or the President before a Proclamation issued under Article 356(1) has been laid before Parliament and the latter has had an opportunity to consider it. The Commission's report recommends amending Article 356 suitably to ensure this. The report also recommends using safeguards that would enable the Parliament to review continuance in force of a Proclamation. The Governor's Report which moves the President to action under Article 356, should be a 'speaking document, containing a precise and clear statement of all material facts and grounds on the basis of which

the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.' The Commission's report also recommends giving wide publicity in all media to the Governor's Report.

Stop To Consider:

- Part XVIII of the Constitution speaks of emergency provisions. The emergency provisions therein can be classified into three categories: (a) Articles 352, 353, 354, 358 and 359 which relate to emergency proper - if we can use that expression, (b) Articles 355, 356 and 357 which deal with imposition of President's rule in States in a certain situation and (c) Article 360 which speaks of financial emergency.
- The crucial expressions in Art.356 (1) are - if the President, "on the receipt of report from the Governor of a State or otherwise" "is satisfied" that "the situation has arisen in which the government of the State cannot be carried on" "in accordance with the provisions of the Constitution.
- The proclamation under article 356(1) is not immune from judicial review.

A liberal interpretation of article 356, the Commission points out, will reduce the States to mere dependencies and willcut at the root of the democratic, Parliamentary, federal form of government.

Check Your Progress:

1. Discuss critically Article 356 of the Indian Constitution.
2. Trace the instances of the misuse of powers under Article 356 by the central government.
3. Examine the report of Sarkaria Commission on the issue of Governor of the State.

2.4 Resource Dependence and Centre-State Relations

Resource Dependence and centre-state Relations in particular relates to the financial power relations between the centre and state governments. In the fiscal domain, the Union has most of the major and buoyant sources of revenue as compared to the States. There has been a steady increase in the powers of the Union government relative to the States. As the fiscal balance

has tilted increasingly towards the Union, the dependence of the States on centralized institutions and sources like the Finance Commission, Planning Commission and Centrally Sponsored Schemes/Central Sector Schemes for resources has increased.

Theoretical Consideration of Resource Dependence Theory

Resource dependence theory is perhaps the most comprehensive in the scope of its approach to organizations, combining an account of power within organizations with a theory of how organizations seek to manage their environments.

The most widely-used aspects of the theory analyze the sources and consequences of power in interorganizational relations to trace the source of power and dependence and the ways to use power and manage dependence. The motivation of those running the organization is to ensure the organization's survival and to enhance their own autonomy while maintaining stability in the organization's exchange relations. There are three core ideas of the theory: (1) social context matters; (2) organizations have strategies to enhance their autonomy and pursue interests; and (3) power. There is evidence that interest in resource dependence theory is rising and it is not surprising for us as finance has altered power relations. It has also ushered in a stunning array of new tactics for managing dependence with regard to centre –state relations.

Fiscal Domian of Resouce Dependence Between State and Centre

The Financial dimension of Indian federal policy is also one of the major issues in centre-state relations. The demand of the States for greater fiscal autonomy has now become one of the most debated issues. The tensions here arise because of

(a) Comparative powers of taxation, (b) Statutory versus discretionary grants and (C) Economic planning.

1. Taxation Powers

The revenue sources of the centre arc relatively expansive as against those of the states. The centre also controls vast resources generated through deficit financing, loans from organised money markets in the country as well as huge funds of foreign aid. The residuary powers of taxation are also vested with the central government. In addition to this, the Constitution also authorises the centre to collect surcharges on taxes to raise additional funds in times of emergency. Another loophole in taxation system on account of which states suffer is the corporate tax which keeps on expanding and is the exclusive purview of the centre. The gap between state revenues and their expenditure has been increasing. Of course one reason for this is the state's own inability to mobilise even those resources which they can and incurring wasteful expenses through populism. The states therefore have to be dependent on central assistance.

2. Issue of Grants

For devolution of funds from the centre to the states there are four methods (i) obligatory sharing of union taxes on income (ii) permissive sharing of union excise duties (iii) assignment of certain union duties and taxes wholly to the states (iv) provision for giving financial assistance to the states in the form of grants and loans. Articles 280 and 281 provide for the appointment of an Independent Statutory Finance Commission every fifth year or earlier as the President of India desires. The provision of the Finance Commission is manifested in its effort to regulate, co-ordinate and integrate the finances of the Government of India and the state governments. Originally the Finance Commission was intended to cover all the financial transfers from the centre to states. On the other hand, the Planning Commission considers the total plan requirements of the states and their resource potential, and then determines the assistance that may be granted. Since the Planning Commission is completely a central institution and is politically influenced, the states have a sense of discrimination in allocation of grants. The functions

of the Finance Commission and the Planning Commission overlap at many points. Grants under the Finance Commission awards are intended to even out the disparities between the states. This is precisely the objective of the Planning Commission. In addition, the provision for grants-in -aid by the centre is purely a political and arbitrary means of devolution and the centre has been making use of this provision more in a controversial manner.

SAQ:

Examine the role of the Planning Commission as an agent of exercising control over state finance by the central government. (60 words)

. . . .

. . . .

. . . .

3. Economic Planning

It is generally agreed that the process of planning in India has tended to push the political system to greater centralisation due to both the central control over resources for development and the preponderance of the centralised planning machinery. The scheme of the Constitution clearly states that industries are essentially a state subject. Only those industries the control of which is declared as expedient in the public interest by the Union Parliament are to be regulated by the Centre. But without an amendment to the Constitution, industries have been virtually transferred into a union subject. In practice, on several occasions, the regulation of industrial activity by the union government has inhibited the setting up of new industries. Similarly, it is alleged that in the name of national planning, the centre has been inordinately delaying viable and important state projects for political considerations. On the contrary, centre has been superimposing its schemes on the states which are deemed by the state governments to be irrelevant to the conditions prevailing in the state. These master trends have altered the profiles of power and dependence.

Check Your Progress:

1. Trace the areas of conflict between Union and State Government on issue of grants.

I. Fill in the blanks:

1. Articles ___________and ______ provide for the appointment of an Independent Statutory Finance Commission.

2. Residuary powers are vested with the__________ government.

3. Finance Commission is appointed after every__________ year or as the President desires.

III. Examine the resource dependency theory in the context of Indian economy.

2.5 Sarkaria Commission and Centre-State Relations

The Sarkaria Commission Report is one of the most prominent in a series of federal reports on Indian federalism. In the 1980s, it became the most extensive effort by the Indian government to assess federalism in India and to recommend practical reforms regarding legislative, administrative and financial irritants. Nearly a decade after the release of the recommendations of the Sarkaria Commission, the issues discussed by the report are prominent in India's contemporary political agenda. The Commission to study centre-state relations is formally constituted on 9 June 1983 under the leadership of a retired justice of the Supreme Court, Ranjit Singh Sarkaria. The Sarkaria Commission is quite sensitive to the various theories of federalism that support the call for greater autonomy by some state governments.

