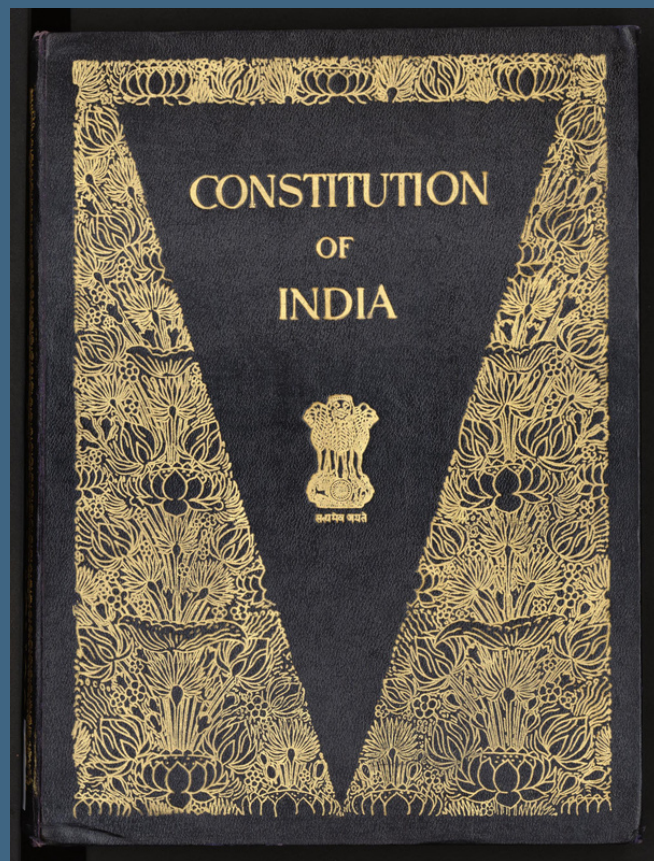


POLITY AND GOVERNANCE IN INDIA

COURSE CODE: M23PA02DC



POSTGRADUATE PROGRAMME IN PUBLIC ADMINISTRATION

SELF LEARNING MATERIAL



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M23PA02DC
Polity and Governance in India
Semester - 1
Discipline Core Course
MA Public Administration

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Regards,
Dr. Jagathy Raj V. P.

01-09-2024

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BLOCK 1

Historical Roots of Indian Constitution



UNIT 1

Evolution of Indian Constitution

Learning Outcomes

A careful study of this chapter will enable you to

- ▶ Understand the constitutional development during the pre-Independence period
- ▶ Critically analyse the contributions of the Government of India Acts, 1909, 1919, and 1935 in the development of the constitution.
- ▶ Examine the role of Cripps Mission and Cabinet Mission in the formation of constitutional polity;
- ▶ Evaluate the role of the Mountbatten Plan and Indian Independence Act in the framing of the Constitution.

Background

During the British rule, Indians faced severe hardships due to the suppression of civil rights and liberties. The British curtailed freedoms of speech, assembly and the press, and enacted repressive laws like the Rowlatt Act of 1919, leading to incidents such as the Jallianwala Bagh massacre. Economically, high taxes, resource draining and the restructuring of the Indian economy to benefit British interests caused widespread poverty and famine. Local industries were destroyed, and the forced cultivation of cash crops impoverished farmers and artisans, fuelling nationalism and the struggle for independence through movements like the Non-Cooperation Movement, Civil, Disobedience Movement and the Quit India Movement, culminating in independence in 1947 and framing the constitution by the people of the country by themselves. However, in many aspects the basic structure of the constitution evolved significantly from the British legislative acts, beginning with

the Indian Council Act of 1909, which introduced limited electoral representation and communal electorates. The Government of India Acts of 1919 and 1935 progressively increased Indian participation in governance, introduced provincial autonomy and established a federal structure and the Federal Court. These measures provided essential insights into legislative functions and governance, shaping the drafting of the Indian Constitution by the Constituent Assembly, and leading to the Indian Independence Act of 1947, which transitioned India to a sovereign, democratic republic.

Keywords

Electoral Representation, Communal representation, Diarchy, Bicameral legislature, Federalism, Distribution of Powers.

Discussion

The Indian Constitution, a comprehensive document that lays the foundation for the governance and polity of India, is a product of historical evolution influenced significantly by various acts and rules made by the British.

1.1.1 The Indian Council Act, 1909 (Morley -Minto Reforms)



This act is also known as Morely - Minto Reforms as it was named after the Secretary of State for India, John Morley and the Viceroy of India, Lord Minto. The primary motivation behind this Act was to address the growing demand for greater Indian representation in the governance process and to quell

rising political unrest and demands for self-rule. It played a crucial role in the constitutional development of India during the British colonial period introducing notable changes in the governance structure and laying the foundations for subsequent legislative advancements.

► Morley-Minto Reforms: Increased Indian representation

Key Provisions of the act are as follows:

► Introduced electoral representation, separate Muslim electorates, expanded councils with limited powers and increased non-official Indian members

1. **Introduction of Electoral Representation:** For the first time, the reforms introduced the concept of electoral representation. Indians were allowed to elect representatives to the legislative councils. However, the franchise was limited and based on property qualifications, effectively restricting the electorate to a small, affluent section of the population.
2. **Separate Electorates:** One of the most controversial aspects of the reforms was the introduction of separate electorates for Muslims. This meant that Muslims could elect their representatives separately, which was intended to address the concerns of the Muslim community about being politically marginalised in a Hindu-majority country.
3. **Expansion of Councils:** The size of the legislative councils was increased, and more powers were given, though still limited, to discuss budgets and address questions to the executive. The legislative councils were given the power to discuss budgets and propose resolutions, although their powers remained largely advisory and the British authorities retained ultimate control over governance.
4. **Non-Official Members:** The number of non-official members (Indians) in the councils was increased. In the Provincial Legislative Council, such members outnumbered the official members.

1.1.1.2 Impact on the Evolution of the Indian Constitution

► Foundation for self-governance

The Indian Council Act in 1909 laid the foundation for future constitutional reforms in India, setting off a series of legislative acts that increased Indian participation in governance, culminating in the Government of India Acts of 1919 and 1935. These reforms significantly raised political awareness and mobilised political activity among Indians, providing a platform for leaders to speak for greater self-governance. The introduction of separate electorates had lasting implications, institutionalising communal representation and influencing the political landscape leading to independence and partition. In addition, the reforms contributed to the development of legislative procedures and norms, helping Indian leaders shape their views on parliamentary democracy. Although the reforms did not grant self-rule, they marked an important step towards self-government by acknowledging that Indians should have a say in their own governance, a principle that was expanded in subsequent constitutional developments.

1.1.2 The Government of India Act, 1919 (Montagu-Chelmsford Reforms)

Based on the report of Montague, the secretary of state for India, and Chelmsford, the Governor General of India, a bill was introduced in the British Parliament and passed. The Act is known as the Government of India Act, 1919 or Montagu-Chelmsford Reforms. The Act represented a significant step towards the eventual establishment of self-governance in India. The Montagu-Chelmsford Reforms played a significant role in the evolution of the Indian Constitution in several ways. Key Provisions of the Act included the following.

► Step toward self-governance

► Diarchy

► Direct Election

► Bicameral Legislature

► Electoral Reforms

1. **Diarchy in Provinces:** This Act introduced a dual system of governance in the provinces, dividing subjects into “Transferred” (administered by Indian ministers) and “Reserved” (administered by the Governor and his executive council). Reserved subjects, such as law and order and finance, remained under the control of the Governor and his executive council. Meanwhile, transferred subjects, such as education, public health and agriculture, were administered by ministers who were responsible to the provincial legislatures.
2. **Increased Indian Representation and Direct Election:** By introducing more Indian members into the executive councils of the Governor-General and the Governors of the provinces, these reforms allowed a significant increase in Indian representation in both Provincial and Central legislatures. Direct elections were also introduced for the first time by this Act, increasing Indian participation in the electoral process.
3. **Establishment of a Bicameral Legislature:** The Imperial Legislative Council was transformed into a bicameral legislature with a Council of State and a Legislative Assembly. The Council of State was the upper house consisting of elected and nominated members. The Legislative Assembly was the lower house, with a majority of elected members. However, the control of British government was maintained through Governor-General who was responsible to the British Parliament.
4. **Franchise and Electoral Reforms:** This Act also introduced some reforms in franchise and the electoral process. The electorate was expanded by lowering property qualifications and introducing communal representation for Muslims, Sikhs, Indian Christians and Anglo-Indians.

1.1.2.1 Impact on the Evolution of the Indian Constitution

► Foundation for provincial autonomy

The Government of India Act of 1919 significantly influenced the evolution of the Indian Constitution by laying the foundation for provincial autonomy and introducing legislative practices. The diarchy system, despite its limitations, introduced the principle that provincial governments could be partly responsible to legislatures. This concept of provincial responsibility was further expanded in the Government of India Act of 1935 and ultimately enshrined in the Indian Constitution. The establishment of bicameral legislatures and increased Indian representation under the 1919 Act fostered essential legislative practices and parliamentary procedures. These experiences were crucial for Indian leaders and lawmakers for drafting the Indian Constitution, as they provided practical insights into governance and legislative functions.

► Sparked mobilisation, federalism and autonomy

The 1919 reforms also energised political mobilisation and demands for greater autonomy. Political activity increased, with parties like the Indian National Congress advocating more significant reforms, leading to movements such as the Non-Cooperation Movement and the Civil Disobedience Movement. Additionally, the introduction of a federal structure in the Montagu-Chelmsford Reforms influenced the eventual federal framework of the Indian Constitution. The division of subjects into central and provincial lists, initially outlined in these reforms, was further detailed in the Government of India Act of 1935 and later incorporated into the Constitution. The ongoing constitutional dialogue between the British government and Indian leaders, marked by various commissions and Acts, facilitated the gradual transfer of power and the development of constitutional ideas that ultimately shaped the Indian Constitution.

1.1.3 The Government of India Act, 1935

The most comprehensive of all the British legislative efforts, this Act was the result of the Simon Commission (1927) and the Round Table Conferences (1930-32). It aimed to address Indian demands for greater autonomy.

Provisions of the Government of India Act, 1935

► Federal Structure

1. **Federal Structure:** The Act proposed the establishment of an All-India Federation, consisting of provinces and princely states by distributing legislative power between the centre and provinces. Though the Federation never materialised, it laid the foundation for a federal structure in India.

► Provincial Autonomy

2. **Provincial Autonomy:** The Act introduced a significant measure of autonomy for the provinces. Provincial legislatures were given the power to legislate on a wide range of subjects, and the executive authority of provinces was to be exercised by the Governors with the aid of ministers responsible to the legislatures. It also abolished diarchy at the provincial level, giving full control of provincial subjects to Indian ministers. It appeared to be mile-stone leading to the goal of complete independence.

► Bicameral Legislatures

3. **Bicameral Legislatures:** The Act provided for bicameral legislatures in the centre and six provinces (Bengal, Madras, Bombay, Bihar, United Provinces and Assam). The Federal Assembly and the Council of States were the two chambers at the Centre and Legislative Assembly and Legislative Council were the two chambers at the state level.

► Diarchy

4. **Diarchy at the Centre:** As per this Act, the central subjects were further divided into "Reserved" and "Transferred" categories. In "Reserved" subjects which consisted of defence, external affairs, ecclesiastical affairs and tribal administration, the Governor General utilised his discretionary powers with the help of "counsellors" appointed by him, who were not responsible to the Legislature. Only in matters other than the above mentioned, was the Governor General to act on the advice of the Council of Ministers who were responsible to legislature.

► Legislative Powers

5. **Distribution of Legislative Powers between Centre and Provinces:** The federal provisions of the Act divided the powers between the centre and the provinces. Though the federation did not come into being due to the unwillingness of provinces, this was a major break away from the act of 1919 in which only delegation of powers was provided.

► Extension of Franchise

6. **Extension of Franchise:** The Act expanded the electorate, allowing more Indians to participate in elections. However, the franchise was still limited and based on property and educational qualifications.

► Federal Court

7. **Establishment of the Federal Court:** The Act established the Federal Court of India, which later became the Supreme Court of India. This court was intended to adjudicate disputes between provinces and the central government and interpret the provisions of the Act.

► Emergency Powers

8. **Emergency Powers:** The Act granted extensive powers to the Governor-General, including the authority to act in emergencies and override the decisions of the central legislature.

1.1.3.1 Impact on the Evolution of the Indian Constitution

► Foundation for federalism and bicameralism

The Government of India Act of 1935 had a crucial role in the constitutional development of India, laying a foundation for several key features of the Indian Constitution. Its federal provisions established the concept of a division of powers between the central and provincial governments, which became a cornerstone of India's federal system. Emphasising provincial autonomy, the Act informed the federal principles that granted states substantial legislative and administrative powers. Additionally, the introduction of bicameral legislatures in some provinces under the Act was a precursor to the bicameral structure of the Indian Parliament, comprising the Lok Sabha and the Rajya Sabha.

► Foundation for democracy

The Act also established the Federal Court, which laid the groundwork for an independent judiciary and the Supreme Court of India, endowed with powers of judicial review. Similarly, electoral reforms under the Act, particularly the expansion of the electorate, set the stage for Universal Adult Suffrage, a fundamental feature of the Indian Constitution. Furthermore, the extensive powers granted to the Governor-General influenced the emergency provisions in the Indian Constitution, allowing the President to assume greater control during crises. Overall, the Act of 1935 was a significant step towards self-governance, providing an institutional framework that facilitated India's transition from colonial rule to a democratic republic.

1.1.4 The Cripps Mission

► Negotiating Indian support



Sir Stafford Cripps

By 1942, the political situation in India was highly changed. The Indian National Congress and other political entities were demanding self-governance and independence from British rule. The British government, embroiled in World War II, was keen to gain the support of Indian leaders and the Indian populace to bolster their war efforts. In this context, the British government sent Sir Stafford Cripps, a senior minister and a member of the War Cabinet, to negotiate terms with Indian leaders. Its primary objective was to secure Indian support for the British war effort against the Axis powers. However, its broader implications were pivotal in the evolution of the Indian Constitution and India's journey toward independence.

► Cripps Mission proposals

The Cripps Mission made the following proposals:

1. **Dominion Status:** The mission proposed granting India full dominion status after the end of the war. This meant that India would have the same status as countries like Canada and Australia within the British Commonwealth.
2. **Constituent Assembly:** It proposed the establishment of a Constituent Assembly to frame a new constitution for India. The members of this assembly would be elected by the provincial legislatures and include representatives from the Princely States.
3. **Indian Union:** As per the proposal, there should be one Indian Union comprising all the provinces and Indian States.
4. **Right to Opt-Out:** Provinces that did not wish to join the new union could opt out and either remain with the existing British dominion status or form a separate union.
5. **Defence and Governance During the War:** The British government would retain control over defence and critical areas of governance during the war period.

1.1.4.1 Role and Importance in the Evolution of the Indian Constitution

► Cripps Mission recognised self-governance aspirations

The Cripps Mission of 1942, though unsuccessful due to the inability of Congress and the Muslim League to reach an agreement, marked a pivotal moment in India's constitutional development. It was the first formal acknowledgment by the British government of India's aspirations for self-governance and the right to self-determination. The mission laid the groundwork for the Constituent Assembly, which would eventually draft the Constitution of independent India, effective from January 26, 1950. Despite its failure, the mission fostered greater political unity and awareness among Indian leaders and underscored the need for a cohesive approach to independence. This failure also acted as a catalyst for the Quit India Movement in August 1942, a decisive step towards India's independence. Furthermore, the Cripps Mission set a precedent for considering Indian opinion in governance, influencing subsequent post-war negotiations, including the Cabinet Mission Plan of 1946.

1.1.5 The Cabinet Mission

By the mid-1940s, it became evident that British rule in India was coming to an end. World War II had weakened Britain's economy and its ability to maintain control over its vast empire. The demand for independence in India had reached a crescendo, with both the Indian National Congress and the Muslim League

► Cabinet Mission aimed to negotiate compromise

advocating an end to British rule, albeit with differing visions for the future. In this context, the British government sent a delegation known as the Cabinet Mission to India in 1946. The mission comprised three British Cabinet members: Lord Pethick-Lawrence, the Secretary of State for India; Sir Stafford Cripps, President of the Board of Trade and A.V. Alexander, First Lord of the Admiralty. The proposals of this committee, which were announced simultaneously in India and England on the 16th May, 1946 sought to effect a compromise between the two parties. Finally, the Cabinet Mission's scheme virtually accepted the principle underlying the claim of Muslim League though it rejected the claim for a separate Constituent Assembly and separate State of Pakistan.

Key Proposals

1. **Federal Structure:** The mission proposed a federal structure for India, with a union government controlling only defence, foreign affairs and communications, while the provincial governments would have extensive autonomy.
2. **Constituent Assembly:** A Constituent Assembly was to be elected to draft the Constitution of India. The assembly would consist of representatives from British Indian provinces and the princely states.
3. **Group System:** The provinces were to be grouped into three clusters: Group A (Hindu-majority provinces), Group B (Muslim-majority provinces in the North west) and Group C (Muslim-majority provinces in the East). Each group would have the autonomy to decide their constitution within the framework of the Union.
4. **Interim Government:** An interim government was to be formed until the new constitution was adopted.

The proposals were initially accepted by both the Congress and the Muslim League, although both had reservations. The Congress was particularly wary of the group system, fearing it would lead to the eventual partition of India. The Muslim League, led by Muhammad Ali Jinnah, saw the grouping system as a means to secure a separate nation for Muslims.

► Differences between Congress and Muslim League emerged

However, the differences between the Congress and the Muslim League soon resurfaced, primarily over the interpretation and implementation of the grouping system. This led to the eventual withdrawal of the Muslim League from the interim government and a renewed demand for a separate Pakistan.

1.1.5.1 Importance and Impact on the Indian Constitution

► Cabinet Mission influenced Constitution drafting

The Cabinet Mission played a pivotal role in the process leading to the drafting of the Indian Constitution by setting the stage for the formation of the Constituent Assembly in December 1946, which was responsible for drafting the Constitution of India, despite initial opposition from the Muslim League. It influenced the debates on federalism, though the final Constitution adopted a more centralised federal system than the Cabinet Mission had proposed. The interim government formed under the mission's plan maintained administrative continuity during the transition to independence in 1947. Although the mission aimed to avoid partition, it ultimately failed to reconcile the differences between the Congress and the Muslim League, leading to the creation of Pakistan. The mission's legacy highlights the complexities of addressing diverse political demands in a multi-ethnic, multi-religious society, influencing the Constituent Assembly to create a constitution balancing unity with diversity, thus profoundly impacting India's democratic and federal structure.

1.1.6 The Mountbatten Plan and Indian Independence Act 1947

► Partition of British India

After World War II, Britain faced severe economic and political pressures, making it difficult to maintain its colonial rule in India. Increasing communal tensions and violence between Hindus and Muslims intensified the demand for a partition of the subcontinent, leading to the urgency for a quick resolution. After the Cabinet Mission's proposal, the Muslim league did not join the Constituent Assembly on the grounds of its inadequate representation of all sections of Indian society and it wanted a separate Constituent Assembly for Muslims. The British Government then sent Lord Mountbatten as the Viceroy. He proposed a plan known as the Mountbatten Plan, officially known as the "June 3rd Plan," laying the groundwork for the partition of British India into two independent dominions: India and Pakistan. The British Parliament enacted a statute following the plan. This statute is called as Indian Independence Act and it came into force on July 18, 1947. Consequently, the viceroy announced the setting up of a separate Constituent Assembly for Pakistan.

Key Provisions of the Mountbatten Plan can be summarised as follows:

1. Partition of British India: The Act created two separate dominions, India and Pakistan effective from August 15,

1947. Under this Act, the dominion of India got the residuary territory of India excluding the Provinces of Sind, Baluchistan, West Panjab, East Bengal, the Northwestern Frontier Province and the district of Sylhet in Assam.

2. End of British Sovereignty: The princely states were given the choice to either remain independent or accede to India or Pakistan. The British suzerainty over these kingdoms was terminated.



Lord Mountbatten

3. Legislative Authority: The constitution framed by the Constituent Assembly ceased to apply to the Muslim-majority areas. The question of a separate Constituent Assembly for the Muslim-majority areas would be decided by these provinces. As per the plan, the legislative assemblies of Bengal and Punjab met and voted for the partition. Accordingly, it was decided to partition these two provinces along religious lines. Similarly, the legislative assembly of Sind would decide whether to join the Indian Constituent Assembly or not. It decided to go to Pakistan. The North-Western Frontier Province decided to join Pakistan after a referendum.
4. Governor-General as Constitutional head: Until the time the new constitutions came into existence, the Governor-General would assent to any law passed by the constituent assemblies of the dominions in His Majesty's name. The Governor-General was made a constitutional head.
5. Termination of British Laws: The Act nullified the application of British laws in the new dominions, giving them full legislative autonomy. The British Parliament could no longer enact any law in the territories of the new dominions.
6. For the demarcation of the international boundaries between the two countries, the Boundary Commission was established chaired by Sir Cyril Radcliffe. The commission was to divide Bengal and Punjab into the two new countries.

1.1.6.1 Importance of Mountbatten Plan

► Transitioning India from colonial rule to self-governance

The Mountbatten Plan played a crucial role in the evolution of the Indian Constitution. The Constituent Assembly of India, formed in December 1946, gained full sovereignty to draft the Constitution following the Indian Independence Act. This Act provided the necessary legal framework for the Assembly to operate independently of British supervision, enabling the creation of a constitution rooted in Indian values and aspirations. Serving as an interim constitution until January 26, 1950, the Act established the foundational structure of governance and influenced the federal framework by delineating powers between the central government and the states. Its significance extends to establishing India's sovereignty and legislative autonomy, laying the foundation for a democratic republic. It ensured a smooth legal transition from colonial rule to independence, maintaining continuity of laws and administrative structures until the new Constitution was adopted. Moreover, the Act inspired the inclusion of fundamental rights in the Constitution, reflecting the nation's aspirations for freedom and justice. Ultimately, the Indian Independence Act of 1947 was instrumental in transitioning India from colonial rule to self-governance, paving the way for the establishment of a sovereign, democratic republic.

Summarized Overview

The Indian Constitution is a result of historical evolution influenced by various British legislative acts. The Indian Council Act of 1909 introduced electoral representation and separate electorates, increasing Indian participation in governance. The Government of India Act of 1919 implemented a dual system of governance in provinces and established a bicameral legislature, furthering provincial autonomy and legislative practices. The Government of India Act of 1935 proposed a federal structure and significant provincial autonomy, expanding the electorate and laying the groundwork for India's federal system. The Cripps Mission of 1942, despite its failure, proposed dominion status and a Constituent Assembly, contributing to the Quit India Movement. The Cabinet Mission of 1946 proposed a federal structure and a Constituent Assembly, influencing the debates on federalism and administrative continuity during independence. Finally, the Mountbatten Plan and the Indian Independence Act of 1947 led to the partition of India and Pakistan, establishing India's sovereignty and legislative autonomy, and providing the legal framework for the Constituent Assembly to draft the Indian Constitution, which became effective on January 26, 1950.

Assignments

1. Analyse the key provisions of the Indian Council Act of 1909.
2. Discuss the impact of the Indian Council Act of 1909 on the subsequent constitutional reforms in India.
3. Describe the dual system of governance introduced by the Government of India Act of 1919, also known as the Montagu-Chelmsford Reforms.
4. Outline the key provisions of the Government of India Act of 1935 that proposed a federal structure and provincial autonomy.
5. Analyse the influence of the Government of India Act of 1935 in shaping the federal principles of the Indian Constitution.
6. What were the main proposals of the Cripps Mission of 1942 and why did it fail to achieve its objectives?
7. Explain the role and importance of the Cabinet Mission of 1946 in the formation of the Constituent Assembly and the drafting of the Indian Constitution.
8. Discuss the key provisions of the Mountbatten Plan and the Indian Independence Act of 1947, highlighting their impact on the creation of the Indian Constitution.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Debates and Framing of the Constitution

Learning Outcomes

A careful study of this unit will enable you to

- ▶ Comprehend the Formation, Structure and Functions of the Constituent Assembly;
- ▶ Critically analyse debates in the Constituent Assembly, especially regarding Article-1 and Article 32;
- ▶ Evaluate the importance of Objective Resolution introduced by Jawaharlal Nehru;
- ▶ Examine the role of B. R Ambedkar in the deliberations of the Constituent Assembly; and
- ▶ Understand the demerits and limitations of the Constituent Assembly

Background

The Constituent Assembly of India was a pivotal body responsible for drafting the Constitution of India. It shaped the democratic framework and governance system of the newly independent nation. Its formation was a response to Indian demands for self-governance, with the idea first proposed by the British Government through the Cripps Mission in 1942 and formalised by the Cabinet Mission Plan in 1946. The Assembly, comprising representatives from British Indian provinces and princely states, held its first session on December 9, 1946, under Dr. Sachchidananda Sinha's temporary chairmanship. Dr Rajendra Prasad was later elected as the permanent Chairman. The Assembly's structure included various committees, such as the Drafting Committee led by Dr B. R. Ambedkar, which were crucial in the detailed examination and incorporation of diverse perspectives into the Constitution. The Assembly's debates and deliberations, especially on key articles like Article 1 (defining India as a "Union of States") and Article 32 (Right to Constitutional Remedies), reflected its commitment to creating a robust and inclusive governance framework. For nearly three years, the Assembly held 11 sessions, culminating in the adoption of the Constitution on November 26, 1949, which came into effect on January 26, 1950, marking the beginning of the Republic of India.

Keywords

Fundamental Rights, Constitutional Remedies, Drafting Committee, Objective Resolution.

Discussion

► Drafting the Constitution

1.2.1 The Constituent Assembly

The Constituent Assembly of India was a pivotal body responsible for drafting the Constitution of India. Its formation, structure, and functions were crucial in shaping the democratic framework and governance system of the newly independent nation.

1.2.1.1 Formation of the Constituent Assembly

► Constituent Assembly established framework

As mentioned in the previous unit, the idea of a Constituent Assembly was proposed by the British Government in response to Indian demands for self-governance. The Cripps Mission in 1942 first proposed the idea formally, but it was the Cabinet Mission Plan in 1946 that laid down the framework for its creation. It provided for the election of the Constituent Assembly. Consequently, the elections were held in July 1946, with members being elected indirectly by the Provincial Assemblies through a single transferable vote system. This Assembly comprised representatives from British Indian provinces and princely states. British Indian provinces elected 292 members, while 93 seats were allocated to princely states. After the election, the Constituent Assembly held its first session on December 9, 1946, under the temporary chairmanship of Dr Sachchidananda Sinha. Dr Rajendra Prasad was later elected as the permanent Chairman of the Assembly. On 13 December 1946, Jawaharlal Nehru moved the Objective Resolution, The Resolution was passed on 22nd January, 1947. The members of the Assembly were the most important personalities of that time. Gandhi and Jinnah were not included. Prominent leaders in the Constituent Assembly included Dr Rajendra Prasad (President), Dr B. R. Ambedkar (Chairman of the Drafting Committee), Jawaharlal Nehru, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad, H. N Kuhzru, T. T Krishnamachari, K. M Munshi, Abdul Ghaffar Khan, Dr S Radhakrishnan, K. T Shah, Khwaja Nazimuddin and others.

1.2.1.2 Structure of the Constituent Assembly

Initially, the Assembly had 389 members. After the partition, the membership was reduced to 299 members. The members representing the areas included in Pakistan formed the Constituent Assembly of Pakistan and the remaining members constituted the Constituent Assembly for India, representing various provinces and princely states within the newly formed India. The Constituent Assembly formed numerous committees to address both procedural and substantive matters. There were 22 committees in total, with 8 major committees and the rest being minor and supporting. Out of these, 10 committees managed procedural affairs, while 12 dealt with substantive matters. These committees sometimes consulted external experts and conducted thorough discussions on various issues. Once the preliminary work was completed and the committee reports were debated in the Constituent Assembly, they were sent to the Drafting Committee to incorporate the recommendations into the Draft Constitution. The Draft Constitution was then presented in the Constituent Assembly, where it underwent three readings, as it is standard for all legislations. Some draft provisions were repeatedly debated, leading to thorough and intensive discussions. The Drafting committee released the first draft of the prospective constitution on February 21, 1948. This draft was reviewed by the Indian public for about eight months, during which citizens proposed further amendments. After considering public feedback, the necessary changes were incorporated, and the revised draft of the constitution was published in October 1948. From its starting in 1947, the Drafting Committee took 2 years, 11 months, and 17 days to complete the full Constitution of India. The Constituent Assembly held 11 sessions over 165 days, with 114 of those days dedicated to discussions by the Drafting Committee and the draft constitution. After nearly three years of effort, the Constituent Assembly of India finalised the world's largest written Constitution. It was signed by Dr Rajendra Prasad, the Chairman of the Constituent Assembly, on November 29, 1949 and came into effect on January 26, 1950. During this period, 554 princely states integrated into the Republic of India.

► Constituent Assembly drafted the Constitution

1.2.1.3 Major committees

1. **Drafting Committee:** This committee, chaired by Dr B. R. Ambedkar, was the most significant committee. It was entrusted with the task of preparing the draft of a new constitution for India. The committee consisted of seven members including the chairman.

2. Union Power Committee: This was chaired by Jawaharlal Nehru. The function of this committee was to deal with the distribution of powers between the Union and the States.
3. Rules of Procedure Committee: This committee was chaired by Dr Rajendra Prasad. It was responsible for framing all the rules of the Constituent Assembly, including those for admission and resignation of members, conduct of business in the Assembly and its various committees and fixing salaries and allowances of all persons involved in the Assembly's functioning
4. Steering Committee: Chaired by Dr Rajendra Prasad, this committee was responsible to coordinate the activities of the various committees and ensure the smooth functioning and progress of the constitution-making process
5. Provincial Constitution Committee: Also chaired by Sardar Patel, this committee worked on the Constitution for the provinces.
6. Advisory Committee on Fundamental Rights, Minorities, Tribals and Excluded Areas: Chaired by Sardar Patel, this committee dealt with issues related to minority rights and protection.
7. Union Constitution Committee: This committee focused on detailing the structure of the Union government, including the executive, legislature and judiciary. It was chaired by Jawaharlal Nehru.
8. State Committee: Chaired by Jawaharlal Nehru, this committee engaged in negotiations with princely states to bring them into the framework of the Indian Union.

The formation of major and minor committees within the Constituent Assembly was crucial in streamlining the constitution-making process, providing for a thorough examination of various governance aspects and ensuring the adequate representation of diverse perspectives and interests.

Biographic Sketch: Dr. B.R Ambedkar



Dr. Bhimrao Ramji Ambedkar, born on April 14, 1891, in Mhow, Madhya Pradesh, was a pioneering social reformer, economist, and the principal architect of the Indian Constitution. Born into a Dalit family, Ambedkar faced severe discrimination throughout his early life. Despite the challenges, he exhibited exceptional academic promise and pursued higher education against all odds. Ambedkar studied at Elphinstone High School in Bombay, becoming one of the first Dalits to enter college. Supported by a scholarship from the Maharaja of Baroda, he pursued further studies abroad, earning multiple degrees, including a doctorate from Columbia University in the United States and a D.Sc. in economics from the London School of Economics. His academic achievements were remarkable, and he used his education to champion the rights of marginalized communities in India.

Dr. Ambedkar's career was marked by his commitment to social justice and public service. He held significant positions, including as the Labour Minister in the Viceroy's Executive Council from 1942 to 1946 and later as the first Law Minister of independent India. However, his most notable role was as Chairman of the Drafting Committee of the Indian Constitution in 1947, where he played a crucial role in framing a progressive constitution that emphasized equality, liberty, and social justice. Ambedkar's contributions to legal reforms, such as his push for the Hindu Code Bill to secure women's rights and family law reforms, underscored his dedication to building a fair and inclusive society.

Ambedkar's legacy is enduring, as he tirelessly advocated for the rights of oppressed communities and worked toward eradicating caste discrimination. His influence on India's social and political landscape is profound, from establishing the principles of social justice within the Constitution to his work in founding institutions like the Scheduled Castes Federation, which aimed to uplift Dalit voices in Indian politics. Beyond politics, he was a prominent writer and thinker, with works like *Annihilation of Caste* that critiqued the caste system and called for radical social reforms. In his later years, Ambedkar embraced Buddhism, seeing it as a path of liberation for Dalits, and inspired a significant movement of conversion to Buddhism among marginalized communities. Dr. Ambedkar passed away on December 6, 1956, leaving behind an enduring legacy as a champion of equality, human rights, and social reform in India.

1.2.1.4 Functions of the Constituent Assembly

► Constituent Assembly ensured diverse representation

The structure and functions of the Constituent Assembly reflected the characteristics and aspirations of the diverse population in India. It ensured the representation to all sections of the people in the country. The members ensured that the sovereignty of the nation along with preserving the fundamental rights of the citizens was upheld. Considering the multi-cultural characteristics of the country, establishing of a federal structure and guiding India's path toward a robust and enduring democracy were their immediate concerns. The Assembly also performed the duties of a legislature and government on temporary basis. We can summarise the key functions as follows:

1. **Drafting the Constitution:** The primary function of the Constituent Assembly was to draft the Constitution of India. This involved conducting debates and discussions on various provisions, incorporating suggestions from diverse sections of society and ensuring that the Constitution reflected the aspirations and values of the Indian people.
2. **Interim Government:** The Constituent Assembly also functioned as the interim legislature for the country until the first general elections were held in 1952. It passed several important laws and ordinances necessary for the governance of the country during this transitional period.
3. **Adoption of the Constitution:** The Constituent Assembly held 11 sessions over a period of nearly three years, totalling 165 days of meetings. These debates were instrumental in shaping the final document. Finally, the Constituent Assembly adopted the Constitution on November 26, 1949. This day is celebrated as Constitution Day. Some of the provisions of the new constitution as those relating to citizenship, elections, provisional parliament and temporary and transitional provisions were given immediate effect. But the rest of the provisions came into force on 26th January, 1960. This day is celebrated as the Republic Day.
4. **Enactment of Laws:** During the transitional period, the Assembly enacted laws to manage the affairs of the newly independent nation. These laws were crucial for maintaining order and establishing a legal framework until the new Constitution took effect.
5. **In addition to the making of the constitution, the Constituent Assembly performed the following functions:**
 - i. It ratified India's membership of the Commonwealth in May, 1949;

- ii. It adopted National flag on 22 July, 1947;
- iii. It adopted the National Anthem on 24 January 1950;
- iv. It adopted the National Song on 24 January, 1950;
- v. It elected Dr Rajendraprasad as the first President of India on 24th January, 1950

1.2.2 Debates on the Provisions of Article 1 and Article 32

Indian constitution was the result of rigorous debates and discussions within the Constituent Assembly covering a wide range of themes. These discussions were crucial in shaping the Constitution, ensuring that it reflected the diverse aspirations of the Indian populace. Especially, the debates on Article 1 (Name and territory of the Union) and Article 32 (Right to Constitutional Remedies) highlight the Assembly's commitment to creating a robust and inclusive Constitution.

1.2.2.1 Article 1: Name and Territory of the Union

► Article 1

Article 1 of the Constitution of India, which states "India, that is Bharat, shall be a Union of States," was subject to extensive debate in the Constituent Assembly. The debates mostly concentrated on the following aspects.

► Debate on country's name

Name of the country: Members had differing opinions on the country's name, with Dr B. R. Ambedkar proposing the dual name "India, that is Bharat" to honour both the internationally recognised name and the indigenous term. While H. V. Kamath and Seth Govind Das favoured using only "Bharat" for its cultural significance, K. Santhanam defended the dual name approach to balance international recognition with traditional identity.

► Central vs. federal structure

The Structure: The structure of the Union also sparked debate; Jawaharlal Nehru and Ambedkar advocated a strong central government with the term "Union of States" to emphasise unity and prevent secession, while K. T. Shah and T. T. Krishnamachari discussed the need for federal principles to ensure autonomy of states.

Territorial Integrity: The territorial integrity and diversity of India were other focal points of discussion. Dr Ambedkar emphasised clear territorial definitions, including all states and union territories, to avoid future ambiguities. Pandit Thakur Das Bhargava supported a detailed enumeration of states, while Sardar Vallabhbhai Patel and S. Radhakrishnan highlighted the

► Territorial integrity and diversity

importance of recognising and incorporating India's linguistic and cultural diversity within the framework of a united nation. Their arguments underscored the need to respect and integrate the diverse identities and heritages of India's populace.

► National integration and unity

National Integration: National integration and unity were paramount in the minds of the members of the Assembly. Dr Rajendra Prasad and G. V. Mavalankar stressed that Article 1 should symbolise national unity and promote a sense of belonging among all citizens. The debates ultimately reflected a concerted effort to balance the need for a strong, centralised state with the principles of federalism, recognising the country's cultural and linguistic diversity and aiming to create a cohesive and progressive nation.

1.2.2.2 Article 32: Right to Constitutional Remedies

► Heart and Soul of the Constitution

Article 32 of the Indian Constitution, described as the "heart and soul" by Dr B. R. Ambedkar, guarantees the right to constitutional remedies for the enforcement of Fundamental Rights. It provides citizens the right to approach the Supreme Court directly in case of violation of these rights. During the debates in the Constituent Assembly, various members expressed their views on the importance, scope and implications of this article. Key proponents, such as Dr Ambedkar, Alladi Krishnaswami Ayyar and K. M. Munshi, emphasised the article's role in making all other rights meaningful and establishing the Supreme Court as the ultimate guardian of these rights, thus ensuring a robust mechanism for their enforcement.

► Overburdening of the Supreme Court

However, some members raised concerns and criticism about Article 32. H. V. Kamath worried about the potential overburdening of the Supreme Court due to the direct access provided by the article, suggesting a need for preliminary examination to filter out frivolous petitions. T. T. Krishnamachari expressed apprehensions about the practical implementation and the Court's ability to handle the volume of cases efficiently. Pandit Thakur Das Bhargava questioned the wide powers given to the judiciary, advocating a balance between the judiciary and legislature to prevent judicial overreach.

► Judiciary's independence and authority

In response to these concerns, key figures like Sardar Vallabhbhai Patel and Jawaharlal Nehru provided reassurances. Patel emphasised that measures would be implemented to manage the Supreme Court's workload, underscoring the necessity of strong judicial supervision for protecting citizens' rights. Nehru highlighted the role of Article 32 in maintaining democracy and protecting individual freedom, arguing that

the judiciary's independence and authority were crucial for the enforcement of constitutional rights.

► Protection of citizens' liberty

Ultimately, the debates around Article 32 were marked by a consensus on its critical importance for safeguarding Fundamental Rights, despite some practical and theoretical concerns. The prevailing sentiment was in favour of a strong judicial mechanism to ensure the protection of citizens' liberties. Article 32 remains a cornerstone of the Indian Constitution, embodying the commitment to uphold the fundamental rights of every citizen and ensuring that these rights are not rendered illusory.

1.2.3 The Objective Resolution and Constituent Assembly

The Objective Resolution, introduced by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946 was a seminal document that outlined the foundational principles

► Ideological and philosophical framework



Jawaharlal Nehru

and aspirations for the Constitution of India. Its relevance in the Constituent Assembly debates was profound, as it set the ideological and philosophical framework for the drafting of the Constitution. The Objective Resolution was adopted on January 22, 1947 and many of its principles were later incorporated into the Preamble and other parts of the Constitution.

Key Elements of the Objective Resolution

1. **Sovereignty:** It declared India as an independent, sovereign republic in which both British India and Indian states were included. The units were given a lot of autonomy and they were also to possess residuary powers.
2. **Democracy:** It emphasised the establishment of a democratic system of government. All powers and authority of the state were derived from the people.
3. **Justice, Liberty and Equality:** All people were to be guaranteed and secured social, economic and political justice and equality of status, opportunities and equality before law. They were guaranteed freedom of thought, expression, belief, faith, worship, vocation, association and action sub-

ject to law and morality. The minorities and backward and tribal people were guaranteed adequate safeguards.

4. Fraternity: It stressed the importance of fraternity, assuring the dignity of the individual and the unity and integrity of the nation.
5. World Peace and Welfare: It expressed India's aspiration to contribute to the promotion of world peace and the welfare of mankind.

1.2.3.1 Relevance of Objective Resolution

Ideological Foundation

► Fundamental objectives

The Objective Resolution gave expression to the ideas and aspirations of the people of India. It declared the fundamental objectives which were to guide the Constituent Assembly in its deliberations.

► Guiding principles for drafting the constitution

Firstly, the Objective Resolution provided the guiding principles for the drafting of the Constitution. It served as a blueprint for the Assembly, ensuring that the core values of sovereignty, democracy, justice, liberty, equality and fraternity were embedded in the constitutional framework. It also articulated the vision for an independent India, laying down the aspirations of the Indian people for their newly independent nation. This vision was crucial for the members of the Assembly as they debated various provisions of the Constitution.

► Coherence and integrity of the Constitution

Secondly, throughout the debates, members frequently referred to the Objective Resolution to ensure that the articles and provisions being drafted aligned with the principles outlined in the Resolution. It acted as a constant reference point for maintaining the coherence and integrity of the Constitution.

► Facilitating consensus among Assembly members

Finally, the Objective Resolution helped in building consensus among the diverse group of Assembly members. By establishing common goals and values, it facilitated discussions and negotiations, helping members from different backgrounds and political ideologies find common grounds.

Influence on Key Provisions

The influence of the Objective Resolution is apparent in many provisions of the Constitution

1. Preamble: The ideals and principles of the Objective Resolution directly reflected in the Preamble of the Constitu-

tion. The Preamble's emphasis on justice, liberty, equality and fraternity, as well as the assertion of India as a sovereign, socialist, secular and democratic republic, were inspired by the Resolution.

2. **Fundamental Rights:** The commitment to justice, liberty and equality in the Objective Resolution influenced the drafting of the Fundamental Rights. These rights aimed to protect individual freedom and ensure social and economic justice.
3. **Directive Principles of State Policy:** The Resolution's focus on socio-economic justice and the welfare of the people shaped the Directive Principles of State Policy. These principles provided guidelines for the state to follow to achieve the socio-economic goals outlined in the Resolution.
4. **Federal Structure and Unity:** The emphasis on the unity and integrity of the nation influenced the federal structure of India. The Constitution sought to balance the autonomy of states with the need for a strong central government to maintain national unity.

Philosophical and Ethical Dimensions

In philosophical and ethical terms, the Objective Resolution served as a moral and ethical compass for the Constituent Assembly. It reminded the members about the higher ideals and aspirations that should guide the drafting of the Constitution, beyond mere legal and administrative considerations. The principles in it underscored the importance of inclusivity and protection of minority rights. This was reflected in the debates and the eventual provisions that sought to protect the rights of various social and religious communities.

► Moral and ethical compass for the Constituent Assembly

1.2.4 Contributions of B. R. Ambedkar in the Drafting of the Constitution

B. R. Ambedkar played a pivotal role in the framing of the Indian Constitution as the Chairman of the Drafting Committee. The Drafting Committee was tasked with the responsibility of preparing the draft of the Constitution. Dr Ambedkar's contributions, along with those of the committee members, were instrumental in shaping the constitutional framework of independent India. The Constituent Assembly formed the Drafting Committee on August 29, 1947. The committee comprised seven members, with Dr B. R. Ambedkar as its Chairman. The other members were:

► Drafting Committee

1. N. Gopalaswami Ayyangar
2. Alladi Krishnaswami Ayyar
3. K. M. Munshi
4. Syed Mohammad Saadullah
5. N. Madhava Rau (replaced B. L. Mitter who resigned)
6. T. T. Krishnamachari (replaced D. P. Khaitan who passed away)

In the debates in the Constituent Assembly Ambedkar played a remarkable role in articulating social justice, especially the rights of Dalits and minorities. His contributions particularly reflect in the constitution due to the following reasons:

1. **Architect of the Constitution:** Often referred to as the "principal architect" of the Indian Constitution, Ambedkar played a crucial role in shaping its fundamental structure and provisions.
2. **Advocate for Social Justice:** Dr Ambedkar ensured the inclusion of provisions that aimed at social justice, such as the abolition of untouchability (Article 17) and the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth (Article 15).
3. **Fundamental Rights and Directive Principles:** He was instrumental in the formulation of the Fundamental Rights and the Directive Principles of State Policy, ensuring that they reflected the aspirations for justice, liberty and equality.
4. **Economic and Social Democracy:** Ambedkar emphasised the need for both political and economic democracy. He argued for the protection of socio-economic rights and the welfare of the marginalized sections of society.
5. **Federal Structure:** He contributed to the design of a federal structure with a strong centre, which he believed was necessary to maintain the unity and integrity of India.
6. **Judicial System:** Ambedkar played a key role in shaping the independent judiciary and the system of judicial review, which is crucial for the protection of fundamental rights.

► Father of Indian Constitution

The Drafting Committee's work, particularly Dr Ambedkar's leadership, left an indelible mark on the Indian Constitution. He took a very prominent part in the deliberations of the Constituent Assembly and was always ready to answer the questions that were raised on the floor of the House. He was



articulate and persuasive in his arguments. It goes to his credit that he was always ready to accept the point of view which was different from his own. He has rightly been called the father or the architect of the constitution of India. Sometimes he is known as even as “modern Manu.”