Legislative Relations

The Sarkaria Commission examines the state of legislative relations between the central and state governments. The Indian Constitution delineates the powers of the central and state governments with respect to its legislative relations with the states. The respective legislative powers of the central government are included in the State and Concurrent Lists that form the Seventh Schedule annexed in the Indian Constitution. However, the Indian

Constitution provides the central government with additional legislative powers over the state's legislative jurisdiction. For instance, Article 248 allows Parliament to legislate on items in the State List. Similarly, Article 249 allows Parliament to legislate on matters on the Concurrent List. The Sarkaria Commission reviews some of these demands from some state governments that want to affirm the state legislative prerogatives. For this reason, the state government of Andhra Pradesh argues that whenever practicable, the Union Parliament should clarify the criteria for legislating on items in the State List and the Concurrent Lists. Moreover, some state governments argue that the control of the central government over state legislation should be reversed.

Financial Relations

The Sarkaria Commission also examines issues relating to financial relations between the central government and the states. The Union and State Lists in the Seventh Schedule of the Constitution provide clearly demarcate jurisdiction with respect to taxation. According to the State List of the Seventh Schedule, the chief sources of revenues by the states are the land revenue, sales tax, excise taxes on alcoholic preparations, and a share of the income tax. There are no concurrent powers of taxation. Moreover, the Indian Constitution empowers the Parliament with the ability to give assistance to the states in the form of statutory grants-in-aid (Article 275), discretionary grants (Article 282), and loans (Article 293). The allocation of financial resources in India has come under heightened scrutiny by some state governments. The tensions also tend to emanate from the imprecise role that the Planning Commission and the Finance Commission have in the allocation of plan transfers to the states. For instance, the state government of Karnataka argues that the planning and financial incentives which were to have operated objectively and with a measure of autonomy have been systematically politicized or emasculated. In order to alleviate the state's perceived dependence on assistance from central government, some state governments demanded more powers to impose taxes of their own. Some

state governments argued that their inability to raise an adequate level of resources prompted unwanted interference from the central government into the affairs of the state governments.

Stop To Consider:

Sakaria Commission on Centre-State Relations

- The Sarkaria Commission is asked to review the working of existing arrangements between the Union and States keeping in view the social and economic developments that have taken place over the years, the scheme and the framework of the Constitution and the need for the unity and integrity of the country.
- It is not concerned with the politics of centre-state relations but only with the administration.
- Among the major recommendations, the recommendations concerning the appointment and working of the Governor, use of Article 356 and division of economic resources are noteworthy.

The Commission has recommended a review in the operational feasibility of the scope for levying taxes and duties, a constitutional amendment to make corporation tax sharable between the union and the states, reforms in taxation and consideration of the potential for resources mobilisation between the union and the states.

Proposals of the Sarkaria Commission

The Sarkaria Commission has offered several recommendations to deal with the concerns of state governments.

- First, in its discussion of legislative relations, the Sarkaria Commission rejected the arguments to reverse legislative supremacy of the Union Parliament. According to the Commission, the simultaneous operation of two inconsistent laws, each of equal validity, will be an absurdity. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle is indeed the kingpin of the federal system. The Sarkaria Commission has recommended that an informal convention

of consulting the state governments whenever the Union Parliament decides to make legislation on an item in the Concurrent List 'should be strictly adhered to, except in rare and exceptional cases of extreme urgency or emergency. The Commission emphasized that the co-ordination of mutual consultation is 'a prerequisite of smooth and harmonious working of the dual system'.

- Regarding the financial relations the Sarkaria Commission Report aims to improve federal relations through moderate changes in the institutional design. For instance, it proposes the establishment of an Inter-State Council as a forum to discuss federal issues of national importance. It also calls for a reconstitution of the National Development Council so that it will work alongside the newly established Inter-State Council on issues of economic planning and development. In order to address the issues of financial relations, the Sarkaria Commission proposes the setting up of an advisory subcommittee of Finance in the National Development Council for the purpose of forging a consensus on financial matters. In order to improve the co-ordination between the Planning Commission and the Finance Commission, the Sarkaria Commission proposes that the Finance Commission must work under the general supervision of the Planning Commission member in charge of financial resources.

SAQ:

Critically examine the proposal of Sarkaria Commission.(50 words)

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

Sarkaria Commission -A Diagnosis of the Report

The Sarkaria Commission is significant because it acts as a recorder of the shifting views on federalism. The Sarkaria Commission is also noteworthy because it provides practical proposals of institutional design in order to ameliorate intergovernmental co-operation. Although the renewed interest in the Sarkaria Commission suggests that some of the other primary recommendations can be implemented, there appears to be some countervailing forces against it. The Sarkaria Commission has served as one of the sole unifying links for two disparate multiparty governing coalitions at the centre. Ironically, although both coalitions have broadly embraced the Sarkaria Commission Report, these multiparty governing coalitions at the centre have been unable to implement any of its recommendations. One of the primary reasons for the possible failure to implement the Sarkaria Commission recommendations is that different political actors diverge in their definition as to what federalism represents. For some, true federalism represents intergovernmental interdependence, shared governance and overlapping jurisdictions. To others, true federalism represents independence of intergovernmental actors, autonomy of intergovernmental institutions and distinctiveness and separation of jurisdictions. Finally, for others the meaning of true federalism is one of intergovernmental interdependence, distinctiveness of policy functions and overlapping jurisdictions. These three conflicting models of federalism have vitiated the discussion about federalism and thus prevented the implementation of a majority of the Sarkaria Commission recommendations. A more daunting challenge to the revival of the Sarkaria Commission is that India's federal system has been transformed through the impact of economic liberalization policies. At the time of the release of the Sarkaria Commission Report, the central government exerted a great degree of influence over the economic and public policy decisions of state governments. A decade later, tenuous national governing coalitions are supported by regional political parties. More importantly, the reliance of the state governments on the central government has diminished through the impact of economic liberalization policies. Some state governments

(notably Andhra Pradesh, Gujarat, Maharashtra, Orissa, Karnataka, Tamil Nadu and West Bengal) have initiated bold developmental policy initiatives that require extra-governmental resources. Tighter fiscal constraints at the federal level will further push states to lobby for alternative sources of revenue, mostly in the form of direct foreign investment or other forms of mobile capital stock.