1.2.5 Evaluation of the Constituent Assembly

The Constituent Assembly's primary achievement was drafting the Constitution of India, laying the foundation for a democratic and secular republic. It included a diverse range of members representing different regions, communities and political ideologies, ensuring the Constitution reflected the aspirations of a broad cross-section of Indian society. Furthermore, extensive debates and deliberations within the Assembly ensured that various viewpoints were considered, leading to a well-rounded and comprehensive Constitution.

► Democratic and secular republic

In addition to creating the Constitution, the Constituent Assembly played a pivotal role in the transition to independence by enacting essential laws to govern the newly independent country. By legislating during this critical transitional period, the Assembly ensured stability and continuity, thereby preventing a legislative vacuum after the end of the British rule. This legislative activity was crucial in maintaining order and establishing a functioning governance system during the nascent stages of India's independence.

► Transition to independence

The significance of the Constituent Assembly is also highlighted by its guiding principles and values, starting with the adoption of the Objective Resolution, which set forth the fundamental principles and goals that directed the drafting of the Constitution. Additionally, the Assembly ensured the inclusion of Fundamental Rights and Directive Principles of State Policy, which became cornerstones of the Indian legal and governance framework. These elements underscored the Assembly's commitment to creating a just and equitable society, enshrining values that continue to shape India's democratic ethos.

► Foundational principles for justice

1.2.6 Limitations of the Constituent Assembly

The Constituent Assembly faced challenges in terms of representation. The members were indirectly elected by provincial assemblies, rather than through direct election by the general populace, which led to criticism about the lack of direct representation. Additionally, despite the Assembly's diversity, certain groups, particularly from rural areas and the less privileged sections of society, were underrepresented.

► Challenges in representation

► Dual responsibilities

The simultaneous legislative role performed by the Constituent Assembly also caused certain limitations. Balancing the dual responsibilities of drafting the Constitution and functioning as a legislative body created considerable constraints of time, placing pressure on Assembly members and potentially leading to rushed decisions. Additionally, the need to address immediate legislative requirements often overshadowed the more critical task of constitution-making, which affected the depth and breadth of deliberations on certain constitutional provisions.

► Ideological conflicts

Political and social challenges, particularly due to communal tensions and the trauma of Partition, hindered its ability to maintain focus and coherence. In addition, the Assembly had to navigate diverse ideological conflicts, often leading to compromises that were perceived as diluting the original intentions.

Summarized Overview

The Constituent Assembly of India was a pivotal body responsible for drafting the Constitution of India, which played a crucial role in shaping the democratic framework and governance system of the newly independent nation. The idea of a Constituent Assembly was proposed by the British Government in response to Indian demands for self-governance, with the Cabinet Mission Plan in 1946 providing the framework for its creation. The Assembly initially had 389 members, later reduced to 299 after partition, representing various provinces and princely states. It formed numerous committees to address procedural and substantive matters, with the Drafting Committee, chaired by Dr B. R. Ambedkar, playing a key role. The Assembly held extensive debates on various provisions, including Articles 1 and 32, reflecting a commitment to creating a robust and inclusive Constitution. It also served as an interim legislature, enacting laws to govern the newly independent country. The Assembly's work culminated in the adoption of the Constitution on November 26, 1949, which came into effect on January 26, 1950, marking the beginning of the Republic of India. Despite facing challenges such as representation issues and time constraints, the Assembly's efforts laid the foundation for a democratic and secular republic, ensuring stability and continuity during India's transition to independence.

Assignments

1. Explain the composition, role and functions of the Constituent Assembly.
2. Briefly describe the major committees within the Constituent Assembly, focusing on their specific responsibilities in the constitution-making process.
3. Discuss the significance of the Objective Resolution introduced by Jawaharlal Nehru. How did it influence the debates and the final drafting of the Indian Constitution?
4. Analyse the importance of Article 1 in the debates of the Constituent Assembly.
5. Why is Article 32 referred to as the "heart and soul of the Constitution" by Dr B. R. Ambedkar?
6. Analyse different roles of the Constituent Assembly.
7. Analyse the contributions of Dr B. R. Ambedkar as the Chairman of the Drafting Committee. How did his views shape key provisions of the Indian Constitution?
8. Critically evaluate the achievements and limitations of the Constituent Assembly.

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Suggested Reading

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

UNIT 3

Philosophical/Ideological Background to Indian Constitution

Learning Outcomes

A careful study of the unit will enable you to

- ▶ Understand the historical background of the Indian Constitution;
- ▶ Analyse the impact of Anti-Colonialism, Nationalism and Partition on the Constitution
- ▶ Examine various ideological approaches enshrined in the Constitution;
- ▶ Critically analyse the vision outlined in the Constitution on the future of the nation.

Background

The Constitution is profoundly influenced by the nation's historical evolution, marked by the anti-colonial struggle, rising nationalism and the traumatic partition of the subcontinent. The late 19th and early 20th centuries saw the emergence of political parties like the Indian National Congress, which demanded self-governance and later gained independence from British colonial rule. The anti-colonial movements, such as the Non-Cooperation and Civil Disobedience movements led by figures like Mahatma Gandhi, mobilised mass resistance against British authority, emphasising not only political freedom, but social justice and human rights also. Rising nationalism unified a diverse population under a common goal, advocating a democratic and inclusive form of government. The partition of India in 1947, which created India and Pakistan, further influenced the constitution-making process, highlighting the need for a strong, secular state to ensure national unity and protect minority rights. The Constituent Assembly, drawing from various ideological traditions such as liberalism, socialism, Gandhism, Dalit and subaltern perspectives and feminism, crafted a comprehensive document. This document, reflecting the collective will and aspirations of the people, aimed to secure justice, liberty, equality and fraternity for all citizens, ultimately shaping India into a democratic and inclusive republic.

Keywords

Liberalism, Nationalism, Social Justice, Gender Equality, Empowerment

Discussion

1.3.1 Historical Background

The constitution emerged taking inspiration from different ideological currents and events that took place in the Indian sub-continent during the reign the British. Among them, anti-colonialism, ationalism and partition deserve special mention. Now let us briefly look into these three phenomena.

1.3.1.1 Anti-Colonialism

► Influence of the Anti-colonial movement

The anti-colonial movement, which gained momentum in the late 19th and early 20th centuries, was marked by widespread resistance against economic exploitation, political subjugation and social oppression. Leaders like Mahatma Gandhi, Jawaharlal Nehru and Subhas Chandra Bose spearheaded various movements and campaigns, including the Non-Cooperation Movement, Civil Disobedience Movement and the Quit India Movement, to demand self-rule. The resistance was not just a fight for political independence, but also a battle for social justice, economic equity and human rights. The collective memory of colonial exploitation and the desire to prevent such oppression in the future profoundly influenced the Constituent Assembly's deliberations, driving the inclusion of fundamental rights and the principles of justice, liberty and equality in the Constitution.

1.3.1.2 Nationalism

► National unity and regional diversity

The rise and growth of nationalism in India was a product of British imperialism. It brought together people from diverse regions, cultures and religions under the common goal of independence. The Indian National Congress, established in 1885, played a central role in fostering a sense of national identity and articulating the aspirations of the Indian people. Nationalist leaders advocated a democratic form of government that would ensure representation, accountability and the protection of civil liberty. The cultural renaissance during the nationalist period also emphasised India's rich heritage and the need to build a modern state rooted in democratic values. This burgeoning

sense of nationalism was crucial in the Constituent Assembly, where leaders were determined to create a constitution that reflected India's pluralistic ethos and promoted national unity while respecting regional diversity.

1.3.1.3 Partition

► Creation of two separate nations

The Partition of India in 1947 was a cataclysmic event that led to the creation of two separate nations, India and Pakistan. The violent and traumatic nature of Partition, which resulted in the mass displacement of crores of people, communal riots and loss of lives, left deep scars on the national psyche. The experience of Partition underscored the urgent need for a constitution that would promote secularism, safeguard the rights of minorities and prevent the recurrence of such communal strife. The horrors of Partition influenced the Constituent Assembly's commitment to creating a robust framework for social justice, non-discrimination, minority rights and protection of fundamental rights, aiming to build a cohesive and harmonious society.

1.3.2 Approaches to the Constitution

► Constitution reflects diverse ideologies

The Constitution sought to address the socio - political challenges and aspirations that had defined India's history in the last seven decades. The framers aimed to construct a democratic republic that is secular, inclusive and committed to social justice. They envisioned a constitution that would not only establish a system of governance based on democratic principles but also protect the rights and freedom of all citizens, promote social and economic equity and maintain national unity and integrity. The Constitution thus represents a synthesis of the diverse and often tumultuous historical experiences that shaped modern India, reflecting the collective will and aspirations of its people. The framers of the Constitution drew on various ideological traditions, including liberalism, socialism, Gandhism, Dalit and subaltern perspectives and feminism. These ideologies shaped the principles, rights and structures enshrined in the Constitution, making it a living document that continues to evolve with the nation. Now let us discuss these ideologies in detail.

1.3.2.1. Liberalism

► Protection of individual rights and personal freedom

Liberalism, as a political ideology, places significant emphasis on the protection of individual rights and personal freedom, upholding the rule of law and establishing a democratic system of governance. These principles are deeply embedded in the Indian Constitution.

Individual Rights and Freedom: In the Constitution, Article 14 guarantees the right to equality, ensuring that every individual is treated equally before law and prohibiting discrimination on various grounds. Article 19 enshrines freedom of speech and expression, allowing citizens to voice their opinions and ideas freely, which is essential for a vibrant democracy. Article 21 provides protection of life and personal liberty, stating that no person shall be deprived of their life or personal liberty except according to the “procedure established by law.” These articles collectively reflect the liberal emphasis on safeguarding individual freedom and rights.

Rule of Law: Another cornerstone of liberalism is the rule of law, which mandates that all individuals and institutions, including the government, are subject to the law. The Indian Constitution upholds this principle through provisions for judicial review and the independence of the judiciary. Judicial review allows courts to assess the constitutionality of legislative and executive actions, ensuring that no branch of government exceeds its constitutional limits. The independence of the judiciary is critical in maintaining the rule of law, as it ensures that judges can make decisions free from political pressure or influence. This framework also guarantees that justice is administered fairly and impartially, reinforcing the liberal ideal of the rule of law.

Democracy and Representation: Liberalism also strongly speaks for democracy and representation, promoting a system of governance where authority is derived from the consent of the governed through free and fair elections. The Indian Constitution establishes a parliamentary system, where representatives are elected by the people to make laws and govern on their behalf. This democratic process ensures that the government remains accountable to the citizens and that power is exercised in a manner consistent with the people's will. The Constitution guarantees regular elections, the right to vote and the freedom to form and join political parties, all of which are fundamental to a functioning democracy. Democracy covers even the economic and social aspects of life.

Impact of Liberalism on the Constitution

The Preamble of the constitution explicitly declares India to be a "Sovereign Socialist Secular Democratic Republic," highlighting the nation's commitment to democratic and liberal values. In addition, the inclusion of Fundamental Rights within the Constitution is a direct manifestation of liberal principles, aiming to protect individual liberty and ensure justice and

► Democratic and liberal values

equality for all citizens. These rights are justiciable, meaning that individuals can approach the courts to seek redress if their rights are violated, thereby reinforcing the liberal emphasis on individual freedom and the rule of law. The overall constitutional framework, thus, reflects a profound commitment to liberalism, shaping India as a democratic and rights-based society.

1.3.2.2 Secularism

► Embodies India's constitutional commitment to religious tolerance

It is the hallmark of the constitution. All the social reformers and political leaders of modern India have advocated religious tolerance, religious freedom and equal respect for all religions. However, the word “secularism” was nowhere mentioned in the constitution adopted in 1949. It was included in the preamble by the 42nd amendment. Further, the right to religion covering Articles 25 to 28 of the constitution guarantees every person the freedom of conscience and right to profess, practice and propagate any religion.

1.3.2.3 Socialism

► Economic equality and social welfare

Socialism is an economic system where means of production and distribution are owned by the state. As a philosophical concept, it stresses more on social equality. It is fundamentally concerned with the reduction of economic inequalities and the provision of social welfare. It emphasises the importance of ensuring that wealth and resources are distributed more equitably among all sections of society, rather than being concentrated in the hands of a few. This principle of economic justice is embedded in the Directive Principles of State Policy (Part IV) of the Indian Constitution. These principles, though non-justiciable, serve as essential guidelines for the state in promoting social and economic justice. They reflect the socialist ideals that aim to create a society where everyone has access to basic necessities and opportunities for a decent standard of living.

► Economic redistribution

Economic Justice: Socialism emphasises the reduction of economic inequalities and the importance of social welfare. No democracy can succeed without economic justice. This involves government intervention in the economy to redistribute wealth and provide public goods and services. In the Constitution, this is manifested in various provisions aimed at social welfare and economic redistribution. The state is guided to implement measures that provide for public health, social security and the upliftment of the underprivileged. As we mentioned, the Directive Principles of State Policy (Part IV) embody socialist ideals by guiding the state to promote social and economic justice.

► Promotes state regulation for equitable resource distribution

State Control and Regulation: Socialism stands for state control or regulation of resources to ensure equitable distribution and prevent exploitation. Article 39 emphasises that the state should ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Through this provision, the Constitution envisions a framework where the state actively works towards creating a more equitable and just society, reflecting the core tenets of socialism. This also means that by regulating industries and resources, the state can work towards reducing the gap between the rich and the poor, ensuring that the benefits of economic growth are shared by all sections of the society.

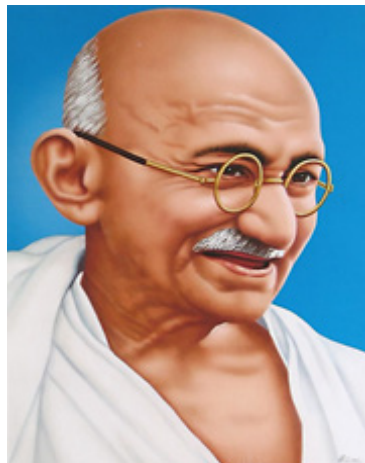
Impact of Socialism on the Constitution

► The 42nd Amendment in 1976

The influence of socialism on the Indian Constitution is significantly highlighted by the inclusion of the term "socialist" in the Preamble through the 42nd Amendment in 1976. This amendment explicitly underscores the commitment of the Indian state to achieve social and economic equity. By incorporating socialism into the Preamble, it was reinforced the notion that the state should play a proactive role in reducing inequalities and providing for the welfare of its citizens. It affirmed the vision of India as a society where social and economic justice are paramount, aligning with the broader global trends of the mid-20th century that saw many newly independent nations adopting socialist principles.

1.3.2.3 Gandhism

► Idea of non-violence



Mahatma Gandhi

Gandhism is rooted in the ethical and moral principles and practices of Mahatma Gandhi who set a new example by fighting against foreign rule through non-violence. He advocated social justice, cottage industry, prohibition of untouchability, adult education and decentralisation. All these principles have been enshrined in the constitution.

Non-Violence and Peace: This ideology advocates the avoidance of harm to any living being, promoting harmony and non-violent social change. The influence of Gandhism on the framers of the Indian Constitution is evident in their commitment to creating a society where conflicts are resolved without violence and social harmony is maintained. Gandhi's approach to non-violence not only shaped the Indian independence movement, but also left a lasting imprint on the values and ethos embedded in the Indian Constitution.

Village Swaraj and Decentralization: One of the core tenets of Gandhism is Village Swaraj, which emphasises the importance of self-reliant village communities (Gram Swaraj) and decentralized governance. Gandhi believed that true independence could be achieved only when villages became self-sufficient units, capable of managing their own affairs. This vision of decentralised governance is reflected in the provisions in the Indian Constitution for local self-government, which aim to empower rural areas and ensure that governance is brought closer to the people. By promoting local self-sufficiency, Gandhism seeks to foster a sense of community and mutual support within villages, contributing to the overall development and empowerment of rural India. The 73rd and 74th amendments of the constitution were remarkable steps towards this direction.

Social Justice: Social justice is another critical aspect of Gandhism, stressing the need to uplift marginalised communities and integrate moral values into governance. Gandhi's commitment to social justice is evident in his efforts to eradicate untouchability and promote the welfare of the downtrodden. The Indian Constitution embodies this Gandhian ideal by incorporating provisions that seek to eliminate social inequalities and protect the rights of marginalized groups. The best example of it is the provisions for reservation for SCs, STs and OBCs. The founding fathers of the constitution believed that the mere granting of the right to equality was not enough to overcome the age old injustices suffered by these groups. Special constitutional measures were required to safeguard their rights. The constitution also made it possible for the government to reserve public sector jobs for these groups. The makers of the constitution also provided several special measures to protect the interests of SCs and STs such as reservation of seats in the legislatures.

Sarvodaya: It refers to the welfare of all. It is different from

the welfare of the majority. It seeks to achieve the welfare of all without any exception. It is referred to as Ramarajya. The concept was developed by Gandhi, Vino Bhava and Jayaprakash Narayan. According to this concept, material, spiritual, moral and mental development of everyone is sought to be achieved. The preamble and Directive Principles of State Policy represent this idea.

Decentralisation: It is another aspect of Sarvodaya. India has introduced the Panchayati Raj System to achieve the objective of decentralisation. The concept of cottage industries as laid down in the DPSP also refers to the decentralisation.

Humanism: Humanism is a salient feature of Indian ideology which regards the whole of the humanity as one big family. It believes in resolving international disputes through mutual negotiation. This is what we find in DPSP.

Gandhism and its Impact on the Constitution:

The influence of Gandhism on the Indian Constitution is the most prominently seen in the Directive Principles of State Policy. These principles, though non-justiciable, provide guidelines for the state to follow to promote social and economic welfare. Reflecting Gandhian ideals, the Directive Principles encourage the state to promote cottage industries, which are vital for the economic self-sufficiency of villages and ensure the development of rural areas. Article 40 of the Constitution, which directs the state to organise village panchayats, is a direct manifestation of Gandhi's vision of decentralised governance. By institutionalising these ideals, the Constitution aims to create a society that adheres to the principles of non-violence, self-reliance and social justice, as advocated by Mahatma Gandhi.

► Article 40

1.3.3 Dalit Perspective

The Dalit perspective of the Indian Constitution is deeply rooted in the vision and advocacy of Dr B. R. Ambedkar, a principal architect of the Constitution and a prominent Dalit leader.

Main characteristics of Dalit Perspectives

Anti-Caste and Social Equality: The Dalit perspective, championed by Dr B. R. Ambedkar, emphasises the abolition of caste-based discrimination and the promotion of social equality. This perspective focuses on dismantling the entrenched caste system and promoting social equality. Dr Ambedkar's efforts were aimed at ensuring that the Constitution enshrined

principles that explicitly oppose caste-based discrimination and work towards the upliftment of marginalised communities. His advocacy has led to the inclusion of various provisions in the Constitution that seek to create a more equitable society by legally outlawing caste discrimination and promoting equal opportunities for all citizens.

Empowerment of Marginalised Communities: One of the key tenets of the Dalit perspective is the empowerment of historically oppressed and marginalised communities. This is reflected in the constitutional provisions that aim to protect and uplift these groups. Dr Ambedkar emphasised the need for systemic changes to eradicate the deep-rooted social hierarchies that perpetuate inequality. He believed that without the active protection and empowerment of marginalised communities, true social equality could not be achieved. Thus, the Constitution incorporates specific measures to safeguard the rights and dignity of these communities, recognising the need for their inclusion in the social, economic and political fabric of the nation.

1.3.3.1 Impact on the Constitution

The impact of this perspective is evident in several constitutional provisions. Article 17 of the Indian Constitution, for instance, explicitly abolishes untouchability, making its practice in any form a punishable offence. This article is a direct outcome of the Dalit perspective, aiming to eliminate the social stigma and discrimination faced by Dalits. Additionally, Articles 15 and 16 prohibit discrimination on various grounds, including caste, thereby ensuring that all citizens have equal access to public spaces and opportunities. These provisions reflect the commitment to creating a society where individuals are not judged or treated unfairly based on their caste.

► Dalit perspective drives anti-discrimination provisions

Furthermore, the Constitution incorporates policies of affirmative action, such as reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) in education, employment and political representation. These policies are designed to address historical injustices and provide these communities with opportunities to improve their socio-economic status. The reservation system ensures that a certain percentage of seats in educational institutions, government jobs and legislative bodies are reserved for the SCs and STs. This initiative is a significant step towards levelling the playing field, allowing marginalised communities to participate more fully in the development of the country.

► Action for marginalised communities

1.3.4 Feminist Perspective

► Eliminate gender-based discrimination

Feminism speaks for the equal treatment of men and women and seeks to eliminate all forms of gender-based discrimination. This perspective is rooted in the belief that both men and women should have the same opportunities and rights in every aspect of life, including social, economic and political spheres.

Gender Equality: The feminist perspective on the Indian Constitution is centred around the principles of gender equality and the empowerment of women. The feminist movement has been instrumental in highlighting the systemic inequalities faced by women and demanding constitutional provisions that protect and promote women's rights.

Women's Rights and Empowerment: One of the core tenets of feminism is the protection of women's rights and their empowerment. This involves ensuring that women have access to education, healthcare, employment and political participation on an equal footing with men. This perspective recognises that women have historically been marginalised and subjected to various forms of discrimination and violence. Therefore, it emphasises the need for specific measures to address these issues and empower women to become active participants in society. It envisions that challenging and changing the social norms and structures that perpetuate gender inequality is essential for empowerment.

1.3.4.1 Impact of Feminism on the Constitution

► Constitution upholds gender equality

The impact of the feminist perspective is clearly reflected in several key provisions of the Indian Constitution. Articles 14, 15, and 16 are particularly significant as they guarantee equality before the law, prohibit discrimination on various grounds including gender and ensure equal opportunities for all citizens. Article 14 establishes the principle of equality before the law, while Article 15 explicitly prohibits discrimination by the state on grounds of religion, race, caste, sex or place of birth. Article 16 further strengthens these guarantees by ensuring equality of opportunity in matters of public employment, thereby providing a constitutional foundation for gender equality.

Moreover, Article 39 of the Directive Principles of State Policy directs the state to ensure that men and women have equal rights to an adequate means of livelihood and receive equal pay for equal work. This directive reflects the feminist demand for economic justice and the recognition of women's labour. Additionally, the Constitution provides for affirmative actions, such as reservations for women in local self-government bodies like Panchayats and Municipalities. These

► Article 39

provisions aim to increase women's political representation and participation at the grassroots level, thereby empowering them to influence decision-making processes that affect their lives and communities. By embedding these principles in the Constitution, the feminist perspective has significantly shaped India's legal and social landscape, promoting gender equality and women's empowerment.

1.3.5 Constitution and Outline for Future Direction

► Guides progress with core values

The constitution provides an outline for the future direction of the nation. This direction, as delineated in the Indian Constitution and its philosophy, must continue to embrace and reinforce its foundational principles while adapting to contemporary challenges. At its core, the Indian Constitution is built on the values of justice, liberty, equality and fraternity. These principles must guide the evolution of the Indian state towards a more inclusive and equitable society. As India progresses, the commitment to secularism and pluralism must be strengthened. The state should actively promote religious harmony and protect the rights of all cultural and religious communities, ensuring that no group feels marginalised or discriminated against. This commitment is essential for maintaining the secular fabric of the nation and fostering a sense of unity amidst diversity.

► Strengthen federalism and decentralization

Furthermore, the constitution envisions that the principles of federalism and decentralisation need to be bolstered to reflect the diverse needs of India's states and regions. Strengthening cooperative federalism involves enhancing the autonomy and decision-making powers of state governments and local self-governing bodies. This approach ensures more localised and efficient governance, addressing regional disparities and promoting balanced development across the country. Decentralisation also facilitates greater citizen participation in governance, empowering communities to have a say in decisions that affect their lives directly. The dream of the founders of the constitution was that by deepening federalism, the Indian state could become more responsive and accountable to its citizens.

In accordance with the aspirations of the Constitution, the future Indian state must also prioritise social justice and inclusion, economic justice and sustainable development. Addressing socio-economic disparities requires expanding affirmative action policies and ensuring equitable access to resources and opportunities for marginalised communities, including Scheduled Castes, Scheduled Tribes and women. Economic policies should be designed to promote sustainable development, balancing economic growth with environmental

► Prioritise justice, inclusion and sustainability

protection and social equity. Additionally, protecting human rights and civil liberties remains paramount, particularly in the face of new challenges such as digital privacy and cyber security. The state must also ensure transparency and accountability in governance, strengthening institutions like the judiciary and anti-corruption bodies. By embracing these guiding principles, the future Indian state can build a more just, inclusive and resilient society, upholding the constitutional vision of a vibrant democracy.

Summarized Overview

The Indian Constitution is shaped by the nation's anti-colonial struggle, rising nationalism and the traumatic partition of the subcontinent. These historical events laid the foundation for the demand for self-governance and democratic ideals. The anti-colonial movements led by figures like Mahatma Gandhi and Jawaharlal Nehru emphasised non-violence, social justice and the eradication of exploitation, influencing the inclusion of fundamental rights in the Constitution. Nationalism fostered a unified identity and the aspiration for a democratic state, reflected in the Constitution's emphasis on representation and civil liberties. The partition also underscored the need for a secular and inclusive framework, ensuring the protection of minority rights. The Constitution synthesises various ideological traditions, such as liberalism, socialism, Gandhism, Dalit perspectives and feminism, embedding principles of individual freedom, social and economic justice, non-violence and gender equality. This comprehensive and evolving document aims to create a democratic, inclusive and just society, drawing from India's diverse historical experiences.

Assignments

1. Explain how the anti-colonial struggle influenced the inclusion of fundamental rights in the Indian Constitution.
2. Analyse how the partition of India influenced the Constituent Assembly's approach to safeguarding minority rights.
3. Examine the contributions of Mahatma Gandhi, Jawaharlal Nehru and Subhas Chandra Bose in shaping the ideological background of the Indian Constitution.
4. How do the Directive Principles of State Policy reflect socialist ideals in the Indian Constitution?
5. In what ways do the Indian Constitution embody Gandhian principles of non-violence and decentralised governance?
6. Discuss the influence of Dr B. R. Ambedkar and the Dalit perspective on the provisions related to social equality in the Indian Constitution.



7. Identify key constitutional provisions that promote gender equality and discuss their significance from a feminist perspective.
8. How does the Indian Constitution balance the ideals of justice, liberty, equality and fraternity in the context of India's diverse and pluralistic society?

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



BLOCK 2

Nature and Features of Indian Polity

UNIT 1

Fundamental Features of Indian Polity

Learning Outcomes

A careful study of this unit will enable you to

- ▶ Critically understand the fundamental features of Indian Polity
- ▶ Analyse the nature and characteristics of Indian federalism
- ▶ Critically analyse the importance of rights in a democracy
- ▶ Analyse the role of fundamental rights in the Indian Constitution
- ▶ Examine the provisions of Citizenship in the Indian Constitution

Background

The Constitution of India serves as the bedrock of the political framework of the nation, reflecting its commitment to democracy, secularism and social justice. Drafted by the Constituent Assembly and coming into effect on January 26, 1950, the Constitution defines the structure, powers and duties of governmental institutions while enshrining the fundamental rights and duties of citizens. The Indian polity is characterised by its federal nature, a unique blend of strong central authority balanced with state autonomy, designed to address the diversity of the nation. The Constitution also incorporates a parliamentary system, an independent judiciary and provisions for a secular state, all of which ensure the protection of individual rights and the promotion of justice and equality. Over the years, the Constitution has been amended to adapt to the evolving socio-political landscape, demonstrating its dynamic nature. An understanding of the fundamental features of Indian polity, including the nature of federalism, the role of fundamental rights and the provisions of citizenship, is essential for comprehending the broader democratic framework within which India operates.

Keywords

Democracy, Secularism, Social Justice, Federalism, Rights, Citizenship.



2.1.1 Basic Features of Indian Polity

The Constitution of India is remarkable for many outstanding features. It has been prepared after consulting all the known constitutions in the world and most of the provisions are borrowed from many constitutions. However, many features of the constitution of India make it distinguished from other constitutions of the world. It is also unique in its contents and spirit. So, if it is a “patchwork” it is a beautiful patchwork. The basic features are summarised as follows:

1. Preamble of the Constitution

The preamble contains the guiding principles and fundamental values as well as the basic structure of the polity envisioned by the framers of the Constitution. The preamble of the Constitution reads as follows:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

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

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

FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY, this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Preamble of the Indian Constitution declares India to be a Sovereign, Socialist, Secular, and Democratic Republic. It underscores the objectives of Justice, Liberty, Equality and Fraternity among Indian citizens. Serving as an introduction to the Constitution, the Preamble reflects the aspirations and vision of the founding fathers of the nation. The terms "Socialist" and "Secular" were incorporated later through the 42nd Amendment in 1976 to reaffirm the commitment of the nation to these ideals. Although the Preamble is not legally enforceable, it holds significant importance as a guiding principle for constitutional

► Vision of the constitution

interpretation. It embodies the essence of constitutional philosophy and serves as a beacon for governance and social norms. The vision articulated in the Preamble aims to ensure the holistic development and welfare of all citizens. It promotes unity and integrity, essential for a diverse nation like India. By emphasising equality and justice, the Constitution seeks to eliminate discrimination and ensure equitable opportunities for all.

2. Comprehensive Written Document

► Comprehensive

The Indian Constitution is the lengthiest and the most elaborate constitutional document that the world has ever written. The original constitution contained 395 Articles divided into 22 parts and 8 schedules. At present, it consists of around 450 articles 25 parts and 12 schedules. (Several additional Articles and parts have been inserted by amendments and several articles have been omitted from the Constitution.) Many factors have contributed to its elephantiac size including the need to accommodate the vast diversity of the country, a single constitution for both centre and states and the presence of legal experts in the Constituent Assembly.

3. Parliamentary System of Government

► Two houses of the parliament

India follows a parliamentary system of government modelled on the British system. This system features a dual executive comprising the President and the Prime Minister, along with their respective councils of ministers. The President serves as the ceremonial head of state, while the Prime Minister, as the head of government, wields significant executive powers. The Parliament consists of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Members of the Lok Sabha are directly elected by the people, whereas members of the Rajya Sabha are elected by the Legislative Assembly of States and Union Territories through proportional representation.

► Accountability

The parliamentary system ensures the accountability of the executive to the legislature. The Prime Minister and the Council of Ministers are collectively responsible to the Lok Sabha, promoting a close relationship between the legislative and executive branches and ensuring responsive governance. This system also facilitates better representation of diverse interests within the government by encouraging a multi-party system, allowing various political parties to participate in governance. The parliamentary system aims to ensure stability and continuity in government policies while providing mechanisms for checks and balances.

4. Independent Judiciary

► Independent and impartial

The Indian Constitution establishes an independent judiciary to safeguard the rights of the citizen and uphold the rule of law. As it is distinct from the executive and legislative branches, the judiciary ensures impartiality and fairness. The Supreme Court of India serves as the apex court, followed by High Courts in the states and subordinate courts at the district level. The judiciary possesses the power of judicial review, enabling it to invalidate laws and executive actions that contravene the Constitution. This function ensures that both the legislature and executive operate within the constitutional framework.

► Judicial independence

Judicial independence is maintained through secure tenure, fixed salaries and protection from arbitrary removal. Judges are appointed via a collegium system, which minimises executive influence. Additionally, the judiciary plays a crucial role in interpreting the Constitution and broadening the scope of fundamental rights. Landmark judgments have reinforced the principles of democracy, secularism and social justice. As the guardian of the Constitution, the judiciary ensures that citizens' rights are protected and that justice is delivered. Its independence is essential for maintaining the checks and balances critical to a democratic system.

5. Secular State

► does not endorse any official religion

The Indian Constitution enshrines the principle of secularism, ensuring that the state treats all religions equally without favouring any particular one. The word “secular” was inserted into the preamble through the fortysecond Amendment of the Constitution of India in 1976. This principle is fundamental to maintaining the pluralistic and diverse nature of Indian society. The state does not endorse any official religion, allowing citizens the freedom to practice, profess and propagate any religion of their choice. The secular nature of the state is reflected in various constitutional provisions, such as the right to freedom of religion and the prohibition of religious discrimination. Additionally, the state ensures that religious practices do not infringe on the rights of others or disrupt public order. In *S. R Bommai vs. Union of India*, the Supreme Court observed that secularism is the basic structure of the Constitution.

► diversity and inclusion

Secularism in India aims to promote harmony and mutual respect among different religious communities, creating an environment where individuals can coexist peacefully, regardless of their religious beliefs. This secular character is crucial for maintaining national unity and integrity, preventing

the dominance of any single religion and ensuring equal treatment of all citizens. Secularism is a cornerstone of Indian democracy, underscoring the nation's commitment to diversity and inclusion.

6. Directive Principles of State Policy (DPSP)

► guidelines for the government

Part IV of the Indian Constitution enshrines the Directive Principles of State Policy (DPSP), which serve as guidelines for the government in the formulation of laws. These principles, while non-justiciable, are designed to foster a just society. Drawing inspiration from the Irish Constitution, the DPSP embodies the ideals articulated in the Preamble. They include provisions aimed at securing social and economic welfare, promoting Gandhian principles and supporting the development of villages and marginalised communities. The principles advocate social justice, economic equality and the upliftment of the under privileged. The state is mandated to apply these principles in legislative processes to ensure a more equitable society.

► achieving the objectives of a welfare state

The DPSP encompasses provisions for ensuring adequate means of livelihood, equal pay for equal work and the protection of children and youth. Additionally, they address critical issues such as public health, nutrition and environmental protection. By incorporating these principles, the Constitution endeavours to bridge the gap between different sections of society. The Directive Principles are fundamental to the governance of the country, serving as a guiding light for achieving the objectives of a welfare state. These principles cannot be enforced by the court of law.

7. Fundamental Duties

The 42nd Amendment Act of 1976 introduced Fundamental Duties into the Indian Constitution, listed in Part IVA under Article 51A. These duties are moral obligations designed to instil a sense of responsibility among citizens. They encompass respecting the Constitution, the national flag and the national anthem, as well as cherishing the noble ideals of the freedom struggle. Additionally, citizens are expected to uphold the sovereignty, unity and integrity of India, promote harmony, protect the environment and develop a scientific temper. Although not legally enforceable, these duties serve as a reminder of the moral and civic responsibilities of citizens. They aim to foster patriotism and contribute to the nation's overall development. The inclusion of Fundamental Duties highlights the importance of balancing rights with responsibilities, encouraging active

► contribute to the nation's overall development

participation in nation-building and the promotion of collective well-being. By adhering to these duties, citizens can help create a more just, equitable and progressive society. The Fundamental Duties complement the Fundamental Rights, ensuring a holistic approach to citizenship.

8. Emergency Provisions

► manage extraordinary situations

The Indian Constitution includes emergency provisions to manage extraordinary situations that threaten national security, stability and governance. These provisions, detailed in Part XVIII from Articles 352 to 360, encompass three types of emergencies: National Emergency, State Emergency (President's Rule) and Financial Emergency.

► event of war, external aggression or armed rebellion

National Emergency: A National Emergency can be declared in the event of war, external aggression or armed rebellion, impacting the entire country or specific parts. During such an emergency, citizens' fundamental rights can be suspended and the central government gains extensive powers.

State Emergency: A State Emergency can be imposed if the President determines that a state government is unable to function according to constitutional provisions. This results in the suspension of the state government and the establishment of direct central rule.

Financial Emergency: A Financial Emergency can be declared if the President believes that the financial stability of the country or any part of it is at risk.

► to respond swiftly and effectively to crises

These emergency provisions enable the government to respond swiftly and effectively to crises. However, safeguards are in place to prevent misuse, such as requiring parliamentary approval and periodic reviews.

9. Unique blend of rigidity and flexibility

► more flexibility than rigidity

Another distinctive feature of the constitution is that it is partly rigid and partly flexible. It is rigid in comparison to the British constitution which is extremely flexible but it is flexible in comparison to the American constitution. However, the constitution seeks to impart more flexibility than rigidity. A good number of the provisions can be amended by a simple majority of the parliament, while there are other provisions whose amendment require a special majority of the parliament and ratification by at least half of the state legislatures.

10. Integrated and independent judiciary

► judiciary operates autonomously

The Indian judicial system is both integrated and independent. An integrated judicial system means that a single system of courts comprising the supreme court, the high court and the subordinate courts enforces both Central laws and state laws. An independent judicial system means that the Indian judiciary operates autonomously, free from the influence of the legislature and the executive.

11. Fundamental rights

► limitation on the tyranny of the executive

Part III of the constitution (article 12 to 35) discusses the various provisions of the fundamental rights. The constitution guarantees six fundamental rights to citizens. These rights promote the idea of political democracy. They operate as the limitation on the tyranny of the executive and arbitrary laws of legislature. In this connection it may be noted that these rights are not absolute. The state is empowered to impose reasonable restrictions on their enjoyment. Thus, the constitution strikes a balance between individual liberty and social interest.

12. Synthesis of parliamentary sovereignty and judicial supremacy.

► review and interpret the laws

The constitution represents a delicate balance between the authority of the legislature to enact laws and the power of the judiciary to review and interpret these laws in the light of the constitutional principles. While the parliament retains the ultimate authority to make laws the judiciary serves as the guardian of the constitution ensuring that the parliamentary actions adhere to constitutional norms and protect fundamental rights.

13. Adult suffrage

► uniform adult suffrage

The old system of communal electorate has been abolished and a uniform adult suffrage system has been adopted. Under the Indian constitution every man and woman above 18 years of age has been given the right to elect representatives for the legislature. The adoption of the universal adult suffrage (article 326) without any qualification of sex, property, taxation or the like is a bold experiment in India.

14. Single citizenship

Though the constitution of India is federal and provides for dual polity, i.e., centre and states, it provides for a single

► single citizenship for the whole of India

citizenship for the whole of India. The American constitution provides for dual citizenship i.e., citizen of America and state citizenship. On the other hand, there is only one citizenship in India, that is citizenship of India. There is no state citizenship. Every Indian is the citizen of India and enjoys the same rights of citizenship no matter in what state he or she resides.

15. Three tier government

► decentralised system

The 73rd and 74th amendments have provided a three-tier governing structure. It refers to division of powers and responsibilities among three levels; the centre, the states and the local governments. This three-tier system is not found in any other federal system in the world. This decentralized system allows for effective governance by delegating authority to address regional and local issues, promoting participatory democracy at the grassroots level.

16. The Co-operative societies

► constitutional status and protection to cooperative societies

The 97th constitutional amendment of 2011 gave constitutional status and protection to cooperative societies; it made it a fundamental right to form cooperative societies. It has added a new article 43-B and a new part IX-B in the constitution.

2.1.2 Nature of India's Federalism

► balance the autonomy of states with the unity of the nation

Federalism is a system of governance in which power is divided between the central and the regional (state) governments so that each government acts within its own sphere and is independent of any other. There are different forms of federalism. Federalism in India is not the same as in Canada, Australia and America and each follows a federal system as per their own specific geo-historical reasons. Though Indian constitution also incorporates features of federalism, it provides for a strong central government. This dual structure is designed to balance the autonomy of states with the unity of the nation. The Union and State lists in the Seventh Schedule delineate the subjects on which each level of government can legislate. The Concurrent List allows both the Centre and states to legislate on the same subjects, with the Centre's law prevailing in case of a conflict. The President has the power to intervene in state matters during emergencies, which centralises authority. The distribution of financial resources further ensures the central government's strength. While the federal structure allows states to govern themselves, the central government retains significant powers to ensure national integrity. This combination of federalism and strong central authority aims to address India's diverse needs and prevent fragmentation. The system is designed to foster

cooperation between the Centre and states while maintaining national unity.

2.1.2.1 Historical Evolution of Indian Federalism

The roots of the federal structure in India can be traced back to colonial times, particularly the Government of India Act of 1935, which laid the groundwork for a federal system by establishing provincial autonomy. After independence, the framers of the Constitution aimed to balance the need for a strong central authority with regional autonomy. Over the decades, federalism has evolved through various phases, marked by periods of central dominance and increasing demands for state autonomy. Some of the landmark events such as the reorganisation of states on linguistic lines in 1956, have shaped the federal dynamics, reflecting the changing socio-political landscape.

► traced back to colonial times

2.1.2.2 Essential Features of Indian Federalism

1. **Distribution of Powers:** The distribution of powers is an essential feature of the federalism. The basis of such distribution is that in matters of national importance, subjects are entrusted to the Union, while matters of local concern remain with the states. Accordingly, the Constitution of India divides all powers between the Union and the States into three lists in the Seventh Schedule. The Union List consists of 97 subjects, the State List has 66 items and the Concurrent List contains 47 subjects. However, in case of conflict between the Central and State in the matter provided in the Concurrent List, the Central laws shall prevail over the State laws. The residuary power of legislation is given to the Centre.
2. **Supremacy of Constitution:** A federal state derives its existence from the written constitution. The constitution in a federal state constitutes the supreme law of the land. The Constitution should be binding on a federal state. Neither government should be in a position to override the Constitution. This principle is absolutely true in the case of the Indian federal system.
3. **Written Constitution:** A federal constitution must be a written constitution. The foundation of the federal state is complicated; it will be practically impossible to maintain its supremacy unless the terms of the constitution are written down. The Indian Constitution is a written document. It specifies the structure, organisation, powers and functions of both levels of government and prescribes the limits within which they must operate.

► essential feature of the federalism

► supreme law of the land

► limits within which they must operate

► method of amendment is rigid.

4. **Rigidity:** A natural corollary of a federal constitution is its rigidity. In a rigid constitution, the procedure of amendment is legally unalterable. It simply means that the power of amending the constitution should not remain exclusively with either the Central or the State governments. The supremacy of the constitution can only be maintained if the method of amendment is rigid.

► powers and functions are fixed in the constitution

The Indian Constitution is rigid in the sense that all provisions of the constitution concerning Union-State relations can be amended only by a special majority in the Parliament and the legislatures of the States. This must be done by simple, independent and important assessment concurrently with the total membership of the Houses and approved by more than half of the States. Accordingly, the ordinary powers and functions of the Parliament and the legislatures are fixed in the constitution.

► the guardian of the constitution

5. **Independent Judiciary:** The very nature of the federal system requires an independent judiciary. The judiciary acts as the guardian of the constitution and is assigned the power to interpret the provisions of the constitution and to settle disputes between the Union and the States or among the States themselves. The Supreme Court is the guardian of the federal judiciary in India. It protects the supremacy of the constitution by exercising the power of judicial review and by this process, it can declare any law unconstitutional.

► representation to both the Union and the States

6. **Bicameral Legislature:** Another essential feature of the federal system is the bicameral legislature. The Constitution of India is written and supreme. The bicameral legislature is a necessity in a federal system to provide representation to both the Union and the States. The provisions of the constitution concerning legislative procedures cannot be altered without the consent of both the people's representatives (in Lok Sabha) and the States' representatives (in Rajya Sabha). This guarantees that both the interests of the people and the States are taken into consideration in federal lawmaking.

From the above analysis, it is clear that the Constitution of India is federal in nature. Each state, along with the Union, possesses attributes of sovereignty in its own sphere. However, the Union is stronger and more powerful than the states in certain respects. This makes Indian federalism quasi-federal in practice.

About the constitution Granville Austin says: “Indian constitution is first and foremost a social document, the

majority of its provisions either directly or indirectly furthering the goal of social revolution. The core of commitment to social revolution lies in part III and part IV of the constitution. These are conscience of the constitution."

► quasi-federal nature of the Indian constitution

India is a federation with strong unitary bias. It is federal in structure but unitary in spirit. Therefore, some scholars call Indian federation as 'quasi-federal'. For instance, Prof. K. C. Wheare observes: "India is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features." Similarly, the Supreme Court of India in *Satpal v. State of Punjab* also remarks: "The constitution of India is more quasi-federal than federal or unitary."

2.1.2.3 Unitary Features of the Indian Federation

In the following matters, the Constitution contains a modification of the application of federal principles:

► Single Citizenship

1. **Single Citizenship:** Generally, in a federation there is a provision for double citizenship — citizenship of the Union and citizenship of the States. In the U. S. A., the double polity is followed by a double citizenship. Though the Constitution of India is federal, it provides for a single citizenship. Every Indian is a citizen of India and enjoys the same rights of citizenship, no matter in which state he or she resides in.

2. **Strong Centre:** The division of power is in favour of the centre.

a. Firstly, the Union list contains more subjects than the state list.

b. Secondly, more important subjects have been included in the Union list.

c. Thirdly, the concurrent list contains subjects on which both the centre and state can legislate.

d. Fourthly, the residuary powers of legislation have been left with the centre, while in the U. S. A. they are vested with the states.

► Favourable to the union

3. **States are not indestructible:** Unlike other federations, India is not the indestructible union of indestructible states. The states in India have no right to territorial integrity. The parliament by a unilateral action may form new states, may increase or diminish the area of any state or alter the boundaries of any state or it may change the name of any state. The very existence of the states thus depends upon

► Territorial integrity

the sweet will of the Union government. Hence the Indian federation is “one indestructible union of destructible states.”