At the same time, the question remains as to whether the newly created intergovernmental institutions, such as the Inter-State Council, or even governmental commissions such as the Sarkaria Commission can play a useful role in India's transformed federal system.

Finally, the third reason behind the non-implementation of the substantive recommendations of the Sarkaria Commission lies in the fragile nature of the multiparty governing coalitions at the centre. These multiparty governing coalitions have been formed through unorthodox alliances between national parties and various regionalist parties. And these multiparty governing coalitions are glued together with tenuous ideological bonds, including vague claims to revive the recommendations of the Sarkaria Commission. Paradoxically, the ideological bonds that hold these multiparty governing coalitions at the centre are so tenuous that implementation of any substantive public policy initiative becomes intractable.

The overview of the Sarkaria Commission Report on centre-state relations shows that both its recommendations and other critical responses by some state governments are significant because they indicate an interest in resolving dissonances in intergovernmental co-operation through changes in institutional design and moderate constitutional change. However, the conclusion is that the revival of the Sarkaria Commission Report may prove to be less of a guide than a rallying tool for attempts at consensus of the diverse political constituencies that have made up the last two national governing coalitions. Given the transformations in the political as well as economic relationship between the central government and the states, it remains to be seen whether any national governing coalition will be capable of salvaging any of the recommendations of the Sarkaria Commission.

Check Your Progress:

1)Analyze the reasons behind the appointment of the Sarkaria Commission and the major recommendations it made.(50 words)

2) Critically assess the working of the Sarkaria Commission in improving Centre-State relation. (50 words)

2.6 Summing up

After reading this unit you are now in a position to analyse the problem areas of Indian federation. Among the major tension areas, the Article 356 deserves special mention. Moreover, you have also learnt the role of the governor as the executive head of the country as well as the agent of the central government. This unit also familiarizes you with the theoretical considerations of resource dependence as well as fiscal domain of resource dependence between the State and Centre. Because of the existence of tensions the Sarkaria Commission has emphasized the grant of co-operative federalism. Now, you have learnt that the answer to all our centre-state relations lies in co-operative federalism. However, the success of co-operative federalism basically depends on fair play and the spirit of co-operation. The requirement is the demand that the constitution should be observed in the proper sprit. In the next unit of this block we shall discuss the issue of centralization vs. decentralization with special reference to autonomy movements in India.

2.7 References and Suggested Reading

Vi.jnpur, Abdulraliim P. (ed.) .1998. *Dimensions of Federal Nation Building*. Centre for Federal Studies .Manak Publication. New Delhi

Narang, A.S. *Indian Government and Politics***.** New Delhi, Gitanjali, 2000

Gani, H.A. *Governor in the Indian Constitution*: *Certain Controversies and Sarkaria Commission*. New Delhi, Ajanta Publications, 1990

Unit 3
Centralization vs. Decentralization

Contents:

3.1 Introduction
3.2 Objectives
3.3 Centralization vs. Decentralization: Assertion for Autonomy and Secession
3.4 Autonomy Movements in India: Basic Trends
3.5 Ethnic Movements for Autonomy: The Case of Bodo Movement in Assam
 3.5.1 The Bodo Movement in Assam
3.6 Summing up
3.7 References and Suggested Readings

3.1 Introduction

Indian Constitution has adopted the federal system of government where the power is divided between the central government and various local governments. Under federalism each level of government has sovereignty in some areas and shares powers in some other areas. Indian federal system shows a strong centralizing tendency. It means that the centre enjoys more power in decision making than the federal units. But at the same time India has adopted the process of decentralization. Decentralization is a systematic delegation of authority at all levels of the structure. The degree of centralization and decentralization depends upon the amount of authority delegated to the lowest level.

In this unit we shall discuss the provision of centralization as well as decentralization in India and how it leads to the assertion for autonomy and secession. The centralizing tendency in India generally leads to the demand for greater autonomy by various local units and this ultimately leads to the secession. We will also analyze the basic trends of the autonomy movement in India. Our aim is to discuss the ethnic movements in India with special reference to the Bodo movement in Assam.

3.2 Objectives

This unit is an attempt to analyze the issue of centralization as well as decentralization process in the India. After reading this unit you will able to:

- *examine* the provision of centralization vs. decentralization in India
- *analyse* the basic trends of the autonomy movements in India
- *examine* the ethnic movements in India with reference to the Bodo Movement in Assam.

3.3 Centralization vs. Decentralization: Assertion for Autonomy and Secession

The issue of centralization vs. decentralization occupies a major part in Indian political system. It is one of the dilemmas faced by the government and administration today. On the one hand, the compulsion of socio-economic planning, the requirements of national integration and the consideration of defence strategy pull the administration towards centralization. Alternatively, the political commitment for autonomy, greater participation by the people and the need to take democracy to grassroot level pull the administration towards decentralization.

We must remember here that the Constitution of India provides for a federal system of government though the word federation is mentioned nowhere in the Indian constitution. Article 1 of the constitution defines India as "union of states". It implies that the states have no right to secede from the centre. As we know, this entails for a strong centre and limited autonomy to the units. The Government of India Act 1935 also shows the inclination towards centralization. It is because, during the British rule, provinces had limited functions to do and the centre dominated the economic as well as non-economic spheres. Therefore, power was distributed on that basis. The domination of centre is manifested in various forms like maintaining law and order of the units by deploying CRPF and BSF, implementing policies relating to land use etc. In addition to this, the centre also fixes the procurement

and support prices of different agricultural goods, operates buffer stocks and also runs various rural development programmes. Moreover, the union government enjoys the right to change the boundaries of any federal unit. This also indicates a strong centralizing tendency in India. We should also remember here that the distribution of powers under Indian Constitution in the three lists namely, Union List, State List and the Concurrent List also indicates the existence of a strong centre. The union government enjoys exclusive power to make laws on the subjects in Union List. The state government makes laws on the subjects of State List and both the union government and the state government can legislate on subjects in the Concurrent List. However, in case of a clash between the union law and state law regarding the subjects of Concurrent List, the former prevails. Again, the residuary powers which do not find place in either of the above three lists are vested in the central government. This also indicates towards a strong centralizing tendency of the Indian union. But despite these visible centralizing tendencies, the process of decentralization has started in India.

Again, we have already learnt that decentralization implies the delegation of power to the grassroots level. Before the coming of the British, the villages in India enjoyed a considerable autonomy. But when the British came to India they changed the situation and instead of decentralization, they followed the policy of centralization. But soon they found out that it was not suitable for a vast country like India.

Now if we try to analyze the history of decentralization in its organized form it can be traced back to Lord Ripon's Resolution in 1882. This resolution aims at involving the intelligent class of people in the management of rural areas under the British rule. This resolution expresses that the government should make an attempt to divide the functions between the provincial government and local bodies in order to raise more income through local sources. Subsequently, through the Government of India Act, 1919, the system of 'dyarchy' has been introduced. Dyarchy is a form of government where there are two heads of the states.

It is also worth mentioning here that the framers of Indian constitution have incorporated the Article 40 in the Constitution of India as a respect to the wishes of Mahatma Gandhi. This Article directs the government to take necessary steps to organize village panchayats and endow them with such power and authority which will enable them to work as units of self-government. The 73rd and 74th amendments of the Constitution of India gave constitutional status to the local self- governments.

Stop to Consider:

Types of Decentralization-

There are mainly four main types of decentralization. These are-

- Political decentralization- Political decentralization implies the transfer of authority to regional councils or local bodies. Advocates of political decentralization assume that decisions made with greater participation will be better informed and more relevant to diverse interests in society than those made only by national political authorities.
- Administrative decentralization- It refers to the transfer of responsibility for planning, financing and managing certain public functions from central government and its agencies to the subordinate units or levels of government.
- Fiscal decentralization- Fiscal decentralization involves the transfer of power of taxing and spending to various units at the sub- national and local levels of government.
- Economic/market decentralization-It is the passing over of power of certain functions to the private sector which were exclusively performed by government.

While discussing the issue of centralisation vs. decentralization, we should remember that during the period 1950-67, the Congress Government showed a very strong centralizing tendency. During that period the Congress party enjoyed the monopoly of power both at the centre and the states. The centre has emerged very powerful and the autonomy of the states has been curtailed. During the regime of Jawaharlal Nehru, the states hardly got a chance to complain against the centre. Ultimately, the concentration of

administrative, economic as well as political power at the centre has given rise to the demands of greater autonomy and secession by the states.

It is important to mention here that the demand for greater autonomy has been voiced by states like Andhra Pradesh, Tamil Nadu, Punjab, Kerala, Jammu and Kashmir and West Bengal. They feel greatly agitated over the growing interference of the centre in the affairs of the states. The centre has done so by using the Governor as a tool to interfere in the affairs of the states; appointing and dismissing state ministers; reserving large number of state bills for the consideration of the President; misusing its right to impose constitutional emergency in a state; appointing inquiry commissions against Chief Ministers belonging to opposition parties; etc. The states like Kerala and Tamil Nadu have alleged that the central government is trying to control even those subjects which are not within the sphere of the central government. They have demanded that the centre should not interfere in the affairs of the state and also grant them additional power. Moreover, some of the regions of Indian union feel that they are continuously being neglected by the central government. In 1970s and 1980s the nation witnessed a series of movements in different parts of the country (eg. Militant movements in Punjab, Gorkhaland movement in West Bengal, Jharkhand movement etc.) based on primordial loyalties like religion, ethnicity, language etc.

We should also note here that the demand for more autonomy eventually leads to the secessionist movements. Some states in India demand that they want to break away or secede from the Indian union and want to become a separate state. DMK in Tamil Nadu, Akalidal in Punjab, Mizos and Nagas in North- East have been demanding secession for a long time. But as we know that the Article 1 of the Indian constitution does not permit the states to secede from the Indian union, the central government has curbed these movements very powerfully. The secessionist demands by these states have practically died down now. These states are now enjoying greater autonomy in all the spheres of action.

Check Your Progress:

1.What do you mean by decentralization process?

2.What is the difference between secessionist movement and autonomy movement?

3.Trace the reasons behind the demand for greater autonomy.

3.4 Autonomy Movements in India: Basic Trends

After reading the above section, we have learnt that in India the demand for autonomy by the states is not a new phenomenon. Right after the independence the states are demanding more and more autonomy on the ground of various issues like language, ethnicity, economic exploitation etc. These autonomy movements mainly stand for the creation of a separate statehood for a particular area so that the people of that area can develop their economic condition and also preserve their cultural identity. Therefore these autonomy movements simply mean the creation of more states out of existing states. Now let us discuss some of the autonomy movements in India and the basic trends of these movements.

Andhra -

The demand for autonomous Andhra Pradesh is based on linguistic issue. Soon after the first general election, the Andhra Provincial Congress Committee demands a separate state for the Telegu speaking people in the bilingual state of Madras. The Tamil-speaking people of Madras also support this demand. The Madras government describes the demand for Andhra as justified. But the central government does not accept this demand. Ultimately, a holy man named Shri Potti Sriramulu goes on fast unto death for the creation of a separate Telegu speaking state. He dies after 56 days of fast and this has forced the union government to accept this demand. Ultimately, the Telegu speaking state of Andhra Pradesh comes into existence on 1st October, 1953.

Punjab and Sikhistan-

In 1956, the State Reorganization Committee has created a bilingual state of Punjab. But the Sikhs in Punjab under the Akali Dal leader Tara Singh starts demanding for a separate Punjabi speaking state. Though this demand is presented on linguistic basis, in reality, the Sikhs want to have an autonomous state for Sikh community. The Sikhs allege that the Hindus in Punjab are highly communalist and narrow minded. The Sikhs also declare that they cannot get any justice from the Hindus in Punjab. Therefore they demand a separate autonomous Sikh state. This is soon met with a counter demand from the Arya Samaj leader of Punjab for the greater Punjab consisting of Punjab, Himachal Pradesh and PEPSU (Patiala and East Punjab States Union). Both the parties continue to launch agitation during the late 50s and 60s. Situations became serious when the Akali Dal leader Sant Fateh Singh threatened to burn himself alive if the demand of Punjabi Suba was not fulfilled. Ultimately Indira Gandhi has to bow to the pressure and agrees to the creation of a separate state of Punjab on November 1, 1966. Punjab is bifurcated as Punjab with the Punjabi speaking people and Haryana with the Hindi- speaking people. But some of the Sikh leaders are not satisfied with this arrangement and they demand for a separate socialist democratic Sikh homeland. But this demand is suppressed by the central government.