► One constitution

► amended by the Parliament with a simple majority.

► No equal representation

► Centre becomes all-powerful

► single system of courts

4. **Single Constitution:** Usually, under a federal system, the states have their own constitution separate from that of the Union. This is the case of the U. S. A. The Indian Constitution, on the other hand, embodies only the Constitution of the Union and does not embody the constitution of the states. In an active federation, there are separate Constitutions for the Union and the States
5. **Flexible Constitution:** Generally, a federal constitution is rigid as in the case of U. S. A. This is done with a view to ensuring the States that the Centre shall not be in a position to easily amend the Constitution. In a true federation like U. S. A., the constitution is very rigid. However, in India, a good number of the provisions can be amended by the Parliament with a simple majority.
6. **No Equality of State Representation:** In India, the States have not been given equal representation in the upper chamber of the Parliament. In the upper chamber (Rajya Sabha), the representation is given to the States on the basis of population. The representation varies from one to thirty-one. In U. S. A., on the other hand, all the states are given equal representation in the upper chamber (Senate) irrespective of area and population of the states.
7. **Appointment of Governor:** The Governors are appointed by the President and are answerable to him. He acts on the report of the Centre. Through him, the Centre exercises control over the states.
8. **Emergency Provisions:** The Constitution envisages three kinds of emergencies — National, State and Financial. When a national emergency is in operation, the distribution of power between the Centre and States undergoes a vital change. The Centre becomes all-powerful and the States go into the total control of the Centre. The same is the case with State and Financial emergencies.
9. **Integrated Judiciary:** The Constitution establishes a single integrated judicial system with the Supreme Court at the top and the State High Courts below it. The single system of courts enforces both the central laws and the state laws. In the U. S. A., on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.
10. **Common All India Services:** There are certain services which are common to the Centre and the States, of which

► recruited and trained by the Centre

► Article 249

► Restricts the financial autonomy of the States

► appointed and removed by the President without consulting the states

the IAS, IPS and the IFS are the best examples. The members of these services are recruited and trained by the Centre, which also possesses ultimate control over them. Thus, these provincial services violate the principles of federalism. In the U. S. A., the federal government and the state governments have their separate public services.

11. Parliament's power to legislate in the national interest: Under Article 249, Parliament is empowered to make laws with respect to every matter enumerated in the state list if the Rajya Sabha passes a resolution by its 2 / 3 majority that it is necessary in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution.
12. Integrated Audit Machinery: The Comptroller and Auditor General of India audits the accounts of not only the Central government but also those of the States. Hence, this office restricts the financial autonomy of the States. The American Comptroller General, on the contrary, has no role with respect to the accounts of the states.
13. Appointment of the judges of High Courts: High Courts are essentially states' courts. But their judges are appointed, transferred and removed by the President.
14. Integrated Election Machinery: Article 324 of the Constitution provides for an appointment of an Election Commission to superintend, direct and control the elections to the Parliament and the state legislatures. However, the Election Commission is appointed and removed by the President without consulting the states. On the other hand, the U. S. has separate machinery for conducting elections to the American Congress and the state legislatures.

From the above discussion, it is very clear that the position of the states in the Indian Federation is weak. This might be the reason which led Prof. K. C. Wheare to state that Indian Federation is a quasi-federation. However, it may be mentioned that federalism varies from place to place and from time to time depending on many factors — historical, geographical, economic and political. So, what is good for America is not necessarily good for India. Federalism is not a set of patterns or coats to wear. Thus, it may be concluded that the Constitution of India is neither purely federal nor purely unitary, but a combination of both. It is a union or composite state of a novel type. It is based on the principle that in spite of federalism, the national interest ought to be paramount.

Thus, the "Indian Constitution is mainly federal with unique unitary features in a combination of both. It is a new and novel type of federation, safeguarding national unity and growth." says Granville Austin.

2.1.2.4. Role of the Supreme Court

► Adjudicates disputes between the centre and states

The judiciary, particularly the Supreme Court of India, plays a pivotal role in interpreting and safeguarding the federal structure. Through its judicial review powers, the Supreme Court adjudicates disputes between the centre and the states, ensuring that neither encroaches upon the powers of the other. Landmark judgments have clarified constitutional ambiguities and reinforced the balance of power. For instance, the S. R. Bommai vs Union of India case in 1994 significantly impacted the use of Article 356, which allows President's Rule in states, setting precedents for its application and ensuring that it is not misused to undermine state autonomy.

2.1.2.5. Fiscal Federalism and the Role of Finance Commission

► Distribution of tax revenues

Fiscal federalism is a critical aspect of India's federal structure, involving the allocation of financial resources between the centre and the states. The Finance Commission, established under Article 280 of the Constitution, plays a key role in recommending the distribution of tax revenues. Despite these provisions, fiscal imbalances often arise, with states relying heavily on central transfers. Various mechanisms, including grants-in-aid and centrally sponsored schemes, aim to address these imbalances. However, debates persist on the need for greater financial autonomy for states to enable them to cater to their specific developmental needs effectively.

2.1.2.6 Political Dynamics

► More collaborative federal approach.

The political landscape significantly influences India's federalism. Coalition governments, both at the centre and the states, have brought about a more collaborative federal approach. Regional parties play a crucial role in these dynamics, often pushing for greater state autonomy and influencing national policies. However, the central government, particularly when led by a dominant party, can exert considerable influence over the states. This interplay between central and regional political forces continuously shapes the contours of Indian federalism, reflecting the changing political, economic and social realities.

2.1.2.7 Challenges to Federalism

► Adaptation and negotiation within the federal framework

Indian federalism faces several challenges, including regional disparities, demands for statehood and inter-state conflicts over resources. Regional disparities in development lead to tensions and demands for greater financial devolution. Movements for new states, such as the creation of Telangana in 2014, reflect aspirations for better governance and representation. Inter-state disputes, particularly over river waters, highlight the need for effective mechanisms for conflict resolution. These challenges necessitate continuous adaptation and negotiation within the federal framework to maintain harmony and address the aspirations of diverse regions.

2.1.3 Fundamental Rights and the Indian Constitution

2.1.3.1 Definition of Rights

► Basic entitlements or privileges

Rights are basic entitlements or privileges that individuals have in a society. These entitlements can be legal, social or ethical principles of freedom or entitlement. Rights define what people are allowed to do or what they are entitled to receive from others or from the government. They form the cornerstone of social justice and personal freedom, ensuring that individuals can pursue their interests, express their beliefs and live their lives without undue interference. Rights are often enshrined in legal documents such as constitutions, bills of rights and international treaties. They are meant to protect individuals from abuse, ensure equality and promote justice. Moreover, the concept of rights is dynamic, evolving with societal changes and advancements in understanding of human dignity and needs.

2.1.3.2 Types of Rights

There are various types of rights, including natural rights, legal rights and human rights.

Natural Rights: Natural rights are those that individuals have just by virtue of being human. These rights are often considered inalienable and universal, such as the right to life, liberty and the pursuit of happiness.

Legal Rights: Legal rights are those granted by specific legal systems and governments, like the right to vote, the right to a fair trial and property rights.

Human Rights: Human rights are a broader category that encompasses both natural and legal rights, emphasising global standards of freedom and equality.

Civil Rights: Civil rights protect individuals' freedom from infringement by governments, social organizations and private individuals.

Political Rights: Political Rights allow individuals to participate in the political life of their society.

2.1.3.3 Historical Development of Rights

► Precedents for modern democracies

The concept of rights has evolved significantly over time, influenced by philosophical, political and social changes in human civilization. Ancient civilizations, such as those in Greece and Rome, had early notions of rights, although they were limited to certain groups of people. The Enlightenment era brought a significant shift with philosophers like John Locke and Jean-Jacques Rousseau advocating natural rights and the social contract theory, which argued that governments exist to protect individuals' inherent rights. The American and French Revolutions were pivotal in institutionalizing the concept of rights, leading to the creation of foundational documents like the United States Bill of Rights and the French Declaration of the Rights of Man and of the Citizen. These documents set precedents for modern democracies and influenced international human rights movements. Over time, global recognition of rights expanded with the establishment of the United Nations and the adoption of the Universal Declaration of Human Rights in 1948, marking a commitment to upholding fundamental freedoms worldwide.

2.1.3.4 Rights in Democratic Societies

► All individuals have equal rights and should have equal opportunities

In democratic societies like India, rights are integral to the functioning and legitimacy of the political system. Democracies are founded on the principle that all individuals have equal rights and should have equal opportunities to participate in the political process. Rights such as freedom of speech, freedom of assembly and the right to vote are essential for a functioning democracy, as they allow citizens to express their opinions, organise for collective action and choose their representatives. The protection of these rights ensures that government power is checked and balanced, preventing tyranny and promoting accountability. Democracies rely on the active participation of informed and empowered citizens, making the protection of rights crucial for the health and sustainability of democratic institutions. Furthermore, the judicial system in democracies plays a key role in interpreting and enforcing rights, ensuring that they are respected and upheld in practice.

2.1.3.5 Challenges to Rights in Democracies

► Challenges and threats

Despite the foundational role of rights in democracies, they often face challenges and threats. Governments may infringe upon rights in the name of national security, public order or other interests, leading to debates about the balance between individual freedom and collective safety. Similarly, discrimination and inequality can also undermine the realisation of rights, particularly for marginalised groups. Currently, technological advancements pose new challenges to privacy rights and freedom of expression, as surveillance and digital platforms create new arenas for violation of rights. Additionally, populism and authoritarianism can erode democratic norms and institutions, threatening the protection of rights. Addressing these challenges requires vigilance, robust legal frameworks and active engagement of civil society to ensure that rights are protected and promoted in changing contexts.

2.1.3.6 Rights in the Indian Constitution

Fundamental Rights Provisions in the Constitution

The Indian Constitution guarantees some basic rights to all citizens, which are essential for the development of individuals and the nation. These rights enshrined in Part III of the Constitution, from Articles 12 to 35, are known as Fundamental Rights. The Fundamental Rights contained in the Constitution are:

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Freedom of Religion
5. Cultural and Educational Rights
6. Right to Constitutional Remedies

Article 12: Concept of State

According to Article 12 of the Constitution, the term state includes:

- a. Government of India and the Parliament of India; i.e., the Executive and the Legislature of the Union government;
- b. Government and the Legislature of the State; i.e., Executive and the Legislature of the State government;

- c. All local authorities: Municipalities, panchayats, improvement trusts, etc.;
- d. All other authorities, i.e., statutory and non-statutory authorities like LIC, ONGC, etc.

Article 13: Concept of Law

Article 13 of the Constitution gives the term law a broad connotation, which includes any ordinance, orders, bye-laws, rules, regulation or notifications having the force of law. It provides that laws inconsistent with Fundamental Rights shall be void.

Right to Equality (Article 14 to Article 18)

Article 14: Article 14 declares that the state shall not deny to any person equality before the law and equal protection of laws within the territory of India.

Article 15: Article 15 provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth or any one of them.

Article 16: Article 16 guarantees equality of opportunity for all citizens in matters of public employment. Religion, race, caste, sex, descent, place of birth or place of residence cannot disqualify a person from getting any public offices.

Article 17: Article 17 provides that untouchability is abolished and its practice in any form is forbidden.

Article 18: Article 18 abolishes titles other than titles of military and academic distinctions.

Right to Freedom: Article 19 to Article 22

Article 19 guarantees six freedoms. They are:

1. Freedom of speech and expression;
2. Freedom to assemble peaceably and without arms.
3. Freedom to form association, unions or co-operatives.
4. Freedom to move freely throughout the territory of India.
5. Freedom to reside or settle in any part of the territory of India.
6. Freedom to practice any profession or to carry on any occupation, trade or business.

Article 19(6): The government provides certain safeguards and imposes reasonable restrictions where the carrying on of business or trade or profession involves using illegal substances such as narcotics. Therefore, the state ensures protection of general public welfare and the economic stability of the nation.

Article 20: Protection in respect of conviction for offences. Article 20 guarantees protection of life and personal liberty. The Article provides three kinds of protection to an individual against arbitrary actions of the state.

- i. Ex post facto law: No person shall be convicted of any offence except for a violation of a law that was in force at the time the act was committed.
- ii. Double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
- iii. Self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

Article 21: Protection of life and personal liberty. The Article guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 21A: Right to education. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

Article 22: Protection against arbitrary arrest and detention.

Article 23: This prohibits trafficking in human beings, begging and other similar forms of forced labour. Any contravention shall be an offence punishable by law.

Article 24: Prohibition of employment of children in factories. No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous work.

Article 25 provides that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion.

Article 26 guarantees every religious denomination or any section thereof the right to:

- a. establish and maintain institutions for religious and charitable purposes;



- b. manage its own affairs in matters of religion;
- c. own and acquire movable and immovable property;
- d. administer such property in accordance with law.

Article 27: Article 27 provides that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Article 28 says that no religious instruction shall be provided in any educational institution wholly maintained out of state funds. However, this provision shall not apply to an educational institution administered by the state but established under any endowment or trust.

Article 29: Protection of interests of minorities. Article 29(1) provides that any section of citizens residing in the territory of India having a distinct language, script or culture of its own shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste or language.

Article 30: Right of minorities to establish and administer educational institutions. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Right to Constitutional Remedies: Article 32

The right to move the Supreme Court for the enforcement of Fundamental Rights conferred by this Part of the Constitution. The Supreme Court shall have the power to issue directions or orders or writs for the enforcement of any of the Fundamental Rights under Article 32. High Courts, under Article 226, can issue orders for the enforcement of Fundamental Rights.

2.1.4 Duties and Responsibilities of Citizens

Along with rights, the Indian Constitution also emphasises the duties and responsibilities of citizens. Part IVA of the Constitution lists the Fundamental Duties, which were added by the 42nd Amendment Act of 1976. These duties serve as a reminder to citizens about their responsibilities towards the nation and society. Key fundamental duties include respecting the national symbols, promoting harmony and brotherhood, protecting the environment and striving towards excellence in all spheres of individual and collective activity. While these duties are not enforceable by law, they hold significant moral

► Not enforceable by law

and ethical value, encouraging citizens to contribute positively to the country's development and uphold its democratic values.

2.1.5 Citizenship in Indian Democracy

► A sense of belonging and a shared identity

The Indian Constitution establishes the principle of single citizenship, whereby all individuals, regardless of their state of residence, are recognised as citizens of India. This concept fosters national unity and integrity by ensuring that citizens enjoy the same rights and privileges throughout the country, without any discrimination based on their state of residence. Single citizenship nurtures a sense of belonging and a shared identity among all Indians, helping to overcome regionalism and parochialism. It encourages citizens to prioritise national interests over regional affiliations. This principle is especially important in a diverse country like India, where linguistic, cultural and regional differences are significant. Single citizenship guarantees uniformity in rights and duties, thereby promoting a cohesive and unified nation.

► Who is a citizen?

Citizenship in India is also rooted in the country's history, culture and constitutional framework. It defines who is a citizen, the rights and duties of citizens and the various modes of acquiring and losing citizenship. The idea of citizenship in India is not just a legal status but also a dynamic and evolving notion that reflects the changing socio-political landscape of the nation. The Constitution provides a broad and inclusive definition of citizenship, ensuring that all individuals who meet certain criteria are granted the full spectrum of rights and privileges associated with being an Indian citizen.

2.1.5.1 Constitutional Provisions and Amendments

Constitutional Provisions on Citizenship

Article 5: Citizenship at the commencement of the Constitution.

The Constitution provides elaborate provisions regarding citizenship. Article 5 states that persons who become citizens of India at the commencement of the Constitution are those who had their domicile in India at that time and were born in the territory of India or either of their parents was born in the territory of India or who have been ordinarily residing within India for five years immediately before the commencement of the Constitution.

Article 6: Citizenship rights of certain persons who migrated from India to Pakistan.

Article 7: Citizenship of persons of Indian origin who returned to India from Pakistan.

Article 8: Citizenship of persons of Indian origin residing outside India.

Article 9: Persons acquiring citizenship of another state lose their citizenship of India.

Article 10: Continuation of rights of citizenship.

Article 11: Parliament has the right to regulate the right of citizenship by law.

The Citizenship Act of 1955

It was a comprehensive law passed by Parliament, in accordance with the powers given by Article 11 of the Constitution. The provisions of the Act broadly cover laws for acquisition, termination and deprivation of citizenship.

Acquisition of Citizenship

The Act provides five modes of acquisition of citizenship in India. They are:

1. By Birth (Section 3)
2. By Descent (Section 4)
3. By Registration (Section 5)
4. By Incorporation of Territory (Section 7)
5. By Naturalization (Section 6)

Termination of Citizenship

The Citizenship Act of 1955 also provides for termination of citizenship in three cases:

1. By Renunciation: Voluntary renunciation of citizenship (Section 8).
2. By Termination: Termination of citizenship if acquired fraudulently (Section 9).
3. By Deprivation: Deprivation of citizenship (Section 10).

Over the years, the Citizenship Act of 1955 has been amended multiple times to address emerging issues and challenges related to citizenship. The Act has been amended in 1986, 1992, 2003, 2005, 2015, and 2019. Significant amendments include the 2003 amendment, which brought in stricter regulations

► Several amendments

on illegal immigration. The most recent and controversial amendment was in 2019, known as the Citizenship Amendment Act (CAA). The Act has amended the Citizenship Act, 1955 to give accelerated eligibility for Indian citizenship to persecuted minorities who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, and who entered India on or before 31 December 2014.

2.1.5.2 Challenges in Implementing Citizenship Laws

► National Register of Citizens (NRC)

Implementing citizenship laws in a diverse and populous country like India comes with its own set of challenges. One of the major issues is the verification of citizenship status, which has become particularly contentious with initiatives like the National Register of Citizens (NRC). The NRC aims to document all legal citizens of India, but its implementation has sparked debates and concerns over potential exclusions and the plight of stateless individuals. Additionally, the CAA has faced criticism for allegedly being discriminatory and undermining the secular fabric of the nation. Balancing concerns of national security with the humanitarian aspect of citizenship laws is a delicate and sensitive task that requires careful consideration and a humane approach.

2.1.5.3 The Evolving Concept of Citizenship

► Adaptation to changes

The concept of citizenship in India continues to evolve, influenced by changing socio-political dynamics and global trends. The rise of global migration, issues of statelessness and the need for inclusive policies are reshaping the discourse on citizenship. India's approach to citizenship needs to adapt to these changes while preserving the principles of justice, equality and secularism. The role of civil society, judiciary and policymakers is crucial in this evolution, ensuring that citizenship laws are fair, just and inclusive. As India progresses, the concept of citizenship will likely continue to be a subject of debate and refinement, reflecting the aspirations and values of its people.

Summarized Overview

The Constitution of India is the cornerstone of the nation's political system, crafted by the Constituent Assembly and taking effect on January 26, 1950. Dr B. R. Ambedkar, a key architect, played a pivotal role in drafting this detailed and inclusive document. As the supreme law, the Constitution delineates the structure, powers and duties of government institutions while safeguarding fundamental rights and outlining directive principles and duties of citizens. It reflects India's dedication to democracy, secularism and social justice, addressing the diverse and pluralistic fabric of Indian society. The Constitution has undergone multiple amendments to adapt to evolving needs, demonstrating its dynamic and enduring nature. Its provisions aim to ensure unity, integrity and equality, embodying the nation's commitment to holistic development and welfare.

The Constitution enshrines fundamental features that define the Indian polity. The Preamble sets forth the guiding principles and values, declaring India a Sovereign, Socialist, Secular and Democratic Republic committed to justice, liberty, equality and fraternity. The Directive Principles of State Policy (DPSP), though non-justiciable, serve as guidelines for creating a just society, inspired by the Irish Constitution. The parliamentary system, modelled on the British system, ensures the executive's accountability to the legislature, promoting responsive governance. An independent judiciary, with the Supreme Court at its apex, upholds the rule of law and protects citizens' rights. Secularism ensures equal treatment of all religions, fostering harmony in a diverse society. The inclusion of Fundamental Duties underscores the moral and civic responsibilities of citizens, complementing their rights. Single citizenship promotes national unity by providing uniform rights and privileges across the country. Emergency provisions enable swift responses to crises, with safeguards to prevent misuse. The amendment process for the Constitution ensures that it remains relevant and responsive to contemporary challenges, balancing stability with the need for change.

Assignments

1. Discuss how the Preamble reflects the fundamental values and guiding principles of the Indian Constitution.
2. Describe the role and importance of the Directive Principles of State Policy (DPSP) in Indian governance.
3. Outline the structure of the Parliamentary System of Government in India.
4. Analyse the concept of judicial independence in India.
5. Explain how the Constitution ensures equality of all religions and its implications for Indian society.
6. List some of the key fundamental duties and discuss their significance in promoting responsible citizenship.

7. Discuss how single citizenship fosters national unity and ensures uniform rights and privileges across the country.
8. Critically analyse the laws and Acts related to Citizenship in India.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

UNIT 2

Directive Principles of State Policy and Fundamental Duties

Learning Outcomes

A careful study of this unit will enable you to

- ▶ Understand the role of Directive Principles of State Policy in establishing socio-economic democracy in India;
- ▶ Analyse different ideological classification of DPSP;
- ▶ Compare and contrast Fundamental Rights and DPSP;
- ▶ Understand the meaning and importance of fundamental duties and the origin of Article 51A

Background

As we already discussed in our first block, the Constituent Assembly had formed a sub-committee on Rights for incorporating the provisions of rights in the Constitution. This Sub-Committee also provided vital recommendations on the Directive Principles of State Policy (DPSP). Interestingly, a significant debate within the Constituent Assembly revolved around whether to bifurcate the rights into two categories: justiciable (Fundamental Rights) and non-justiciable (Directive Principles of State Policy). Ultimately, the Directive Principles were included to guide the state in formulating policies aimed at the welfare of various societal segments.

Prominent figures like B. N. Rau, A. K. Ayyar, B. R. Ambedkar, and K. T. Shah were instrumental in shaping the DPSP, with B. N. Rau being recognised as the most influential among them. The conceptual roots of these principles can be traced back to the Karachi Resolution and the prevalent socialist and nationalist ideologies of the 1920s in India. The Sapru Committee, along with the Rights Sub-Committee, had previously suggested dividing rights into justiciable and non-justiciable categories.

The inclusion of provisions addressing the state's role in the social and economic development of society was not unique to India. Granville Austin noted that these provisions attracted widespread support among Assembly members. Influences from

Gandhian ideas further reinforced the decision to embed these principles, which emphasise the holistic development - social, economic, and political - of the people. After extensive deliberations, the Constituent Assembly incorporated the Directive Principles of State Policy in Part IV of the Constitution. These principles serve as directives for the state to pursue policies that promote the welfare of its citizens, encompassing various aspects of social and economic development. The following section provides a detailed list of these Directive Principles.

Keywords

Socio-Economic Democracy, Welfare, Socialism, Liberalism, Gandhian Ideologies

Discussion

2.2.1 The Directive Principles of State Policy (DPSP)

► guidelines for the Indian state

The Directive Principles of State Policy (DPSP), enshrined in Part IV of the Indian Constitution, serve as fundamental guidelines for the Indian state in the formulation of policies and laws. Although these principles are non-justiciable as they cannot be enforced by any court, they are essential in ensuring that the state strives towards creating a just society. The DPSPs complement the Fundamental Rights (Part III of the Constitution) by aiming to establish socio-economic democracy in India. The following table contains the Directive Principles enshrined in the Constitution. The following are the provisions of DPSP in Indian Constitution.

Article	Directive Principle
36	Definition of State: Refers to the same meaning as in Part III of the Constitution relating to Fundamental Rights
37	Application of the principles contained in this Part: The principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws
38	State to secure a social order for the promotion of welfare of the people: Strive to promote the welfare of the people by securing a social order
39	Certain principles of policy to be followed by the State: Secure the right to an adequate means of livelihood, equal pay for equal work, etc

39A	Equal justice and free legal aid: Promote justice on a basis of equal opportunity and provide free legal aid
40	Organization of village panchayats: Organize village panchayats and endow them with powers and authority
41	Right to work, to education, and to public assistance in certain cases: Provide employment, education, and public assistance in cases of unemployment, old age, sickness, etc.
42	Provision for just and humane conditions of work and maternity relief: Ensure just and humane conditions of work and maternity relief
43	Living wage, etc., for workers: Ensure a living wage, decent standard of life, and social and cultural opportunities for workers
43A	Participation of workers in management of industries: Secure participation of workers in the management of industries
44	Uniform civil code for the citizens: Strive to secure for citizens a uniform civil code throughout the territory of India
45	Provision for early childhood care and education to children below the age of six years: Ensure free and compulsory education for children
46	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections: Promote their interests and protect them from social injustice
47	Duty of the State to raise the level of nutrition and the standard of living and to improve public health: Improve nutrition, standard of living, and public health
48	Organization of agriculture and animal husbandry: Organize agriculture and animal husbandry on modern and scientific lines
48A	Protection and improvement of environment and safeguarding of forests and wildlife: Protect and improve the environment and safeguard forests and wildlife
49	Protection of monuments and places and objects of national importance: Protect monuments and places of national importance from spoliation and destruction
50	Separation of judiciary from executive: Separate the judiciary from the executive in public services of the State
51	Promotion of international peace and security: Promote international peace, maintain just and honorable relations between nations, foster respect for international law, and encourage settlement of international disputes by arbitration

2.2.1.1 Roles of DPSP in Socio-economic Democracy

2.2.1.1.1 Promoting Social Welfare

► social order that secures welfare

One of the primary roles of the DPSPs is the promotion of social welfare. Articles 38, 39, and 41 emphasize the state's responsibility to create a social order that secures the welfare of the people, ensures adequate means of livelihood, and provides assistance in cases of unemployment, old age, sickness and disablement. These provisions aim to reduce inequalities

in income and eliminate inequalities in status, facilities and opportunities. By focusing on social justice, the DPSP guide the state to work towards a more equitable society.

2.2.1.1.2 Economic Democracy

► ensuring economic democracy

The DPSP play a crucial role in ensuring economic democracy by promoting equitable distribution of resources and opportunities. Article 39(b) and (c) advocate the distribution of the ownership and control of material resources of the community to serve the common good and prevent the concentration of wealth and means of production. Additionally, Article 43 emphasises securing a living wage, decent working conditions and a fair standard of life for all workers, thus aiming to reduce economic disparities and provide a fair opportunity for all to participate in economic activities.

2.2.1.1.3 Protecting Vulnerable Sections

► uplift marginalised communities

The Constitution recognises the need to protect vulnerable sections of society, including Scheduled Castes, Scheduled Tribes and other weaker sections. Article 46 directs the state to promote the educational and economic interests of these groups and protect them from social injustice and exploitation. This principle aims to uplift marginalised communities and integrate them into the mainstream, thereby promoting social and economic inclusion.

2.2.1.1.4 Environmental Protection

► balance between economic growth and environmental sustainability

In the context of sustainable development, the DPSP also encompass environmental protection. Article 48A mandates the state to protect and improve the environment and safeguard the forests and wildlife of the country. This principle ensures that economic development does not come at the cost of environmental degradation, thus promoting a balance between economic growth and environmental sustainability.

2.2.1.1.5 Enhancing Educational Opportunities

► access to education

Education is a crucial element for achieving socio-economic democracy and the DPSP underscore its importance. Article 45 directs the state to provide early childhood care and education for all children until they complete the age of six years. Additionally, Article 41 mandates the provision of education within the limits of its economic capacity. These directives aim to ensure that every child has access to education, which is essential for personal development and economic empowerment.

2.2.1.1.6 Strengthening Democracy

► independence of the judiciary

The DPSP also aim to strengthen democratic principles in India. Article 50 mandates the separation of the judiciary from the executive, ensuring the independence of the judiciary and maintaining checks and balances within the government. Article 40 encourages the organisation of village panchayats and endows them with the necessary powers and authority to function as units of self-government. This decentralisation of power is crucial for participatory democracy and local self-governance.

2.2.1.2 Ideological Composition of Directive Principles of State Policy (DPSP)

► mixture of ideologies

The Directive Principles of State Policy (DPSP) in the Indian Constitution reflect a mixture of ideologies, inspired by different ideological trends such as Socialism, Liberalism and Gandhian philosophy. These principles aim to create a balanced framework for social, economic and political justice. The DPSP can be broadly categorised into three main ideologies: Liberal, Socialist and Gandhian principles.

2.2.1.2.1 Socialist Principles

DPSP contains articles based on socialist perspectives. These articles are as follows.

Article 38: The State shall strive to promote the welfare of the people by securing and protecting a social order by ensuring social, economic and political justice and by minimising inequalities in income, status, facilities and opportunities

Articles 39: The State shall in particular, direct its policies towards securing:

1. Right to an adequate means of livelihood to all the citizens.
2. The ownership and control of material resources shall be organised in a manner to serve the common good.
3. The State shall avoid concentration of wealth in a few hands.
4. Equal pay for equal work for both men and women.
5. The protection of the strength and health of the workers
6. Childhood and youth shall not be exploited.

Article 41: To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disability.

Article 42: The State shall make provisions for securing just and humane conditions of work and for maternity relief.

Article 43: The State shall endeavour to secure to all workers a living wage and a decent standard of life.

Article 43A: The State shall take steps to secure the participation of workers in the management of industries.

Article 47: To raise the level of nutrition and the standard of living of people and to improve public health.

2.2.1.2.2 Liberal Principles

The DPSP contains also provisions inspired from liberal principles. Such provisions are as follows.

Article 44: The State shall endeavour to secure for the citizen a Uniform Civil Code throughout the territory of India.

Article 45: To provide early childhood care and education for all children until they complete the age of six years.

Article 48: To organise agriculture and animal husbandry on modern and scientific lines.

Article 48A: To protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49: The State shall protect every monument or place of artistic or historic interest.

Article 50: The State shall take steps to separate judiciary from the executive in the public services of the State.

Article 51: It declares that to establish international peace and security the State shall endeavour to:

1. Maintain just and honourable relations with the nations.
2. Foster respect for international law and treaty obligations.
3. Encourage settlement of international disputes by arbitration.

2.2.1.2.3 Gandhian Principles

Gandhian principles in the DPSP are inspired by the teachings and philosophy of Mahatma Gandhi. These principles emphasise rural development, self-reliance and social justice, focusing on the upliftment of the underprivileged and the promotion of a self-sufficient rural economy. Key articles reflecting Gandhian principles include:

Article 40: The State shall take steps to organise village panchayats as units of Self Government

Article 43: The State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

Article 43B: To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

Article 46: The State shall promote educational and economic interests of the weaker sections of the people particularly that of the Scheduled Castes (SCs), Scheduled Tribes (STs) and other weaker sections.

Article 47: The State shall take steps to improve public health and prohibit consumption of intoxicating drinks and drugs that are injurious to health.

Article 48: To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

2.2.1.3 Amendments to Directive Principles of State Policy (DPSP)

Several constitutional amendments have been made to enhance the Directive Principles of State Policy, making them more inclusive of social welfare concerns.

1. 42nd Amendment Act of 1976: This amendment introduced four new subjects:
 - Ensuring the healthy development of children (Article 39).
 - Promoting equal justice and providing free legal aid to the poor (Article 39A).
 - Securing worker participation in industry management (Article 43A).

- Protecting the environment, forests and wildlife (Article 48A).
- 2. The 44th Amendment Act of 1978: This amendment added under Article 38 requires the State to minimise inequalities of income, status, facility and opportunity.
- 3. The 86th Amendment Act of 2002: This amendment modified Article 45, directing the State to provide early childhood care and education until children reach six years of age. It also made education a fundamental right under Article 21A. In addition, it included a Fundamental Duty for parents or guardians to provide education to children aged 6-14 years.
- 4. The 97th Amendment Act of 2011: This amendment added Article 43B, which requires the State to promote the voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

2.2.1.4 Implementation of Directive Principles of State Policy (DPSP)

► reduced inequalities in rural agrarian society

Since gaining independence, various central and state governments in India have enacted numerous laws, launched schemes and programmes and established commissions in line with the Directive Principles of State Policy (DPSP). The Planning Commission (now replaced by Niti Aayog) utilised the Five-Year Plans to promote social and economic equity and justice. Land reforms such as the abolition of Zamindari, tenancy reforms, landholding ceilings and cooperative farming have significantly reduced inequalities in rural agrarian society. The government has also introduced measures to support underprivileged sections, including laws to ensure minimum wages, protect contract workers, provide free legal aid, abolish child and bonded labour and resolve industrial disputes.

► Supporting women

To support women, the government enacted laws related to maternity benefits and equal remuneration. Environmental protection efforts included acts for wildlife conservation and forest protection, as well as the establishment of central and state pollution boards. To develop cottage industries, the government set up the Khadi and Village Industries Board and the Handlooms and Handicrafts Boards. Legislation was also enacted to protect ancient and historical monuments, archaeological sites and places of national importance.

To safeguard the interests of Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs),

► protecting civil rights and preventing social exploitation

the government provided reservations in government jobs and political institutions and enacted laws to protect civil rights and prevent social exploitation. The establishment of village panchayats and reservations for weaker sections within them has empowered these communities. Programmes such as the Community Development Programme, Hill Area Development Programme, Minimum Needs Programme, IRDP (Integrated Rural Development Program), MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and NRHM (National Rural Health Mission) have promoted social and economic inclusion.

2.2.1.5 DPSP and Fundamental Rights

The Indian Constitution is a remarkable document that balances individual rights with the duties and responsibilities of the State. Two key components that embody this balance are the Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV). While Fundamental Rights provide a set of enforceable rights to individuals, the Directive Principles lay down guidelines for the State to achieve social and economic democracy. Understanding the similarities and differences between these two sections is crucial for comprehending the broader framework of the Indian Constitution.

2.2.1.5.1 Nature and Enforceability

► justiciability

Fundamental Rights are justiciable and enforceable by the courts. If these rights are violated, individuals can directly approach the judiciary for redressal. Articles 12 to 35 outline these rights, which include the right to equality, freedom against exploitation, to freedom of religion, cultural and educational rights and constitutional remedies. In contrast, Directive Principles of State Policy are non-justiciable, meaning they are not legally enforceable by the courts. Found in Articles 36 to 51, they serve as guidelines for the State to create a welfare state by addressing various socio-economic challenges.

2.2.1.5.2 Objective and Purpose

► lead a dignified life

The primary objective of Fundamental Rights is to protect the individual liberty of citizens and to prevent the State from encroaching upon these rights. They aim to establish a legal framework where the basic freedom of individuals is safeguarded against arbitrary actions by the State. On the other hand, the Directive Principles are designed to guide the State in formulating and implementing policies that ensure social and economic justice. They emphasise creating conditions where

citizens can lead a dignified life, addressing issues like health, education and equitable distribution of resources.

2.2.1.5.3 Scope and Coverage

Fundamental Rights apply universally to all citizens and in some cases, to non-citizens as well, ensuring a wide coverage and protection under the law. They provide specific and actionable rights that individuals can claim. Directive Principles, however, are broader in scope and cover a wide range of policy areas, including social welfare, economic policies and environmental conservation. They serve as a comprehensive framework for the State to follow in governance but do not grant specific rights to individuals.

► comprehensiveness

2.2.1.5.4 Conflict and Resolution

Conflicts between Fundamental Rights and Directive Principles have been the subject of judicial interpretation and constitutional amendments. Initially, in cases like the State of Madras vs. Champakam Dorairajan (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail. It was this judgment that necessitated the Constitution First Amendment Act (1951). Here the Supreme Court prioritised Fundamental Rights over Directive Principles. However, subsequent amendments and landmark judgments like the Kesavananda Bharati case (1973) established the doctrine of the basic structure, where both Fundamental Rights and Directive Principles are seen as complementary. The State is encouraged to harmonise both to achieve the constitutional goal of a just and equitable society.

► Superiority of fundamental rights

2.2.1.5.5 Amendments and Judicial Interventions

Fundamental Rights have been subject to several amendments to adapt to changing socio-political contexts, such as the 42nd Amendment, which added more Directive Principles and the 44th Amendment, which restored certain Fundamental Rights. Judicial interventions have played a crucial role in interpreting these rights and principles. For instance, the Right to Education was elevated from a Directive Principle to a Fundamental Right through the 86th Amendment. The 86th amendment act 2002, also known as Right of Children to Free and Compulsory Education (RTE), mainly added provisions regarding the Fundamental Right of a child to free and compulsory education. The amendment also imposes new responsibilities upon the state governments, local authorities and all other persons. Such

► new responsibilities upon the state governments

changes reflect the dynamic nature of the Constitution and the interplay between enforceable rights and guiding principles.

In conclusion, the Fundamental Rights and Directive Principles of State Policy represent two sides of the same coin, embodying the spirit of the Indian Constitution. While Fundamental Rights ensure the protection of individual freedom, the Directive Principles aim to create an environment where these rights can be meaningfully enjoyed by promoting social and economic welfare. Both are essential for achieving the Constitution's vision of justice, liberty, equality and fraternity and their interplay continues to shape the legal and policy landscape of India.

Comparison and Integration

Aspect	Fundamental Rights (FR)	Directive Principles of State(DPSP)
Nature	Justiciable (legally enforceable in courts)	Non-justiciable (not enforceable by courts)
Purpose	Protect individual liberties and rights	Guide the state in policy-making for social and economic welfare
Constitutional Position	Part III of the Constitution	Part IV of the Constitution
Scope	Primarily individual-centric rights	State-centric directives for governance
Example	Right to Equality, Right to Freedom, Right against Exploitation	Principles related to economic and social rights, like adequate livelihood, education, public health
Enforceability	Can be enforced through courts	Cannot be enforced through courts, only guidelines
Amenability	More difficult to amend (require special procedure)	Easier to amend (can be altered by simple majority)
Impact	Immediate protection of individual rights	Long-term goals for achieving social and economic democracy
Supremacy in Conflict	supersedes DPSP in case of conflict	DPSP aims to harmonize with FR, does not override

Examples of Influence	Fundamental Rights have led to landmark judgments and legal precedents	DPSP has inspired legislation and policies like the MGNREGA, Right to Education Act
External inspiration	Inspired by the Bill of Rights in the US Constitution and other democracies	Influenced by the Irish Constitution, socialist principles, and Gandhian philosophy

2.2.2 Fundamental Duties

► sense of discipline and commitment

The Fundamental Duties were introduced by the 42nd Amendment Act in 1976 and are enshrined in Part IVA of the Indian Constitution under Article 51A. The idea behind the Fundamental Duties is to uphold the responsibilities of Indian citizens towards their nation. These duties are aimed at promoting a sense of discipline and commitment among the citizens, encouraging them to contribute positively to the society and nation-building process. The concept of Fundamental Duties is inspired by the Constitution of the former Soviet Union, which included a similar set of duties for its citizens. These duties were incorporated in the Constitution on the recommendation of the Swaran Singh Committee, constituted in 1976. The committee believed that emphasising duties was essential to balancing the Fundamental Rights enjoyed by citizens. Consequently, the 42nd Amendment Act incorporated ten Fundamental Duties into the Constitution, with an eleventh duty added later by the 86th Amendment Act in 2002.

2.2.2.1 Evolution Fundamental Duties

► importance of community duties for personal development

Initially, the Indian Constitution did not include Fundamental Duties. However, a chapter on Fundamental Duties was inserted into the constitution through the 42nd Amendment. Before this, Article 33 outlined certain duties specifically for armed forces and police to ensure discipline. The inclusion of Fundamental Duties was based on the recommendations of the Swaran Singh Committee, established by Indira Gandhi's government in 1976. This amendment, effective from January 3, 1977, added a new section to the Constitution detailing the Fundamental Duties of Indian citizens. These duties were further expanded by the 86th Amendment in 2002. The Fundamental Duties, outlined in Article 51A, align with Article 29(1) of the Universal Declaration of Human Rights, which emphasises the importance of community duties for personal development. There are 11 Fundamental Duties for Indian citizens.

2.2.2.2 Importance of Fundamental Duties

Fundamental Duties play a crucial role in ensuring that citizens actively participate in the welfare and development of the country. They serve as a constant reminder to the citizens that while they enjoy their rights, they also have certain responsibilities towards the nation. The importance of Fundamental Duties can be summarised as follows:

1. **Promotion of Civic Sense:** Fundamental Duties encourage citizens to cultivate a sense of respect and adherence to the Constitution, the national flag and the national anthem.
2. **National Unity and Integrity:** Duties such as promoting harmony and the spirit of common brotherhood among all people of India and protecting the sovereignty, unity and integrity of the country help in fostering national unity.
3. **Environmental Protection:** The duty to protect and improve the natural environment, including forests, lakes, rivers and wildlife, emphasises the importance of environmental conservation.
4. **Scientific Temper:** The duty to develop a scientific temper, humanism and the spirit of inquiry and reform encourages rational thinking and innovation among citizens.

2.2.2.3 Article 51A

Article 51A of Part IV A of the Indian Constitution specifically mentioned the Fundamental Duties of Indian citizens. It lists eleven duties, which include:

1. To abide by the Constitution and respect its ideals and institutions, the national flag and the national anthem.
2. To cherish and follow the noble ideals that inspired the national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.
6. To preserve and value the rich heritage of India's composite culture.
7. To protect and improve the natural environment, including

- forests, lakes, rivers and wildlife and to have compassion for living creatures.
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
 9. To safeguard public property and to abjure violence.
 10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
 11. To provide opportunities for education to children between the age of six and fourteen years.

Fundamental Duties, although not enforceable by law, play a pivotal role in guiding the behaviour and actions of Indian citizens. They complement the Fundamental Rights and serve as a moral and ethical compass, fostering a sense of responsibility and national consciousness. By adhering to these duties, citizens can contribute to the development and prosperity of the nation, ensuring a harmonious and progressive society.

2.2.3 Limitations of Directive Principles of State Policy (DPSP) and Fundamental Duties

► not legally obligated to implement

The primary limitation of the DPSP is that the state is not legally obliged to implement them, despite having a moral duty to do so. Their non-justiciable nature leaves the state susceptible to influence from politically and economically powerful groups. Some members of the Constituent Assembly highlighted these limitations, particularly their non-justiciability. K. T. Shah described the DPSP as “pious wishes,” while T. T. Krishnamachari called them “a veritable dustbin of sentiment.” K. Santhanam, another member of the Constituent Assembly, argued that the DPSP could cause constitutional conflicts between the Centre and the States, the Prime Minister and the President, the Governor and the Chief Minister regarding direction, guidance, legislation, assent, enforcement and issues of non-compliance and discretion.

Like the DPSP, Fundamental Duties are non-enforceable and non-justiciable, meaning no citizen can be punished by a court for failing to fulfil them. This makes them comparable to the DPSP in nature. Unlike in India, Fundamental Duties in countries like the U. S. S. R., Yugoslavia, the Republic of China, Poland, Czechoslovakia, Netherlands, Japan, the Democratic Republic of Vietnam, and Albania are legally enforceable. Despite this, Fundamental Duties in India hold ethical, social and economic significance. Citizens must perform their Duties

► ethical, social and economic significance

to claim their Rights, and there has been a growing awareness and realisation of this in recent decades. The courts, civil society organizations, political parties and governments have all emphasised the importance of Fundamental Duties for the overall development of society.

Summarized Overview

The Directive Principles of State Policy (DPSP) and Fundamental Duties, enshrined in the Indian Constitution, serve as crucial guidelines for achieving socio-economic justice and fostering responsible citizenship. DPSP, though non-justiciable, provide a framework for the state to promote social welfare, economic democracy, environmental protection and the empowerment of vulnerable groups. They reflect a blend of socialist, liberal and Gandhian ideologies, aiming to create a just and equitable society. The Fundamental Duties, introduced by the 42nd Amendment in 1976, outline the responsibilities of citizens towards the nation, promoting values such as national unity, environmental conservation and the development of a scientific temper. While both DPSP and Fundamental Duties are not legally enforceable, they play a pivotal role in shaping state policies and fostering a sense of civic responsibility among citizens, contributing to the overall development and prosperity of the nation.

Assignments

1. Discuss the importance of Directive Principle of State Policy in Indian polity.
2. Critically analyse the ideological contents in Directive Principles of State Policy.
3. Explain the influence of Gandhian ideas in Directive Principles of State Policy.
4. Compare and contrast the DPSP and Fundamental duties.
5. How are the Fundamental duties different from DPSP?
6. Evaluate the Article 51A and the importance of Fundamental Duties.
7. Elaborate on the amendments to the DPSP.
8. Critically analyse the role of DPSP in ensuring social justice.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.





Judiciary and Fundamental Rights

Learning Outcomes

A careful study of this unit will enable you to

- ▶ Understand the role of judiciary in India as guardians of fundamental rights;
- ▶ Evaluate the role and importance of Judicial review;
- ▶ Critically analyse the role of Article 13 in protecting the Fundamental Rights;
- ▶ Evaluate the implications of Article 32 in the context of Fundamental Rights;
- ▶ Analyse the role of Article 226.

Background

The Indian judiciary stands as a cornerstone of democracy, entrusted with the monumental responsibility of safeguarding fundamental rights enshrined in the Constitution. The framers of the Constitution envisioned a legal system that would protect individual liberties while maintaining the delicate balance between the legislature, executive, and judiciary. This vision is embodied in the judiciary's role as the guardian of fundamental rights, ensuring that laws and executive actions adhere to constitutional principles. Through mechanisms like judicial review, the courts have the power to examine the constitutionality of legislative and executive actions, thereby fortifying democracy against potential violations of rights. This critical function underscores the judiciary's role in upholding the rule of law and ensuring justice is accessible to every citizen.