Dravid Nad-

The DMK in 1960s demand for secession of Madras from Indian union for the economic development of the area. Later on, it is extended to include Andhra Pradesh, Kerala and Mysore. Dravid movement mainly demands autonomy on the basis of protection for the economic interest with promotion of the socio- cultural aspirations of the threatened groups. It originally advocates an independent homeland for the Dravidians in South India. Some leaders who do not support this secession form a new party, the Tamil National Party, under E. V. K. Sampath. Despite this division, the DMK continues to demand the same. However the demand is firmly turned down by Jawaharlal Nehru. As a result, DMK has abandoned its demand for

complete secession. In turn, they are demanding greater autonomy and economic resources for the state.

Mizos-

The Mizos also demand secession from the Indian union for preserving the identity of the Mizo people with regard to their social system and custom. They have also showed their resentment against the injustice done to the Mizo people. The Mizos form an organization known as Mizo National Front in 1962. But the Indian government adopts the policy of repression against the rebellious Mizos. As a result a section of the Mizo leaders abandon their demands for secession and indicate their willingness to come to terms with the government. In 1971 the President of Mizo National Front submits a memorandum to the Indian government demanding a separate state within the Indian union. The government reciprocates well and accepts their demands. But a section of Mizos under the leadership of Laldenga continues to demand for secession. But the Indian government adopts a tough attitude and ultimately, Laldenga decides to give up arms. An agreement is made to solve the problem peacefully. But after few days Laldenga again reverts to violence. Consequently the Indian government starts military operation against them. In July, 1980 the Mizo rebel leaders reach an agreement with Mrs Indira Gandhi for a permanent political solution of the Mizo problem. But the Mizos continue their violence in secret. Laldenga demands a greater Mizoram with some sort of autonomy by constitutional amendment. Indian government does not accept this. Ultimately the government of India grants a separate statehood to Mizoram and Mizo National Front forms the government. But after the first election, the Laldenga party fails to capture power.

Nagas-

The Naga National Council under Zepo Phizo has carried on long drawn out struggle for secession from the Indian union. They have demanded autonomy for the development of the state to generate resources and employment. The Nagas under Phizo refuse to take part in 1952 elections

and resort to open violence. The government adopts the policy of repression. In 1962, Nagaland is given the status of a full fledged statehood, although it is formally inaugurated as a state on December 1, 1963. But Phizo continues the policy of violence and the government of India forces Phizo to run away from India. In 1977 Morarji Desai meets Phizo in London to find a solution to the Nagaland problem but he fails to succeed. The struggle is spearheaded by the main Naga group National Social Council (NSCN). The long awaited development in the direction of restoration of peace in Nagaland takes place on 28april 2001 when the central government announces a year long ceasefire with NSCN.

Manipur-

In Manipur, groups like People's Liberation Army (PLA), the Red Army, the People's Revolutionary Party of Kangleipak (PREPAK), Meitei United National Liberation Front (Meitie Marup) have engaged in secessionist activities. They have forced the non- Manipuri people to leave the state. In October 1979, the central government has banned these revolutionary organizations. The Manipuri people show their resentment against the prevailing unemployment among the educated youth, widespread corruption in administration, non-implementation of development projects and loss of Meitei identity.

Stop to consider:

Some other important autonomy movements in India-

Gujrat and Maharashtra-

The State Reorganization Commission has established Bombay as a bilingual state. But the organizations like Samyukta Maharashtra Samiti and Maha Gujrat Janata Parishad demand for the division of Bombay into two separate states of Gujrat and Maharashtra on linguistic ground. The government of India ultimately bifurcates the state of Bombay into two separate autonomous states. This bifurcation is a logical sequence to the creation of the unilingual state of Andhra Pradesh.

Konkan state-

Konkan region consists of the coastal areas of Maharashtra. The people of this area have started demanding a separate autonomous state for themselves. They allege the government of Maharashtra of not paying much attention to redress their grievances. The leaders of the movement feel that under the existing arrangement the region cannot develop economically. The demand is however not very vigorous. Meantime, Konkani has been included as a language in the Eighth Schedule of the Indian constitution.

Meghalaya-

The people of Garo, Khasi and Jaintia demand for an autonomous state for the preservation of their cultural identity. For the purpose they organize the All Party Hill Leaders Conference (APHLC) and carry out necessary agitation. The government of India meets their demand partially and organizes the state of Assam on federal basis. However, this act does not satisfy the people and they revise their demand for a separate hill state. They try to pressurize the government to concede their demand by threatening to resign from the Assam Assembly. But the government does not consider their demand and this leads to the resignation of all the nine members of the APHLC from Assam Assembly. Ultimately, the Parliament passes the Assam Reorganization Bill and creates the autonomous hill state of Meghalaya within the state of Assam. This arrangement also fail to satisfy the hill people and they demand to convert Meghalaya into a full fledged state. This demand is completed with in January 1972 when Meghalaya is given a full fledged statehood.

Jharkhand-

The demand for Jharkhand is put forth as early as in 1988. The tribal people living in some parts of Bihar, Madhya Pradesh, Orissa and West Bengal have demanded a separate state for cultural and economic development. When their repeated requests are not heeded by the government of India in 1988, they organize massive rallies and also economic blockade in Jharkhand areas. In 1989, they make it clear that they want an independent state

comprising of contiguous tribal areas of Bihar, Madjya Pradesh, Orissa and West Bengal. Rajiv Gandhi government sets up a committee to examine the demand. The committee submits its report in 1990. It is of the view that Jharkhand General Council should be created but does not accept the idea of separate state of Jharkhand. In September 1992, the Jharkhand leaders organizes 15 days economic blockade to pressurize the government to accept their demand for a full fledged state. But it is not successful. Ultimately Jharkhand as an autonomous state comes into being on 14th November, 2000.

Demand for Gorkhaland-

The Gorkhas living in hill areas of West Bengal, particularly in Darjeeling are demanding a separate GorkhaLand. They fight against the economic exploitation of the area and also to preserve the Gorkha language. Under the leadership of Subhas Ghising they start agitation which takes a violent turn. The government of India and the government of West Bengal take a strong attitude to make it amply clear that there is no scope for the creation of a separate state for the Gorkhas from existing West Bengal. Ultimately Gorkha National Liberation Front agrees to the formation of an autonomous Gorkha Council within the state of West Bengal. Subhash Ghising hasalleged that West Bengal government is creating problem in the smooth working of the Council. In 1992, he again revives his demand for a separate Gorkhaland within the Indian union. He protests against the inclusion of Nepali in the Eighth Schedule of the Constitution of India.

Uttarakhand-

Hill regions of UP have put forth a strong demand for the creation of a separate state of Uttarakhand. They have accused the government of neglecting these areas for long. The government has also failed to carry out the development programmes in these areas. On this ground they have demanded a separate autonomous state. UP state assembly has also recommended its formation. The hill leaders are agitating for this demand. The Congress government has been opposed to this idea. In 1996 Prime

Minister Devegowda has announced that the government has decided to make a separate state of Uttarakhand from the hills of the Uttar Pradesh. Ultimately the NDA government decides to carve out the state of Uttaranchal on 9 November, 2000.

Assam-

The Assamese people are demanding autonomy to preserve their cultural identity. They are demanding for the ouster of all the immigrants from other states. A loud demand for detecting, identifying and deporting the foreigners from the state is raised with great force. In 1985, the Assam Accord has been signed to settle the foreign national issue.

But another autonomy movement has started in Assam by the United Liberation Front of Assam (ULFA). They are demanding for a state of Assam independent from the Indian union. At the initial stage it has applied the policy of extortion, intimidation and murders of innocent people. But gradually it is trying to enlist the popular support. In November 2001 they show the interest to enter into a process of negotiation. The Bengali speaking people in Karbi Anglong district are also demanding for an autonomous state on linguistic ground. But their demand has been turned down.

Check Your Progress:

1. Write a note on the Naga movement.

2. State the grounds behind the demand for autonomy by the tribal people of Jharkhand.

Rabha Hasong-

The Rabhas which is a dominant tribal community in Assam has also demanded for an autonomous state and self-rule. For a very long period they have been exploited by the mainstream. As a result they feel alienated and demand for an autonomous state within Assam. Their demand includes areas extending from Joyramkuchi in Goalpara district to Rani of Kamrup

district. The Rabhas have also demanded for a Rabha Hasong autonomous district within Darrang district in North Assam.

After analyzing the autonomy movements in India we have seen that these movements do not follow similar trends. Now autonomy is demanded on various grounds like language, communal issue, economic exploitation, development issue, ethnicity, devolution of political power etc. The movements like Andhra movement, Punjab movement, creation of Gujarat and Maharashtra etc. are based on the language issue. On the other hand, the autonomy movements for the creation of Manipur, Meghalaya, Mizoram, Nagaland, Jharkhand, etc are basically fuelled by the need to preserve the cultural and ethnic identity as well as the economic development. Again, the ULFA movement in Assam is fuelled by the need for economic as well as political reason.

We should also remember here that some autonomy movements are based on purely economic issues. For example. movements in Jammu region of Kashmir, Marathwada in Maharashtra, Darjeeling in West Bengal etc. They generally cut across the linguistic loyalties and other cultural similarities. They mainly emphasize economic development. There is also a stress on the independent identity. In the present scenario the economic principles have superseded the ethnic, religious and linguistic consideration. The main objective is that the local people should be given preference over outsiders in matter of employment (son of the soil theory), licenses for industry, establishing new economic enterprise, admission to educational institution etc. The people of Jammu region or Marthwada complain that they are discriminated in matter of jobs and developmental activities. Their emphasis is on the economic grievances. The states are demanding autonomy for more fiscal powers for the states which have no adequate funds.

It is worth mentioning here that the Indian union has accommodated the demands for greater autonomy on the basis of language, culture etc. but the demand for autonomy on the basis of religion is not entertained. For example, the demand for the creation of a Punjabi Suba on the basis of language is accepted, but the demand for the creation of Khalistan which is purely

based on religion is rejected. In various occasions, the Indian union has suppressed the demands for secession with a stern attitude. In some cases, the central government has even employed armed forces as evident in Nagaland, Assam, Punjab etc.

Again, within the states also certain regions have demanded greater autonomy because their developments have been neglected. For example, Ladakh region of the state of Jammu and Kashmir has often complained of step-motherly treatment and demanded greater autonomy. Karbi Anglong of Assam is also demanding autonomy. Thus demand for autonomy has not only been raised by the states but also by the various regions of the state.

SAQ:

1. Do you think economic consideration is the most powerful ground for demanding autonomy? Give arguments in favour of your answer. (50 words)

. . . .

. . . .

. . . .

2. Do we think decentralization can prevent the secessionist movements in India? Give arguments in favour of your answer. (50 words)

. . . .

. . . .

. . . .

3.5 Ethnic Movements for Autonomy: The Case of Bodo Movement in Assam

The word ethnic has been derived from the Greek word '*Ethnikos*'. It refers to three things viz. nations not converted to Christianity, races or large groups of people having common traits and customs and thirdly, groups

in an exotic primitive culture. Very often the ethnic groups are substituted for minority groups. Ethnicity is commonly expressed as assertion of cultures, communal upsurges, revivalism of religions, voices of marginalized peoples, regions and nationalities. Now the ethnic groups tend to organize along narrow ethnic lines and it becomes a source of political instability. The 'sons of the soil movements', the communal riots in various parts of the country, the caste combinations like 'Kham' in Gujrat and 'Ajgar' in Haryana, the Jharkhand movement, the Bodo movement are some of the ugly manifestations of ethnic politics in India. In this section we shall discuss the case of Bodo movement in Assam.

3.5.1 The Bodo Movement in Assam

Before discussing the Bodo movement we should know the background of the Bodo people. The Bodo tribes are considered to be the earliest immigrants in Assam. Bodo is derived from the word '*bod*' that connotes Tibet and thus refers that most of the Bodos have arrived from Bhutan passes. The Bodo tribal community belongs to a large group of ethnicity, popularly known as the Bodo-Kachari. The Bodos represent one of the largest of the 18 ethnic sub-groups within the Bodo-Kachari group. Today they constitute a large part of the population of Assam accounting to around 5.3%. They speak Bodo language that is derived from the Tibeto Burmese family of language. Bodos are the 8th largest tribal group in India, with Bodo being spoken by about 0.8 million people. The Bodo language is unique as it does not contain any vowels. The Bodos have introduced rice cultivation, tea plantation, pig and poultry farming and silkworm rearing in the North -East India. Rice is the main food of the Bodos and is often accompanied by a non-vegetarian dish such as fish and pork. Weaving is another integral part of Bodo culture. The Bodos are also expert craftsmen and produce bamboo products.