Articles 13, 32, and 226 are pillars of this protective framework, reflecting the judiciary's proactive role in defending fundamental rights. Article 13 invalidates laws contravening fundamental rights, ensuring that no legislative enactment infringes upon the liberties guaranteed to citizens. Article 32, often hailed as the "heart and soul" of the Constitution, empowers individuals to directly approach the Supreme Court for redressal of rights violations, emphasizing justice as an inherent entitlement. Complementing this, Article 226 vests High Courts with wide-ranging powers to address grievances, expanding the scope of judicial intervention in safeguarding fundamental rights.

Together, these provisions underscore the judiciary's unparalleled role in strengthening the constitutional order, fostering trust, and promoting accountability in governance.

Keywords

Writs, Judicial Review, Fundamental Rights, Rule of Law

Discussion

2.3.1 The Judiciary and Fundamental Rights

► protection and preservation of fundamental rights

The judiciary in India plays a crucial role in the protection and preservation of fundamental rights. As an independent body, it acts as the guardian of the Constitution and ensures that the rights guaranteed to the citizens are upheld. This unit explores the various dimensions of the judiciary's role in safeguarding fundamental rights. As we discussed in the previous units, the Indian Constitution provides a set of fundamental rights to its citizens under Part III. These rights include the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and the Right to Constitutional Remedies. The judiciary plays a crucial role in protecting these rights. The role of the judiciary is well implied in enforcing and protecting the fundamental rights of citizens through prerogative writs. Articles 32 and 226 of the Indian Constitution empower the Supreme Court and High Courts respectively to issue these writs, providing a robust mechanism to address violations of fundamental rights. This writ jurisdiction is an essential aspect of the Indian legal system, ensuring that the rights enshrined in the Constitution are not merely theoretical but are practically enforceable, maintaining the rule of law and the democratic fabric of the nation.

► empowering the Supreme Court

As we already mentioned, Article 32 guarantees the right to move the Supreme Court for the enforcement of fundamental rights, making it a cornerstone of the judicial system. This article empowers the Supreme Court to issue various writs, such as *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, to ensure that fundamental rights are protected. This right to constitutional remedies is so vital that it cannot be suspended except under specific provisions laid out in the Constitution.



The goal of the Constitution is to protect individuals from arbitrary actions by the state or others. This protection is operationalised through the power of the judiciary to issue writs, which act as a critical instrument for the aggrieved. Citizens can approach the Supreme Court directly under Article 32 or the High Courts under Article 226, ensuring multiple avenues for the enforcement of their rights.

2.3.1.1 Various Writs

2.3.1.1.1 Habeas Corpus

Habeas corpus is a Latin term meaning "to have the body" or "to produce the body." A writ of *habeas corpus* requires that an individual in custody be brought before the court. Its primary purpose is to secure the release of a person who has been unlawfully detained, whether in prison or in private custody. According to the law, no one should not be detained illegally. The court can order the detainee to be presented before it to determine the legality of the detention. If a person arrested is not brought before a magistrate within 24 hours of the arrest, they are entitled to be released via a writ of *habeas corpus*. This writ can be issued against any private individual or executive authority and failure to comply with it is considered contempt of court, punishable by law.

► to produce the body

2.3.1.1.2 Mandamus

It is a type of prerogative writ in common law. It is issued by a higher court to compel a lower court or a government official to properly perform mandatory or purely ministerial duties. The duty must be obligatory under law and not merely optional or discretionary. It cannot be issued against the President or the Governor or private individuals.

► prerogative writ

2.3.1.1.3 Certiorari

Certiorari means "to be certified" or "to be informed." It is an order issued by the Supreme Court or High Courts to a lower court, directing it to transfer a case to the higher court for review of the validity of the proceedings or to nullify the lower court's orders. This writ can be issued not only against inferior courts but also against bodies performing judicial or quasi-judicial functions. It is issued under the supervisory or original jurisdiction, rather than the appellate jurisdiction. The purpose is to secure that the jurisdiction of an inferior court or tribunal is properly exercised.

► to transfer a case

2.3.1.1.4 Prohibition

► to forbid

Prohibition means "to forbid." Every court is expected to operate within its jurisdictional boundaries. A writ of prohibition is issued to stop an inferior court or tribunal from exceeding its legal authority, acting without jurisdiction or violating principles of natural justice. This writ can also be issued against authorities performing judicial or quasi-judicial functions.

2.3.1.1.5 Quo warranto

► by what warrant

Quo warranto means "by what warrant?" or "what is your authority." It is an order that challenges the legitimacy of a person's claim to a public office. This writ is directed at an individual occupying a public position, demanding that they demonstrate the legal basis for holding that office. The purpose of this writ is to ensure that a person holding a public office is qualified to hold the office. The office must be a public office and must be created by a statute or the constitution.

2.3.2 Judicial Review

► right to declare it null and void

A prominent feature of any constitution in an independent democracy is the power of judicial review. As a custodian of the Constitution, the judiciary is vested with the power of judicial review. Judicial review is used as a supreme course to determine the constitutionality of the actions of the executive and legislative organs of the government and declare them null or void if they are unconstitutional. In other words, if any act of the government goes beyond the limits of their authority as laid down by the Constitution of India, the courts have the right to declare it null and void. Judicial review deals with the supremacy of the law and any law inconsistent with the Constitution is void.

Judicial review is needed for the following reasons:

1. It upholds the principle of the Supremacy of the Constitution.
2. It maintains federal equilibrium (balance between the Centre and the states).
3. It protects fundamental rights of the citizens.

The need and importance of judicial review

Judicial review protects the constitution from any violation of powers and the fundamental rights, ensuring that every branch of

► protects the constitution from any violation of powers

government remains within the framework. However, nowhere is it found that the framers of the Constitution have given the courts the power to declare or exercise such an extraordinary power. Now the courts in India as well as in the U. S. A. through judicial review have slowly created a norm in which the courts can review the acts passed in the Constitution. For instance, Article 13 (2) of the Constitution reads, "The State shall not make any law which takes away or abridges the Fundamental Rights." The judicial review is the provision through which any law that goes against any provision of Fundamental Rights or those that infringe upon laws including ordinary laws, rules, regulations, notifications, customs or usages having the force of law, can be declared invalid.

► consent of the state legislature

According to Article 246 (2) the state legislature holds exclusive power to make laws on any subject in the state list. This means that if the Parliament enacts a law on any topic in the state list, except temporarily in case of an emergency under Article 249, such a law can be declared null and void. If Parliament has to make a law in such situations, it must seek the consent of the state legislature. Thus, Article 13 ensures that Fundamental Rights are safeguarded.

► amending the Constitution

On various occasions, the Supreme Court struck down certain laws passed by the Parliament as being unconstitutional. The landmark case of *Minerva Mills v. Union of India* (1980) stands as a prime example where the Supreme Court invalidated provisions of the Constitution that restricted judicial review. Through such cases, the judiciary has ensured that certain privileges granted to individuals cannot be arbitrarily removed by the government. The courts also upheld that governments cannot suppress those privileges. Similarly, the Supreme Court used the power of judicial review in *Kesavananda Bharati* case, *Vaman Rao* case, *S. R. Bommai* case, *I. R. Coelho* case etc. The parliament overcame some of the judgements by suitably amending the Constitution.

► procedure established by law

In this connection, it may be noted that the Supreme Court of India does not have wide power of judicial review as the Supreme Court of the U. S. A. This distinction is because the American Constitution provides for "due process of law" (it empowers the judiciary to pronounce the last word in respect of life and personal liberty of a citizen) as against the "procedure established by law" (the legislature has the final authority to determine the limit of personal liberty). The doctrine of "procedure established by law" severely restricts the power of the Supreme Court of India.

► due process of law

While determining the constitutionality of law, Indian courts examine only the substantive question, i.e., whether the law under challenge falls within the power of the authority that has framed it (Enacting Court). It is not expected to go into the question of its reasonableness, suitability or policy implications. The Supreme Court, however, overturned this position in the case of *Maneka Gandhi v. Union of India* (1978) and inserted the "due process of law" clause of America. It meant that there must be a law and procedure. Both law and procedure must be just, fair and reasonable and not arbitrary. This emphatically imposed a judiciary restraint and brought arbitrary deprivation of liberty by the legislature under strict scrutiny.

2.3.2.1 Landmark Judgments

The Indian judiciary has delivered several landmark judgments that have significantly contributed to the protection of fundamental rights. Some notable cases include:

Kesavananda Bharati Case v. state of Kerala (1973)

► Basic Structure

It is an evergreen case delivered by the Supreme Court. In this case the court observed that the parliament has wide powers of amending the constitution. It extends to all the Article of the constitution. But the court observed that the amending power is not unlimited and does not include the power to destroy the "Basic Structure" or "Essential features" of the constitution. There are implied limitations on the amending powers under Article 368. Within these limits the parliament can amend every Article of the constitution. However, the court did not lay down what and what didnot constitute the "Basic Structure." But the court observed that it will be determined on the basis of the fact in each case.

Maneka Gandhi Case v. Union of India (1978)

► broadening the scope of fundamental rights

In this case, the Supreme Court expanded the interpretation of the Right to Life and Personal Liberty under Article 21. The Court held that the right to life includes the right to live with dignity and encompasses various other rights, thereby broadening the scope of fundamental rights. The court observed that the right to life or personal liberty of a person can be deprived by a law provided the procedure prescribed by the law is just, fair and reasonable. In other words, it has introduced the American expression "Due process of law."

Vishaka Case (1997)

- safeguarding the fundamental rights of working women

In the Vishaka case, the Supreme Court laid down guidelines to prevent sexual harassment at the workplace, thus safeguarding the fundamental rights of working women. This judgement highlighted the judiciary's proactive role in addressing social issues and protecting fundamental rights.

Overall, the judiciary in India plays a pivotal role in protecting and preserving fundamental rights. Through judicial review, Public Interest Litigation and the issuance of writs, the judiciary ensures that the rights of citizens are not violated by the legislature or executive. Landmark judgments have further strengthened the framework of fundamental rights, ensuring their protection and promotion. The judiciary's role as the guardian of fundamental rights is indispensable for the functioning of a democratic society.

2.3.2.2 Importance of Judicial Review

- examining the constitutionality

One of the primary functions of judicial review is to protect the fundamental rights of citizens. By examining the constitutionality of laws and executive actions, the judiciary ensures that individual rights are not infringed upon. This protection is vital for upholding the principles of justice, equality and liberty enshrined in the Constitution.

2.3.2.3 Balancing Judicial Activism and Restraint

- balancing approaches

The exercise of judicial review often brings up the debate about judicial activism and judicial restraint. Judicial activism refers to the proactive role played by the judiciary in interpreting the Constitution and addressing social issues, while judicial restraint emphasises the importance of deferring to the decisions of the legislative and executive branches. Balancing these approaches is crucial for maintaining the legitimacy and credibility of the judiciary.

2.3.2.4 Challenges to Judicial Review

Despite its importance, judicial review faces several challenges. These include accusations of judicial overreach, delays in the judicial process and the need for judicial reforms to ensure efficiency and transparency. Addressing these challenges is essential for strengthening the institution of judicial review in India.

► cornerstone of the Indian constitutional framework

Judicial review is a cornerstone of the Indian constitutional framework, ensuring that the principles of democracy, justice and constitutional supremacy are upheld. It empowers the judiciary to act as a check on the powers of the legislature and the executive, protecting the fundamental rights of citizens and maintaining the integrity of the Constitution. As India continues to evolve as a democracy, the role of judicial review will remain crucial in shaping the nation's democratic foundation.

2.3.3 Article 13 and Fundamental Rights

► declared void to the extent of the inconsistency

The Article 13 of the Indian Constitution ensures that any law in force in India before the commencement of the Constitution that is inconsistent with the fundamental rights shall be void. It also states that the State shall not make any law that takes away or abridges the rights conferred by Part III (Fundamental Rights) of the Constitution. If such a law is made, it will be declared void to the extent of the inconsistency. In this way, the article serves as a protector of fundamental rights by ensuring that no law can undermine these essential freedoms and ensures the supremacy of the Constitution regarding fundamental rights. It addresses both pre- and post-Constitution laws.

1. Pre-Constitution Laws: Clause (1) declares that any law existing before the Constitution came into force shall be void to the extent to which they are inconsistent with the Fundamental Rights.
2. Post-Constitution Laws: Clause (2) Provides that the state shall not make any law which takes away or abridges the Fundamental Rights. Any law made in contravention of Fundamental Rights to the extent of contravention shall be void.

The term "State" is defined as per Article 12, that is, it includes all the legislative and executive organs of central and state governments, local bodies such as Panchayats and Municipalities, Statutory and non-Statutory authorities and "law" includes both temporary and permanent laws, subordinate legislation and non-legislative sources of law such as customs or practices with the force of law.

► definition of state

Article 13(4) specifies that constitutional amendments are not considered "law" under Article 13, thus their validity cannot be challenged on the grounds of violating fundamental rights. However, the Supreme Court has established through various rulings that while fundamental rights can be amended, they form part of the "basic structure" of the Constitution, which cannot be altered.

► Vision of the constitution

Significant Supreme Court decisions include:

1. *Golak Nath v. State of Punjab* (1967): as per the verdict in this case it is established that Fundamental rights cannot be amended by the Parliament.
2. *Keshavananda Bharati v. State of Kerala* (1973): In this case the Supreme Court established the "basic structure" doctrine, allowing amendments but protecting basic features.
3. *Minerva Mills v. Union of India* (1980): This case reinforced those amendments affecting the basic structure, like excluding judicial review, are invalid.
4. *Waman Rao v. Union of India* (1981): This case reaffirmed the limitation on amending the basic structure.
5. *Bhim Singhji v. Union of India* (1981) and *S. P. Gupta v. Union of India* (1982): In this case the amendments were upheld but the basic structure doctrine was acknowledged.
6. *S.P. Sampath Kumar v. Union of India* (1987): This case also reinforced the principle that constitutional amendments cannot override the basic structure.

2.3.4 The importance of Article 32

The constitution, while ensuring the fundamental rights of citizens, also provides mechanisms to enforce these rights. Constitutional experience worldwide demonstrates that these rights are truly upheld only through the judiciary. The power of judiciary to enforce fundamental rights relies not only on its impartiality and independence but also on the effectiveness of tools available to compel compliance from the Executive or any other authority. In the Anglo-American legal system, such tools include writs like *habeas corpus*, *mandamus*, prohibition, *certiorari*, and *quo warranto*. Likewise, the Indian Constitution provides the following mechanisms to enforce the Fundamental Rights it guarantees:

► mechanisms to enforce rights

► counter arbitrary actions

1. The Constitution guarantees Fundamental Rights against actions by both the Executive and the Legislature. Any act by these bodies that infringes on these rights is void and the Courts can declare it so [Article 13]. The Supreme Court can counter arbitrary actions by the State and has the authority to enforce fundamental rights against private entities and individuals, awarding compensation for violations. As we mentioned before, it can act *Suo motu* or based on Public Interest Litigation (PIL).

2. The Constitution empowers the Supreme Court and the High Courts to issue writs for enforcing Fundamental Rights [Articles 32 and 226].
3. These rights cannot be suspended except during an Emergency, as outlined in the Constitution [Article 359].

► constitutional remedy

While Fundamental Rights can be enforced through other legal proceedings, such as a declaratory suit or an application under Article 226, a proceeding under Article 32 is described as a “constitutional remedy” for enforcing the rights in Part III. The right to bring such proceedings before the Supreme Court is itself a fundamental right included in Part III. Dr B. R. Ambedkar highlighted its importance in the Constituent Assembly, stating that it is "the very soul of the Constitution and the very heart of it."

The key provisions in Clauses (1) and (2) of Article 32 are:

1. The right to approach the Supreme Court for enforcing the rights conferred by Part III is guaranteed.
2. The Supreme Court has the power to issue directions, orders or writs such as *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for enforcing these rights.

Article 32 thus ensures a guaranteed remedy for the enforcement of the Fundamental Rights and this remedial right is itself a fundamental right. The Supreme Court, as the protector and guarantor of these rights, cannot refuse to entertain applications on technical grounds when a fundamental right appears to be infringed.

► enforce the Fundamental Rights

Additionally, the Supreme Court can issue any appropriate order without being bound by the technicalities of English Prerogative writs. It has the authority to declare a law void if it contravenes the provisions guaranteeing fundamental rights and to issue writs to enforce these rights against any authority or the State on behalf of an individual whose rights have been violated. However, the sole purpose of Article 32 is to enforce the Fundamental Rights guaranteed by the Constitution. A person can only seek redress under Article 32 if a fundamental right has been infringed. Complaints unrelated to fundamental rights will not be addressed under Article 32.

2.3.5 Article 226: Power of High Courts to Issue Writs

Article 226 extends the power to issue writs to the High Courts of India. It allows individuals to approach the High Courts for the enforcement of not only fundamental rights but also other legal rights. This broader scope makes Article 226 an essential tool for judicial intervention at the state level. It ensures that legal remedies are accessible at both the national and regional levels, thus decentralising the enforcement of rights and making justice more accessible. Under Article 226, High Courts can issue orders, directions and writs to ensure that the rights of citizens are protected. They can review laws and actions of state governments and other authorities within their jurisdiction, providing a crucial check on the exercise of power at the state level.

► broader scope

The term “prerogative writ” in English common law refers to the extraordinary writs granted by the Sovereign, as the source of justice, due to the inadequacy of ordinary legal remedies. Over time, these writs began to be issued by the High Court of Justice, acting on behalf of the Sovereign, as extraordinary remedies in cases where no remedy was available under ordinary law or where the available remedy was inadequate. These writs include *habeas corpus*, *mandamus*, prohibition, *certiorari*, and *quo warranto*.

► inadequacy of ordinary legal remedies

2.3.5.1 Difference Between Supreme Court and High Court in the power of Writs

The High Courts' power to issue these writs is broader than that of the Supreme Court. Under Article 32 of the Constitution, the Supreme Court can issue these writs only for the enforcement of Fundamental Rights. In contrast, under Article 226, a High Court can issue these writs not only for the enforcement of Fundamental Rights but also for addressing any injury or illegality resulting from a contravention of ordinary law, provided certain conditions are met.

► broader

The jurisdiction of the High Court differs from that of the Supreme Court in two ways:

- a. An application to a High Court under Article 226 is valid not only when a Fundamental Right is infringed but also when other constitutional limitations are violated, as for example, if a State Legislature imposes a sales tax contrary to Article 286. However, an application under Article 32 is

valid only if a Fundamental Right enumerated in Part III of the Constitution is infringed.

- b. The Supreme Court can issue a writ against any person or government within India. A High Court can issue a writ under Article 226 against any person, government or authority only if they are physically within its territorial jurisdiction or if the cause of action arises within such jurisdiction.

2.3.6 Supreme Court as the Protector of Fundamental Rights

The Constitution assigns the Supreme Court a special role as the "protector and guarantor of fundamental rights" under Article 32(1). Therefore, to invoke the jurisdiction under Article 32, one must demonstrate why the High Court was not approached or why it was futile to approach the High Court.

When a fundamental right infringement is established, the Supreme Court cannot refuse relief under Article 32 on the grounds that:

- a. The aggrieved person may have another remedy from some other court or under ordinary law.
- b. Disputed facts need investigation or evidence needs to be taken before granting relief.
- c. The petitioner did not ask for the proper writ applicable to their case. In such instances, the Supreme Court must grant the proper writ and, if necessary, modify it to suit the case.
- d. Generally, only the affected person may approach the Court. However, in social or public interest actions, any person may move the Court. This is known as the expansion of the "right to be heard" and supports Public Interest Litigation (PIL). Following English and American decisions, the Supreme Court has admitted exceptions to strict rules relating to affidavit *locus standi* and similar issues in cases of public interest litigation, where the public has a general interest in vindicating a right or enforcing a public duty.

► Public Interest Litigation

► cannot be overridden by legislation

A significant consequence of the constitutional remedy guarantee under Article 32 is that this remedy cannot be overridden by legislation. Any law that nullifies or makes illusory the Supreme Court's power to grant this remedy is void. This was demonstrated in the case of A. K. Gopalan v.

State of Madras, where the Supreme Court invalidated Section 14 of the Preventive Detention Act, 1950, as it originally stood. The section stated that no court could allow statements or evidence related to the grounds of a detention order to be given, except for prosecuting an offense under subsection (2), and that disclosing or publishing such communications without government authorisation was punishable with imprisonment or a fine.

Summarized Overview

This unit focuses on the crucial role of the judiciary in India as the guardian of the Constitution and protector of the fundamental rights of citizens. It emphasises the authority of the judiciary through judicial review, allowing courts to assess the constitutionality of laws and executive actions, ensuring that fundamental rights are upheld. Key elements include Article 13, which declares laws void if they infringe on fundamental rights and Articles 32 and 226, which empower the Supreme Court and High Courts to issue writs like *habeas corpus* and *mandamus* to enforce these rights. The unit also explores landmark judgments that have shaped the interpretation of fundamental rights and highlights the importance of judicial review in maintaining the balance of power between the legislative, executive and judiciary. Overall, it underscores the judiciary's pivotal role in protecting the democratic fabric of the nation by safeguarding the rights enshrined in the Constitution.

Assignments

1. Explain the significance of Article 13 of the Indian Constitution in the context of judicial review. How does it contribute to the protection of fundamental rights?
2. Discuss the role of the judiciary in maintaining the balance of power between the legislative, executive, and judiciary branches of the Indian government.
3. What are Articles 32 and 226 of the Indian Constitution? Describe how they empower the Supreme Court and High Courts to protect fundamental rights.
4. Evaluate the importance of judicial review in upholding the democratic fabric of India. How does it ensure that laws and executive actions are in line with the Constitution?
5. Define the writs of *habeas corpus* and *mandamus*. How do these writs function as tools for enforcing fundamental rights in India?
6. Assess the impact of landmark judgments on the interpretation and expansion of fundamental rights in India.

7. What is the role of the judiciary as the guardian of the Indian Constitution? How does it protect the rights of citizens?
8. Critically analyse the challenges faced by the judiciary in balancing the enforcement of fundamental rights with the need to respect the legislative and executive branches' authority. How can these challenges be addressed?

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Suggested Reading

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



BLOCK 3

Union Government

UNIT 1

Union Legislature

Learning Outcomes

A careful study of the unit will enable you to

- ▶ Critically understand the history and composition of the Indian Parliament;
- ▶ Comprehend the composition, power, and functions of the House of People (Lok Sabha);
- ▶ Understand the composition, power, and functions of Council of States (Rajya Sabha);
- ▶ Evaluate the joint sitting of the Parliament and the role of Lok Sabha Speaker; and
- ▶ Critically analyse the legislative process and different stages in it.

Background

The historical legacy of India's legislature traces back to its colonial past under British rule, where the seeds of parliamentary institutions were first sown. The Regulating Act of 1773, followed by the Charter Acts, laid the foundation for legislative councils, marking the beginning of representative governance in India. With the Government of India Act of 1919, the bicameral legislature was introduced at the central level, and the Act of 1935 furthered the concept of responsible government, granting greater autonomy to provinces. However, true legislative independence was only achieved post-Independence, when the Indian Constitution came into force in 1950. This Constitution not only preserved but also evolved the parliamentary system by incorporating democratic ideals tailored to India's social, cultural, and political contexts, thus giving birth to the modern structure of the Indian Parliament.

The Indian Parliament, a symbol of sovereignty and democracy, was designed as a bicameral legislature comprising the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). The vision behind this structure was to ensure that both the people and the states had an active role in governance, reflecting the federal nature of India. The Lok Sabha, elected by the people, represents the democratic will of the nation, while the Rajya Sabha offers a platform for states' representation. This framework was

set against a backdrop of India's struggle for self-rule, aiming to create a legislative body that not only made laws but also safeguarded individual rights and promoted social justice. Thus, India's Parliament stands as a product of historical evolution, crafted to suit the complex and diverse needs of a newly independent nation.

Keywords

Bicameral Legislature, Financial Control, Cabinet, Casting Vote

Discussion



3.1.1 Indian Parliament: History and Evolution

India follows a parliamentary form of government where the Parliament is the supreme legislative body of the Republic, serving as a symbol of the country's democratic foundations. It plays a crucial role in shaping the legislative framework of the nation, reflecting the will of the people. The legacy of the legislative system in India can be traced back to the colonial period. The foundation of a legislative system in India was laid by the British with the Regulating Act of 1773 which restricted the rule of the East India Company in India. Later in 1833, a clear distinction was drawn between the executive and legislative roles of the Governor-General's Council. The Indian

► Evolution of Parliament during the British period

Councils Act of 1861 furthered this by gradually increasing the legislative responsibilities assigned to the legislative councils and progressively involving "natives" in the legislative process. The Morley-Minto Reforms of 1909 aimed to expand both the imperial and provincial legislative councils by incorporating elected non-official members. However, as we mentioned in the first block of this course, the Government of India Act of 1919 and the Government of India Act of 1935 were pivotal in shaping the modern parliamentary system. These acts introduced bicameral legislatures at the central level and provided for the establishment of a federal structure. The Government of India Act 1947 ended British sovereignty over India, transferring authority to the Constituent Assembly, which was tasked with drafting a new constitution and acting as the legislative body. This initiated the path of the nation to democracy, with parliamentary government central to its political structure. The prime goal of the assembly was to create a constitution that would unify the nation socially and politically.

Qualification for membership of parliament

A person to be elected as a member of parliament must possess the following qualifications:

1. He must be a citizen of India;
2. He must be not less than 30 years in the case of Rajya Sabha and not less than 25 years in the case of the case of Lok Sabha;
3. He must not hold any office of profit under the government of India or any state government; and
4. He must possess all other qualifications as may be prescribed by the parliament.

► Vacation of seats

The Representation of Peoples Act, 1951 requires that a person's name should be registered as a voter in any parliamentary constituency. However, the constitution does not prescribe any educational qualifications for the membership of the parliament.

If a member of either House of the parliament absent himself/herself from all meetings without the permission of the House for a period of sixty days the House may declare his seat as vacant.

3.1.2 Structure and Functions of the Parliament

The Parliament of India is a bicameral institution, consisting of two houses: the Upper House referred as Rajya Sabha

► Consists of two houses

(Council of States) and the Lower House referred as Lok Sabha (House of the People). These two houses, along with the President of India, form the Parliament. Each house has its unique composition, functions, and powers, contributing to the legislative process.

► Legislative functions are the core functions

3.1.2.1 Functions of the Parliament

As per the Parliamentary form of government followed by India, the executive power is exercised by those legislators whose party holds a majority in the lower house of Parliament, and they continue in office as long as they maintain that majority. The legislative functions of Parliament stem from this core aspect of the parliamentary system. We can summarise the main functions of the Parliament as follows.

1. **Formation of the Cabinet:** The primary function of Parliament is to form the Cabinet and hold it accountable. Although the Cabinet is primarily accountable to the lower house, its members may also be drawn from both Houses.
2. **Control of the Cabinet:** The Cabinet remains in power so long as it retains the confidence of the Lok Sabha, as mandated by Article 75(3) of the Constitution. Members have the power to question ministers, demand explanation, and seek clarification on government policies and actions.
3. **Criticism of the Cabinet and Individual Ministers:** The Cabinet formulates the policies of the government; the function of the parliament is to bring about a discussion or criticism of the policies on the floor of the House. This critical function is essential for maintaining a responsible government and preventing autocracy. Both houses participate in this function, although only the Lok Sabha has the power to bring down the Cabinet as per Article 75(3). The role of the Parliament is to facilitate a discussion and criticism of government policy, allowing the Cabinet to receive feedback and the public to be informed about alternative perspectives, which is crucial for the functioning of representative democracy.
4. **Legislation:** Another key function of Parliament is law-making, as outlined in Articles 107-108 and 245. In India, the volume of legislation has steadily increased since the inception of the Constitution to support various development initiatives and the establishment of a welfare state.
5. **Financial Control:** Parliament holds exclusive authority for approving public expenditures, determining the purposes for which funds will be allocated, raising revenue

through taxes and other means, and ensuring that funds are spent for their intended purposes. As in the British system, the Lok Sabha holds the dominant power in financial matters under our Constitution.

6. An organ of information: As an organ of information, the parliament is more powerful than the press or any other private agency. The parliament secures information authoritatively. The information is collected and disseminated not only through the debates but also through the specific medium of questions to ministers.
7. International Relations: The parliament also plays a role in India's international relations. It ratifies treaties, approves agreements with other nations, and monitors the government's foreign policy decisions and promotes accountability.

3.1.3 Composition of the Lok Sabha



The Lok Sabha is the lower house of the Parliament and is directly elected by the people of India based on adult suffrage. Every citizen who is not less than 18 years of age and not disqualified due to non-residence, unsoundness of mind, crime or corrupt or illegal practice are entitled to vote in the election of its members. It has a maximum strength of 550 members, including up to 530 representatives of states, up to 20 representatives of union territories. There was a provision empowering the President to nominate two members from the Anglo-Indian community if they have inadequate

► principal legislative body

representation in the House until 2020. However, this provision was removed through the 104th Constitutional Amendment Act in 2019. At present, there are 543 members. Out of which 530 are elected from the states and 13 from the union territories. The Lok Sabha's term is a maximum of five years, extendable by one year at a time during emergencies, with no set minimum term. The Parliament can be dissolved and new elections held if the government loses the confidence of the house, but often, fresh elections are timed by the Prime Minister for political advantage. The Lok Sabha is constitutionally required to meet twice a year, with a maximum gap of six months between sessions, although it typically meets three times a year. Parliamentary business is conducted mainly in Hindi or English, though any recognised official language may be used. The Lok Sabha is the principal legislative body, with significant powers over the Rajya Sabha, particularly in matters of finance. It is responsible for passing bills, including money bills, and plays a key role in the formation of the government.

3.1.4 Powers and Functions

Legislative powers: The primary function of the Lok Sabha is to enact laws. It has the power to introduce and pass bills on a wide range of subjects listed in the Union and Concurrent Lists of the Constitution. Once a bill is passed by the Lok Sabha, it moves to the Rajya Sabha (the upper house) for approval. If the Rajya Sabha suggests amendments or rejects the bill, the Lok Sabha can either accept or reject those amendments. In the case of a disagreement between the two houses, a joint sitting may be convened by the president to resolve the issue.

Financial powers (Money Bill): The Lok Sabha has exclusive powers over money bills, which deal with taxation, borrowing, expenditure, and financial matters. A money bill can only be introduced in the Lok Sabha and must be passed by it before being sent to the Rajya Sabha. The Rajya Sabha must pass it within a period of 14 days. If Rajya Sabha returns the money bill with some recommendations of its own, the Lok Sabha may accept or reject them. However, a money bill can in no case be referred to back to the Rajya Sabha for a second time. Moreover, it is one of the powers of the speaker to decide whether a bill is a money bill or not. It is, therefore, clear that the Lok Sabha alone is powerful in financial legislations.

Control Over the Executive: The Lok Sabha exercises significant control over the executive branch. The Prime Minister and the Council of Ministers are collectively responsible to the Lok Sabha. The Lok Sabha can hold the executive accountable

through various mechanisms such as the question hour, debates, motions of no confidence, and adjournment motions. If the Lok Sabha passes a vote of no confidence against the government, the entire Council of Ministers must resign. In case the Lok Sabha rejects a government bill or a budget, or disapproves official policy or shows its lack of confidence in the government policies, it shall amount to the expression of a vote of non-confidence.

3.1.5 Composition and membership of the Rajya Sabha



The Rajya Sabha, or the Council of States, is the Upper House in the bicameral Parliament of India. The decision to establish a bicameral legislature in India was influenced by three key factors. Firstly, as its name suggests, the Rajya Sabha was intended to represent and safeguard the rights of states within a federal system. It reflects the federal characteristic of the polity by representing each unit of the federation. However, unlike the American system where all states are represented equally in the Second Chamber, the Council of States in India has varied representation for each state ranging from 1 (Nagaland) to 31 (Uttar Pradesh). Similarly, the Rajya Sabha holds equal importance to the Lok Sabha in the Electoral College responsible for electing the President. The second reason for having a bicameral legislature was to create an institutional mechanism for re-evaluating legislation even after it had been passed by the Lok Sabha. This role of the Rajya Sabha largely depends

► Reflection of the federal characteristic of the polity

on the party composition in both Houses and was less effective during periods of one-party dominance especially during the early decades after the Independence when the Congress Party was ruling the centre and majority of the states. Thirdly, the Rajya Sabha allows for the introduction of bills in Parliament even when the Lok Sabha is not in session, enabling much of the debate and legislative work to be completed before the Lok Sabha reconvenes.

► permanent body

Unlike the Lok Sabha, the Rajya Sabha is a permanent body and not subject to dissolution. However, one-third of its members retire every two years. The maximum strength of the Rajya Sabha is 250 members, out of which 238 are elected by the elected members of the State Legislative Assemblies and members of electoral college representing the Union Territories in accordance with the system of proportional representation by means of the single transferable vote. The remaining 12 are nominated by the President from among persons who have achieved distinction in the fields of literature, science, art, and social service. The Rajya Sabha plays a vital role in reviewing, amending, and delaying legislation passed by the Lok Sabha, ensuring a federal balance.

3.1.6 Powers and Functions of the Rajya Sabha

Law-Making Authority: The Rajya Sabha shares equal power with the Lok Sabha in non-financial matters. Both houses must pass a bill for it to become law (except in the case of money bills). A bill can be introduced in either house, and after being passed by one house, it moves to the other for consideration. The Rajya Sabha can approve, amend, or reject the bill. If there is a disagreement between the two houses, a joint sitting may be convened to resolve the issue, although the Lok Sabha generally has an advantage due to its larger membership.

Minimal Role in Money Bills: The Rajya Sabha has limited powers over money bills, which exclusively deal with financial matters such as taxation and government spending. A money bill can only be introduced in the Lok Sabha. Once passed by the Lok Sabha, it is sent to the Rajya Sabha, which must return the bill within 14 days with or without recommendations. However, the Rajya Sabha cannot amend or reject a money bill, and the Lok Sabha can choose to accept or ignore its recommendations. Thus, the Rajya Sabha is powerless in money matters.

Executive Powers

The Rajya Sabha has some executive powers. It is true that the council of ministers is collectively responsible to the Lok Sabha. However, it does not mean that the Rajya Sabha cannot pass a vote of censure. But its members may exercise control over the government by means of asking questions, tabling important motions, introducing resolutions and call attention motions and demanding half an hour discussion. Thus, it has ample opportunities to control the executives.

► Legislation in the matters in State List

Role in Federal Structure: Under Article 249 of the Constitution, the Rajya Sabha has the unique power to authorise the Parliament to legislate on matters enumerated in the State List (subjects usually reserved for state legislatures) if it is deemed necessary in the national interest. To exercise this power, the Rajya Sabha must pass a resolution by a two-thirds majority of members present and voting. Once the resolution is passed, Parliament can legislate on the state subject for a period of one year, which can be extended by further resolutions.

Creation and Abolition of All-India Services: The Rajya Sabha has the power to recommend the creation of new All-India Services or the abolition of existing ones. This power is exercised by passing a resolution with a two-thirds majority of the members present and voting. Once such a resolution is passed, Parliament can legislate on the matter.

► Ratifying proclamations of National Emergency

Both Rajya Sabha and Lok Sabha play a crucial role in amending the Constitution, requiring a two-thirds majority in both houses, with certain amendments also needing ratification by state legislatures. Both houses hold the power to ratify proclamations of National Emergency, Presidential Rule, and Financial Emergencies. The approval of Rajya Sabha is required if the Lok Sabha is dissolved at the time. Additionally, both houses wield the power to scrutinise the delegated legislations, if they exceed the authority granted by the parent law.

3.1.7 Joint Sitzings of Parliament

It is already mentioned that any bill, except a Money Bill, can only become law if both houses of Parliament agree on its provisions or amendments. In the case of Money Bills, this issue does not arise, as the Lok Sabha holds the final power to pass them. If there is disagreement, the Lok Sabha can override the recommendations of the Rajya Sabha, making its decision final. For all other bills, including financial bills, Article 108 of the Constitution provides for a joint sitting of both houses

to resolve disagreements. The President may call for a joint sitting if:

► Lok Sabha holds the final power in financial bill

- a. a bill is rejected by the other House after being passed by the first.
- b. there is a final disagreement between the Houses on amendments to be made to the bill, or
- c. more than six months have passed from the date of the receipt of the Bill by the other House without the bill being passed by it.

The President cannot notify a joint sitting if the bill has lapsed due to the dissolution of the Lok Sabha, but once a joint sitting is called, the subsequent dissolution of the Lok Sabha does not prevent it from occurring. The Speaker presides over the joint sitting. In the absence of the speaker, the Deputy Speaker, Deputy Chairman of the Rajya Sabha, or another member chosen by those present preside over the joint sitting.

At the joint sitting, amendments to the bill are restricted:

- a. If the bill was rejected or delayed by the Rajya Sabha, only necessary amendments due to the delay can be proposed.
- b. If the deadlock arose due to disagreements over amendments, both necessary amendments and those related to the points of disagreement can be proposed.

If the bill, with or without amendments, is passed by a majority of members present and voting at the joint sitting, it is considered passed by both houses. It is important to note that the joint sitting procedure under Article 108 does not apply to constitutional amendment bills, which must be passed by each house separately with a special majority, as required by Article 368(2). Until now only three bills have been passed during a joint session. They are:

1. Dowry Prohibition Bill (1961)
2. Banking Service Commission (Repeal) Bill, 1978; and
3. POTA Bill 2002

3.1.8 Role of the Lok Sabha Speaker

The Speaker is the presiding officer of the Lok Sabha. He/she holds the office of great honour, dignity, and authority. He/

she is elected by the members of the Lok Sabha from among its members. The date of the election is fixed by the President. Usually, the Speaker belongs to the ruling party. However, once elected, he/she is expected to act as the neutral guardian of the rules and procedures of the House, presiding impartially over its deliberations.

The office of the Speaker was created in 1921 under the Government of India Act of 1919 (Montague-Chelmsford Reforms). The first Speaker of the Central Legislative Assembly was Sir Frederick Whyte. After independence, the office of the Speaker was adopted in 1947. G.V. Mavlankar became the first Speaker of the Indian Parliament.

The Speaker continues in office even if the Lok Sabha is dissolved until a newly elected Lok Sabha meets.

Powers and Functions

The Speaker has great responsibilities. He/she is the pivot of the Lok Sabha. His/her important powers and functions may be enumerated as follows:

1. The Speaker presides over the meetings of the Lok Sabha and chairs its proceedings. It is his/her primary responsibility to maintain order in the House. The Speaker sees to it that the proceedings are conducted in a disciplined and decorous manner.
2. The Speaker has the final power of maintaining order within the House. He/she points out the rule of procedure, adjourns the House, or suspends it in case of a breakdown of quorum or transgression of the business of the House.
3. He/She presides over the joint sitting of the House. When the two Houses of Parliament have differences regarding any ordinary bill, they meet in a joint session. The Speaker presides over such meetings and decides all procedures in this respect, as well as conducts the debate.
4. Maintaining discipline in the House is the fundamental duty of the Speaker. He/she may direct any member to withdraw from the House. He/she may even suspend a member for five days if the member disobeys the order of the Speaker and persists in obstructing the debates and proceedings of the House.
5. It is the Speaker who certifies whether a bill is money or not and his/her decision is final. Every money bill originates in the Lok Sabha, and it is submitted to the Speaker for his/her decision.

6. The Speaker allows members to speak, decides the time of discussion, and gives permission to introduce bills. No member has the right to speak without the permission of the Speaker.
7. The Speaker appoints the various employees and officers of the House. He/she performs various administrative duties and functions in relation to the House.
8. The Speaker is the guardian of the privileges of the members of the Lok Sabha. He/she ensures that none of the members' privileges is infringed upon and that members enjoy full freedom of speech in the House.
9. The Speaker recognises the official opposition. He/she directs the government about the opposition parties or groups in the House. If no party in the House is entitled to the status of opposition, he/she decides the leader of the opposition.
10. The Speaker is the presiding officer of the House of People. He/she decides on questions of disqualification of the members of the Lok Sabha on the grounds of defection under the 10th Schedule. The Speaker's decision on such matters is final.

► Speaker represents the dignity and independence of the House

The Speaker has great independence and impartiality in the discharge of his/her functions. Though he/she may be a member of a party, it is necessary to remember that the office of the Speaker is an office of great responsibility. He/she cannot engage in active politics and cannot join any party meetings. He/she represents the dignity and independence of the House and has great influence inside and outside Parliament. He/she symbolises the authority of the House.

In conclusion, we may say that the Speaker represents the House. He/she is the guardian of the traditions of parliamentary democracy. He/she has the highest place of honour in the country. The office of the Speaker is a symbol of national freedom and liberty. Thus, the Speaker occupies a position of great respect and should be occupied always by a man/woman of outstanding ability and impartiality.

3.1.9 The Legislative Process

The Parliament in India can make laws on the subjects specified in the Constitution. As per the Constitution the Parliament can make laws in the matters specified in the Central list and the Concurrent list. It can also make laws on subjects that are residuary subjects, that is, those which are not

► Introducing a bill in the Indian Parliament

allocated to states and which are not covered by the specified subjects allocated to Parliament. The first and crucial step in the law-making process is introducing a bill in the Indian Parliament. A bill is a draft of a proposed law that is introduced in either house of Parliament for discussion and approval. If passed by both houses and given assent by the President, the bill becomes law.

3.1.9.1 Classification of Bills

1. Government/Public Bills

► Bills are reflection of the government's policies

Government Bills, also known as Public Bills are those introduced by a Minister in the Parliament. Most legislative proposals, even those not related to finance, are typically presented to Parliament by ministers in the form of government bills. These bills reflect the government's policies and are part of its legislative agenda. These Bills are considered more significant because they usually involve matters of public policy, governance, and the administration of the country. These bills are usually initiated by specific ministers. Once a legislative idea is conceived, the responsible ministry thoroughly examines its constitutional, administrative, political, financial, and other implications, often consulting experts. If the proposal affects other ministries or state governments, their input is sought. The Ministry of Law and the Attorney General of India review the legal and constitutional aspects. After careful examination, the sponsoring ministry prepares a memorandum for the Cabinet. The Cabinet may approve the proposal after considering its policy implications or refer it to a standing or ad hoc committee for further detailed consideration.

In some cases, after approving the basic principles, the Cabinet may request that the final draft of the bill be reviewed again. Once the Cabinet gives its approval, the sponsoring ministry sends the necessary documents to an official drafts person who creates the bill. This draft is reviewed by the concerned ministry, often requiring several revisions before the final bill is prepared.

► Delegated legislation

The Parliament mainly modifies and approves policy proposals from the executive. Delegated legislation arises from the increasing workload on the legislature, allowing the permanent executive to address specific details within the framework set by Parliament. Before a legislative proposal reaches Parliament, extensive groundwork is done by the executive, including gathering information, conducting research, and exploring alternatives. In Parliament, a bill

follows a systematic process to become law, including three readings in each House, which we will briefly discuss.

2. Private Bills

► Committee on Private Members' Bills and Resolutions

Private Members' Bills are introduced by members of Parliament who are not ministers, hence the term "private members" is used. While these bills allow individual MPs to propose legislation on various issues, they are less likely to be passed since they do not represent the government's position. These bills can only be discussed on specific days set aside for private bills. The Secretariat of the House reviews these bills, and members are usually given help in drafting them correctly. These bills are then sent to a special committee known as the Committee on Private Members' Bills and Resolutions, which exists in both the Lok Sabha and Rajya Sabha. After the Committee submits its report and the bill is circulated among the members of the House, it is considered formally introduced. From there, it follows the same procedures as other non-financial bills. The main goal of private members' bills is to spark public debate on important social, economic, and political issues, making the government aware of the public's views. However, it is important to note that private members cannot introduce financial or money bills.

3. Money Bill

A bill is classified as a 'Money Bill' if it exclusively contains provisions related to certain financial matters. These include:

► Money, and Financial Bills

- a. imposing, abolishing, altering, or regulating any tax;
- b. regulating government borrowing;
- c. managing the Consolidated Fund or the Contingency Fund of India, including depositing or withdrawing money;
- d. appropriating funds from the Consolidated Fund of India;
- e. declaring or increasing expenditure charged to the Consolidated Fund of India;
- f. handling the receipt, custody, or audit of money related to the Consolidated Fund or the public account of India;
- g. any matter incidental to these financial issues.

According to Article 110 of the Constitution, a bill is considered a Money Bill only if it meets these criteria. The decision of whether a bill qualifies as a Money Bill is made by

the Speaker of the Lok Sabha, and the Speaker's certification is final and cannot be challenged.

4. Financial Bill

A Financial Bill broadly refers to any bill that deals with government revenue or expenditure. However, in the context of the Constitution, the term has a more technical meaning. While all Money Bills are Financial Bills, all Financial Bills are not Money Bills. A bill must meet the specific conditions outlined in Article 110 to be considered a Money Bill. If a bill does not meet these conditions but still relates to financial matters, it is classified as a Financial Bill, and it does not require the Speaker's certification as a Money Bill.