We should remember here that the Bodo movement started as a socio-cultural and economic movement of the Bodo-Kachari tribe. They are

concentrated in the Northern parts of Goalpara, Kamrup and Darrang districts. But this socio-cultural movement has developed into a socio-political movement for a separate state within the Indian Union in due course of time. The leadership of the movement in its later stage has been provided by the Plains Tribal Council of Assam and hence it is often referred to as PTCA movement. Moreover, the Bodo Sahitya Sabha, Bodo Students Union etc also play an important role in the development of the movement. Their activities are integrated towards a common goal of raising cultural, political and economic status of the Bodo community. Now let us discuss the Bodo movement in details.

One of the major causes of the Bodo movement is the cultural cause. The Bodos of Assam are having distinct and rich linguistic and cultural heritage. This is quite different from Assamese language and culture. Many educational institutions are established in the Bodo dominated areas to spread literacy among them. The Bodo language has been uplifted to a rich language. The Bodos have got the opportunity to learn their own language and know their cultural heritage. The Bodo Sahitya Sabha and Tribal Sangha usher in a new era of revivalism and self-regeneration and it unites the Bodo people into one common cord. Moreover, the Assam government takes the Assamisation policy. The government wants to impose Assamese culture and language upon the tribal people. This has made them conscious of their own separate identity.

Chronology of Events:

During the early part of the fifties, at the initiative of some social workers and politicians of different tribes, the Tribal Sangha is established. But the impact of the Sangha is not felt among the masses. In 1952 the Bodo Sahitya Sabha is formed at Basugaon in Kokrajhar subdivision of Goalpara district. This Sabha has done a tremendous job in uniting all the Bodo people of the state. The Bodo Sahitya Sabha spreads a tempo of literary, linguistic and cultural resurgence among them.

It is noteworthy that on 27th February 1967, a political party with the name of Plain Tribal Council of Assam (PTCA) is formed at Kokrajhar. PTCA demands a Union Territory called Udayachal to be carved out of Assam. The proposed Udayachal map includes mainly those areas known as tribal belts and blocks. But the demand for Udayachal is never materialized. In 1978 the Janata Party comes to power with PTCA as coalition partner. Samar Brahma Choudhury became minister in Janata government while Charan Narzary is elected to the Lok Sabha.

Stop to Consider :

Objectives of the Bodo movement:-

1. To ascertain self- rule for themselves.
2. To restrain unlawful habitation in their area.
3. To allocate a bigger share of development and planned expenditure for their people as enjoyed by other tribal states like Nagaland, Arunachal Pradesh, Meghalaya, Mizoram, Manipur and Tripura.
4. To drive out undesirable human elements either lawfully or by force.
5. To achieve complete control of economic, social and political exploitation of their people by the other privileged ones.
6. To ensure all constitutional benefits to their inmates, to remove rampant unemployment problem.

Then, Assam witnessed the emergence of All Assam Students Union (AASU) has come into being. The main motive of this movement is to drive out the foreigners from the state. It covers all the sections of the people of Assam. The Bodo students also take part in the movement. But unfortunately an ideological rift between the AASU top leaders and some Bodo student leaders arises in the Gauhati University campus. As a result the Bodo students come out of AASU and form a separate student organization exclusively for the Bodos. This organization is known as All Bodo Students Union (ABSU) and is headed by Upen Brahma. He is known as the Bodofa meaning father of the Bodos. Their main motive is to regain their lost position by demanding a separate state of Bodoland in the north bank and

autonomous area for the Rabhas and the Tiwas in the south bank. The official Bodoland Movement for an independent state starts on March 2, 1987, under the leadership of Upendranath Brahma of ABSU. But soon they realize that their demand for a separate state will not be accepted by the state government. Consequently, they try to terrorize the people and the government. They have selected the path of armed struggle against the authority or the path of insurgency to terrorize the people. They have started to extort money from almost all the sections of the employees working in the so called Bodoland. They use to abduct the functionaries of certain big tea companies and collect huge amount of money. They have used the money in procuring sophisticated arms and ammunition; in training their members in guerrilla warfare etc. Consequently, they have become a strong anti-government force with sufficient amount of arms, ammunition, and trained manpower and sufficient liquid balances.

We should remember here that arson, abducting, bombing in public places, running buses and trains, killing innocent people, destruction of public buildings, railway tracks etc. are common practices for them. Public life in Kokrajhar, Barpeta road, Guwahati (Dispur), Udalguri, and Tamulpur had become paralyzed and insecurity looms large everywhere especially in the Bodo dominated areas.

In the meantime Sri S.K.Basumatary, an MLA from Udalguri of Darrang district has formed a new political party- United Tribal Nationalists' Liberation Front (UTNLF) - with a political motive. ABSU has also been split into two groups. One is led by Upen Brahma and the other by Sri Ramchiary. But these two factions of ABSU are not different from one another except in leadership and in their attitude towards insurgency.

Gradually, the two organizations- PTCA and UTNLF start opposing the ABSU for various reasons. They particularly oppose ABSU for making a division between the tribal and Bodos of Assam on political ground. So the ABSU tries to make an edge over the other two organizations- particularly in support of their masses. For this, the ABSU uses their heinous activity of killing and abducting the members of the other two organizations. It seems

that the Bodos will be annihilated in course of times. But before the end the PTCA and UTLNF both opt for an extremist organization named Bodo Security Force (Br SF) to safeguard and protect the members of the two organizations.

Stop to consider:

Some Important Causes of the Bodo Movement-

Bodos feel that they have been neglected, exploited, alienated and discriminated for decades. The main causes of the movement are –

- Economic causes- The Bodos are economically depressed for a long time. They are economically exploited by the non- Tribal groups. The Bodos have little or no access to the aid given by the central governments. Moreover, the imposition of ceilings on agricultural land holdings has seriously affected the illiterate and ignorant Bodo people. They demand a separate state in the hope that it will evolve new avenues for job opportunities for the Bodo people and eventually their economic condition will improve.
- Political cause- The Bodos have felt that the Assam government is not the government of the people of Assam but it is a government of Assamese people. Again, Assamese government, according to the Bodo leaders, is repressive on the tribal people and especially the Bodo. Whenever the Bodo people demand justice and constitutional and legitimate rights, they meet brutal police atrocities and torture. Moreover, no developmental programmes are taken for the tribal people under the AGP government. Hence, they start feeling that they must have a government of their own.