► Article 110

3.1.10 Stages of Legislation

1. First Reading

The legislative process begins with the introduction of a bill in either the Lok Sabha or the Rajya Sabha. A minister or member proposing the bill must first seek permission from the House to introduce it. If the House grants this permission, the bill is formally introduced, marking the first reading. If there is opposition to the introduction, the Speaker may allow brief explanations before putting the motion to a vote. Finance Bills or Appropriation Bills are directly put to a vote without debate. Once introduced, the bill is published in the Official Gazette. If the bill is published before its introduction with the Speaker's permission, formal introduction in the House is not required.

► Formal introduction of the bill

2. Second Reading

The second reading involves two stages. The first stage is a general discussion on the bill's principles. The House may refer the bill to a Select Committee, a Joint Committee of both Houses, or circulate it to gather public opinion. Complex or controversial bills are often sent to a Select or Joint Committee, where the bill is examined clause by clause, and amendments can be proposed. The committee may also gather evidence from experts or interested parties. After reviewing, the committee submits a report to the House for further consideration. If the bill was circulated for public opinion, the opinions are tabled in the House, and the bill is usually referred to a committee. The second stage of the second reading involves detailed discussion and voting on each clause and any proposed amendments. Amendments accepted by a majority become part of the bill.

► General discussion on the bill's principles

3. Third Reading

► Arguments for or against the bill

In the third reading, the member responsible for the bill moves for its passage. This final stage focuses on arguments for or against the bill, without delving into details. Only minor, formal amendments are allowed. A simple majority of members present and voting is required to pass an ordinary bill. However, a Constitutional amendment bill requires a majority of the total membership of the House and at least two-thirds of members present and voting. After the bill is passed by one House, it is sent to the other House for consideration, where it undergoes a similar three-stage process. For Money Bills, the Lok Sabha has exclusive legislative power, and the Rajya Sabha can only suggest amendments, which the Lok Sabha may accept or reject. If the Rajya Sabha does not return a Money Bill within 14 days, it is considered as passed by both Houses in the form approved by the Lok Sabha.

4. Presidential Assent and Gazette Notification

► The bill becomes an Act after the President's assent

Once a bill is passed by both Houses of Parliament, the Secretariat of the House that last handled the bill sends it to the President for approval. The bill becomes an Act only after the President gives his/her assent. The President has the option to either approve or withhold approval. Additionally, the President can return the bill, with recommendations, to the Houses for reconsideration—except in the case of a Money Bill. If the Houses pass the bill again, with or without changes, the President must then give his/her assent.

3.1.11 Role of Parliamentary Committees

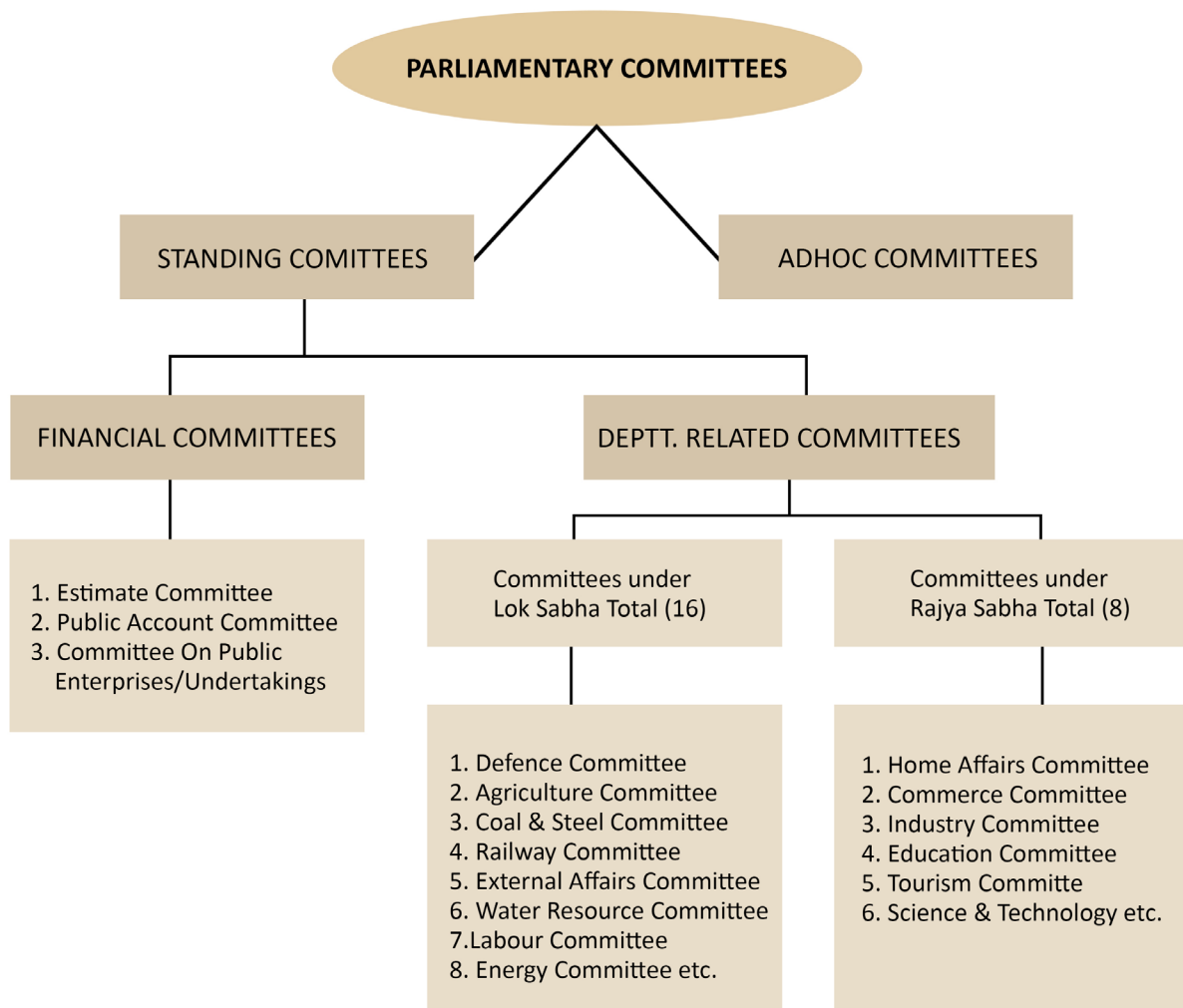
Parliamentary committees are essential for the efficient functioning of Parliament. These committees are responsible for detailed examination of legislative proposals, budgetary allocations, and policies of the government. Committees like the Public Accounts Committee, Estimates Committee, and Committee on Public Undertakings ensure accountability and transparency in government functioning. These committees work in smaller groups, allowing for more focused and in-depth discussions.

A Parliamentary committee is one that is either appointed or elected by the House, or nominated by the Speaker, and it works under the Speaker's direction, submitting its report to the House or the Speaker. There are two main types of parliamentary committees: Standing Committees and Ad hoc Committees. Standing Committees are elected or appointed annually or

► Standing and ad hoc committees

periodically, and their work continues on an ongoing basis. Ad hoc Committees are formed for specific tasks as needed and disbanded once their work is completed and their reports are submitted.

Committees often meet while the House is in session, allowing the House to handle multiple items of business simultaneously. Their importance has grown due to the legislature's limited capacity to conduct detailed examinations, gather evidence, and deliberate over complex issues. The committee process is more flexible, with no formal motions, speeches, or divisions, enabling members to engage in more informal and direct discussions.



- Growing importance due to the legislature's limited capacity

As committee proceedings are not open to the public or press, members can operate more freely, often setting aside party lines to consider issues from broader perspectives. The expertise within these committees lends authority to their opinions and recommendations, given the specialised knowledge and interest of the members involved.

- The Lok Sabha has around eighteen standing committees

The Lok Sabha has around sixteen standing committees, each with varying membership, such as the Business Advisory Committee, Committee on Privileges, Committee on Private Members' Bills, Committee on Subordinate Legislation, and General Purposes Committee. Among these, the three financial committees- Committee on Estimates, Public Accounts Committee, and Committee on Public Undertakings- are particularly important for overseeing government spending and performance. While members of the Rajya Sabha are involved in the Public Accounts and Public Undertakings Committees, the Committee on Estimates consists solely of Lok Sabha members. These committees bring out cases of irregular, unauthorised and improper usage and wastage and extravagance in public expenditure.

The control exercised by these committees is ongoing. They gather information through questionnaires, memoranda from non-official organisations and experts, on-site studies, and oral examinations of witnesses. The Financial Committees cover a broad range of governmental activities, ensuring that their recommendations are given due consideration by the Government. The implementation progress and any unresolved issues between the Committees and the Government are documented in "Action Taken Reports," which are presented to the House periodically.

Summarized Overview

The unit provides a comprehensive overview of the Indian Parliament, tracing its historical evolution from colonial legislative reforms to its current structure and functions. The Parliament, as the supreme legislative body, consists of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States), along with the President. It plays a central role in the legislative process, cabinet formation, and financial oversight, ensuring a responsible government. The unit explores the distinct powers and composition of both houses, highlighting the legislative procedures, including the stages of bill passage, joint sittings to resolve disagreements, and the critical role of the Lok Sabha Speaker in maintaining parliamentary order. Through this framework, the unit emphasises the pivotal function of the Parliament in shaping India's democratic

governance and upholding the federal structure of the country. Despite its crucial role, the Indian Parliament faces several challenges, including disruptions, declining quality of debates, and increasing criminalisation of politics. Frequent disruptions in the functioning of Parliament lead to loss of valuable legislative time. To address these challenges, various reforms have been suggested, such as the introduction of a code of conduct for members, strengthening the committee system, and ensuring better attendance and participation in parliamentary proceedings.

Assignments

1. Trace the evolution of the Indian Parliament from the Colonial period to its modern form.
2. Discuss the composition and powers of the Lok Sabha in the Indian Parliament.
3. Explain the role and significance of the Rajya Sabha in India's bicameral parliamentary system.
4. Describe the stages of the legislative process in the Indian Parliament.
5. Analyse the impact of the Government of India Acts of 1919 and 1935 on the development of the Indian parliamentary system.
6. Evaluate the effectiveness of the Rajya Sabha in representing state interests within the federal structure of India.
7. Critically assess the role of the Lok Sabha Speaker in maintaining the balance between parliamentary debate and legislative efficiency.
8. Examine the relevance of joint sittings in the Indian parliamentary system for resolving legislative deadlocks.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Union Executive

| Learning Outcomes

A careful study of this unit will enable you to

- ▶ Understand the powers, function and relevance of the President of India
- ▶ Critically analyse the role and powers of the President in Indian Polity
- ▶ Comprehend the role, functions of the Prime Minister in governance
- ▶ Evaluate the role and functions of Cabinet Ministers and Council of Ministers
- ▶ Analyse the significance of collective responsibility of Council of Ministers

| Background

The Union Executive is a crucial component of the Indian political system, defined by the Constitution and comprising the President, the Vice-President, the Prime Minister, and the Council of Ministers. Article 53 of the Indian Constitution vests executive authority in the President, making him the ceremonial head of the state. However, the real executive power is exercised by the Prime Minister and the Council of Ministers, who are responsible for the day-to-day administration of the government. The role of the President, while largely symbolic, is integral to maintaining the constitutional balance of power, ensuring that executive actions are carried out in accordance with the law. The Prime Minister, as the head of the government, is the principal advisor to the President and leads the executive branch, coordinating the activities of various ministries. The structure of the executive reflects the federal nature of Indian governance, balancing the ceremonial duties of the President with the practical powers vested in the Prime Minister and the Council of Ministers.

| Keywords

Ceremonial Head, De facto Sovereign, Collective Responsibility, Coordination, Federal structure



3.2.1 The President

► Ceremonial role of president

As per the Article 53 of the Constitution, the executive authority of the Indian government is vested in the President, who serves as the formal head of state and a symbol of national unity. Although the Constitution of India grants the President the authority and dignity, it does not provide substantial powers to him in carrying on the business of the government. The President primarily fulfils a ceremonial role, while real executive power is exercised by the Council of Ministers under the leadership of the Prime Minister. The duties of the President are carried out with the assistance and counsel of the Prime Minister. The Constitution also establishes the role of a Vice-President, who is also indirectly elected and assumes the duties of the President in the event of resignation, impeachment, or death.

Qualifications: According to Articles 58 and 59 of the Constitution, a candidate for the presidency must be an Indian citizen, at least 35 years old, and eligible to become a member of the Lok Sabha. The candidate cannot hold any office of profit under the Union, State, or local governments, or other authority subject to the control of any of the mentioned Government. However, a sitting President or Vice-President or the Governor of any State or a Minister either for the Union or for the State is not disqualified for election as President.

► Proportional representation by means of a single transferable vote system

Method of Election: The President is elected indirectly by an electoral college, which includes the total elected members of both Houses of Parliament, the elected members of the State legislative assemblies and elected members of the Legislative Assemblies of Union Territories of Delhi and Puducherry. The election is conducted through proportional representation by means of a single transferable vote system, designed to ensure the election of a candidate who represents the entire nation. The value of votes from state assembly members is calculated based on the population of the state, while the value of parliamentary votes is determined by dividing the total number of state assembly votes by the total number of elected members of both houses of Parliament. The voting process involves casting first and second preferences, with the candidate needing an absolute majority to win. If no candidate secures a majority in the first round, the second preference votes are counted until a candidate surpasses the 50% mark. This election method aims to create a broad-based and politically balanced process that reflects

the federal nature of Indian governance, with the President symbolising both the Union and the states.

Term of Office: The term of the President is five years, beginning from the date of taking office after an oath administered by the Chief Justice of India. The President may seek re-election, as many times as he desires. An election to fill the vacancy must be completed before expiration of the term. The President remains in office until a successor is appointed notwithstanding the expiry of his term in this case. If the office becomes vacant other than the expiry of his term, the Vice-President assumes the role until a new President is elected within six months.

► Articles 56 and 61 outline the impeachment process

Removal from the Office: The Constitution provides that the President must exercise the duties and powers assigned to him according to the Constitution. Therefore, if the President violates any of the mandatory provisions of the Constitution, he is liable to be removed from the office through the process of impeachment. Articles 56 and 61 outline the impeachment process, which can be initiated in either House of Parliament after moving a resolution in fourteen days' notice containing the proposal in writing with the support of one-fourth members of that House. The impeachment motion must be supported by at least two-thirds of the total membership of the initiating house. The other House then investigates the charges. The president has the right to appear and to be represented in such an investigation. If the other house confirms the charges with a two-thirds majority, the President is removed from office. This stringent process ensures that the power to remove the President is not misused. It is also remarkable that till this date, no President of India has been impeached.

3.2.2 Powers of the President

As the head of the State, the Constitution has incorporated various powers and functions of the President including administrative, legislative, military, diplomatic, judicial and emergency powers. Now let us discuss these powers in detail.

3.2.2.1 Administrative Powers

Article 53 provides that all executive powers of the Union are vested in the President, who can exercise them directly or through subordinate officers. The Administrative Power means the execution of laws and the administration of the departments of government. In the Parliamentary system followed in India, the government departments are functioning under the control and responsibility of the respective Ministers in charge

► All executive powers of the Union are vested in the President

of it. The President remains the formal head of all of these administrative units and all officers of the government are his subordinates. The constitution provides that He should be informed of all affairs of the Central Government. The Prime Minister must keep the President updated on all decisions of the Union Council of Ministers. Similarly, Article 77 requires that all executive actions of the Union government be carried out in the name of the President. It is with this reason that all contracts and assurances of property made on behalf of the Government of India must be expressed to be made by the President and executed in such manner as it is directed or authorised by the President. He directly administers the union territories through administrators appointed by him. He can declare any area as Scheduled Area and has power with respect to the administration of Scheduled Areas and Tribal Areas.

Administrative authority includes the power to appoint and remove high-ranking officials within the State. According to our Constitution, the President of India holds the authority to appoint the following:

1. The Prime Minister.
2. Other Union Ministers.
3. The Attorney-General of India.
4. The Comptroller and Auditor-General of India.
5. Judges of the Supreme Court.
6. Judges of the High Courts in various States.
7. The Governor of a State.
8. A Commission to investigate interference with water supplies.
9. The Finance Commission.
10. The Union Public Service Commission and Joint Commissions for a group of States.
11. The Chief Election Commissioner and other members of the Election Commission.
12. A Special Officer for the Scheduled Castes and Tribes.
13. A Commission to report on the administration of Scheduled Areas.
14. A Commission to investigate the condition of backward classes.
15. A Commission on Official Language.
16. A Special Officer for linguistic minorities.

For some appointments, the President is constitutionally required to consult individuals other than the ministers. For instance, while appointing Supreme Court Judges, the President must consult the Chief Justice of India and other Judges of the Supreme Court and High Courts as deemed necessary [Art. 124(2)].

The President also holds the power to remove:

1. A Minister on the advice of the Prime Minister.
2. The Attorney-General of India.
3. The Governor of a State.
4. The Chairman or a member of the Union or State Public Service Commission, upon the Supreme Court's recommendation.
5. A Judge of the Supreme Court or a High Court, or the Election Commissioner, based on an address of Parliament.

3.2.2.2 The Military Power

The military powers of the Indian President are more limited compared to those of the American President or the British Crown. While the President of India holds the position of Commander-in-Chief of the Defence Forces, the Constitution explicitly states that the exercise of this power must be regulated by law [Article 53(2)]. This means that although the President may have the authority to declare war, make peace, or deploy the Defence Forces, Parliament has the authority to regulate or control how these powers are exercised. Unlike in the United States, the President's role as Commander-in-Chief in India is not independent of legislative oversight.

► Commander-in-Chief of the Defence Forces

Additionally, the Constitution mandates that certain actions, particularly those involving financial expenditure, cannot be undertaken without legal authorisation. For instance, actions related to the raising, training, and maintenance of the Defence Forces require parliamentary approval. In other words, the President cannot act unilaterally in these matters without first seeking sanction of the Parliament. [Article 114(3)]. Thus, the exercise of military power is regulated by the parliament.

► Legal authorisation

3.2.2.3 Legislative Powers

The legislative powers of the Indian President, similar to the Crown in England, make the President an integral part of the Union Parliament. This reflects a divergence from the principle of Separation of Powers seen in the U.S. Constitution. The

► President an integral part of the Union Parliament



President exercises these powers based on ministerial advice [Art. 74(1)] and can be categorised as follows:

1. **Summoning, Prorogation, and Dissolution:** The President has the authority to summon or prorogue the Houses of Parliament and dissolve the Lok Sabha. Additionally, in case of a deadlock between the two Houses, the President can call for a joint sitting [Arts. 85, 108].
2. **The Opening Address:** The President addresses both Houses at the beginning of the first session after each general election and at the beginning of the first session each year. [Art. 87]. This address often reflects the government's agenda for the session, akin to the 'Speech from the Throne' in England.
3. **Right to Address and Send Messages:** The President can address either House or a joint session at any time, requiring the presence of members for this purpose [Art. 86(1)]. The President also has the right to send messages to either House concerning pending Bills or other matters, which must be considered promptly [Art. 86(2)].
4. **Nominating Members to the Houses:** The President can nominate members to both Houses to ensure adequate representation of certain interests. For example, 12 members are nominated to the Rajya Sabha based on their expertise in literature, science, art, and social service [Art. 80(1)], and up to two members can be nominated to the Lok Sabha from the Anglo-Indian community [Art. 331].
5. **Laying Reports Before Parliament:** The President must ensure certain reports and statements are presented before Parliament, such as the Annual Financial Statement (Budget), the Auditor-General's report, the Finance Commission's recommendations, and reports from various commissions and officers regarding Scheduled Castes, Tribes, and linguistic minorities.
6. **Previous Sanction to Legislation:** For certain legislative matters, the President's prior sanction or recommendation is required before introduction. This includes Bills for the formation of new states, Money Bills, and those involving expenditure from the Consolidated Fund of India, among others [Art. 255].
7. **Assent to Legislation and Veto:** A Bill becomes an Act only after receiving the President's assent. The President can assent to, withhold, or return a Bill (except Money Bills and Constitutional Amendment Bills) for reconsideration by Parliament. If the Bill is passed again by both Houses and is resubmitted, the President must give assent to

it [Art. 111]. The Indian President's veto power combines elements of absolute, suspensive, and pocket vetoes:

A. Absolute Veto: Like in England, the Indian President can end a bill by withholding assent. Although this power is largely obsolete in England due to the Cabinet system, it was included in the Government of India Act, 1935, and remains in the Indian Constitution. Typically, this power is exercised on private members' bills. However, if a government bill passes and the Ministry resigns before the President assents, the new Council of Ministers may advise the President to use the veto, making it constitutionally valid even if Parliament passed the bill.

B. Suspensive Veto: If the President returns a bill or part of it for reconsideration, and Parliament passes it again by a simple majority, the President must assent. This differs from the U.S. qualified veto, where an extraordinary majority is required. The Indian President's return of a bill only delays its enactment, not stopping it permanently. This power is not applicable to Money Bills.

C. Pocket Veto: The Indian Constitution does not specify a time limit for the President to assent, refuse, or return a bill. Article 111 states only that the President should act "as soon as possible" after receiving a bill. This lack of a time limit implies that the Indian President can exercise a pocket veto by indefinitely delaying action on a bill, especially if the government is unstable and may soon fall.

8. **Ordinance-Making Power:** The President can issue Ordinances when Parliament is not in session, allowing for immediate legislative action. These Ordinances have the same force as Acts of Parliament but must be approved by Parliament within six weeks of reassembly or they cease to be effective [Art. 123]. There are three important conditions for this ordinance making power.

Firstly, the President can only exercise this power on the advice of the Council of Ministers, not based on his individual judgement, unlike the Governor-General under the Government of India Act, 1935. Secondly, the Ordinance must be presented before Parliament when it reconvenes and will automatically expire six weeks after Parliament's reassembly unless it is disapproved earlier. This means that an Ordinance can remain in effect for a maximum of six weeks from the date the Parliament reconvenes. If the two Houses reconvene on different dates, the six-week period is calculated from the later date.



► Ordinance making is temporary and subject to constitutional limitations

Thirdly, the President can only issue an Ordinance when either of the two Houses of Parliament has been prorogued or is not in session, making it impossible to pass legislation through Parliament. The President cannot issue an Ordinance while both Houses are in session. Therefore, the President's ordinance-making power is not a parallel or co-equal power of legislation but is only available when Parliament is not in session and unable to legislate. This ordinance-making power, inherited from the Government of India Act, 1935, allows the executive to legislate in the absence of Parliament, though it is temporary and subject to constitutional limitations. Unlike in the U.S., where such legislative power of the executive is inconceivable due to the strict separation of powers, this provision is justified in India to address urgent legislative needs during parliamentary recesses.

3.2.2.4 Financial Powers

► Constitutes the Finance Commission

The President's financial power is equally important. He is responsible for laying down the union budget before the parliament. No demand for grant can be made except on his recommendations. He can make an advance from the Contingency Fund of India. He constitutes the Finance Commission every five years to recommend the distribution of revenue between the centre and the states. No money bill can be introduced in the Lok Sabha without the sanction of the President.

3.2.2.5 Diplomatic Powers

► The President represents India in international arenas

The President's diplomatic power is extensive and often equated with authority over foreign or external affairs, which encompass all matters that connect the Union with any foreign nation. While Parliament holds the legislative power over these issues, as well as the authority to make and implement treaties, it cannot initiate actions in this domain. The responsibility for negotiating treaties and agreements with other countries, subject to Parliament's ratification, lies with the President, who acts on the advice of the Ministers. Additionally, although Parliament legislates on diplomatic representation, the President, like other heads of state, represents India in international relations. The President has the authority to appoint Indian representatives to other countries and to receive foreign diplomatic representatives, as recognised by Parliament.

3.2.2.5 Judicial Powers

As we already mentioned, the President has judicial powers, including appointing justices to the Supreme Court and High Courts and granting pardons or other forms of clemency.

The Power of Pardon: Most constitutions grant the head of the executive the authority to pardon individuals who have been tried and convicted of a crime. This power is intended to address potential judicial errors, as no system of justice is without flaws. The term "pardoning power" actually refers to a collection of related powers, each with distinct meanings and legal outcomes, including pardon, reprieve, respite, remission, suspension, and commutation.

Pardon: A pardon nullifies both the conviction and the sentence, releasing the individual from all punishments and disqualifications.

Commutation: This power substitutes one form of punishment with a lighter one, such as reducing a death sentence to rigorous imprisonment or simple imprisonment to a fine.

Remission: Remission decreases the length of a sentence without altering its nature, like reducing a one-year imprisonment to six months.

Respite: Respite involves imposing a lesser sentence than what is prescribed due to specific circumstances, such as the pregnancy of a female offender.

Reprieve: A reprieve temporarily delays the execution of a sentence, often pending further proceedings like a request for pardon or commutation.

These powers serve to mitigate the rigidity of criminal laws and protect individuals on humanitarian grounds. The President can also seek the Supreme Court's advice on important constitutional, legal, and diplomatic issues.

3.2.2.6 Emergency Powers

► Protecting sovereignty, integrity, and independence of the nation

The Constitution grants the President emergency powers to protect sovereignty, integrity, and independence of the nation. The President can declare three types of emergencies: a national emergency (due to war, external aggression, or armed rebellion), a state emergency (due to a breakdown of constitutional machinery), and a financial emergency.

- 1. National Emergency:** The President can declare a "Proclamation of Emergency" when there is a threat to the security of India or any part of it due to war, external aggression, or armed rebellion. This proclamation aims to safeguard the security of the nation and allows the Union to assume greater control over state affairs affected by such threats.

2. **State Emergency or Presidential Rule:** The President can issue a Proclamation of Emergency if the Constitutional machinery in a State fails either due to a political deadlock or failure to follow Union directives [Arts. 356, 365]. This allows the President to take over the powers of the State government and grant Parliament the authority of the State Legislature.
3. **Financial Emergency:** The President can declare a situation where the "financial stability or credit of India or any part thereof is threatened" [Art. 360]. The purpose of this proclamation is to preserve financial stability of the nation by controlling state expenditures, reducing public servant salaries, and directing states to follow financial propriety as necessary.

3.2.2.7 Constitutional Position of the President

► A position similar to that of the British monarch

The legal powers of the President of India are extensive, but in practice, the President occupies a position similar to that of the British monarch. As the nominal or constitutional head of the government, the President's role is largely ceremonial, with executive powers exercised on the advice of the Council of Ministers headed by the Prime Minister. This reflects the parliamentary system of government established by the framers of the Constitution, modelled on the British system.

► Formal head of the Union executives

The President serves as the formal head of the Union executive, but his powers are exercised in accordance with the advice of the Council of Ministers. In the landmark case of *U. N. Rao vs. Indira Gandhi*, the Supreme Court ruled that even after the dissolution of the Lok Sabha, the Council of Ministers continues to hold office, as mandated by Article 75(1) of the Constitution. This article stipulates that the President cannot exercise executive powers without the aid and advice of the Council of Ministers. Similarly, in *Shamsher Singh vs. State of Punjab*, the Supreme Court held that any action taken by the Governor or President without such advice is constitutionally invalid.

► President's discretion is limited by constitutional mandates

Regarding situations such as a hung parliament or the dissolution of the Lok Sabha, constitutional conventions and practices have firmly established the position of the Prime Minister. Although the President, in such cases, may act on the advice of the Council of Ministers to delay elections or extend the term of Parliament, the President's discretion is limited by constitutional mandates. For instance, while the President may have some discretion in the appointment of Rajya Sabha

members or Governors, these powers are exercised within the bounds of the Constitution.

► Article 75

The President of India, much like the English monarch, plays a largely symbolic role. The actual functioning of the office is dependent on the advice of the Council of Ministers. According to Article 75, the President cannot exercise executive authority independently, and any decision made in the absence of ministerial advice would be unconstitutional. The President embodies the dignity of the Indian executive, serving as a symbol of national unity and ceremony while leaving governance to the elected representatives.

3.2.3 The Prime Minister

► chief adviser to the President

The Prime Minister of India leads the executive branch of the Government of India and serves as the chief adviser to the President. The Prime Minister also heads the Council of Ministers and can be a member of either the Lok Sabha (House of the People) or the Rajya Sabha (Council of the States). However, he/she must belong to the political party or coalition that holds a majority in the Lok Sabha. As the most senior member of the cabinet within the parliamentary system, the Prime Minister has the authority to appoint or dismiss cabinet members, assign roles within the government, and preside over cabinet meetings. The Union Cabinet, led by the Prime Minister, is appointed by the President to assist in managing executive affairs. According to Article 75(3) of the Indian Constitution, the Union Cabinet is collectively accountable to the Lok Sabha. The Prime Minister must maintain the confidence of the majority in the Lok Sabha and is required to resign if he/she is unable to prove a majority when requested by the President.

3.2.3.1 Appointment

► The President appoints the Prime Minister

The Prime Minister is not directly elected by the public. Instead, the President appoints the Prime Minister. However, the President does not have free rein to choose anyone; He must appoint the leader of the party or coalition that holds the majority in the Lok Sabha. If no party or alliance has a clear majority, the President selects the person most likely to gain majority support. The tenure of the Prime Minister is not fixed; he/she remains in office as long as he/she enjoys the majority in Lok Sabha. Article 74(1) of the Constitution mandates that there shall be a council of ministers, led by the Prime Minister, to aid and advise the President, who acts in accordance with this advice. Thus, the real power lies with the council of ministers, headed by the Prime Minister, who, as the head of the government, wields extensive powers.

Term of office

- Vote of non-confidence

According to the constitution the Prime Minister holds office during the pleasure of the President. It seems that the president can remove him at any time but in practice it is not so. The President cannot remove a Prime Minister so long as he/she enjoys the confidence of the House. If Lok Sabha passes a vote of non-confidence, he/she will have to resign. It is thus evident that the term of office of the Prime Minister is not expressly fixed. It depends upon the will of the majority of the Lok Sabha.

3.2.4 Role of the Prime Minister

3.2.4.1 Formation of the Council of Ministers

- If the Prime Minister resigns, the entire Ministry must step down as well

The formation of the Council of Ministers starts with the appointment of the Prime Minister. He has the authority to choose members of the Cabinet. If the Prime Minister resigns, the entire Ministry must step down as well. In the event of the death of the Prime Minister, the Council of Ministers is automatically dissolved. The Prime Minister can also dismiss members of the Council of Ministers at any time, either by asking them to resign or by having the President remove them. Thus, other Ministers effectively serve at the pleasure of the Prime Minister. He/she is the chairman of the cabinet and presides over its meeting.

3.2.4.2 Distribution of portfolios

- Determine the size of the Cabinet

Another important task of the Prime Minister is to distribute portfolios among the ministers. He/she has a free hand in assigning various departments to his colleagues. It is for him/her to determine the size of the Cabinet and the Ministers to be included in it. He/she may even select ministers outside the rank if he/she feels that a person is fit for a job. During this distribution, the Prime Minister normally ensures that important members of the party do get important portfolios. Similarly, in a federal State, he/she must guarantee representation from all sections of the society.

3.2.4.3 Chairman of the Cabinet Committee

- Heads the Council of Ministers

The Prime Minister serves as the Chairman of the Cabinet Committee and is responsible for calling and leading all Cabinet meetings. He sets the agenda for these meetings. Ministers are accountable to him/her individually for the effective management of their respective departments. The Prime Minister can offer warnings, advice, or encouragement to them in carrying out their duties. Additionally, he heads the

Council of Ministers and presides over both standing and ad-hoc Committees of the Cabinet.

3.2.4.4 Liaison and Link between the President and the Ministers

► Exclusive adviser to the President

The Prime Minister acts as a liaison between the President and the Cabinet. Although individual Ministers can communicate with the President on matters concerning their departments, important communications, especially those related to policy, must go through the Prime Minister. Similarly, the Prime Minister serves as the exclusive adviser to the President, holding the authority to recommend the dissolution of the Lok Sabha. Acting as the primary link between the President and the Cabinet, the Prime Minister communicates all Cabinet decisions to the President and presents the President's views to the Cabinet.

3.2.4.5 Coordination of Government

► Chief coordinator of the policies

The Prime Minister serves as the chief coordinator of the policies across various Departments. When conflicts arise between departments, he acts as a mediator to resolve them. He solves disputes among Ministers and departments and closely monitors the functioning of all Government of India Departments. He has the authority to request any file from any Ministry for review.

► All key appointments are made with the advice of PM

In addition, all key appointments are made by the President with the advice of the Prime Minister. Such appointments include judges of the Supreme Court and the High Courts, Governors, diplomats, members of UPSC, Comptroller and Auditor General (CAG) etc. He/she maintains a vigilant oversight of key departments such as Finance, Foreign Affairs, and Home Affairs. Additionally, he/she stays in close contact with foreign ambassadors and represents the Union Government at international conferences of foreign leaders. Furthermore, the Prime Minister plays an important role in the conduct of India's international relations. He/she plays a pivotal role in framing the internal policies of the country. He/she has a leading hand in the preparation of the budget. Besides, he/she is the chairperson of various bodies like NITI Aayog, National Development Council (NDC) etc.,

Article 74(1) of the Indian Constitution explicitly mandates that the Prime Minister shall lead the Council of Ministers and provide aid and advice to the President in carrying out his/her duties. The Prime Minister holds a central position within

the Cabinet. In the Westminster system, it is the ministers who are responsible for policy-making and decisions on significant issues. However, in India, despite the Westminster model's constitutional framework, the Prime Minister is the unquestioned leader of the executive branch.

► "a moon among lesser stars"

The role of the Prime Minister originated in England, where William Harcourt famously described him as "a moon among lesser stars." Dr. Ambedkar also remarked that, if any official in the Indian Constitution were to be compared to the U.S. President, it would be the Prime Minister, not the President. The Prime Minister's dual goals seem to be enhancing state autonomy while maintaining a centralised structure for governing the Union.

The Prime Minister and the President

The Prime Minister is the sole channel of communication between the President and his/her council of ministers. Article 78 of the constitution provides that it shall be the duty of the Prime Minister:

- a. To communicate to the President all decisions of the Council of Ministers relating to the administration of the union and proposals for legislation.
- b. To furnish such information relating to administration of the Union affairs and proposals for legislation as the President may call for.
- c. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the cabinet.

Thus, it is clear that the Prime Minister communicates the decisions and not merely renders advice to the President. The President is bound to accept the decisions taken by the cabinet because it is the cabinet for which the Prime Minister is responsible to the lower House of the People. There is no provision in the constitution which makes the President responsible to the Parliament.

► Principle of collective responsibility

According to Article 78(c), it shall be the duty of the Prime Minister, if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has already been taken by a minister but which has not

been considered by the cabinet. This is very necessary for the successful working of the principle of collective responsibility.

Again, it is on the Prime Minister's request that the President summons and prorogues both the houses of the Parliament. The Lok Sabha is dissolved by the President with the advice of the Prime Minister. In the same way, the proclamation of national emergency is declared by the President on the written advice of the Council of Ministers headed by the Prime Minister.

Prime Minister and the Parliament

The Prime Minister is the leader of the party in power. In this capacity, he also functions as the leader of Lok Sabha. The function of the Prime Minister as the leader of the house is very important. He/she makes proposals for the date of summoning and proroguing the sessions for the approval of the speaker. He/she has to draw up the official business to be transacted in the Parliament – bills, motions, discussions on important activities of the government and the like. He/she is a member of the Business Advisory Committee, which determines allocations of time for official bills and other business. He/she shapes the course and the content of legislation. His/her voice is final in deciding as to what amendments will be acceptable.

► Leader of the house

As the leader of the house, he/she deals with procedural matters relating to the business of the house. He/she can request the speaker to fix a date for the closing session of the house. He/she also requests the speaker to move a resolution that the seat of a particular member be declared vacant as per Article 101 of the constitution. The speaker consults the Prime Minister with regard to the arrangement of the government business, discussion of matters in the Presidential Address. The Lok Sabha can be dissolved by the President on the advice of the Prime Minister.

► Procedural matters

Two important points should be noted in this direction. First, while acting as the leader of the house, the Prime Minister is not merely the leader of the majority party in the Lok Sabha, but he/she is expected, ideally, to be the leader of the house representing all the other parties as well. Second, the Prime Minister as the leader of the house in a way becomes the guardian of the legitimate rights of the opposition.

► voice of the entire majority

From the above study, it seems that much will depend upon the experience and charismatic leadership of the person who occupies the chair. One with a charismatic personality

can and does easily dictate the policy, but one with ordinary qualities may remain no more than a dumb. Usually, the Prime Minister is expected to be a person with wide knowledge and understanding, of quick decision and swift action, an efficient administrator, and an expert manager of party politics.

3.2.5 Council of Ministers

The framers of the Indian Constitution intended that, although all executive powers are formally vested in the President, the President should function as a constitutional head of the Executive, similar to the English Crown, by acting on the advice of Ministers who are accountable to the popular House of the Legislature. While the English Constitution relies on conventions to operate the Cabinet Government system, with the Crown legally vested with absolute powers and Ministers theoretically being mere servants of the Crown, the Indian Constitution embeds the foundation of the Cabinet system within its written text. However, the detailed functioning of this system is still shaped by conventions and practices.

► Cabinet system

3.2.5.1 Council of Ministers and the Cabinet

The terms "Cabinet" and "Council of Ministers" are often used interchangeably, but they are distinct. The Council of Ministers includes various categories of ministers. At the time of independence, India did not have a Cabinet as it exists today; instead, there was an Executive Council. On August 15, 1947, this Executive Council was transformed into a Ministry or Council of Ministers, which is accountable to Parliament. The term "Cabinet" began to be used as an alternative to the Council of Ministers. Initially, all members of the ministry, including the Cabinet, except for the Prime Minister, had equal status. However, with the introduction of junior ministers, this structure evolved. In 1950, based on the report of Gopalaswami Ayyangar, a three-tier system was established with Cabinet Ministers at the top, Ministers of State in the middle, and Deputy Ministers at the bottom. The Cabinet, comprising senior ministers whose responsibilities extend beyond individual departments, is a smaller and more powerful body within the government. The Cabinet performs three major functions: determining government policy for presentation to Parliament, implementing government policy, and coordinating inter-departmental activities.

► various categories of ministers

The Cabinet meets regularly as it is a decision-making body, assisted by the Cabinet Secretariat, led by a senior civil servant, the Cabinet Secretary. To handle the workload, the

► Decision-making body

Cabinet has developed standing and ad hoc committees. The four permanent standing committees include the Defence Committee, Economic Committee, Administrative Organisation Committee, and Parliamentary and Legal Affairs Committee. Ad-hoc committees are created as needed. The Cabinet is the core of the Council of Ministers, leading Walter Bagehot to describe it as "the greatest committee of the legislature" and the "connecting link between the executive and legislative power."

3.2.5.2 Ministers of State and Deputy Ministers

► Administrative responsibilities

Ministers of State rank below Cabinet Ministers and may hold independent charge of ministries, performing similar functions as Cabinet Ministers but attending Cabinet meetings only when specifically invited. Deputy Ministers, at the bottom of the hierarchy, do not have specific administrative responsibilities but assist in parliamentary proceedings, explain policies to the public, maintain liaison with various stakeholders, and conduct special studies or investigations.

► Limits the total number of Ministers

The Constitution does not specify the number of members in the Council of Ministers; this is determined by the needs of the time. However, the Constitution (Ninety-first Amendment) Act, 2003 added sub-clause (1A) to Article 75, which limits the total number of Ministers, including the Prime Minister, to no more than 15% of the total number of members in the Lok Sabha, effective from January 1, 2004.

3.2.6 Collective Responsibility

► Work as a team

The Council of Ministers operates on the principle of collective responsibility, meaning all ministers share equal responsibility for every government action. Under this principle, the council of ministers work as a team and all decisions taken by the cabinet are joint decisions of all, no matter whatever be their personal differences of opinion within the cabinet. Once the decision has been taken it is the duty of each and every minister to stand by it and support it both in the legislature and outside. If the Lok Sabha passes a non-confidence motion, all ministers must resign.

► Maintaining public confidence

In coalition governments, a minimum common programme is essential to maintain unity among the various political parties, as the Cabinet's survival depends on it. Unity within the Council of Ministers is vital not only for its survival but also for its effectiveness and for maintaining public confidence. Internal conflict sometimes leads to the collapse of the entire government. For example; the internal conflicts within the

Janata government on public policy matters led to its collapse in 1979.

Ministers' Individual Responsibility:

Every minister is responsible for the acts of the officers of his/her department. He/she has to answer questions regarding the affairs of his department in the parliament. He/she cannot shirk this responsibility and blame either his/her own officials or another minister.

Size of Council of Ministers

► shall not exceed 15 percent

The 91st Constitutional Amendment provides that the total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15 percent of the total members of the House of People (Lok Sabha). The Amendment also states that a member of either House of Parliament belonging to any political party who is disqualified on the grounds of defection shall also be disqualified to be appointed as a minister till he/she is again re-elected.

One who is not a member of either House of the Parliament can be appointed as a minister. But he/she must become a member of Parliament within a period of six months. However, the Supreme Court in *S.R. Chaudhuri vs. State of Punjab* held that such a person who fails to get elected during the period of six months cannot be reappointed as a minister.

► Disqualified to contest

A convicted person cannot be appointed as the Prime Minister or a minister. The Supreme Court has held that a person convicted of a criminal offence and sentenced to more than two years of imprisonment and disqualified to contest elections shall not be appointed as the Prime Minister or a minister.

Powers and Functions of the Cabinet

1. The Cabinet formulates the policy of the country

The Council of Ministers introduces most important bills and resolutions in the parliament. It prepares and presents the budget to the Parliament. The foreign policy of the country is determined by the Council of Ministers.

2. Running of Administration

It runs the administration in accordance with laws and policies. It has the responsibility to maintain law and order.

The day-to-day decisions are taken by the Cabinet in accordance with the policies of the cabinet.

3. Functions during Emergencies

► Written advice of the cabinet

The President declares emergencies on the written advice of the cabinet. Without receiving written advice from the cabinet, the President cannot declare the national emergency under Article 352. It is the Cabinet which finally decides that the constitutional machinery has broken down. Similarly, the question of proclamation of the financial emergency is decided by the Cabinet. (Article 356 & Article 360)

4. Appointments

All the major appointments made by the President are on the advice of the Council of Ministers headed by the Prime Minister.

5. Treaty-making and Defence Functions

All treaties and international agreements are negotiated and signed by the Council of Ministers on behalf of the President.

6. Legislative Powers

► Working of the parliament

Most of the proposals for legislation are passed/introduced and piloted by them. A bill not supported by the Council of Ministers cannot get passed from the parliament because the ministers enjoy the majority support in Parliament. The President prorogues or dissolves the Parliament in accordance with the advice of the cabinet. Normally, it is the Cabinet that really controls the working of the Parliament.

7. Financial Powers

► Financial bills

The Cabinet controls the purse of the nation. The Houses of the Parliament are the custodian of the national finances. Yet the Cabinet plays a leading role. The budget is prepared by the Cabinet. The Cabinet runs the finance in accordance with the provision of the budget. All proposals for additional taxes come from the Cabinet. Money bills are introduced by the ministers. The parliament can modify the financial bills only with the consent of the Cabinet.

Summarized Overview

The Union Executive in India, as per Article 53 of the Constitution, is headed by the President, who serves as the ceremonial head of state, while real executive power is exercised by the Prime Minister and the Council of Ministers. The role of the President, while significant in terms of national unity and formal authority, remains largely symbolic, with executive actions requiring the advice and assistance of the Prime Minister. The President is elected indirectly by an electoral college and holds office for a term of five years, with the possibility of re-election. The Constitution also provides for the office of the Vice-President, who steps in during the President's absence. Although the President holds various administrative, legislative, and military powers, these are exercised under the guidance of the Council of Ministers, ensuring that the executive remains accountable to the Parliament. The Prime Minister, appointed by the President, plays a pivotal role in forming the government, leading the Cabinet, and coordinating government policies and actions, while ensuring the collective responsibility of the Council of Ministers to the Lok Sabha.

Assignments

1. Describe the legislative duties and powers of the Indian President.
2. Explain the role of the Prime Minister in the Indian executive system
3. Discuss the process of appointment, the responsibilities, and the powers of the Prime Minister.
4. Evaluate the role of the President as a ceremonial head versus the real executive power exercised by the Prime Minister.
5. Discuss the implications of this division of power on the functioning of the Indian government.
6. Analyse the relevance of the President in Indian Polity.
7. Elucidate the responsibilities of the Council of Ministers in Governance.
8. Analyse the principle of collective responsibility as it applies to the Council of Ministers.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

UNIT 3

Judiciary

Learning Outcomes

By the end of this unit, you will be able to:

- ▶ Explain the nature and characteristics of the integrated Judicial System in India;
- ▶ Understand the hierarchy of the judicial system- Supreme Court, the High Court, the District Court and the Subordinate Courts in India;
- ▶ Evaluate the Composition, Jurisdiction, and Functions of the Supreme Court;
- ▶ Evaluate the Composition, Jurisdiction, and functions of High Courts; and
- ▶ Assess the role of the Judiciary in preserving democracy via Judicial Activism and Public Interest Litigation (PIL).