This type of hostility has continued unabated for a long time. But later on we witness a sense of understanding between them. More members of the ABSU join hands of the Br S F. In the meantime government of Assam realizes the gravity of the situation. Central government is also found to be a party in a tripartite talk for the solution of the Bodo problem. Consequently, a number of tripartite talks are held between the representatives of the central government, state government and the ABSU leaders. But it is worth mentioning here that just before the tripartite talks, the ABSU activists are

seen engaged in various insurgent activities in the state. By this tactics they perhaps try to show their strength and force the government sides to concede to their demand.

In 1990 with the premature death of ABSU President Brahma, the situation has taken a new turn as leadership passes under the control of S. Brahma Choudhury and Sugai Basumutiary. Talks are held between the three concerned parties viz the Central Government, State Government and the ABSU leaders and after a long process of tripartite talks among the representatives of central government, state government and ABSU leaders, an agreement is reached.

It is pertinent to remember here that a memorandum of understanding known as the Bodo Accord is signed by the representatives of central government, state government and ABSU, on February 20, 1993. This Accord has led to the creation of the Bodoland Autonomous Council (BAC). The Council has 40 elected members and it has an executive body to carry out the functions. It enjoys autonomy in a number of subjects like agriculture, small scale and cottage industry, education, irrigation etc. But the condition in the Accord is that the Bodo militants will have to surrender with all their arms and ammunitions before the authority. S.K. Biswumutiary becomes the head of the BAC. However, BAC fails to meet the aspirations of Bodos and ABSU again launches an agitation denouncing the Accord and demanding the creation of a separate state. The BLT also indulges in acts of violence during this period. But these difficulties do not deter the National Democratic Alliance government at the centre for making fresh efforts to settle the Bodo issue.

It is important for us to remember here that on 1st October, 1995, the government of Assam has identified and given 2075 villages at first and 112 other forest and revenue villages in the six districts of Kokrajhar, Bongaigaon, Barpeta, Nalbari, Rangia subdivision of Kamrup and Darrang district to the Bodo BAC. But some of the militant leaders are not happy with this provision and they demand more autonomy. As a result, on November 25, 1994, BdSF rechristenes itself as the National Democratic Front of Bodoland

(NDFB). The constitution of the NDFB is adopted on March 10, 1998, nearly twelve years after its formation. The NDFB has adopted the violent methods to assert their demand.

Again on June 18, 1996, the Bodo Liberation Tigers (BLT) is formed. After prolonged struggle, BLT unilaterally decides to defer its armed operations on July 14, 1999 and comes to an agreement to negotiate with the Government of India. The BLT gives up its demand for a separate state. The Sixth Scheduled status is given to the Bodo areas. This provision empowers them to exercise their rights over land, ensures the protection of their traditions and ethnic identity and also enables them to govern themselves. Ultimately, according to the Memorandum of Settlement of February 10, 2003, the Bodoland Territorial Areas District (BTAD) under the Bodoland Territorial Council (BTC) has been established and on December 7, 2003, Hagrama Mohilary is appointed as the Chief Executive Member (CEM) of BTC. The BTC has 12 electorate members each looking after a specific control called Somishthi. The BTAD consists of four contiguous districts with an area of 27,100 sq km (35% of Assam) Kokrajhar, Baska, Udalguri and Chirang- carved out of eight existing districts- Dhubri, Kokrajhar, Bongaigaon, Barpeta, Nalbari, Kamrup, Darrang and Sonitpur. At present Kokrajhar serves as the headquarters of Bodoland. (www.bodolandcouncil.org/aboutus)

We should note here that the NDFB has been maintaining a ceasefire since June 1, 2005. Since the ceasefire, the level of threat posed by the NDFB has dropped. The agreement states that the NDFB has agreed to cease hostile action against security forces and civilians. In return, the security forces will not carry out operations against the members of the group. The agreement also stipulates that the members of NDFB will disarm and live in camps protected by the military for a year, and will refrain from assisting other militant groups. The ceasefire is expected to lead to talks between the armed groups and state agencies and ultimately to a complete halt in armed conflicts.

However the suspected NDFB militants have abducted and killed five members of security forces in May, 2006 in Udalguri district of Assam. They also continue their rift against the ex BLTF (Bodo Liberation Tiger Force) members. On June 5, 2006, NDFB militants in Karbi Angong kill two BLTF cadres. Again, on June 3rd, 2007, in Golaghat district the NDFB militants have murdered some people. Hence we can say that the NDFB is still continuing with its violent activities.

We have learnt that the hatred between the Bodos and the non- Bodos in Assam is growing at a rapid rate. If it is not stopped now, Assam will witness another violent movement. Their culture should be respected and they should be given economic facilities and job opportunities so that they do not feel deprived.

SAQ:

Can Bodo movement be described as an ethnic movement? Do you think that the Bodo movement can be settled non- violently through decentralization of power? Give reasons for your answer. (40+40 words).

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

3.6 Summing up

After reading the unit we have learnt that India has adopted a strong centralizing tendency. But at the same time India has also emphasized the process of decentralization. The 73rd and 74th amendment of Indian

Constitution has given constitutional status to the self governing units. We have also learnt that this centralizing tendency ultimately gives rise to the demand for decentralization of authority and more autonomy. The states in India are demanding for greater autonomy on the basis of religion, economic exploitation, development, ethnicity etc. but in the present world economic exploitation has become the most important reason for demanding autonomy. The unit also helps us to understand the role played by the various autonomy movements in India like Andhra movement, Naga movement, Mizo movement, etc. with special emphasis on the Bodo Movement. Here, we have also learnt that the Bodo movement is a kind of ethnic movement which has been successful in achieving autonomy by establishing a separate Bodoland under the Bodoland Territorial Council (BTC).

3.7 References and Suggested Readings

Chander, Prakash. *Indian Government and Politics*; Bookhive, Gurgaon

Sikri, S.L. *Indian Government and Politics*, New Delhi: Kalyani Publisher, 1999

Singh, Bhupinder. *Autonomy Movements and Federal India.* New Delhi Rawat Publications

Brahma, K. *Aspects of Social Customs of the Bodos.* Guwahati: Bina Library, 2008.

Brahma, Kameswar. *A study of Socio Religious Beliefs, Practices and Ceremonies of the Bodos.* Calcutta: Punthi Pustak, 1992

Links-

http://www.allfreeessays.com/essays/Centralisation-Vs.-Decentralisation/28612.html

http://en.wikipedia.org/wiki/Decentralization

* * *