Background

The Indian judiciary is a cornerstone of the country's democratic framework, recognised for its independence, impartiality, and commitment to upholding the Rule of Law. Operating within a unified structure, the judiciary administers both Union and state laws through a hierarchical system of courts, with the Supreme Court at the apex, followed by the High Courts in various states, and a network of Subordinate Courts at the district and lower levels. This system ensures the protection of citizens' rights and freedoms, reinforcing the judiciary's role as the guardian of the Constitution and the fundamental rights of the people. Despite the quasi-federal nature of the Indian Constitution, the judiciary functions as an integrated entity, reflecting consistency and stability in its proceedings. The judicial process in India is marked by fairness and transparency, with judges upholding the principles of equality before the law and the presumption of innocence. Even when certain limitations are imposed in the interest of the state and the public, the judiciary remains a vital and largely independent institution that commands respect as the ultimate protector of justice and the rule of law.

Keywords

Rule of Law, Original Jurisdiction, Impartiality, Judicial Activism, Suo moto action

Discussion

3.3.1 The Judiciary in India

3.3.1.1 Significance of Judiciary

► Principles of the Rule of Law

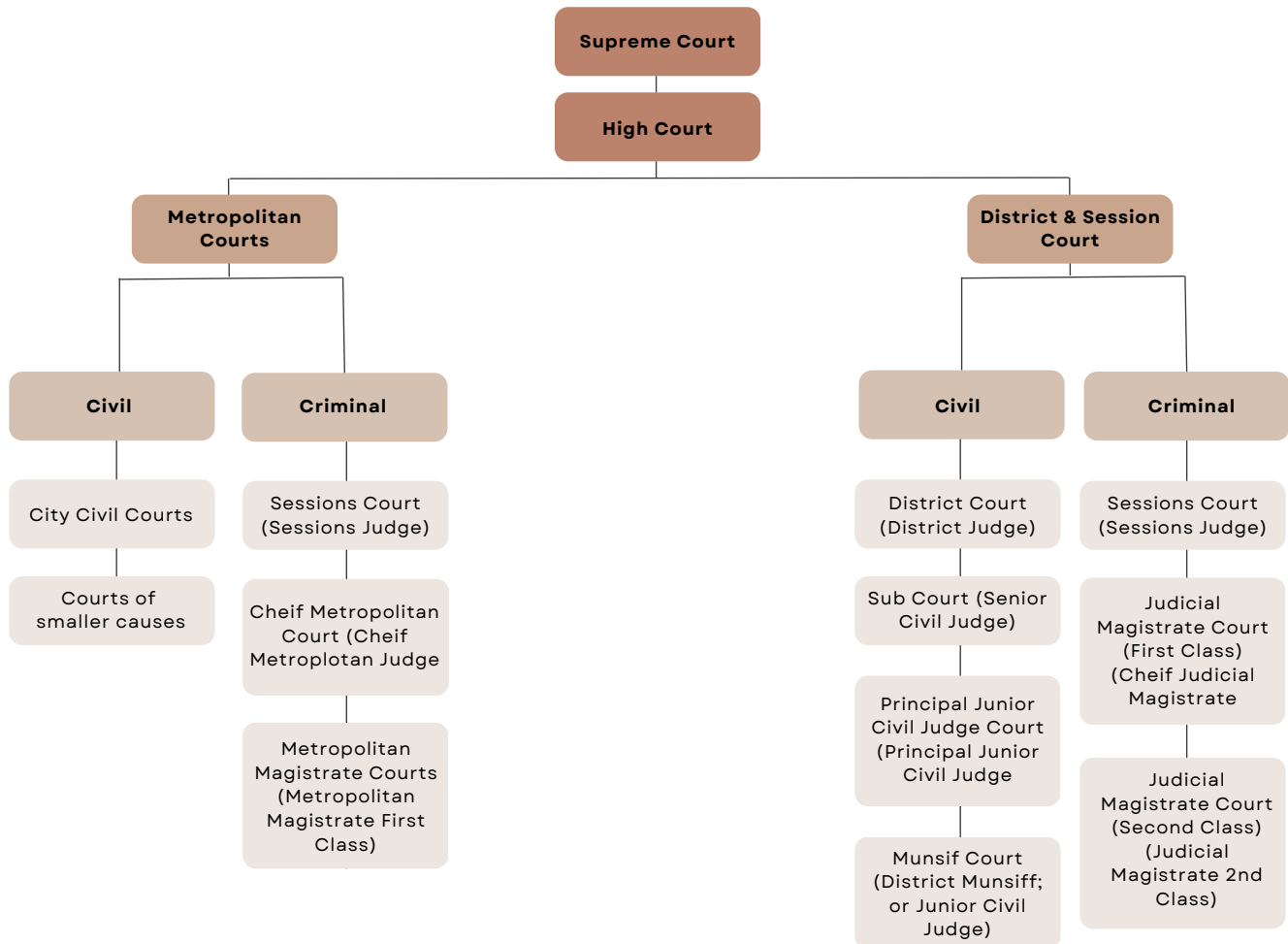
In contemporary democratic systems, the judiciary is recognised for its openness, impartiality, consistency, stability, and predictability. It functions according to the principles of the Rule of Law, which include the equality of all citizens before the law and the presumption of innocence until proven guilty by a court. The role of Judiciary as the guardian-protector of the constitution and the fundamental rights of the people makes it more important than the other two organs of the state, at least from the perspective of a common citizen. The judicial system emphasises fair and transparent proceedings. Occasionally, in the interest of the state and the broader public, certain limitations may be imposed on the judiciary, but there is rarely a deliberate effort by the state to undermine the standard judicial processes. In India, the judiciary is also regarded as largely independent, impartial, fair, and a true guardian of citizens' rights and freedoms.

3.3.1.2 Judicial System in India

► Integrated system of courts

The judiciary in India operates within a unified structure, despite the Constitution being quasi-federal. There is a single, integrated system of courts that administers both Union and state laws. At the top of this hierarchy is the Supreme Court, followed by the High Courts in different states, and below them, a tiered system of Subordinate Courts. The organisation of these subordinate courts can vary slightly between states. Each state is divided into districts, each with a District Court that holds appellate jurisdiction within that district. Below the District Courts are lower courts, such as the Additional District Court, the Sub-Court, the Munsif Magistrate Court, and the Court of Special Judicial Magistrate. The District Court Judge has unlimited original jurisdiction in both civil and criminal matters and is the highest judicial authority in the district, hearing appeals from Munsif and Sub-Courts. At the lowest level of the Subordinate Courts are the Panchayat Courts, which go by

various names like Nyaya Panchayats, Panchayat Adalat, and Gram Kachahari. These courts handle both civil and criminal cases.



Structure of Judiciary in India

3.3.2 The Supreme Court

As it is shown in the diagram, the Supreme Court is the highest judicial authority in India, and according to the Constitution, its rulings are binding on all lower courts within the country. Below the Supreme Court, each state has a High Court, which oversees District Sessions Courts, Subordinate Courts, and Small Cause Courts. Recognising the crucial role of the judiciary in a federal system, the Supreme Court was established as the ultimate authority in interpreting the Constitution. During the drafting of the judicial provisions, the Constituent Assembly focused

► The ultimate authority in interpreting the Constitution

extensively on ensuring the independence of the courts, the powers of the Supreme Court, and the process of judicial review.

3.3.2.1 Composition and Appointments

► Appointed by the President

The Supreme Court of India comprises the Chief Justice and up to thirty-three other judges. Initially it had a chief justice and seven other judges. The Chief Justice and all other judges in the Supreme Court are appointed by the President. The President appoints these judges based on the advice of the Prime Minister and the Council of Ministers, as well as consultations with other judges. The Chief Justice is appointed by the President after consultation with such other judges of the Supreme Court. The other judges are appointed by the President after consultation with the Chief Justice and other judges of the Supreme Court. Generally, the most senior judge in the Supreme Court is appointed as the Chief Justice of India. However, this convention was violated in 1973 when A.N Ray was appointed bypassing three senior judges. Again, in 1977 M.H Beg was appointed as Chief Justice by passing the then senior most judge, H R Khanna.

► The Collegium System

The Collegium System, unique to India, is often described as a system where judges appoint judges. Established through two Supreme Court judgments in the 1990s, this system involves a group of senior judges from the apex court who are responsible for the appointment and transfer of judges to the Supreme Court and High Courts. In 2014, the Parliament passed a National Judicial Appointment Commission (NJAC) Act with a Constitutional Amendment (99th) Act to scrap the Collegium system of appointment. However, the Supreme Court in its verdict in 2015 struck down this Amendment Act declaring NJAC as the interference of the executive in a sphere in which it is prohibited, i.e., to tamper with the basic structure of the Constitution.

3.3.2.2 Qualifications

A person to be qualified as a judge of the Supreme Court must be a citizen of India. In addition, he/she has been a judge of the High Court for at least five years or of two or more such courts in succession or has been practising for at least ten years as an advocate of the High Court or of two or more such courts in succession. An academic jurist may also be appointed as a judge of the Supreme Court if he is a distinguished jurist. Every person who is appointed as a judge of the Supreme Court before joining his/her office has to make and subscribe an oath or affirmation before the President of India.

3.3.2.2 Tenure

Once appointed, a Supreme Court judge serves until the age of 65. A judge can resign or be removed from office for proved misbehaviour or incapacity. A judge of the Supreme Court can be removed from his office by an order of the President. However, the President can issue this order only after receiving an address from the Parliament recommending the removal. This address must be presented to the President in the same parliamentary session in which the removal motion was initiated. For the motion to succeed, it must be passed by both Houses of the Parliament with special majority. The removal process is based on proven misbehaviour or incapacity. The motion is passed by both the Houses of Parliament after it is debated. Next, the matter goes to the President for approval.

The first impeachment motion against a Supreme Court judge occurred in 1991, involving Justice V. Ramaswami. An audit report revealed several irregularities during his tenure as Chief Justice of the Punjab and Haryana High Court. A judicial committee, consisting of a serving and retired Supreme Court judge and the Chief Justice of the Bombay High Court, found that Justice Ramaswami had engaged in wilful misuse of his position and habitual extravagance, amounting to "misbehaviour." Despite the impeachment proceedings initiated against him, the motion failed in May 1993, with 196 out of 401 members voting in favour and 205 abstaining. However, Justice Ramaswami eventually resigned.

3.3.2.3 Salaries

The independence of judges is largely influenced by their remuneration. Their salaries and allowances are set at a high level to ensure independence, efficiency, and impartiality. Additionally, judges are provided with rent-free official accommodations. The Constitution guarantees that salaries of the judges cannot be reduced to their disadvantage, except during a Financial Emergency. The administrative expenses of the Supreme Court, including salaries of judges and allowances, are charged to the Consolidated Fund of India.

► Independence, efficiency, and impartiality

3.3.2.4 Immunities

To protect judges from political controversies, the Constitution grants them immunity from criticism for decisions and actions taken in their official capacity. The Court can initiate contempt proceedings against anyone who questions the motives of judges in their official duties. Even Parliament

► Restricted from discussing a judge's conduct

is restricted from discussing a judge's conduct, except when a resolution for their removal is under consideration.

3.3.3 Jurisdiction of the Supreme Court

The Supreme Court's jurisdiction is categorised into four main types: 1) Original Jurisdiction, 2) Appellate Jurisdiction, 3) Advisory Jurisdiction, and 4) Review Jurisdiction.

3.3.3.1 Original Jurisdiction

► Interpretation of power distribution

The Supreme Court's original jurisdiction primarily functions as a federal court. In India's federal system, both the Union and State governments derive their powers from the same Constitution. Disputes over the interpretation of power distribution between the Union and States or conflicts between State governments require resolution by an independent judicial body. Article 131 grants the Supreme Court exclusive jurisdiction in disputes between the Union and a State, between two or more States, or between groups of States. This means that no other court in India can handle such disputes. The original jurisdiction is applicable only when the parties involved are units of the federation. Unlike the Supreme Courts in Australia and the United States, the Indian Supreme Court does not have original jurisdiction in disputes between residents of different states or between a State and a resident of another State.

► Protector of Fundamental Rights

Additionally, the Supreme Court has original jurisdiction as the protector of Fundamental Rights. Article 32 of the Constitution allows citizens to approach the Supreme Court directly to enforce their fundamental rights as listed in Part III of the Constitution. As the guardian of these rights, the Supreme Court can issue writs like Habeas Corpus, Quo Warranto, Prohibition, Certiorari, and Mandamus. For instance, Habeas Corpus orders the release of a person from illegal detention, while Mandamus directs public officials to fulfil their legal duties. Prohibition prevents a court or tribunal from exceeding its authority, Certiorari nullifies orders passed by government officials, and Quo Warranto removes individuals unlawfully holding public office. Beyond issuing these writs, the Supreme Court can also direct and order the executive branch as necessary.

3.3.3.2 Appellate Jurisdiction (Article 132)

Appeals from High Courts

The supreme court is the final court of Appeal. It empowers to appeal against the decisions of High court in the following cases:

► Appeals against the final judgement of a high court

1. In constitutional cases, an appeal can go to the Supreme Court from a judgement of a High Court. It empowers the Supreme Court to hear appeals against the final judgement of a High Court, where the case involves a substantial question of law. The appeal can be admitted only if the High Court certifies that the case involves such a substantial question of law and in the opinion of the High Court, the appeal needs to be decided by the Supreme Court. This is known as the certification of substantial questions of law. If it is satisfied, the Supreme Court may grant special leave to appeal against any judgement of the High Court, irrespective of the amount involved in the case.

► Substantial question of law

2. Civil cases article 133

In civil cases, an appeal can go to the Supreme Court only if the High Court certified that the case involved a substantial question of law of general importance and in the opinion of the High Court the said question needed to be decided by the Supreme Court. Thus, in civil cases, an appeal can be filed to the Supreme Court from the judgement, degree or final order of a High Court irrespective of the amount involved in the case.

Criminal cases article 134

In criminal cases, an appeal can be filed to the Supreme Court from any judgement, final order or sentence in criminal proceedings of a High Court in the following two ways:

1. without certificate of High Court: an appeal shall be filed if the High court has in an appeal reversed an order of acquittal of an accused person and sent him to death or has withdrawn a case from any subordinate court to it and convicted the accused person and sentenced him to death.
2. The High Court has certified that the case is fit for appeal. However, if the High court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

3.3.3.3 Special Leave to Appeal (Article 136)

The Supreme Court has been given wide power to grant special leave to appeal to it. The Constitution provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgement or decree by any court or tribunal in India. However, there is no special leave to appeal over the decision of a tribunal relating to armed forces.

i) It is a matter of discretionary power of the court, cannot be claimed as a matter of right, ii) it can be granted in any judgements whether final or interlocutory iii) It may be related to any matter, civil, criminal, income-tax, labour etc., iv) it can be granted against any court or tribunal and not necessarily against a High Court.

3.3.3.4 Advisory Jurisdiction

► Legal or factual questions

The Supreme Court can provide advisory opinions on legal or factual questions referred to it by the President. Unlike ordinary adjudication, advisory opinions do not involve litigation between parties, are not binding on the government, and are not enforceable as judgements. This advisory role assists the executive in making informed decisions on important issues and offers the government a way to navigate politically sensitive matters.

3.3.3.5 Review Jurisdiction (Article 137)

The constitution empowers the Supreme Court to review any judgement passed by it. This is subject to the laws passed by Parliament or rules made under Article 145 of the constitution. Review will lie in the Supreme Court on:

- a. Discovery of new and important matter or evidence.
- b. Mistake or error on the face of record.
- c. Any other sufficient cause or reason.

In this context, the Supreme Court observed that the final judgements of the Supreme Court are final. A review is permissible only when there is an error glaring on the face of the records. This is an error of substantial nature, which can be reviewed.

3.3.3.6 The Supreme Court is the Court of Records (Article 129)

► Recorded for evidentiary value

The Supreme Court is the Court of Record (Article 129). The judgements are binding upon the lower courts. The judgements of the Supreme Court are important for proper proceedings on testimony, and they are recorded for evidentiary value and can be questioned when they are produced before any court. Once a court is made a Court of Record, it has the power to punish the contempt of court either with simple imprisonment for a term up to six months or with fine up to Rs. 2000 or with both.

The law declared by the Supreme Court is binding on all courts (Article 141). However, in *Bengal Immunity Co. v. State of Bihar*, the Supreme Court ruled that the Supreme Court is not bound by its decisions.

3.3.3.7 Role of the Supreme Court

In order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to adjudicate on the dispute between the Centre and the States or between the states. The Supreme Court is the final interpreter and the guardian of the Constitution. It is also the highest and final interpreter of the general laws of the country. It plays the role of the guardian of social revolution and protects rights and imposes duties.

► The final interpreter and the guardian of the Constitution

It is through its power of judicial review that the court has been helping in the growth of the Constitution. The most fundamental contribution in this regard is the emphasis of the Court that it is the Constitution that is supreme. When there was a parliamentary threat to the Constitution, the court succeeded in protecting it through the Basic Structure Doctrine, as propounded in the *Kesavananda Bharati* case.

► Protected the essence and core values of our Constitution

By providing a liberal interpretation of the Constitution, particularly Articles 19 and 21, it has expanded the scope of the Fundamental Rights and the concept of 'due process of law' under Part III of the Constitution. It has also succeeded in maintaining the harmony between these important parts of the Constitution, namely Fundamental Rights and Directive Principles of State Policy. It has also expanded the scope of judicial review to crucial Articles like 352 (National Emergency) and 356 (State Emergency).

And finally, through Judicial Activism and Public Interest Litigation, it has protected the essence and core values of our Constitution.

The Seat of the Supreme Court

The Constitution declares Delhi as the seat of the Supreme Court. It also authorises the Chief Justice, with the previous approval of the President, to appoint other place or places as the seat of the Supreme Court.

Overall, the Supreme Court as the highest court of appeal, guardian of Fundamental Rights, protector of Federalism, and as a Court of Record occupies an important role in the Indian

► Declares Delhi as the seat

political system. It supervises the working of the High Courts and can transfer any case from one High Court to another to meet the ends of justice. The decision of the court is binding on all courts and on everybody [corrected as "every authority"], with the backing of Article 142.

► Disputes between the Centre and the States

The Supreme Court is vested with the power of judicial review, by which the court can examine whether the laws passed by the legislature or orders issued by the executive are constitutional. As a protector of the guardian of Fundamental Rights of citizens, the court issues directions, orders, and writs. As the protector of Federalism, it involves itself in the settlement of disputes between the Centre and the States. Thus, the Supreme Court is really supreme in letter and spirit.

3.3.4 The High Court

► Highest judicial authority in the State

The Constitution establishes a High Court as the highest judicial authority in the State. Articles 214 to 231 in Chapter V of Part VI of the Constitution detail the organisation and functions of High Courts. Article 214 provides that there shall be a High Court for each state. However, the Parliament can establish a common High Court for two or more states and a union territory (Article 231), such as the shared High Court for Punjab and Haryana, or for Assam, Nagaland, Mizoram, and Arunachal Pradesh. In Union Territories, Parliament can extend or exclude the jurisdiction of a High Court or create a separate High Court. For example, Delhi has its own High Court, while the Kerala High Court has jurisdiction over Lakshadweep, and the Bombay High Court oversees Dadra and Nagar Haveli. The High Courts stand at the upper apex of the judiciary hierarchy in India. Every High Court is declared as a Court of Record.

3.3.4.1 Composition of the High Court

► Review the strength of the High Court

The Constitution does not fix the number of judges in the High Court. The Supreme Court in *S.P. Gupta v. Union of India* held that the President is under the constitutional obligation to review the strength of the High Court vis-à-vis the arrears of cases pending therein. The President appoints the Chief Justice of a High Court after consultation with the Chief Justice of India and the Governor of the state concerned. In case of appointment of other judges, he is required to consult also the Chief Justice of the High Court concerned.

Appointment of Acting Chief Justice

When the office of the Chief Justice of a High Court is

► Additional judges

vacant, it shall be performed by one of the other judges of the court as the President may appoint for the purpose (Article 223). Similarly, if there is a temporary increase in the work of the High Court, the President can appoint duly qualified persons to be additional judges for a maximum period of two years (Article 224). Besides this, the Chief Justice of a High Court may on his own, with the previous consent of the President, request a retired judge of the High Courts to sit and act as the judge of the High Court.

Qualifications

1. A person to be qualified for appointment as a judge of a High Court, must be a citizen of India;
2. Must have held a judicial office for at least 10 years; or
3. Must have been an advocate of the High Court for at least 10 years.

Term and Removal

A judge of the High Court shall hold office until he attains the age of 62 years. If a question arises as to the age of a judge of the High Court, then it shall be decided by the President after consultation with the Chief Justice of India. A judge may be removed from office by impeachment in the same manner as a judge of the Supreme Court. Also, a judge may resign office by writing to that effect to the President.

► Impeachment

Restriction after Retirement

Article 220 prohibits a retired judge of a High Court from acting or pleading in any court except the Supreme Court and other High Courts.

Salaries and Allowances

The judges of High Courts are paid such salaries as are specified in the Second Schedule. They are also entitled to such allowances as the Parliament may determine by law from time to time. Thus, salaries, allowances, and pensions are charged on the Consolidated Fund of India.

3.3.4.2 Jurisdiction (Article 225)

It is not directly defined in the Constitution. It is defined with reference to the jurisdiction of the High Court that existed in India before the promulgation of the Constitution. In other

► Enforcement of
Fundamental Rights

words, the High Courts have the same jurisdiction which they had at the commencement of the Constitution. A High Court's original jurisdiction includes the enforcement of Fundamental Rights, settling election disputes for members of the Parliament and State legislatures, and handling revenue matters. Its appellate jurisdiction covers both civil and criminal cases, including appeals from decisions where a sentence exceeds seven years.

High Courts also possess four additional powers:

1. The authority to issue writs or orders and directions for enforcing Fundamental Rights, with broader writ jurisdiction than the Supreme Court, as it can address ordinary legal rights as well.
2. The power of superintendence over all subordinate courts and tribunals, except those related to the armed forces.
3. The authority to transfer cases from subordinate courts that involve constitutional interpretation.
4. The High Court has the power to hear appeals over the decisions of the subordinate courts.
5. The High Court has the power to appoint officers and staff for its office.

However, High Courts have limited jurisdiction in some areas, such as tribunals, and they cannot invalidate Central Acts, rules, notifications, or orders issued by Union administrative authorities, even if they violate Fundamental Rights.

Extension or Exclusion from the Jurisdiction (Article 230)

The jurisdiction of the High Court can be further extended by the law of the parliament. The Parliament can also extend the jurisdiction of the High Court to any Union Territory. The Parliament can also exclude any Union Territory from the jurisdiction of a High Court.

3.3.5 Subordinate Courts

Below the High Court, there exists a hierarchy of courts referred to in the Indian Constitution as subordinate courts. These courts were established by state government legislation, leading to variations in their names and designations across different states, though their organisational structure remains consistent.

► Appeals from subordinate courts

Each state is divided into districts, with each district having a district court that possesses appellate jurisdiction. Below the district courts are various lower courts, including the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, and the Court of Special Munsiff Magistrate for Factories Act and Labour Laws. At the lowest level of the subordinate court hierarchy are the Panchayat Courts (Nyaya Panchayat, Gram Panchayat, Panchayat Adalat, etc.), which are not considered part of the criminal courts' jurisdiction. The primary role of the District Court is to hear appeals from subordinate courts, although it can also handle original cases under certain laws, such as the Indian Succession Act, the Guardian and Wards Act, and the Land Acquisition Act.

► Governor makes decisions

The Constitution safeguards the independence of the subordinate judiciary. Appointments to District Courts are made by the Governor in consultation with the High Court. To be eligible for such appointments, a person must either be an advocate or pleader with seven years of experience or an officer in the service of the Union or State. For appointments to positions other than District Judges within a state's judicial service, the Governor makes decisions based on rules established after consulting the High Court and the State Public Service Commission.

The High Court maintains oversight over the District Courts and their subordinate courts, including responsibilities such as postings, promotions, and granting leave to all members of the State judicial service.

3.3.6 Judicial Activism

The Constitution of India provides for an independent and impartial judiciary. The judiciary in India is responsible not only for settling disputes among people but also for punishing the violators of the law. It has also been given the power to protect the Constitution and safeguard peoples' rights; for this purpose, the judiciary can declare any act of legislature or executive as unconstitutional or void. In a Parliamentary democracy, the Parliament is supreme. However, in India, the Constitution is somewhat ambiguous on this point. The judiciary can override the powers of the Parliament through judicial review.

► Judicial review

The judiciary can declare an act violative of the Fundamental Rights and unconstitutional. From this, the judiciary has derived the power of judicial review. Slowly, the judiciary started expressing its social, developmental and environmental

concerns. This expression of concern is generally described as judicial activism.

► The assertive role of the judiciary

Judicial activism connotes the assertive role of the judiciary in forcing the government organs to discharge their duties towards the public. An unresponsive administration disregarding the people's interests has forced it upon the judiciary. The power of judicial activism has emanated from the power of judicial review.

The astonishing feature of the trend is that what was the exclusive concern of the executive and the legislature has also become the court's concern. What are the causes of this trend? Pervasive failure of governance, excess by the executive, non-performance by the legislature, widespread corruption and a murky state of affairs are the important factors that paved the way for judicial activism.

► Foundation of judicial activism

The concept of judicial activism developed in the U. S. A. in 1947. In India, the foundation of judicial activism was laid down by the learned judges of the Supreme Court. In this regard, Justices like V. R. Krishna Iyer, P. N. Bhagavati, Chinnappa Reddy, D. A. Desai, and others may be mentioned.

The Supreme Court passed orders on every facet of the daily life of citizens, be it in politics, sports, education, medicine or checking the executive's functioning. The court has gone to the extent of looking into the telecom policy or asking the union government or state governments to construct a dam that is up to a certain height. Through its activism, the court ordered the release and compensation of children and bonded labourers, the closing down of factories emitting poisonous gases or amending the outdated prison laws.

► Examples of activism

In a major judgement, the Supreme Court held that the bonded labourers should be identified, released and rehabilitated after the release (Neerja Chandran V. State of Madhya Pradesh). Likewise, in M. C. Mehta V. State of Tamil Nadu, the Supreme Court held that children below 14 cannot be employed in any hazardous industry, mine or other work. In contesting elections, the court observed that a sentence of imprisonment awarded to a person for various offences should be taken into account cumulatively when determining disqualification, rather than treating each sentence separately.

The court's concern was warranted and widely shared in all these cases. The court's well-meant intervention might have had some good results. However, it may be noted that

► Need not always be progressive

judicial activism need not always be progressive. There can be reactionary or retrogressive activism as well. In some cases, judicial activism has gone beyond defensible activism. In some cases, it appears that a desire for social approval, for a place in history or rendering a landmark judgement before retirement might have weighed with a judge. In some cases, it is to be examined whether there are instances of judicial activism or clear encroachments into the executive or legislative spheres. However, one must look at the generality of the picture and not conclude from a few wrong examples.

► Encroachment of institutional boundaries

The need of the hour is to debate the reasons for the failure of the legislature and the executive. It is this that has given birth to judicial activism. We must find ways to ensure that laws are properly and sincerely executed. Then, there is no need for the judiciary to intervene. The legislature, the executive and the judiciary derive their powers from the people through the Constitution. If the encroachment of institutional boundaries is done in the people's interest, it need not be construed as a violation of Constitutional provisions. In this context, the Chief Justice of Canada, Beverley Mc Lachlin wisely observed:

“It is not for the judge to set the agenda for social change or to impose their personal views on society. The role of a judge is to support the rule of law and not the rule of judicial whim.”

Thus, it must also be pointed out that the judiciary can interpret the provisions of law; it cannot make inroads into the legislative or executive processes, which are the responsibilities of the legislature and the executive branches of the government.

3.3.6.1 Impact of Judicial Activism

Judicial activism has profoundly impacted various aspects of Indian society and governance, contributing significantly to democratic governance and social justice.

► Strengthening democratic institutions and processes

Strengthening Democracy: By holding the legislative and executive branches accountable, the judiciary reinforces a system of checks and balances to ensure a healthy democracy. Judicial activism ensures that no branch of government exceeds its authority and that Constitutional provisions are upheld. The judicial review of laws and executive actions helps maintain the balance of power, thereby strengthening the democratic institutions and processes.

Social Justice: Judicial activism has been instrumental in advancing social justice, addressing critical issues such as

bonded labour, child labour and environmental degradation. The judiciary's proactive stance has led to significant improvements in these areas. Judicial directives in cases related to environmental pollution have led to stricter regulations and enforcement, contributing to better environmental governance.

Policy Formulation: In some cases, the judiciary has stepped beyond its traditional role and ventured into policy formulation by issuing guidelines and directives on critical issues. This involvement often fills the gaps left by legislative and executive inaction. The Prakash Singh case (2006), where the Supreme Court issued guidelines for police reforms, showcases the judiciary's role in shaping public policy to ensure better governance and accountability.

3.3.6.2 Criticism and Controversies

Despite its positive contributions, judicial activism in India has faced several criticisms and created controversies.

1. **Judicial Overreach:** Critics argue that the judiciary sometimes oversteps its boundaries and encroaches on the domains of the legislature and executive, undermining the principle of separation of powers. This overreach can lead to tensions between the branches of government. Instances where the judiciary has issued detailed guidelines on policy matters, traditionally within the purview of the executive or legislature, are often cited as examples of judicial overreach.
2. **Inconsistent Application:** The discretionary nature of judicial activism can lead to inconsistent and unpredictable outcomes. Different judges might interpret the same law in various ways, leading to a lack of uniformity and potential arbitrariness in judicial decisions. Variations in judgements on similar issues can create legal uncertainty and unpredictability, affecting the coherence of the legal system.
3. **Resource Constraints:** The increasing number of PILs and activist judgements can strain the judiciary's resources, affecting its ability to dispense justice efficiently. The capacity of the judiciary to handle regular cases may be compromised due to the additional burden of addressing PILs and activist interventions. Courts often face backlogs and delays in case disposals, exacerbated by the additional workload from numerous PILs and activism-driven cases, thereby affecting the overall efficiency of the judicial system.

While Judicial activism has significantly contributed to upholding Constitutional values and advancing social justice in India, it is essential to balance this activism with judicial restraint to prevent overreach and ensure the efficient functioning of the judiciary.

3.3.6.3 Significance of Judicial Activism

Judicial activism has emerged as a vital mechanism for upholding citizens' rights and ensuring the implementation of constitutional principles, especially in situations where the executive and legislature fail to do so. It empowers the judiciary to step in and protect the interests of the public when other branches of government are unable or unwilling to act. This form of activism is particularly significant in a democratic set-up like India, where the rule of law is paramount, and the judiciary serves as a check on the potential excesses of the other branches of government.

► Upholding citizens' rights

In India, the judiciary is often seen as the last hope for citizens whose rights have been violated or neglected. When all other avenues for redress are exhausted, individuals turn to the courts as their final refuge. The Indian judiciary has earned a reputation as the guardian and protector of the Constitution, ensuring that the fundamental rights enshrined within it are not merely theoretical but are actively upheld and enforced. This role has made the judiciary an essential pillar in the preservation of democracy and the protection of individual freedoms.

► Their final refuge

The Constitution of India itself provides the judiciary with the tools necessary to adopt a proactive stance in safeguarding constitutional values. Article 13, in conjunction with Articles 32 and 226, grants the higher judiciary the power of judicial review, enabling it to declare any executive, legislative, or administrative action void if it contravenes the Constitution. This constitutional provision empowers the judiciary to act decisively when other branches of government fail to adhere to the principles enshrined in the Constitution, ensuring that no law or action that violates citizens' rights goes unchecked.

► Adopt a proactive stance

One of the most significant developments in Indian judicial activism has been the shift from the traditional concept of *locus standi* to Public Interest Litigation (PIL). This shift has made the judicial process more inclusive, participatory, and democratic, allowing any individual or group to approach the courts on behalf of those who may not have the means or ability to do so themselves. This broadened access to justice has enabled the judiciary to address a wide range of issues affecting the public,

► Concept of *locus standi*

from environmental protection to the enforcement of human rights, thereby strengthening its role as a champion of public welfare.

► Actively shape and influence public policy

Judicial activism also challenges the notion that the judiciary is merely a passive spectator in the democratic process. Through its proactive interventions, the judiciary demonstrates its capacity to actively shape and influence public policy and governance. By stepping in when the executive and legislature fall short, the judiciary not only protects individual rights but also reinforces the constitutional framework that underpins Indian democracy. This active role has solidified the judiciary's position as a dynamic force in the pursuit of justice and the preservation of the rule of law.

3.3.6.4 Examples of Judicial Activism

3.3.6.4.1 Golaknath Case: Protecting Fundamental Rights

The Golaknath case (1967) stands as a pivotal example of judicial activism in India, where the Supreme Court safeguarded the sanctity of Fundamental Rights. The central question in this case was whether the Parliament had the authority to amend Fundamental Rights under Article 368 of the Constitution. The Supreme Court ruled that Fundamental Rights were beyond the reach of parliamentary amendments, as Article 13 stipulated that no law could contravene these rights. The Court further contended that to alter Fundamental Rights, a new Constituent Assembly would be required. This decision highlighted the judiciary's proactive role in limiting parliamentary power and preserving individual liberties.

3.3.6.4.2 Kesavananda Bharati Case: Defining the Basic Structure Doctrine

In the landmark Kesavananda Bharati case (1973), the Supreme Court introduced the "Basic Structure Doctrine," further solidifying its role in judicial activism. The case questioned the extent of Parliament's power to amend the Constitution. While the Court upheld that no part of the Constitution, including Fundamental Rights, was beyond Parliament's amending power, it also established that the "basic structure" of the Constitution could not be altered. This doctrine empowered the judiciary to review and potentially strike down constitutional amendments that threatened the core principles of the Constitution, ensuring the protection of India's democratic foundation.

3.3.6.4.3 2G Scam: Ensuring Accountability in Governance

Judicial activism was prominently displayed in the Supreme Court's intervention in the 2G spectrum allocation scam. In 2012, the Court cancelled 122 telecom licences and the spectrum allocated to eight telecom companies, citing a flawed and corrupt allocation process. This decision not only underscored the judiciary's commitment to upholding transparency and fairness in governance but also acted as a significant check on executive actions. By stepping in, the Supreme Court reinforced the importance of accountability and ethical conduct in public administration.

3.3.6.4.4 Ban on Firecrackers: Addressing Environmental Concerns

In 2018, the Supreme Court took a proactive stance on environmental issues by imposing a blanket ban on firecrackers in the Delhi-NCR region, with specific exceptions. This decision was driven by growing concerns over air pollution and public health, particularly during the festival season. The Court's ruling demonstrated its willingness to intervene in matters of public interest, even if it meant imposing restrictions on traditional practices. This example of judicial activism highlights the judiciary's evolving role in addressing contemporary challenges and safeguarding the well-being of citizens.

3.3.7 Public Interest Litigation

Public interest litigation is a litigation for protection of the interest of the public at large. It is an internationally recognised Indian phenomenon. PIL is also known as a Social Action Litigation (SAL), Social Interest Litigation (SIL) and Class Action Litigation (CAL). Its object is to render justice.

The credit for the inauguration of this trend goes to the two renowned judges of the Supreme Court, Justice V. R. Krishna Iyer and Justice P. N. Bhagwati. They recognised the possibilities of providing justice to the poor and exploited people who could not approach the court because of the cost of litigation.

The first reported case of PIL was in 1979. It focused on the inhuman conditions of prisons and under-trial prisoners. In 1979, an advocate filed a PIL based on a news item published in the Indian Express Newspaper. The news item depicted touchingly the plight of thousands of under-trial prisoners in Bihar Jails.

These proceedings led to the release of 40,000 under-trial prisoners (Hussainara Khatoon V. State of Bihar). As a result of the litigation, speedy justice emerged as a basic Fundamental Right. In 1981, Anil Yadav, a public-spirited person, filed a writ petition that exposed the brutality of the police. A newspaper report revealed that the police in Bihar blinded 33 suspected criminals by putting acid into their eyes. Through an interim order, the Supreme Court directed the state government to bring the blinded persons to Delhi for medical treatment. It also ordered the speedy prosecution of the policemen. Since then, free legal aid has become a Fundamental Right of every accused. In Shreya Singhal V. Union of India (2015), the Supreme Court struck down section 66A of the IT Act as unconstitutional. The section provides three years imprisonment for posting any “offensive, annoying or inconvenient” materials on social media.

► The rights of the public at large

PIL is not confined to enforcing the Fundamental Rights of an individual or a group of individuals. It also extends to the rights of the public at large. The rights of a large number of people who are poor and ignorant should not go unnoticed. According to Justice Bhagwati, PIL is meant to bring justice to the doorsteps of the poor, the weak, the unorganised and the exploited sections of society who have no access to the court because of the prohibitive cost of litigation.

It can be moved by an aggrieved party, any public-spirited individual or a social action group where there is a public wrong or an act of omission by the state or a public authority. Any member of the public having sufficient interest can maintain an action. However, the Supreme Court held that the person filing the PIL should act with *bona-fide* interest. He should not have any personal interests. It should be for the general social good.

► Writ petitions

The court adopted a liberal stand in this matter, that matters could be raised even without formally filing a suit. Even conscious citizens' letters or telegrams to the Supreme Court are treated as writ petitions. The court may also *suo moto* take up cases and issue notices to the authorities concerned to do what is needed.

As a result of PIL, many people under illegal detention have got relief. In many cases, compensation was given to victims of administrative wrongs. PIL is heavily weighted in favour of the poor, the weak and the ignorant. The Supreme Court, through PIL, has not only protected the rights of the weaker sections of society but also ensured socio economic justice to the weaker

sections. However, the Supreme Court observed that PIL is not a pill or panacea for all wrongs.

Who and How the PIL is submitted

In 1998, the Supreme Court issued a set of guidelines as to who can submit a PIL and how the PIL can be submitted. PIL can be filed for:

1. Bonded Labour Matter;
2. Neglected Children's Matter;
3. Non-payment of minimum wages to workers;
4. Petitions from jails complaining of harassment;
5. Petitions against atrocities on women;
6. complaining harassment of villagers by co-villagers or police;
7. Petitions about environmental pollution;
8. Petition from Riot victims;
9. Petition for family pension.

However, the court will not entertain the following matters as PIL;

1. Landlord- Tenant matter;
2. Service matter (pension and gratuity)
3. Complaint against Admission to Medical and other educational institutions;
4. Petition for early hearing of cases.

Regarding the usefulness of PIL, it may be stated that it has facilitated access to justice, given voice to the voiceless, empowered the weak, protected the human rights of the poor and powerless, protected human rights against state abuses and the like. On the other hand, PIL can be and has been abused certainly; there has been a proliferation of NGOs and individual activists, but not all of them are driven by noble intentions. They have tended to file PIL on various issues for dubious purposes. Under such situations, certain guidelines are necessary. In this context, the latest decisions of the Supreme Court are a welcome development.

Summarized Overview

The Indian judiciary, recognised for its openness, impartiality, and adherence to the Rule of Law, plays a crucial role as the guardian of the Constitution and citizens' fundamental rights. Operating within a unified structure despite India's quasi-federal Constitution, the judicial system includes the Supreme Court at the apex, followed by High Courts in each state, and a hierarchy of Subordinate Courts. These courts, organised at the district level, encompass District Courts with appellate jurisdiction, along with lower courts such as Additional District Courts, Sub-courts, and Munsif Magistrate Courts. At the base of this structure are Panchayat Courts, which handle both civil and criminal cases. The judiciary's emphasis on fair and transparent proceedings ensures its independence and importance, particularly in protecting citizens' rights against potential overreach by other state organs. Similarly, the judiciary's role is crucial in maintaining fairness, transparency, and the protection of citizens' rights, making it a vital pillar of India's democratic system.

Assignments

1. Explain the significance of the judiciary in a democratic system. How does it function as the guardian of the Constitution and citizens' fundamental rights?
2. Discuss the structure and hierarchy of the judicial system in India. How does the system ensure both Union and State laws are administered?
3. Evaluate the role of the judiciary in maintaining the rule of law in India. How does it ensure equality before the law and the presumption of innocence?
4. Analyse the impact of the Collegium System on the appointment of judges in India. What challenges and controversies have arisen from this system?
5. Outline the original jurisdiction of the Supreme Court of India. In what types of disputes does the Supreme Court have exclusive jurisdiction?
6. Assess the significance of judicial review in India. How does it empower the judiciary to act as a check on the legislative and executive branches?
7. Describe the role and jurisdiction of the High Courts in India. How do they function as the highest authority in the State judiciary?
8. Discuss the concept of judicial activism in India. How has it evolved, and what are its implications for the balance of power between the judiciary and other branches of government?

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



BLOCK 4

Federal System in India

UNIT 1

Indian Federal Structure

Learning Outcomes

A careful study of this unit will enable you to

- ▶ understand the meaning and Implications of federalism in the Indian context;
- ▶ analyse the peculiar features of the Indian federal system;
- ▶ evaluate the asymmetric and quasi-federal characteristics of Indian Polity; and
- ▶ identify the main challenges to Indian Federalism

Background

Federalism, as a system of governance, involves the division of powers between different levels of government—typically national and state governments. In the Indian context, this division of powers is articulated within the framework of the Indian Constitution, which provides for a dual polity with a clear demarcation of authority between the Union and state governments. The Indian federal system, unlike those formed through voluntary agreements among sovereign states (e.g., the United States), evolved from a unitary system, where provinces were granted autonomy through the Government of India Act, 1935. The framers of the Indian Constitution chose to structure the nation as a "Union of States," emphasising the indestructibility of the Union and the inability of states to secede, thereby ensuring national unity amidst vast social and cultural diversity.

The evolution of federalism in India reflects a blend of unitary and federal features, often described as "quasi-federal." The Constitution grants significant powers to the Union government, including the control of residuary powers. Despite these centralising tendencies, the Indian federal structure accommodates diversity through mechanisms like asymmetric federalism, where certain states receive special provisions and autonomy based on their unique needs. Over time, challenges such as regionalism, centralisation of power, and fiscal imbalances have tested the resilience of Indian federalism, prompting ongoing debates about the balance between central authority and state autonomy in the world's largest democracy.

Keywords

Quasi-Federal, Asymmetrical Federalism, Fiscal Federalism, Central-Bias, Regionalism

Discussion

4.1.1 Federalism: An Overview

4.1.1.1 Meaning and Implications in the Indian Context

► Nature of a federal polity

Federalism involves the distribution of constituent and political power, allowing governance at two levels: national and state, with the possibility of local governments within a state. In any federal system, powers are divided between the Union and State Governments, with each being autonomous within its own domain, not subordinate to the other. To prevent chaos and conflicts between these jurisdictions, powers are clearly delineated between the centre and the states, making this division one of the most crucial aspects of federal constitutions. A federal union can be established in two main ways: (i) through a voluntary agreement among sovereign and independent states to manage common affairs, as seen in the United States or Australia; or (ii) by transforming the provinces of a unitary state into a federal union, as occurred in Canada or India.

► Federal Constitution

The Indian Constitution is fundamentally federal in nature, characterised by the traditional features of a federal system: the supremacy of the Constitution, the division of powers between the Union and state governments, an independent judiciary, and a rigid procedure for amending the Constitution. It establishes a dual polity with clearly defined areas of authority for the Union and the states, each operating within its assigned fields. An independent judiciary exists to resolve disputes between the Union and the states, or between states.

4.1.1.2 Historical Evolution

Until 1935, India had a unitary system of government. The Government of India Act, 1935, introduced the concept of federalism to India, marking the first legal use of the term 'Federation,' although the process of decentralisation and devolution of power had begun with the Government of India Act, 1919. Unlike other federal systems that arise from

► Transition from unitary to federal

treaties or agreements among constituent units or states, India transitioned from a unitary to a federal system by assigning certain powers and responsibilities to the states under its Constitution. The framers of the Indian Constitution aimed to establish a federal system to accommodate the country's vast size and social diversity.

To maintain national unity, it is crucial to address the legitimate grievances of states within the framework of the Federal Constitution, as fissiparous tendencies can threaten the cohesion of a nation. During the framing of the Constitution, the Constituent Assembly had various models to consider but wisely chose the Government of India Act, 1935, as the foundation for the new Constitution. Interestingly, the words 'federation' and 'federal' do not appear in any article of the Indian Constitution. Instead, Article 1 of the constitution provides: "India, that is Bharat, shall be a Union of States." According to Dr. Ambedkar the phrase 'union of states' has been preferred to 'federation of states' to indicate two things: 1) Indian federation is not an agreement of states like the American federation, and 2) the states have no right to secede from the federation. The federation is union because it is indestructible. The founding fathers of the constitution designed this federal structure for two main reasons:

► 'Union of states' denotes two meanings

1. A federal system is more effective than a unitary system, because of the large size of the country and its socio-cultural diversity; and
2. A federal system not only ensures efficient governance of the country but also reconciles national unity with regional autonomy.

4.1.1.3 Characteristics of a Federal Polity

In a federal polity, governance is structured under two distinct levels: the national or federal government and the governments of individual states. Unlike a unitary state, where a single central authority holds all governing power and may delegate limited, revocable powers to local subdivisions, a federal system unites multiple states into a single entity for matters of common interest while allowing them to retain autonomy over other affairs. Both the federal and state governments derive their authority directly from the constitution, ensuring they are not merely agents of one another, and individual states do not have the right to secede from the federation, which differentiates a federation from a confederation. A key characteristic of federalism is the clear

► Clear division of powers

division of powers between the federal government and the states, though the method of distribution may vary across different federal constitutions. The constitution's supremacy is paramount in a federal state, with all branches of government-executive, legislative, and judiciary-operating under its authority. To maintain this supremacy and the division of powers, the judiciary is vested with ultimate interpretative authority, enabling courts to invalidate actions by federal or state governments that violate constitutional provisions.

4.1.2 Peculiar Features of the Indian Federal System

4.1.2.1 Formation Without an Agreement

► Integration of autonomous provinces

It is important to note the unique origin of India's federal system. Prior to and during the enactment of the Government of India Act, 1935, Indian provinces did not function as sovereign states like those in the American Union. The Indian Constitution was formulated by the 'people of India' through the Constituent Assembly, rather than through an agreement among autonomous states. The transition from a unitary to a federal structure in India was not driven by the provinces seeking autonomy within a federal union, as seen in Canada. Instead, the Government of India Act, 1935 granted autonomy to provinces within defined spheres. The framers of the Indian Constitution integrated these autonomous provinces with Indian states to form a federal union, an initiative that the Indian states had previously declined in 1935.

4.1.2.2 Position of the States in the Federation

► Indian federation is distinctive in the position of states

In the United States, individual states existed as sovereign and independent entities before forming a federation, leading them to cede only as much sovereignty as necessary to establish a national government for common purposes. Consequently, the U.S. Constitution includes numerous safeguards to protect 'state rights.' In contrast, such measures were unnecessary in India since the states were not sovereign entities prior to the federation. Therefore the position of states in the Indian federation is distinctive.

4.1.2.2.1 The Allocation of Residuary Powers to the Union

In the Indian federal system, as per Article 248, the allocation of residuary powers- those powers not specifically enumerated in the Constitution- rests with the Union government. This centralisation of authority in the hands of the Union reflects

► Strong unitary bias

a strong unitary bias within the federal structure. Unlike other federal systems where residuary powers may be allocated to the states, India's approach strengthens the Centre's control over unforeseen and new issues, thereby reducing the autonomy of the states in such matters. In the U.S. Constitution, these powers are reserved for the states. The approach of the Indian Constitution aligns with the Canadian system, where residuary powers rest with the federal government, and does not diminish the federal nature

4.1.2.2.2 Single Constitution

Unlike classical federations like the United States, where each state has its own constitution, Indian states operate under a single, unified Constitution. This means that the governance and legislative frameworks of the states are subject to the provisions of the Indian Constitution, which can be amended by the Union Parliament.

4.1.2.2.3 No Right to Secede from the Federation

The Indian Constitution does not provide states with the right to secede from the Union. This reflects the emphasis on the indestructibility of the Indian Union, ensuring national integrity and unity. Due to the diversity of the nation, the framers of the Constitution tried to prevent any possibilities of disintegration, thus embedding a strong centralising tendency within the federal framework. This feature distinguishes the Indian federal system from more flexible federations such as the U.S.A where constituent units may have the theoretical right to secede.

► Strong centralising tendency

4.1.2.2.4 Altering the Boundaries of the States without their Consent

The Indian Constitution grants the Parliament the power to reorganise the states or alter the boundaries through ordinary legislation without requiring the consent of the affected state. While the President seeks the views of the state while initiating the bill for this purpose, they are not binding on the Parliament. This provision further emphasises the supremacy of the Union over the states, allowing for the reorganisation of states in the interest of national unity and administrative efficiency, often at the expense of state autonomy.

4.1.2.2.5 Unequal State Representation

In the Indian Parliament, states are not represented equally. Even in the Council of States or Rajya Sabha which is the

► Unequal allocation of seats

representative body of Indian states the allocation of seats is unequal. The allocation of seats in the Rajya Sabha is based on the population of the states, meaning larger states have more representatives, while smaller states have fewer. For example, while Uttar Pradesh state elects 31 members to Rajya Sabha states like Manipur elects only one member to it. Similarly, the number of seats allocated in Rajya Sabha to Uttar Pradesh alone is significantly higher than that of combined north-eastern states. This contrasts with other federal systems like the United States, where each state has equal representation in the Senate. The unequal representation in Parliament reinforces the majority and dominance of populous states in federalism. It also diminishes the power of smaller states within the federal framework.

4.1.2.3 Nature of Polity

The nature of Polity in India is distinguished from the classical federal models in the following manner.

4.1.2.3.1 Single Citizenship

In the Indian Federal System, the concept of a single citizenship is emphasised, distinguishing it from other federal systems like that of the United States, where dual citizenship exists. In India, individuals are recognised as citizens of the nation as a whole, not of individual states.

4.1.2.3.2 Integrated Public Services

Unlike classic federal systems where public services are often divided between the central and state governments, India has a unified civil service system. The All India Services, such as the Indian Administrative Service (IAS) and Indian Police Service (IPS), are jointly recruited by the central government but serve both the centre and the states. This arrangement helps to ensure consistency in administration across the country. It also strengthens the control of the Union while allowing for state-specific governance.

4.1.2.3.3 Unified System of Courts

India operates a unified judiciary with a single integrated system of courts, as opposed to a dual system found in many federal countries like the U.S.A, where separate state and federal courts exist. The Supreme Court of India stands at the apex, with High Courts at the state level, and a network of subordinate courts. The single system of judiciary interprets both central and state laws.

4.1.2.3.4 Union Control in Normal Times

In the federal structure of India, the central government exercises significant control over the states even during normal times, not just in emergencies. This control is evident in legislative, administrative, and financial domains, where the Union government can influence state policies and governance. Thus, the Article 249 provides that the Parliament can assume temporary legislative authority over any subject included in the State List on the ground of 'national interest' if the Rajya Sabha resolves so by a two-third majority vote. The extensive powers of the central government, as outlined in the Constitution, allow for a strong central authority that can intervene in state matters when deemed necessary.

4.1.4 Quasi-Federal and Asymmetrical Federal Polity

Considering the peculiar characteristics of Indian federalism, K.C. Wheare describes it as a quasi-federal. A quasi-federal state stands between Unitary and Federal state. In other words, the power is unevenly divided there between the central and state governments in such a way that the central government holds more authority. Despite this imbalance, the Constitution of India establishes a federal system of government, characterised by dual administration, a division of powers, a written constitution, constitutional supremacy, rigidity, an independent judiciary, and bicameralism. Additionally, some experts refer to India's federalism as 'bargaining federalism' and 'cooperative federalism'.

► Uneven division of power

The Indian Constitution is often described as having a strong central bias, reflecting its quasi-federal nature. While it provides for federal features like division of powers and a system of checks and balances, it also includes provisions that empower the central government considerably. The Union government holds significant powers in areas like emergency provisions, legislation, and financial control, ensuring that the Union remains dominant in the federal arrangement, especially on the grounds of maintaining national integrity and uniformity in governance.

► Dominance of the Union

However, looking at the operation of the Indian Constitution over the past 75 years, it would be inaccurate to conclude that federalism has entirely faded away, even though centralising tendencies have tightened in some respects. Some Indian scholars argue that the Constitution's unitary bias has been intensified by two main factors: (a) the Union's overwhelming

► Factors for intensifying unitary bias

financial power, which leaves states heavily reliant on Union grants, and (b) the extensive reach of the erstwhile Planning Commission . However, these critiques can be countered by noting that these controls aim to ensure uniform national development. While it is true that larger states should not monopolise their resources leaving smaller states at a disadvantage, the existing system prevents national weakness.

► "Cooperative federalism"

Even in the United States, similar factors have unexpectedly strengthened the national government, far beyond what the framers of the Constitution envisioned. American scholars have voiced concerns about the centralising effect of federal grants, noting that key state and local functions, like economic control and social services, are increasingly handled at the national level, risking the erosion of state autonomy. This trend reflects a broader shift in federal countries towards "cooperative federalism," moving away from the traditional theory of mutual independence between federal and state governments.

4.1.4.1 Asymmetrical Nature of Indian Federalism

The asymmetrical distribution of power among the units of the federal polity can be classified as two.

- a. **Vertical Asymmetry:** The Indian Constitution establishes a strong central government with the power to unilaterally alter state names and boundaries (Article 3), impose National Emergency and President's rule (Articles 352 and 356), and retain residuary legislative powers (Article 248).
- b. **Horizontal Asymmetry:** The Constitution provides unequal representation of states in the Rajya Sabha (Schedule 4), and distinct federal arrangements for Union Territories as outlined in Part VIII. Furthermore, the Fifth and Sixth Schedules create special provisions for the administration of Scheduled Areas and tribal areas in certain states, respectively.

4.1.4.1.1 Special Powers to Certain States (Article 371 & others)

Article 371 and its Sub-Clauses: These Articles grant special provisions to states like Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Karnataka, and Goa, to protect their unique cultural, social, and economic interests. For example, Nagaland enjoys protection of its local customs, laws, and land ownership practices, while Andhra Pradesh has provisions for equitable distribution of resources.

4.1.4.2 Fiscal Asymmetry

► Key role of Finance Commission

Fiscal asymmetry in India is primarily evident in the distribution resources among the state through the Finance Commission and Centrally Sponsored Schemes (CSS). The Finance Commission, a constitutional body, plays a crucial role in recommending measures for centre-state financial relations. The 15th Finance Commission, for instance, suggested that 41% of central taxes be shared with the states. It is apparently an example of vertical asymmetry. Horizontal asymmetry is evident in the devolution of resources among states, which is based on criteria like income distance, demographic performance, and forest and ecology. Furthermore, the Finance Commission provides specific grants to selected states to address their unique needs. In addition, CSS, which are schemes implemented by state governments but primarily funded by the central government, further contribute to fiscal asymmetry. These schemes are funded in a 60:40 ratio for normal category states, whereas for special category states, the Centre covers 90% of the costs, reflecting the differential financial support provided based on the unique challenges faced by these states.

4.1.4.3 Autonomy in Governance

The Indian Constitution allows for differential treatment of states, granting some more autonomy or special rights based on their unique needs. This pragmatic approach accommodates India's diverse socio-cultural landscape, allowing certain states to operate with more autonomy while maintaining national unity.

4.1.4.5 Evolution and Changes

► Abrogation of Article 370

The abrogation of Article 370 in 2019 marked a significant shift in India's approach to asymmetric federalism. By removing the special status of Jammu and Kashmir, the Indian government moved towards a more uniform federal structure, reducing the degree of asymmetry within the union. This change reflects an evolving perspective on federalism in India, where the balance between accommodating diversity and maintaining national unity is constantly reassessed.

4.1.5 Challenges to Indian Federalism

Indian federalism, a unique blend of unitary and federal features, faces numerous challenges that threaten the balance of power between the Centre and the states. Major challenges are as follows;

4.1.5.1 Regionalism

Regionalism poses a significant challenge to Indian federalism. Federalism flourishes as a democratic system when it effectively balances power-sharing between the Centre and the states. However, the pluralistic character of India often gives rise to regionalism, where people from culturally distinct regions, such as the Northeast and Southern states sometimes feel neglected or alienated from central governance. Despite India's tradition of successful federal rule since independence, regionalism persists in various parts of the country.

► Gorkhaland, Bodoland, and Karbi Anglong

The demand for more states, which became more prominent after the formation of Telangana in 2014, is an example of aggressive regionalism that threatens the federal structure. Movements for the creation of Gorkhaland, Bodoland, and Karbi Anglong, along with demands for separate states like Vidarbha in Maharashtra, Harit Pradesh, and Poorvanchal in Uttar Pradesh, reflect the growing influence of regionalism. These movements can hold the central government hostage to regional parties on matters of national importance, as seen in opposition of West Bengal to the Teesta river waters treaty with Bangladesh, or influence of Tamil Nadu on India's stance in the UNHRC resolution on Sri Lanka in 2012.

4.1.5.2 Centralisation of Power

► Union List, State List, and Concurrent List

Unlike federations like the USA or Australia, India's distribution of powers is defined under three lists in the Seventh Schedule of the Constitution: the Union List, State List, and Concurrent List. The Union List covers areas of national importance, the State List pertains to regional matters, and the Concurrent List includes subjects that require cooperation between the Centre and states. However, in case of a conflict over legislation in the Concurrent List, the Centre's authority prevails.

Certain constitutional provisions, such as Article 200 (which allows the Governor to reserve state bills for the President's consideration), emergency provisions (Articles 352, 356, and 360), and the requirement for states to comply with the Centre's executive powers under Articles 256 and 257, have led to concerns about centralisation of power. This centralisation poses a threat to the federal balance by undermining state autonomy.

4.1.5.3 Absence of Fiscal Federalism

The Indian Constitution grants the Centre greater powers



► Vertical imbalance and horizontal imbalances

of taxation, while also establishing the Finance Commission to address the financial needs of the states. Despite this mechanism, there remains a significant vertical imbalance between the Centre and states, and a horizontal imbalance between different states. About 40% of central revenues are transferred to states, but the distribution remains unequal, leading to uneven development across the country.

► Goods and Services Tax (GST)

The introduction of the Goods and Services Tax (GST) has further complicated fiscal federalism. While it amalgamated various taxes into a single tax, the states fear it undermines their financial autonomy, as the revenue is collected centrally and then distributed among states. This has sparked demands for greater financial independence among the states.

► Lack of equal representation

4.1.5.4 Unequal Representation of Federal Units

In most federations, a constitutional mechanism ensures equal representation of units in the Second Chamber (such as the Senate in the USA), and states typically have a say in constitutional amendments. However, in India, there is no provision for equal representation of states in the Rajya Sabha, nor do states have substantial influence over constitutional amendments. This lack of equal representation and limited state participation in constitutional changes challenges the federal principle.

4.1.5.5 Centralised Amendment Power

In typical federations, the power to amend the constitution is shared between the central government and the states. However, in India, the power of constitutional amendment largely rests with the Centre under Article 368. Although some amendments require ratification by half of the states, the states have virtually no power in this critical area. This centralisation of amendment power further erodes the federal structure.

4.1.5.6 The Indestructible Union with Destructible Units

The Indian Constitution does not allow for the secession of states from the Union, making the Union indestructible. While this arrangement is designed to protect national unity and integrity, it also curbs the growing demands for secession from the Union, such as the calls for a separate Dravida Nadu in the South or voices of separation in the eastern and western parts of India.

► Union's power to create or reorganise states

In contrast to other federations, where states cannot be divided or merged without their consent, the power to create or reorganise states in India lies with the Union Parliament. Article 3 lays down that the parliament may by law increase the area of a state, diminish the area of any state, alter the boundaries of any state or alter the name of any state by passing a law by a simple majority. Thus 'India is an indestructible union of destructible states'

4.1.5.7 Office of the Governor

► Imposing President's Rule

The office of the Governor, appointed by the Centre, has often been a point of contention in Indian federalism. The misuse of this office, particularly in imposing President's Rule under Article 356, has led to accusations of central overreach. A notable example was the imposition of President's Rule in Arunachal Pradesh in January 2016, despite the presence of an elected government, which the Supreme Court later ruled unconstitutional. The Centre's support for such actions reveals the inherent weaknesses in India's quasi-federal structure.

4.1.5.8 Centralised Planning

► State's limited influence over planning

Economic and social planning, listed in the Concurrent List, is largely controlled by the Centre, through institutions like the Planning Commission (now NITI Aayog). This centralisation of planning power, coupled with the financial dependence of states on central grants, weakens state autonomy and challenges the federal spirit. The lack of state-level planning commissions further exacerbates this issue, leaving states with limited influence over national and regional planning.

The challenges to Indian federalism are manifold, arising from regionalism, centralisation of power, fiscal imbalances, and the absence of equal representation and state autonomy in key areas. While the Indian federal structure has evolved to meet the country's diverse needs, these challenges highlight the need for continuous adaptation and reform to maintain the delicate balance between unity and diversity in a vast and pluralistic nation like India. Addressing these challenges is essential to preserving the federal spirit and ensuring that both the Centre and states can effectively govern in harmony.

Summarized Overview

The Indian federal structure is a complex system characterised by the distribution of powers between the Union and state governments, with each operating autonomously within its domain. Federalism in India, introduced through the Government of India Act of 1935, evolved from a unitary system to accommodate the country's vast size and diversity. The Indian Constitution, while fundamentally federal, incorporates unique features such as the allocation of residuary powers to the Union, a single constitution for both the Union and states, and no right for states to secede. The states, unlike those in classic federations, do not have sovereign status and are represented unequally in the Rajya Sabha. Indian federalism is marked by a strong central bias, often described as quasi-federal, with the Union holding significant powers, especially in emergencies. Asymmetrical federalism exists through special provisions for certain states and the fiscal asymmetry evident in financial relations between the Centre and states. Despite these centralising tendencies, the Indian federal system has been effective in managing regional diversity and maintaining national unity, though challenges such as regionalism, centralisation of power, and issues in fiscal federalism continue to test its resilience.

Assignments

1. Analyse the implications of the asymmetrical nature of Indian federalism with reference to Article 371 and other special provisions for states.
2. Evaluate the challenges posed by regionalism to the federal structure of India.
3. Critically assess the centralising tendencies within the Indian federal structure.
4. Examine the impact of the abrogation of Article 370 on the concept of asymmetric federalism in India.
5. Explain the key features of the Indian federal system as outlined in the Constitution.
6. Discuss the historical evolution of federalism in India, particularly in relation to the Government of India Act, 1935.
7. Describe the concept of 'quasi-federalism' in the context of Indian federalism.
8. Examine the role of the Finance Commission in ensuring fiscal federalism in India.

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Suggested Reading

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

UNIT 2

Centre- State Relations

Learning Outcomes

A careful study of this unit will enable you to

- Analyse the unitary tendencies of Indian Federalism in the light of Schedule 7 in the Constitution;
- Evaluate the components of Legislative Federalism in India in the light of Emergency Provisions, Union List, State List, Concurrent List and Residuary Powers
- Assess the implications of Administrative Federalism in India in the light of All India Services, Inter-State Council, NITI Aayog
- Understand Financial Federalism and role of GST Council and Finance Commission; and
- Analyse Indian Federalism in the context of the role of Governor.

Background

Unlike classical federations such as the USA, Indian federalism exhibits a distinctive blend of federal and unitary features, often leading to debates about the extent to which power is centralised. The 7th Schedule of the Indian Constitution, which demarcates the division of powers between the Union and State governments through three lists-Union, State, and Concurrent-highlights these complexities. The dominance of the Union List, the allocation of residuary powers to the Union, and the supremacy of Union law in the Concurrent List exemplify the unitary tendencies embedded within the federal structure. These features, combined with emergency provisions, the power of Parliament to override state legislation, and the role of All India Services, reinforce the centralisation of authority, thereby challenging the federal equilibrium. This unit examines the core aspects of Centre-State relations, focusing on how constitutional provisions and institutional mechanisms have shaped the interaction between the Union and State governments.

Keywords

Unitary Tendency, Residuary powers, President's Rule, Cooperative Federalism, Finance Commission

Discussion

4.2.1 Unitary Tendencies of Indian Federalism

Although the Constitution provides for a federal structure, many features involved in it make a polity with more unitary tendencies. The following characteristics of the Constitution underline the unitary nature of Indian Federalism.

4.2.1.1 The 7th Schedule of the Constitution

Federal structure creates a complex governmental framework where both the Union and state governments coexist, deriving their authority from the Constitution. In a federal constitution, powers are divided in such a way that the Union Government can legislate for the entire country, while state governments can legislate for their respective states. Each government operates independently within its jurisdiction, without being controlled by the other, ensuring that neither is subordinate but both are co-equal.

The Indian Constitution clearly outlines a detailed division of legislative powers between the Union and state governments in the Seventh Schedule. The executive powers of both the Union and state governments correspond to their respective legislative powers. These powers are categorised into three lists: the Union List, the State List, and the Concurrent List.

► The 7th Schedule

However, this distribution also underlines certain unitary features, which are essential in understanding the nature of Indian federalism. Now let us discuss these unitary features contained in the 7th Schedule.

Dominance of the Union List: The 7th Schedule consists of three lists: the Union List, the State List, and the Concurrent List. The Union List (List I) includes 97 subjects that fall under the jurisdiction of the Union government. Only the Parliament can legislate on these matters. These areas typically involve matters of national importance that require uniform laws across the country. The main subjects included in this list are defence,

foreign affairs, atomic energy, etc, which are crucial for national integrity and security. The State List (List II) contains 61 subjects on which state legislatures can legislate. These areas typically involve matters of local or regional importance.

Supremacy of Union in Concurrent List: The Concurrent List (List III) has 52 subjects where both the Union and state governments can make laws. In case of a conflict between Union and state laws on a Concurrent List subject, the law made by the Parliament will take precedence. Similarly, dominance of the Union List highlights the unitary nature of Indian federalism, as it centralises significant powers in the hands of the Union government.

Residuary Powers with the Union: As per Article 248 of the Constitution, the residuary powers are with the Union government, meaning any subject not enumerated in the State or Concurrent Lists automatically falls under the Union List. This provision strengthens the unitary bias by ensuring that any new area of legislation that emerges due to socio-economic changes or technological advancements remains under the central government's control.

The Dominance of the Union during Emergencies: Under Article 250, the Parliament acquires the power to legislate on subjects in the State List during a national emergency. Similarly, during the President's Rule, the Parliament can legislate on any subject in the State List for that particular state. These emergency provisions effectively convert the federal structure into a unitary one, concentrating legislative powers at the central level.

Parliament's Power to Override State Legislation: Article 249 allows the Parliament to legislate on a subject in the State List if the Rajya Sabha passes a resolution by a two-thirds majority that it is necessary as per the 'national interest'. This enables the central government to override state autonomy on critical matters, reflecting a unitary feature.

Power of Union to Amend the 7th Schedule: The Constitution allows the Parliament to amend the Union, State, and Concurrent Lists through a constitutional amendment (Article 368), subject to the ratification by half of the State legislatures. This power of the Union to alter the distribution of powers underscores the unitary tendencies embedded within Indian federalism.

4.2.2 Legislative Federalism

Article 245 to 255 of the constitution deals with legislative relations between the union and the states.



Territorial Extent

The constitution defines the territorial limits of the legislative powers vested in the centre and the states in the following way

1. The Parliament can make laws for the whole or any part of India;
2. The state legislatures can make laws for the whole or any part of the state; and
3. The Parliament alone can make extraterritorial legislation; Thus the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

List	Main Subjects Included
Union List	Defence: Army, Navy, Air Force, and other defence forces. Foreign Affairs: Treaties, diplomatic relations, international organisations. Atomic Energy: Nuclear energy, mineral resources necessary for atomic energy. Currency: Coinage, legal tender, foreign exchange. Banking: RBI, banking, foreign exchange markets. Telecommunications: Posts and telegraphs, telephones, wireless, broadcasting. Railways: Railways, high-speed rail projects, rail infrastructure. Interstate Trade and Commerce: Interstate rivers, highways, and inter-state trade.
State List	Police: Public order, police forces, prison administration. Public Health and Sanitation: Hospitals, dispensaries, public health, and sanitation. Agriculture: Agriculture, including agricultural education and research. Water Supply and Irrigation: Water storage, water supply, irrigation, and canals. Markets and Fairs: Markets, fairs, and agricultural fairs. State Public Services: Public service commissions, employment, and pensions. Fisheries: Fisheries within territorial waters, including inland fisheries.

Concurrent List	Criminal Law: Criminal procedure, police, criminal law enforcement. Marriage and Divorce: Marriage, divorce, and matters related to family law. Education: Education, including universities, technical education. Labour Welfare: Trade unions, industrial disputes, social security. Bankruptcy and Insolvency: Bankruptcy, insolvency, and administration of insolvent estates. Environmental Protection: Forests, protection of wildlife, and environmental conservation. Economic and Social Planning: Planning and implementation of economic and social schemes.
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4.2.2.1 Residuary Powers

► Model of Canada

The allocation of residuary powers in the Indian Constitution follows the model of Canada, where these powers are assigned to the Union rather than to the states, as is the case in the U.S.A. and Australia. This marks a departure from the Government of India Act, 1935, where residuary powers were not vested in either the Federal or State Legislatures, but were instead placed under the authority of the Governor-General. In contrast, as per Article 248, the Constitution entrusts the Union Legislature with the power to legislate on matters not listed in any of the three Lists, with the Courts having the final say on whether a matter falls under this residuary power. However, since the three Lists aim to comprehensively cover all possible legislative subjects and the Courts interpret these powers broadly, the actual use of the residuary power is likely to be limited.

4.2.2.2 Emergency provisions (Article 352-360)

The Constitution provides for three different kinds of abnormal situations which necessitate the President to declare emergencies. They are:

1. An emergency due to war, external aggression, or armed rebellion (national emergency).
2. Failure of constitutional machinery in the states (state emergency).
3. Financial emergency.

4.2.2.2.1 National Emergency (Article 352)

► Article 352

A proclamation of national emergency is declared by the President at any time he/she is satisfied that the security of India or any part of India has been threatened by war, external aggression, or armed rebellion. It shall be made by the President on the written advice of the cabinet. It shall remain in force for a period of one month unless it's approved by the Parliament within a period of one month. Once approved by the Parliament, it shall remain in force for a period of six months if a specific time limit has not been set. It says that the extension of duration in one instance cannot be for a period of more than six months. However, no maximum time limit has been specified. Such proclamation may be revoked by the president at any time.

Effect of National Emergency

The effect of the proclamation of this type may be given below:

1. The Parliament shall have unrestricted power to make laws for the whole or any part of the country with respect to any matter given in the state list.
2. The Parliament shall have the power to make laws and confer powers and impose duties upon the government of India and its officers to carry out the laws made by it under its extended jurisdiction.
3. The Parliament shall have the power to extend its own life, and that of the state legislatures for a period not exceeding one year at a time. The tenure of the Lok Sabha and Assemblies may be extended for indefinite periods with the approval of the Parliament for each time. However, extension shall not last beyond six months at the most after the revocation of the emergency.
4. The executive power of the union shall extend to the issuing of any direction to any state as to the manner in which its executive power is to be exercised.
5. During the operation of the proclamation of emergency, the President shall have the constitutional power to modify the provisions of the constitution relating to the allocation of financial resources.
6. The President shall be entitled to suspend fundamental freedoms under Article 19 and their enforcement given in Articles 32 and 226 of the constitution. He/she is also entitled to suspend the judicial enforcement of Fundamental Rights except those of life or personal liberty given in Articles 20 and 21.

This kind of emergency has been declared thrice so far. For the first time, Article 352 was invoked in October 1962 when Communist China attacked India. The second instance of this invocation of the Article took place in December 1971 when we had a war against Pakistan. The president invoked Article 352 for the third time in June 1975 in the name of grave danger to internal security.

4.2.2.2.2 State Emergency (Article 356)

► Breakdown of
the constitutional
machinery

Article 356 of the constitution empowers the President to take over the administration of the state in the event of the breakdown of the constitutional machinery in the state. It shall be made by the President either on the report of the state Governor or otherwise on the assessment of the union cabinet. It shall remain in force for a period of two months unless the period of extension is approved by the Parliament. Once approved by the Parliament, it shall remain in force for a period of six months in one instance. This may be further extended for a further period of six months. Ordinarily, the total period of such emergency cannot exceed one year unless there is a national emergency in force or the Election Commission certifies that the continuance of such emergency is necessary in view of the difficulties in holding general elections. However, the total period of state emergency cannot go beyond three years.

The effects of the state emergency are given below:

1. The President shall assume all functions of the state government and conduct its administration through the Governor or with administrators, assisted with advisors or not.
2. The President may declare that the powers of the legislature of the state shall be exercised by or under the authority of the Parliament.
3. The President may make such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the object of the proclamation.
4. The President cannot, however, assume or transfer any of the powers vested in the High Court.

While the proclamation is in operation, the power of the state legislature can be exercised by the Parliament. The Parliament can confer on the President the power to make laws for the state. The Parliament may also authorise the President to delegate such powers to any other authority as specified by himself.

The provision of Article 356 has been invoked on many occasions since its first application in Punjab in 1951. In the majority of cases, the proclamation lacked constitutionality.

4.2.2.2.3 Financial Emergency (Article 360)

► Threatening for financial stability

If the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened, he can issue a proclamation of financial emergency under Article 360. It can remain in force for a period of two months, but it may be extended by a resolution of both Houses of Parliament by a simple majority. Once approved by the Parliament, it can continue for an indefinite period till it is revoked by the President.

4.2.2.2.4 Effects of Financial Emergency

The effects of the financial emergency shall be as follows:

1. The executive authority of the Union shall extend to giving directions to any state to observe such canons of financial propriety as may be specified in the communication. Any such direction may include a provision for the reduction of salaries and allowances of any or every class of person serving the state, including judges of the Supreme Court and High Courts. It may also require that all money or financial bills are to be reserved for the consideration of the President after they are passed by the legislature of the state.
2. No financial emergency has been declared so far, though there was a financial crisis in India.
3. Thus, during the period of financial emergency, the Centre gains full control over the states in financial matters.

In this context, H. V. R. Iyengar, a member of the Constituent Assembly, observed that the provisions of the financial emergency pose a serious threat to the financial autonomy of the states.

4.2.2.2.5 Criticisms

In the Constituent Assembly itself, there were criticisms—a very strong criticism was raised against the insertion of the provision in the Constitution. The important criticisms were based on the following grounds:

1. The federal character of the Constitution will be destroyed, and the Union will become all-powerful.
2. The powers of the government- both the Centre and the states- will entirely be concentrated in the hands of the Union executive.
3. The President will become a dictator.
4. The financial autonomy of the states will be nullified.
5. Fundamental rights will become meaningless, and as a result, the democratic foundation of the Constitution will be destroyed.

► Concentration of power in the hands of the Union

To allay the fears and apprehensions raised in the Constituent Assembly, Dr. Ambedkar stated that he did not anticipate any situation where the provisions of the articles would be abused or employed for political purposes. However, he expressed the optimism that such articles will never be called into operation and that they remain a “dead letter.”

4.2.3 Administrative Federalism in India (Articles 256–263)

► Distribution of legislative powers

Articles 256 to 263 of the Constitution discuss Centre-state administrative relations. The executive power of the nation has been divided between the Centre and the states along the lines of the distribution of legislative powers. Thus, the executive power of the Centre extends to the whole of India concerning matters on which the Parliament has exclusive power of legislation. Similarly, the executive power of the state extends to its territory regarding matters on which the state legislature has exclusive power of legislation. In respect of matters on the concurrent list, the executive power rests with the state, except when a constitutional provision or a parliamentary law specifically confers it on the Centre.

1. Obligation of the State (Article 256)

The Constitution has placed a restriction on the executive power of the state to ensure that the state government does not interfere with the legislative and executive powers of the Union.

2. Centre's Direction to the States (Article 257)

Besides, the Constitution has empowered the Union to issue directions to the states as necessary for the exercise of their executive authority. In the case of failure on the part of any

state to carry out these directions, it is lawful for the President to supersede the state government and assume its power.

3. The powers of the State Government (Articles 256, 356, or 365)

Specifically, the constitution empowers the Union to issue administrative directions to the states for the following purposes:

- ▶ To ensure compliance with the Union laws and existing laws which apply in the state (Article 256).
- ▶ To ensure that the executive power of the state does not interfere with the exercise of the executive power of the Union (Article 257).
- ▶ To secure the construction and maintenance of means of communication by the state (Article 257).
- ▶ To ensure protection of railways within the state (Article 257A).
- ▶ To secure the drawing and execution of schemes for the welfare of Scheduled Tribes in the state (Article 339(2)).
- ▶ To ensure the provision of adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350A).
- ▶ To secure the development of Hindi language (Article 351).

In addition to this, the Union government is empowered to issue directions to the state during emergencies under Articles 352, 356, and 360. During emergencies, the whole government of India will function as a unitary form of government.

4. Mutual Delegation of Functions (Article 258)

The President may, with the consent of the government of the state, entrust either conditionally or unconditionally any executive functions of the Centre to the states. Similarly, the Governor of the state may, with the consent of the central government, entrust to that government any of the executive functions of the state. The constitution also makes a provision for the entrustment of the executive functions of the Centre to the states without the consent of the states. But in this case, the delegation is by the Parliament and not by the President.

From the above, it's clear that the mutual delegation of functions between the Centre and states can take place either under an agreement or by legislation. While the Centre can use both methods, the states can use only the first method. In addition, there are certain provisions in the constitution for maintaining smooth working of the Union and the state governments.

5. Inter-state River Water Disputes (Article 262)

The Parliament can provide for the adjudication of any disputes or complaints with respect to the use, distribution, and control of water of any inter-state river and river valley.

4.2.3.1 Public Service Commission

In the field of public service commissions, the Centre-state relations are as follows:

- ▶ The chairman and members of the State Public Service Commission, though appointed by the Governor of the State, can be removed only by the President.
- ▶ The Parliament can establish a joint Public Service Commission for two or more states on the request of the state legislatures concerned.
- ▶ The Union Public Service Commission can serve the needs of a state on the request of a state Governor and with the approval of the President.
- ▶ The Union Public Service Commission assists the state in framing and operating schemes for joint recruitment of any service for which candidates possessing special qualifications are required.

4.2.3.2 Integrated Institutions

Key institutions, such as the judiciary, election machinery, and audit systems, operate through a centrally unified approach to ensure coherence in governance.

- ▶ **Judicial System:** The judges of the High Courts are appointed by the President in consultation with the Chief Justice of India and the Governor of the state concerned. The Parliament can establish a common High Court for two or more states.



- ▶ **Election Machinery:** The Election Commission conducts elections not only to the central legislature but also to the state legislatures. But this body is constituted by the President and the states have no say in this matter. The position is somewhat rigid with regard to the removal of its members as well. (On the other hand, the USA has separate machinery for the conduct of elections at the federal and at the state level.)
- ▶ **The State Election Commission:** The State Election Commissioner, though appointed by the Governor of the state, can be removed by the President
- ▶ **Audit Machinery:** The CAG audits the accounts of not only the Centre but also those of the states; hence, this office restricts the financial autonomy of the states. American CAG, on the other hand has no role with respect to the audit of the states.

4.2.3.3 Role of All India Services (Article 312)

▶ Relation of All India Services with federalism

There are certain services 'common to the union and the states'. These are called All India Services of which IAS, IPS and IFS are the existing examples (article 312). The officers of these services are recruited by the UPSC. The Rajya Sabha may pass a resolution with a special majority for the creation of an All-India Public service. These services play a crucial role in the functioning of the Indian administrative framework. These services are also unique to the Indian federal structure, representing a blend of federal and unitary features.

4.2.3.3.1 Federal Nature of All India Services

▶ Uniformity across the country

The AIS contains federal features in their recruitment and control mechanisms. The Officers of All India Services are recruited by the Union Government but serve both the Union and State Governments. This is a hallmark of federalism, ensuring that while these officers are centrally recruited, they are accountable to both the Union and State authorities. This arrangement provides a link between the Union and State administrations, fostering cooperation and consistency in governance across the country. Similarly, the recruitment, training, and service conditions of AIS officers are maintained uniformly across the country by the Union Public Service Commission (UPSC). This ensures that all states have access

to a pool of highly qualified and trained officers, promoting administrative efficiency and uniformity in public administration across different states.

4.2.3.3.2 Unitary Bias in All India Services

The Union Government exercises significant control over the cadre management of AIS officers, including appointments, promotions, and transfers, especially to important positions. This control by the Centre over crucial aspects of an officer's career can be seen as a unitary feature, potentially limiting the autonomy of states in deploying these officers according to their specific needs. Secondly, the AIS officers can be deputed to central services or organisations, often occupying senior positions in the Union Government. This system of central deputation further reflects the unitary character, as it allows the Union Government to utilise the services of these officers at the central level, thereby reinforcing the central authority over these officers. Likewise, the AIS officers, serving under dual authority, may face conflicting demands from the Union and State Governments. In situations of political or administrative conflict between the Centre and a State, the allegiance of these officers often leans towards the Union Government, given the latter's control over their career prospects. This can sometimes undermine the federal principle of state autonomy.

► Central deputation

4.2.3.3.3 Role in National Integration

The presence of AIS officers across all states helps maintain a cohesive administrative structure, which is essential for national integration. The officers act as a bridge between the Union and State Governments, facilitating the implementation of central policies and schemes at the state level. This integration is vital for maintaining the unity and integrity of the country, especially in a diverse and multi-ethnic federal structure like India's. This role is more significant during emergencies or national crises. These services are supported on the ground that 1) they help in maintaining high standard of administration in the centre as well as in the states 2) they help to ensure uniformity of administrative system throughout the country and 3) they facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the centre and the states.

► Benefits of AIS

4.2.3.3.4 Challenges to State Autonomy

The central control over the career progression of AIS officers can sometimes lead to politicisation, where officers may be seen as agents of the Union Government rather than

► Agents of the Union Government

neutral administrators. This perception can strain Centre-State relations and pose challenges to the federal principle of state autonomy. Similarly, the states have limited control over the appointment and transfer of AIS officers, which can hinder their ability to implement state-specific policies effectively. The members of these services draw their salaries and allowances as determined by the centre but any disciplinary action against any officer can be taken by the union home ministry in consultation with the UPSC. The state cannot take any disciplinary action except suspending them. The objective of the provision is to ensure greater centre-state coordination and implementation of the policies of the central government through these officers. However, this enables the central government to exercise control over the state in matters of execution of union laws.

► Complication due to dual nature

In a nutshell, the All India Services, while being a federal mechanism designed to ensure administrative uniformity and national integration, also carry inherent unitary features that centralise significant control with the Union Government. This dual nature reflects the quasi-federal character of the Indian Constitution, where the balance between central authority and state autonomy is delicately maintained. The role of AIS in bridging the Union and State Governments is crucial for the functioning of Indian federalism, but it also underscores the complexities and tensions inherent in India's federal structure.

4.2.3.4 Inter-State Council (Article 263)

► promoting cooperative federalism

The Inter-State Council in India serves as a crucial mechanism for promoting cooperative federalism and coordination between the central and state governments. Given India's federal structure, where the centre holds significant power but relies on states for policy implementation, there is a need for effective intergovernmental communication and consultation. Article 263 of the Indian Constitution empowers the President to establish such a Council, which is tasked with advising on and addressing disputes between states, as well as facilitating discussions on subjects of mutual interest between the Union and the states. This framework ensures that national policies are formulated through dialogue, discussion, and consensus, reflecting the collaborative spirit of India's federalism.

The Inter-State Council is designed to investigate and discuss matters of common concern to the Union and the states or between multiple states, thereby coordinating policies and actions across different levels of government. The constitution outlines certain duties:

1. The duty of enquiring into and advising upon disputes which may have arisen between states.
2. to investigate and discuss subjects of common interest between the Union and the States or between two or more States. For example, research in such matters as agriculture, forestry, public health and to make recommendations for coordination of policies and action relating to such subjects. In the exercise of this power the President has so far established a Central Council of Health, a Central Council of Local Self Government and a Transport Development Council for the purpose of coordinating policies of the states relating to these matters.

► **Punchhi Commission**

A permanent Inter-State Council was established on April 1, 1990, based on the recommendations of the Sarkaria Commission, which emphasised the need for such a body to handle intergovernmental relations effectively. This Council consists of six Union Cabinet Ministers, the Chief Ministers of all states, and the Chief Ministers of Union Territories with a Legislative Assembly, with the Prime Minister serving as the Chairman. To distinguish this Council from other bodies created under Article 263, the Sarkaria Commission recommended that it be referred to as the InterGovernmental Council, highlighting its unique role in fostering cooperation and resolving disputes within India's federal structure. With a view to ensure a more harmonious and healthier relationship between the centre and the states in future as well as for further strengthening of the third tier of governance the government appointed a second commission on centre state relations in 2007 known as Punchhi Commission. The commission has submitted 273 recommendations which are under consideration of the council. In 2014 the Prime minister approved the reconstitution of the Inter-State Council.

4.2.3.5 Extra Constitutional Devices

In addition to the above constitutional devices, there are extra-constitutional devices to promote cooperation and coordination between the Centre and the states. These include a number of advisory bodies and conferences held at the central level. They include: NITI Aayog, National Development Council, National Integration Council, North Eastern Council, and Zonal Councils.

The important conferences held either annually or otherwise to revisit the Centre-state relations on a wide range of matters are: the Governors' Conference, the Chief Ministers' Conference, the

Chief Secretaries' Conference, the Chief Justices' Conference, the Conference on Vice-Chancellors, the Home Ministers' Conference, and the like.

4.2.3.3 NITI Aayog

► Central repository of best practices

National Institution for Transforming India, otherwise known as NITI Aayog, established to replace the Planning Commission, aims to foster cooperative federalism by involving state governments in the policy-making process and ensuring inclusive growth across the country. Its key objectives include strategic long-term planning, monitoring and evaluating the implementation of programmes, promoting innovation and research, and aligning national policies with Sustainable Development Goals (SDGs). By acting as a central repository of best practices and facilitating knowledge exchange, NITI Aayog tailors policies to meet the unique needs of different states, thereby addressing regional disparities and promoting equitable development.

4.2.3.3.1 Composition of NITI Aayog

NITI Aayog is composed of the Prime Minister as the Chairperson, a Governing Council consisting of Chief Ministers and Lt. Governors of States and UTs, a Vice-Chairperson, full-time and part-time members, and four ex-officio members from the Union Council of Ministers.

- **Chairperson:** The Prime Minister of India serves as the NITI Aayog Chairman.
- **Vice-Chairperson:** The NITI Aayog Vice Chairman is appointed by the Prime Minister.
- **Governing Council:** The Governing Council consists of all the Chief Ministers of states and Lt. Governors of all Union Territories' .
- **Regional Council:** The Regional Council addresses specific regional issues. It is chaired by the Prime Minister or his nominee. It comprises Chief Ministers and Lt. Governors of the concerned region.
- **Ad hoc Membership:** Two members from leading research institutions serve as ex-officio members on a rotational basis.

- ▶ **Ex-Officio Membership:** Up to four members from the Union Council of Ministers are nominated by the Prime Minister.
- ▶ **Chief Executive Officer:** The Niti Aayog CEO is appointed by the Prime Minister and holds the rank of Secretary to the Government of India.
- ▶ **Special Invitees:** Experts and specialists with domain knowledge are nominated by the Prime Minister.

▶ Driving economic reforms and liberalisation

In its role as the government's primary policy advisor, NITI Aayog provides expertise and recommendations on a broad range of issues, advocating for evidence-based policies grounded in rigorous research and global best practices. It plays a crucial role in driving economic reforms and liberalisation, enhancing productivity and competitiveness through structural reforms and market-oriented policies. Additionally, NITI Aayog supports innovation and entrepreneurship through initiatives like the Atal Innovation Mission, advises on social sector reforms in health and education, and coordinates large-scale infrastructure projects. Its commitment to sustainable development and environmental sustainability ensures that India's growth trajectory aligns with global climate goals, making it a central player in shaping the country's contemporary policy landscape.

4.2.4 Financial Relations under Indian Federalism (Articles 268 to 293)

No system of federalism can be successful unless both the Union and the States have at their disposal adequate financial resources. To achieve this object, the Constitution has made elaborate provisions.

4.2.4.1 Allocation of Taxing Powers

The Constitution divides the taxing powers between the Centre and the States in the following ways:

1. The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 13 in number).
2. The State Legislatures have exclusive power to levy taxes on subjects enumerated in the State List (which are 18 in number).

3. There are no tax entries in the Concurrent List. However, the 101st Amendment has made one exception: The Amendment has conferred concurrent power on the Parliament and the State Legislatures to make laws governing Goods and Services Taxes (GST).
4. The residuary power of taxation is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax, and expenditure tax.

4.2.4.2 Distribution of Tax Revenues

The 80th Amendment Act of 2000 and the 101st Amendment Act of 2016 have introduced major changes in the scheme of the distribution of tax revenues between the Centre and States. The 80th Amendment was enacted to give effect to the recommendations of the 10th Finance Commission. The Commission recommended that out of the total income obtained from certain Central taxes and duties, 29% should go to the States. This is known as the automatic scheme of devolution and came into effect retrospectively from April 1996.

► The 101st Amendment

The 101st Amendment has paved the way for the introduction of a new tax regime in the country. The Amendment conferred concurrent taxing power upon the Parliament and the State legislatures to make laws for levying GST on every transaction of supply of goods or services or both.

1. Taxes belonging to the Union exclusively are:

Customs, Corporation tax, Surcharge on Income Tax, Fee in respect of matters in the Union List.

2. Taxes belonging to the States exclusively are:

Land Revenues, Stamp duties (excluding stamp duties on documents included in the Union List), Succession duty, Estate duty, Income tax on agricultural land, Tax on passengers and goods carried on inland waterways, Tax on land and buildings, Tax on animals and boats, Tax on road vehicles, on advertisement, Tax on entry of goods in local areas, Tolls, Fees in respect of matters in the State List, and Tax on professions, trade, etc.

3. Duties levied by the Union but collected and appropriated by both States: E.g. Stamp duties on bills of exchange, Excise duty on toilet and medical preparations.

4. Taxes levied and collected by the Union but assigned to the States: E.g. Duties on succession to property other than agricultural land, Estate duty in respect of property other than agricultural land, Terminal tax on goods and passengers carried by railway, air, or sea.
5. Taxes levied and collected by the Union and distributed between Union and the States: E.g. Taxes on income other than agricultural income, Duties of excise (other than agricultural) are included in the Union List—except medical and toilet preparations.

4.2.4.3 Grants-in-Aid to States (Article 275)

Under the Constitution, financial resources of the States are very limited though they have to undertake many social welfare measures. The Constitution provides for grants-in-aid to the States from Central resources. There are two types of grants-in-aid:

1. Statutory Grants
2. Discretionary Grants

► Article 275

Article 275 empowers the Parliament to make grants to the States which are in need of financial assistance and not to every State. Also, different sums may be fixed for different States. These sums are charged on the Consolidated Fund of India.

► Article 282

Article 282 empowers both the Centre and the States to make any grant for public purposes, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to States. These grants are also known as discretionary grants. The Centre is under no obligation to give these grants, and the matter lies within its jurisdiction. This discretionary grant forms the larger part of Central grants to the States.

► Third type of grants-in-aid

The Constitution also provides for a third type of grants-in-aid, but for a temporary period. Under it, grants are given for schemes of development for the welfare of SCs, STs, for raising the level of administration of scheduled areas. Grants are given to the State of Assam for the development of tribal areas. Again, grants-in-aid will be given to the States of Assam, Bihar, Orissa, and West Bengal in lieu of export duties on jute and jute products. These sums are charged on the Consolidated Fund of India and are made to the States on the recommendation of the Finance Commission.

4.2.4.4 Borrowing Powers of the Centre and the States

The following are the provisions with regard to the borrowing powers of the Centre and the States:

1. The Centre can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees within the limits fixed by the Parliament.
2. States borrow within India (not abroad) upon the security of the Consolidated Fund of the States or can give guarantees within the limits fixed by the State Legislatures.
3. The Central government can make loans to any State or give guarantees in respect of loans raised by any State.
4. A state cannot receive or raise any loan without the consent of the Centre if any part of the loan, which has been made by the Government of India, is still outstanding.

4.2.4.5 Immunity from Mutual Taxation

As a federation, the Indian government constitution made provisions for the rule of "Immunity from Mutual Taxation." The following are the provisions:

1. Exemption of Central Property from State Taxation (Arts. 285 to 288)
 - The property of the Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats, and so on. But the Parliament is empowered to remove the bar. This property includes movable or immovable, and tangible or intangible.
 - The corporations or the companies created by the central government are not immune from state taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.
2. Exemption of State Property or Income from Central Taxation

The property or income of a state is exempted from central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of the state if the Parliament so provides. However, the Parliament can declare any particular trade or business

as industrial or commercial functions of the government and it would then be taxable. However, the property and income of local authorities situated within a state are not exempted from central taxation. Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.

4.2.4.6 Finance Commission (Article 280)

Article 280 provides for the establishment of a Finance Commission. The Finance Commission shall consist of a chairman and four other members appointed by the President. The chairman must be a person having experience in public affairs. The other members must meet one of the following qualifications:

- a. A High Court judge or one qualified to be appointed as such;
- b. A person having special knowledge of the finances and accounts of the government;
- c. A person having wide experience in financial matters and administration; and
- d. A person having special knowledge of economics.

The members of the Commission shall hold office for such a period as may be specified in the presidential order and shall be eligible for reappointment. The Commission is empowered to determine its procedure and shall have all the powers of a civil court in respect of summoning and enforcing the attendance of witnesses, production of any document, and requisitioning any public record from any court or office.

4.2.4.7 Duties of the Finance Commission

It shall be the duty of the Commission to make recommendations as to:

- a. The distribution between the Union and the states of the net proceeds of taxes which are or may be divided between them;
- b. The principles which should govern the grants-in-aid of the revenues of the states out of the Consolidated Fund of India;
- c. The measures needed to augment the Consolidated Fund of the state to supplement the resources of the panchayats in

the state on the basis of the recommendations made by the Finance Commission.

- d. The measures needed to augment the Consolidated Fund of the state to supplement the resources of the municipalities in a state on the basis of recommendations made by the Finance Commission of the state;
- e. Any other matter referred to the Commission by the President in the interest of sound finance.

► Article 281

The Commission shall determine the procedure and shall have power in the performance of their functions as the Parliament may by law confer on them. Article 281 says that the President shall cause every recommendation of the Finance Commission to be laid before each House of the Parliament together with an explanatory memorandum.

► The balancing wheel of fiscal federalism

The constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India. The scheme of distribution of revenues indicates, like the distribution of legislative and administrative powers, a clear tendency towards centralisation. The Centre's resources are many and vast but the state resources are very limited while the responsibilities of the states are manifold. The state has to implement all the welfare schemes. Consequently, the states are dependent upon the Centre for funds. These funds are given to the states by the Centre on the recommendations of the Finance Commission in the form of grants. The states are primarily responsible for the well-being of the citizens.

4.2.4.8 GST Council

► Unification of the tax system

The Goods and Services Tax (GST) is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. It was implemented in India on July 1, 2017, replacing a plethora of indirect taxes levied by both the Central and State Governments. GST is designed to unify the Indian market by subsuming various taxes like the Central Excise Duty, Service Tax, VAT, and others into a single tax regime. The GST Council is the apex decision-making body responsible for governing the GST regime in India. It is a federal institution where both the Centre and the States have representation, with decisions typically being made by consensus. The Council is tasked with making recommendations on various aspects of GST, such as tax rates, exemptions, and thresholds. It also addresses issues related to disputes and governance of GST law. The GST Council plays a critical role in shaping Centre-State relations

concerning the taxation and distribution of revenue generated through GST. Article 269A(1) of the Constitution, introduced as part of the GST regime, primarily addresses the taxation and collection of GST on goods and services, especially in the context of inter-state trade and commerce.

4.2.4.8.1 Compensation Mechanism

The GST (Compensation to States) Act, 2017, ensures that States are compensated for any revenue loss arising from the implementation of GST. The compensation is calculated based on the projected growth rate of 14% per annum over the base year revenue (2015-16) for a period of five years (2017-22). However, this has been a point of contention, especially during economic downturns when the compensation cess collected fell short of the amounts due to States.

4.2.4.8.2 Revenue Sharing

GST is a dual tax regime where both the Centre and the States levy taxes on the same base, but they do so concurrently. The taxes collected under GST are shared between the Centre and the States based on a predetermined formula. This sharing mechanism ensures that both levels of government receive a fair share of the tax revenues.

Taxation and Collection of GST: Article 269A(1) specifically deals with the application of GST on inter-state trade or commerce, ensuring that the tax system is streamlined across state boundaries, reducing complexities and ensuring uniformity.

Inter-State Trade and Commerce: The GST mechanism is particularly significant in managing inter-state trade. Under this system, the central government levies and collects Integrated GST (IGST) on inter-state supplies. This collection ensures that there is no cascading effect of taxes and that trade across state borders remains seamless and efficient.

Revenue Distribution: One of the key aspects of Article 269A(1) is the provision for the distribution of the taxes collected under GST between the Union and the states. This distribution is crucial for maintaining financial balance and ensuring that states receive their fair share of revenue, which is vital for their functioning and development. The GST Council, a body comprising representatives from both the central and state governments, plays a pivotal role in recommending how this revenue should be distributed.



Legislative Power of Parliament: The Parliament holds the authority to legislate on the distribution of taxes collected under GST. However, this power is exercised in line with the recommendations made by the GST Council, ensuring that both the centre and the states have a say in the financial matters arising from GST collections. This collaborative approach helps in maintaining a harmonious Centre-State financial relationship.

Division of GST Revenue: The GST collected on inter-state supplies, known as IGST, is levied and collected by the central government but is shared between the centre and the states. The division of this revenue is done in a manner prescribed by the Parliament, again following the GST Council's recommendations. This ensures that the states are adequately compensated for the revenue they would have otherwise collected under the previous tax regime.

► Centre-state collaboration in tax regime

In summary, the GST Council, empowered by Article 269A(1), is a cornerstone in managing Centre-State financial relations in India. It ensures that both the centre and the states collaborate effectively in the taxation and distribution of GST revenues, thus promoting financial federalism and maintaining a balance between central and state powers.

4.2.4.8.3 GST and Challenges in Centre-State Financial Relations

Despite the establishment of the GST Council and the compensation mechanism, the implementation of GST has led to several challenges in Centre-State financial relations:

Revenue Shortfall: States have faced revenue shortfalls due to lower-than-expected GST collections, especially during economic slowdowns or unexpected events like the COVID-19 pandemic. The delay in compensation payments has strained Centre-State relations, with some States demanding alternative measures or extensions of the compensation period.

Autonomy vs. Uniformity: The shift to GST has reduced the fiscal autonomy of States, as they now have less control over tax rates and revenues. While the GST Council seeks to balance these concerns, the need for uniformity in tax policy across India has sometimes led to conflicts between the Centre and the States.

Dispute Resolution: The GST Council also faces challenges in dispute resolution between the Centre and States, particularly

on issues like tax rate changes and exemptions. The Council's decisions can have significant implications for the financial health of individual States, making it a critical player in Centre-State financial relations.

The GST regime represents a significant shift in Centre-State financial relations in India. While it has the potential to streamline tax administration and boost economic efficiency, it also poses challenges in terms of revenue sharing, fiscal autonomy, and Centre-State coordination. The GST Council plays a pivotal role in navigating these challenges and ensuring a balanced approach to tax policy that accommodates the interests of both the Centre and the States.

4.2.5 Federalism and the Role of the Governor

The Governor is the constitutional head of the state. He is appointed by the President for a period of five years. He holds office during the pleasure of the President (Art. 154, 155, and 156). He occupies the same position within the state as the President does with respect to the Government of India.

Qualifications of Governor (Article 157)

1. He must be a citizen of India.
2. He must have completed 35 years of age.
3. He must not be a member of the Parliament or of any state legislature.
4. He must not hold any office of profit under the Government of India or any state governments.

► Article 157

In addition to all these, there is a convention that he must not belong to the state where he is appointed. Before assuming his office, the Governor has to make and subscribe an oath or affirmation to preserve, protect, and defend the Constitution. The oath is administered by the Chief Justice of the High Court.

4.2.5.1 Powers and Functions of the Governor

1. Legislative powers

The Governor is an integral part of the state legislature. He summons, prorogues, or dissolves the state legislature on the advice of the Chief Minister. He addresses the meetings of the legislature at the commencement of the session once in a year. He also sends messages to the legislature. During every financial year, he causes the budget to be laid before the state

assembly. Demands for grant and legislation can be made only with his recommendations.

Every bill passed by the state legislature must receive the assent of the Governor before it becomes law. He nominates one member to the state legislative assembly from among the Anglo-Indian community.

The Governor has also the special legislative power of promulgating ordinances when the state legislature is not in session. This power is more or less similar to that of the President and it has the same force as a law made by the legislature. But with respect to the following matters, the Governor is prohibited from promulgating ordinances without prior instructions from the President.

1. If the ordinance contains provisions which would require the previous sanction of the President, or
2. If the Governor would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President, or
3. If an act of the state legislature containing the same provisions would be invalid without the assent of the President.

The Governor is empowered to withdraw the ordinance anytime he likes.

2. Financial powers

No money bill can be introduced in the legislature without the recommendation of the Governor. No demand for grants can be made except on the recommendation of the Governor.

3. Judicial powers

Governor has the power to grant pardons, suspend, remit, or commute sentences, reprieves, or remissions of punishment or to suspend, remit, or commute the sentence of any person where the offence is under a law relating to matters within the executive competence of the state.

4. Recommendation of President's Rule under Article 356

President's Rule is declared in the state on the report of the Governor. During President's Rule, the Governor comes into his own as 'the real executive head of the state'

The Governor exercises all the powers on the advice of the cabinet headed by the Chief Minister. He is only a titular head of the state. However, there are certain occasions in which he acts on his discretion, and he is much more than a figurehead. These occasions are given below:

1. Appointment of Chief Minister in case of a hung assembly situation.
2. Dismissal of a ministry.
3. Dissolution of the legislative assembly.
4. Asking for information from the Chief Minister relating to the administration of the affairs of the state and proposals for legislation.
5. Refusing to give his assent to a bill passed by the state legislature.
6. Reservation of a bill for the consideration of the President.
7. Seeking instructions from the President before promulgating certain ordinances.
8. Recommendation for the declaration of a state emergency under Article 356.

4.2.5.2 Criticisms against the role of Governor

There are strong criticisms against the role and functions of the Governor in the Indian federal system. The most significant criticism is the misuse of the Governor's powers and position, as these are often interpreted and applied differently in similar situations to suit the political interests of the ruling party at the Centre. Similarly, it has been pointed out that legislative assemblies have been kept in suspension to buy time for the ruling party at the Centre to form an alternative government or resolve leadership issues. Furthermore, it has been alleged that President's Rule was recommended to dislodge opposition-ruled state governments on grounds such as corruption, law and order, and similar issues. Critics also claim that during the period of coalition politics, the Governor acted as an agent of the central government to topple opposition-led state governments, even when those governments held a majority in the legislature. A close examination of these criticisms reveals that they have substantial merit.

► Agent of the central government

Thus, it appears that the institution of the Governor has suffered greater erosion than any other in the federal structure. What makes the Governor's position controversial is not the provisions contained in the Constitution but rather the

► Greater erosion to the institution

individuals who interpret those provisions to suit their political interests. This issue is not solely a problem of Centre-state relations; it is a significant political question involving the Centre and the Governor on one side, and the state and its elected representatives on the other. What is compromised here is the democratic process within the state, the growth of healthy conventions, and the principles of federalism.

► Political than legal dimensions

The fundamental issue is that the position of Governor has more political than legal dimensions. Therefore, those with strong political inclinations should not be appointed as Governors. Furthermore, the practice of appointing defeated, aged, or politically inactive individuals as Governors should cease. In this context, Rajeev Dhavan, a distinguished jurist, rightly observed, "If political pluralism is to survive, there is a need for the appointment of good statesmen as Governors." Numerous recommendations, suggestions, and Supreme Court rulings have been made to address these issues. However, the activism of the Governor has continued as before.

► Reformation in the process of appointment

The recent controversies between Governors and Chief Ministers in the states of Kerala, Tamil Nadu, and West Bengal exemplify this problem. There is no doubt that the office of the Governor has lost its sanctity and prestige. To restore its former glory, it is essential to reform the process of appointment and removal of Governors. It is also evident that the Governor should not act against the state government, as it is elected by the people. If the Governor stands against the ministry's wishes, it undermines democracy. This situation calls for reconsideration of the Governor's position and role, with a focus on his mode of appointment, security of tenure, and post-retirement benefits. In this context, the recommendations of the Sarkaria Commission are particularly relevant and adoptable.

Summarized Overview

The unit provides an in-depth analysis of the Indian federal structure, highlighting the unitary tendencies embedded within it. Despite being a federal polity, the Indian Constitution features several provisions that centralise power in the Union government. The dominance of the Union List, the allocation of residuary powers to the Union, and the supremacy of Union law in the Concurrent List reflect these unitary aspects. Additionally, the emergency provisions and the power of the Parliament to override state legislation underscore the central government's authority, particularly during crises.

The role of All India Services, the Inter-State Council, and NITI Aayog further demonstrates the complex interplay between federalism and unitary control. While these institutions aim to promote cooperative federalism and ensure uniformity in administration, they also reinforce central authority, sometimes at the expense of state autonomy. Financial relations, governed by the Constitution, also exhibit a strong central bias, with the Finance Commission playing a crucial role in managing fiscal transfers between the Centre and the states. This intricate balance between centralisation and federalism defines the unique character of Indian federalism, where the central government retains significant control over key aspects of governance while still allowing for state participation and autonomy within a federal framework.

Assignments

1. Describe the significance of the 7th Schedule in the Indian Constitution in defining Centre-State relations.
2. What role do Residuary Powers play in reinforcing the unitary character of Indian federalism?
3. Explain the impact of the Emergency Provisions on the federal structure of India.
4. Discuss the role of All India Services in maintaining national integration within the Indian federal structure.
5. Analyse how the dominance of the Union List reflects the unitary tendencies in Indian federalism.
6. Evaluate the impact of Article 249 on the autonomy of State Legislatures.
7. How does the existence of the Financial Commission ensure a balanced Centre-State fiscal relationship?
8. Critically assess the role of the Inter-State Council in promoting cooperative federalism in India.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Devolution and Grassroot Democracy in India

Learning Outcomes

A careful study of this unit will enable you to

- ▶ Analyse the importance of devolution and grassroots democracy in Indian Federal system;
- ▶ Evaluate the Gandhian idea of Grama Swaraj and its relevance in Federalism;
- ▶ Understand the importance of devolution in deepening federalism in the context of 73rd and 74th Constitutional Amendments;

Background

The evolution of federalism in India is deeply intertwined with the concepts of devolution and grassroots democracy. As a system of governance, federalism aims to distribute power among various levels of government, ensuring a balance between the central authority and local administrations. In the Indian context, this objective was significantly advanced through the 73rd and 74th Constitutional Amendments, which introduced a third tier of government- Panchayats and Municipalities. These amendments institutionalised grassroots democracy by empowering local self-government institutions, thereby transforming India's federal structure into a more inclusive and participatory system.

Historically, India's commitment to decentralised governance can be traced back to ancient village panchayats, which were vital local governance bodies. These traditional structures, which played a crucial role in managing local affairs, gradually diminished under centralised colonial rule. However, the post-Independence period witnessed a revival of these ideals, inspired by Mahatma Gandhi's vision of Gram Swaraj- village self-rule. This vision was realised through the 73rd and 74th Amendments, which not only aimed to empower rural and urban local bodies but also sought to deepen democratic processes at the grassroots level.

Keywords

Decentralisation, Gram Swaraj, PRIs, ULBs

Discussion

4.3.1 Overview of Devolution and Grassroot Democracy

► The 73rd and 74th Constitutional Amendments

Devolution is a core objective of federalism, with power divided among different stakeholders in federal polity. The 73rd and 74th Constitutional Amendments introduced another level of government—Panchayats and Municipalities—creating a third tier of government. This three-tiered system is considered a novel form of federation, unique to India and unlike any other in the world.

4.3.1.1 Historical Background

► Gramini or village head

Devolution and decentralised power structure in India has a rich historical background rooted in the ancient traditions of village panchayats, which served as essential local governance institutions. References to panchayats are found in ancient Vedic literature, where village councils comprised informally elected elders who played pivotal roles in settling disputes and managing local affairs. The Rig Veda mentions the role of the *Gramini* or village head, and the Atharva Veda highlights the importance of village assemblies like *sabha* and *samiti*. Despite the erosion of these institutions during the centralisation of power under Mughal and later British rule, the British administration eventually recognised the importance of local self-governance, leading to various reforms aimed at decentralisation. However, it was post-Independence India, under the vision of leaders like Mahatma Gandhi, that the idea of Gram Swaraj (village self-rule) was revived and institutionalised, culminating in the 73rd Constitutional Amendment Act of 1992, which provided a constitutional mandate for the establishment of a robust Panchayati Raj system.

4.3.1.2 Significance in the Indian Democratic Framework

Devolution, through the Panchayati Raj system, is a cornerstone of India's democratic framework, ensuring that



► Fostering participatory democracy

the power and responsibility of governance extend to the lowest tiers of society. This system embodies the principle of democratic decentralisation, empowering local bodies to address the socio-economic needs of rural populations effectively. The 73rd Constitutional Amendment Act, 1992, marked a significant milestone by institutionalising a three-tier structure of Panchayati Raj Institutions (PRIs) at the village, block, and district levels. These institutions are crucial for fostering participatory democracy, enabling direct involvement of citizens in decision-making processes, and ensuring that development initiatives are tailored to the unique needs of local communities. By decentralising power, the Panchayati Raj system strengthens the democratic fabric of India, promotes inclusive development, and enhances the accountability and transparency of governance at the grassroots level.

► Reforms during late British period

4.3.2 Evolution and Grassroot Democracy

The Panchayati Raj Institutions (PRIs) in India have roots stretching back to ancient times, evolving considerably through the ages. In ancient times local governance in India began with village councils or Panchayats, which were informal assemblies guided by traditional customs and responsible for local administration and resolving disputes. In the early British period, The British colonial system disrupted these traditional PRIs by establishing new land revenue and tax structures that eroded Panchayat authority, weakening their decision-making power. In the later colonial era, recognising the significance of local governance, the British introduced reforms aimed at revitalising local bodies, including Panchayats. Major steps included Lord Mayo's Resolution (1870), Lord Ripon's Resolution (1882), and the Royal Commission on Decentralisation (1907-09), each progressively attempting to restore local governance structures.

4.3.2.1 Post-Independence Era

After independence, India's Constitution emphasised decentralisation and local self-government. Beginning in the late 1950s, efforts focused on reviving PRIs, culminating in the 73rd Constitutional Amendment Act of 1992, which granted PRIs constitutional status.

Key Committee Recommendations for Strengthening PRIs

1. Balwantrai Mehta Committee (1957): Tasked with assessing rural development programmes, it recommended the three-tier Panchayati Raj structure-Gram Panchayat (village level), Panchayat Samiti (block level), and Zila Parishad (district level). The Village Panchayat would be

directly elected, with Panchayat Samiti as the executive body and Zila Parishad for supervision and coordination. Emphasising genuine power and resource transfer, it called for indirect elections and periodic evaluation of devolving authority. These recommendations received support from the National Development Council, leading states like Rajasthan and Andhra Pradesh to adopt the structure by 1959.

2. Ashok Mehta Committee (1977): Formed to address the declining efficacy of PRIs, it proposed a two-tier system with Zila Parishad at the district level and Mandal Panchayat at the group village level. The committee suggested district decentralisation, party-based participation in elections, regular social audits, and reserving seats for Scheduled Castes, Scheduled Tribes, and women, advocating constitutional recognition for PRIs.
3. G.V.K. Rao Committee (1985): This committee emphasised empowering Zila Parishads as central to rural development, proposing the District as the primary planning and development unit. It recommended creating a District Development Commissioner post, regular elections, and incorporating some state-level planning functions at the district level.
4. L.M. Singhvi Committee (1986): This committee highlighted the need for constitutional recognition of PRIs to protect and preserve their autonomy. It advocated for a new constitutional chapter to secure regular elections, establishment of Nyaya Panchayats for judicial functions, and financial empowerment for Village Panchayats. Additionally, it emphasised the Gram Sabha's role in direct democracy and proposed Judicial Tribunals to address PRI-related disputes.
5. Thungon Committee (1988): This committee recommended a constitutionally recognised three-tier system with Panchayats at village, block, and district levels, proposing a fixed five-year term for PRIs, limited supersession duration, State-level Planning and Coordination Committees, and a comprehensive list of subjects for PRIs. It also emphasised reserving seats for marginalised groups and the formation of State Finance Commissions.
6. Gadgil Committee (1988): The committee proposed constitutional status for PRIs, fixed tenure, reservation for Scheduled Castes, Scheduled Tribes, and women, and direct elections at all PRI levels. It advocated PRI responsibility for socio-economic planning, tax-collection powers, and establishing State Finance and Election Commissions.

► L.M. Singhvi
Committee
made major
recommendations

4.3.2.2 Constitutional Status of PRIs

Following these committee recommendations, the 73rd Constitutional Amendment Act of 1992 was enacted, transforming PRIs into constitutionally recognized self-governing bodies. This marked a significant shift, elevating PRIs from administrative units to legally mandated institutions of local governance.

4.3.2.3 Structural and Functional Features

In India, a decentralised power structure is composed of Panchayati Raj Institutions (PRIs) in rural areas and Urban Local Bodies (ULBs) in urban settings. PRIs are three-tiered systems consisting of Gram Panchayats at the village level, Panchayat Samitis at the block level, and Zilla Parishads at the district level. These institutions are responsible for implementing development programmes, maintaining public infrastructure, and ensuring the delivery of basic services. ULBs, including Municipal Corporations, Municipalities, and Nagar Panchayats, cater to urban governance, focusing on urban planning, sanitation, public health, and education. The 73rd and 74th Constitutional Amendments of 1992 significantly enhanced the autonomy of these bodies, mandating the devolution of powers, responsibilities, and financial resources from the state governments to the local governments.

► PRIs and ULBs

4.3.2.4 Participation and Representation

The participation and representation, particularly for marginalised communities and women is a key hallmark of grassroot democracy. The 73rd and 74th Amendments introduced mandatory reservations, ensuring that at least 33% of seats in PRIs and ULBs are reserved for women, and proportional representation for Scheduled Castes (SCs) and Scheduled Tribes (STs). This policy has led to a significant increase in the involvement of these groups in local governance, promoting inclusivity and ensuring that the voices of all sections of society are heard in the decision-making process. The active participation of Gram Sabhas in rural areas and Ward Committees in urban areas further strengthens grassroots democracy by providing forums for direct citizen engagement in governance.

► 33% reservation for women

4.3.3 Gandhian Idea of Grama Swaraj

4.3.3.1 Gandhian Philosophy of Grama Swaraj

The grassroot democracy in India is much indebted to the ideas and teaching of Mahatma Gandhi. His concept of Grama

► Village as self-sufficient republic

Swaraj, or village self-governance, was deeply rooted in his vision of a decentralised, self-reliant society where the power and autonomy resided with the people at the grassroots level. Gandhi believed that true Swaraj, or self-rule, could only be achieved when every village became a self-sufficient republic, managing its own affairs and contributing to the collective well-being of the nation. In his view, the village was not just an administrative unit but the foundation of Indian society and civilization. He emphasised the importance of local production, particularly through cottage industries, and advocated for a decentralised economy to reduce dependency on external resources and foster community resilience. Grama Swaraj, as Gandhi envisioned, was a system where the moral authority of the people, rather than coercive power, guided governance, and where every individual actively participated in decision-making and the implementation of policies that directly affected their lives.

4.3.3.2 Relevance of Grama Swaraj

► Empowerment of local communities

The idea of Grama Swaraj is relevant in the context of the 73rd and 74th Constitutional Amendments in India, which aimed to empower local self-governments and deepen democratic processes at the grassroots level. These amendments institutionalised Panchayati Raj Institutions (PRIs) and urban local bodies, creating a framework for decentralised governance that echoes the vision of Gandhi on self-reliant villages. In modern times, Grama Swaraj translates into the empowerment of local communities to manage their resources, plan development activities, and ensure that governance is not just top-down but also participatory and inclusive. The principles of Grama Swaraj are reflected in the emphasis on participatory democracy, where decisions are made through consensus and active involvement of the local populace, ensuring that governance remains close to the people it serves.

4.3.3.3 Grama Swaraj and Economic Decentralisation

One of the central ideas of Grama Swaraj was the belief that political freedom was incomplete without economic independence. Gandhi argued that India's subjugation by colonial powers was not just a loss of political control but also a consequence of economic dependency. In his seminal work, *Hind Swaraj*, Gandhi outlined his vision for an economic system that prioritised self-reliance at the village level. He advocated for the revival of traditional crafts and cottage industries, such as spinning and weaving khadi, which he saw as symbols of

► Hind Swaraj emphasised self-reliance

economic freedom and self-sufficiency. By promoting local production and consumption, Gandhi sought to create a decentralised economic model that minimised exploitation, reduced unemployment, and prevented the concentration of wealth in the hands of a few. In the present context, these ideas find relevance in the push towards sustainable development and the strengthening of local economies as a means to achieve broader social and economic equity.

4.3.3.4 Grama Swaraj and Social Equity

► Egalitarian approach

Gandhi's vision of Grama Swaraj was not just about economic and political decentralisation but also about fostering social equity. He introduced the concept of trusteeship, where wealth and resources held by the few were seen as a trust for the welfare of the many. Gandhi believed that for true Swaraj to be realised, it was essential to bridge the gap between the rich and the poor and to ensure that the benefits of economic growth reached the most marginalised sections of society. This egalitarian approach is reflected in his advocacy for simple living, ethical consumption, and the moral responsibility of the affluent to contribute to the common good. In the modern context, Grama Swaraj inspires efforts to build inclusive communities where social justice is as important as economic growth, and where the development process is guided by the principles of fairness, equity, and collective well-being.

► Guiding principle for grassroots democracy

Overall, the Gandhian idea of Grama Swaraj continues to be a guiding principle for grassroots democracy and development in India. It emphasises the importance of self-reliance, participatory governance, and social equity as the cornerstones of a just and democratic society. As India grapples with the challenges of modern governance, including the pressures of globalisation and urbanisation, the principles of Grama Swaraj offer valuable insights into building resilient, inclusive, and sustainable communities. By revisiting and revitalising these ideas, contemporary governance can align more closely with the aspirations and needs of the people, ensuring that democracy remains vibrant and truly reflective of the collective will.

4.3.4 The 73rd and 74th Constitutional Amendments

The 73rd and 74th Constitutional Amendments, passed in 1992, represent landmark reforms in the governance process, aiming to decentralise power and deepen federalism by empowering local self-government institutions. The 73rd Amendment primarily focuses on rural governance through the establishment of Panchayati Raj Institutions (PRIs), while

► Participatory democracy

the 74th Amendment targets urban governance by strengthening Municipalities. Both amendments were designed to create a more participatory democracy by bringing government closer to the people and enhancing their role in decision-making at the grassroots level.

4.3.4.1 Key Provisions: Structure, Powers, and Functions of PRIs

► Three tier system of local self governance

The 73rd Amendment Act of the Indian Constitution marked a significant transformation in the role and responsibilities of Panchayati Raj Institutions (PRIs). Before this amendment, PRIs were primarily engaged in traditional and maintenance tasks, with limited developmental responsibilities. The introduction of Article 243G through the 73rd Amendment initiated a three tier system of local self governance: Gram Panchayat at village level, Panchayat Samiti at block level and Zilla Parishads at District level to undertake both maintenance and developmental activities. The Amendment also provided a list of functions under the 11th Schedule, but did not explicitly assign these functions to specific levels of PRIs, leaving it to the states to define the roles at these three levels.

► Three categories of functions

Article 243G emphasises the autonomy of PRIs by granting them the authority to prepare and implement plans for economic development and social justice. States have amended their Panchayat Acts to align with the 73rd Amendment, assigning specific responsibilities to each tier of PRIs. The functions broadly fall into three categories: General Administrative Functions, Developmental and Social Functions, and Maintenance Functions, with the degree of responsibility varying across different levels of PRIs.

► Agriculture, social forestry, animal husbandry, rural housing

At the Gram Panchayat (GP) level, administrative functions include preparing annual plans and budgets, mobilising relief during natural calamities, and maintaining village statistics. Gram Panchayats are also tasked with social functions like agriculture, social forestry, animal husbandry, rural housing, and education. Maintenance responsibilities at this level include rural electrification, sanitation, and conservation efforts. These functions enable GPs to address local issues directly, reflecting the decentralisation ethos intended by the 73rd Amendment.

► Coordination and implementation of broader development programs

The Panchayat Samiti (PS) at the block level is responsible for a range of functions, many of which overlap with those of the Gram Panchayats but are more focused on coordination and implementation of broader development programmes. PSs often manage relief efforts during natural disasters, maintain health

and sanitation services, and oversee agricultural development, animal husbandry, and social forestry programs.

► Overall planning and implementation of district-wide projects

Zilla Parishads (ZP) at the district level hold significant authority, particularly in terms of supervising and coordinating development schemes across blocks and villages. They are responsible for the overall planning and implementation of district-wide projects, ensuring that developmental efforts are integrated and consistent across the district. ZPs also play a critical role in consolidating and supervising the works of Panchayat Samitis, making them central to the development strategy at district level.

4.3.4.2 Importance of Gram Sabha

► Local platform for residents

The Gram Sabha is a crucial institution within India's Panchayati Raj System, defined under Article 243(b) of the Constitution. It serves as a local platform for residents to discuss issues of local governance and development. As a foundation of local self-governance, the Gram Sabha supervises the Panchayat's activities and approves decisions, making them valid and official. Composed of village residents over 18 whose names appear on the Panchayat's electoral rolls, the Gram Sabha operates under a structured hierarchy. The village-level Gram Panchayat is accountable to it, while further oversight is provided by the Panchayat Samiti at the block level and the Zilla Parishad at the district level, ensuring coordination and accountability across administrative tiers.

► Article 243G

The Gram Sabha convenes meetings at least four times a year, facilitated by the Panchayat Secretary and Sarpanch/Panchayat president. As outlined in Article 243G, the Gram Sabha performs several key functions, including reviewing Panchayat activities, addressing issues such as ration distribution and pensions, and discussing health and educational needs within its jurisdiction. It also holds discussions on public health initiatives and facilitates approvals for public works funded by the Panchayat. Additionally, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, it has the authority to assess forest rights claims.

While the Gram Sabha is an assembly of eligible village residents, the Gram Panchayat is an elected executive body. Effective functioning of the Gram Sabha ensures transparency and public participation in local governance, making it a vital grassroots institution for democratic decision-making.

4.3.4.3 Impact on Devolution and Grassroot Democracy

► Social justice and gender equality

The 73rd Amendment significantly impacted rural governance by institutionalising grassroots democracy. The introduction of regular elections and reservations ensured the political representation of marginalised communities, including SCs, STs, and women, thereby promoting social justice and gender equality. The empowerment of Gram Sabhas provided a platform for direct democracy, allowing villagers to actively participate in the planning and implementation of development programmes. The Amendment also encouraged the devolution of functions related to 29 subjects listed in the 11th Schedule of the Constitution, enabling PRIs to play a crucial role in local economic development and social justice.

4.3.4.4 Provisions: Structure, Powers, and Functions of Municipalities

► Uniform structure for urban local bodies

The 74th Constitutional Amendment Act, 1992, significantly enhanced the powers and functions of municipalities in India, transforming them from mere civic bodies into crucial players in local governance and development. It provided a uniform structure for urban local bodies, comprising Municipal Corporations for large urban areas, Municipal Councils for smaller urban areas, and Nagar Panchayats for transitional areas. It mandated regular elections, the reservation of seats for SCs, STs, and women, and the establishment of Ward Committees in municipalities with a population exceeding 300,000. This amendment mandated that municipalities should not only handle traditional civic functions like waste management, water supply, and street lighting but also engage in broader urban planning, economic and social development, and poverty alleviation. By entrusting these responsibilities to municipalities, the amendment aimed to create a more decentralised and participatory form of urban governance, aligning with the broader objectives of federalism in India.

► The Twelfth Schedule

The Twelfth Schedule of the Indian Constitution lists the specific functions that municipalities are expected to perform. These include urban planning, regulation of land use, construction of buildings, and planning for economic and social development. Additionally, municipalities are tasked with maintaining roads and bridges, ensuring adequate water supply for various purposes, and providing essential public health services. These responsibilities reflect the growing importance of local bodies in shaping the urban landscape and addressing the unique challenges faced by rapidly growing cities.

► Urban poverty alleviation

One of the critical functions of municipalities, as outlined in the Twelfth Schedule, is urban poverty alleviation. This function highlights the role of municipalities in ensuring that the benefits of urban development are equitably distributed among all sections of society, particularly the weaker and marginalised groups. By focusing on slum improvement and upgrading, municipalities are expected to play a key role in improving the living conditions of the urban poor, thereby contributing to social justice at the grassroots level.

► Environmental protection and the promotion of ecological sustainability

In addition to their developmental roles, municipalities are also responsible for environmental protection and the promotion of ecological sustainability. Urban forestry, protection of the environment, and promotion of ecological aspects are all critical functions entrusted to municipalities. These responsibilities are particularly significant in the context of increasing environmental challenges such as pollution, deforestation, and climate change, which have profound implications for urban areas.

► Additional responsibilities

The 74th Amendment also empowers state legislatures to assign additional responsibilities to municipalities, including the preparation of plans for economic development and social justice. This provision allows for flexibility and adaptability in municipal governance, enabling municipalities to address the specific needs and priorities of their communities. Moreover, state legislatures can also empower ward committees and other sub-committees to carry out specific functions, thereby promoting greater decentralisation and citizen participation in local governance.

► Autonomy in financial matters

A significant aspect of municipal governance under the 74th Amendment is the autonomy granted to municipalities in financial matters. State legislatures have the authority to specify the taxes, duties, and fees that municipalities can levy and collect. Additionally, municipalities can receive grants-in-aid from the state government, and state laws may establish funds for the creation and withdrawal of monies by municipalities. This financial autonomy is crucial for municipalities to effectively discharge their functions and undertake development projects.

4.3.5 Challenges to Devolution

The success of Panchayats and municipalities in fulfilling their expanded roles hinges on the effective devolution of powers and resources from state governments. However, they often face challenges such as inadequate financial resources, limited administrative capacities, and interference from state

► Limitations for functioning

authorities, which hampers their potential as instruments of local self-government and weakens the federal structure of India. Moreover, the inconsistent demarcation of functions within state Panchayat Acts has led to uneven implementation of the 73rd and 74th Amendments. While some states have clearly defined the roles of each tier of Panchayati Raj Institutions (PRIs), others have left significant areas of overlap, causing potential conflicts and inefficiencies. The main challenges include;

1. Funding Constraints

► Generating their own financial sources

PRIs continue to face significant financial limitations, despite constitutional empowerment. Many local bodies lack adequate funding to perform the responsibilities assigned to them. Transfers made via the State Finance Commissions are minimal in most states. Furthermore, Gram Panchayats (GPs) often hesitate to increase their own revenue sources, and only a few succeed in generating income through local taxes or non-tax sources like shop rentals, house taxes, and fees for clean water services.

2. Functional Limitations

The effective devolution of powers to PRIs is inconsistent across states, as local government falls under state jurisdiction. This means critical areas such as fuel, fodder, non-conventional energy, rural electrification, non-formal education, small-scale industries, and vocational training are not devolved in certain states, which restricts the autonomy of Panchayats in addressing local needs.

3. Infrastructure Challenges

Some Gram Panchayats lack their own buildings and instead share space with schools, anganwadi centres, or other institutions. Even where GPs have buildings, basic amenities like toilets, drinking water, and electricity are often missing. While some GPs have internet facilities, these are frequently non-functional, forcing officials to visit Block Development offices for data entry, thereby causing delays in administrative tasks.

4. Lack of Convergence in Government Programs

There is limited integration between various development programmes from central and state governments. For instance,

► Funding through different sources

road projects might be funded through different sources, such as the Fourteenth Finance Commission and the Member of Parliament Local Area Development (MPLAD) scheme, yet lack unified planning, resulting in fragmented development. Different departmental guidelines also contribute to this lack of programme convergence.

5. Staffing Shortages

A major challenge for PRIs is the acute shortage of support personnel, as noted by the Standing Committee on Rural Development in 2018. Panchayats often lack essential staff such as secretaries, junior engineers, computer operators, and data entry personnel, which impacts their ability to deliver services effectively.

6. Creation of Parallel Bodies

Parallel bodies, or parastatals, are often established to speed up implementation and enhance accountability. However, these bodies sometimes encroach on the functions of PRIs, diminishing their role and causing demoralisation. They often exhibit issues similar to those in PRIs, such as political bias, corruption, and elite capture. Additionally, local entities like Khap Panchayats operate as parallel structures in some regions, often infringing upon the authority and responsibilities of PRIs.

However, the 73rd and 74th Constitutional Amendments played a pivotal role in deepening federalism in India by decentralising power and enhancing the autonomy of local self-government institutions. By empowering PRIs and Municipalities, these amendments strengthened the federal structure of the Indian polity, ensuring that governance is more responsive to the needs of local communities. The amendments also promoted participatory democracy by involving citizens in decision-making processes at the grassroots level, thereby reinforcing the principles of democracy and federalism.

Summarized Overview

The unit explores the decentralisation of power as a fundamental aspect of federalism, particularly through the 73rd and 74th Constitutional Amendments that established Panchayats and Municipalities, creating a unique three-tiered government structure in India. The historical evolution of devolution is traced back to ancient village panchayats, with a resurgence in post-Independence India, culminating in these amendments. These amendments are crucial in enhancing democratic decentralisation

by empowering local bodies to address socio-economic needs, ensuring participation and representation of marginalised communities, and fostering inclusive development. The Gandhian concept of Grama Swaraj, emphasising village self-rule, is highlighted as an ideological foundation for grassroots democracy, advocating for self-reliance, participatory governance, and social equity. The amendments' impact on devolution is significant, but challenges remain in fully realising their potential due to inconsistent implementation and resource constraints, which can weaken the federal structure. Despite these challenges, the amendments have strengthened India's federalism by deepening democratic practices at the grassroots level.

Assignments

1. Explain the significance of the 73rd and 74th Constitutional Amendments in the context of Indian federalism.
2. Describe the historical evolution of local self-governance in India, with a focus on the role of village panchayats.
3. Outline the structural and functional features of Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) in India.
4. Analyse the impact of Gandhian philosophy of Grama Swaraj on the development of grassroots democracy in India.
5. Evaluate the challenges faced by Panchayats and Municipalities in implementing their roles under the 73rd and 74th Amendments.
6. Discuss the relevance of devolution and grassroots democracy in strengthening the federal structure of India.

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Suggested Reading

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2. Granville, A. (2003). *Working a Democratic Constitution: A History of the Indian Experience*. Oxford University Press.
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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Appendix

Federal Character and its Relevance: Selected Case Studies

1. A K Gopalan Vs State of Madras, AIR 1950 SC27
2. Golaknath Vs State of Punjab, AIR 1967 SC1643
3. Kesavananda Bharathi Vs State of Kerala, AIR 1973 SC1461
4. Maneka Gandhi Vs Union of India, AIR SC597

1. A K Gopalan vs State of Madras (1950)

This is the first case in which the Supreme Court considered different provisions of the Constitution, especially Articles 19 to 22, on account of its importance. It was heard by a constitutional bench of six judges, each of whom wrote separate judgements. The petitioner in this case was detained under the 'Preventive Detention Act of 1950.' By filing a habeas corpus petition, the petitioner (A.K. Gopalan) challenged the validity of his detention on various grounds. The most important ground was that the Act offended the provisions of Articles 19 and 21. He prayed for a writ of habeas corpus.

The arguments in favour of the petitioner were the following:

1. The preventive detention law must satisfy the requirement of Article 19. Articles 19(1), (2), and 21 must stand together. The right could be restricted under clause (5) of Article 19; preventive detention was not the law visualised under clause (5) of Article 19. Therefore, detention under the Act violated his freedom of movement guaranteed under Article 19. In other words, Article 21 was controlled by Article 19.
2. The "expression" procedure established by law in Article 21 means due process of law. The American Constitution adopted due process as a natural principle of human justice, and the framers of the Indian Constitution did not intend otherwise.
3. Article 22 of the Constitution permitting preventive detention is controlled by Articles 19 and 21.

All these objections were rejected by the Supreme Court, and Gopalan's detention was justified. The reasoning of the Supreme Court can be summarised as follows:

1. The court held that Article 19 was not applicable to preventive detention laws. Articles 19 and 21 deal with different aspects of liberty. Article 21 guarantees against deprivation (total loss) of personal liberty, while Article 19 affords protection against unreasonable restriction (which is only partial control) on the right of movement. Freedom guaranteed under Article 19 can be enjoyed by a citizen only when he is a free man and not if his personal liberty is deprived under a valid law.

The Court observed that so long as law on preventive detention satisfies the requirements of Article 22, it is not required to meet the challenges of Article 19. Hence, Article 21 was not controlled by Article 19. Article 21, the word "law" has been used in the sense of state-made law and not as equivalent to a law embodying the principles of natural justice. The right guaranteed under Article 21 is not a substantive right but it is a procedural right. The Supreme Court also pointed out many points of distinction between the "due process" clause of America and Article 21 of the Indian Constitution. In the American Constitution, the word "liberty" was used in a simple sense, while in Article 21, the expression was not "liberty" but "personal liberty," which is a comparatively narrow concept. Therefore, the phrase "except according to the procedure established by law" cannot be interpreted to mean the same thing as the "due process of law" clause of the American Constitution.

The decision in this case is an important landmark in the interpretation of Fundamental Rights in this country. The decision made very clear that the right to personal freedom was subject to legislative control and always to judicial review. The judgement has been widely criticised even by foreign experts on constitutional law.

Impact on Individual Liberties and Federal Balance

The judgement marked a restrictive approach to the protection of fundamental rights, placing greater emphasis on legislative supremacy. This approach had federal implications, as it strengthened the powers of both Union and State legislatures to enact laws that could potentially curtail individual freedoms without extensive judicial scrutiny.

The decision also influenced the relationship between the Union and State governments in terms of law enforcement and public order, areas that are primarily under state jurisdiction. By upholding state authority in this case, the judgement reinforced the federal structure by allowing states significant autonomy in matters of preventive detention.

Federal Structure and Emergency Powers

The ruling in A.K. Gopalan vs. State of Madras highlighted the federal balance by demonstrating how state laws could operate independently of central oversight in certain areas. However, it also raised concerns about the potential for misuse of such powers by states, leading to subsequent debates on the need for stronger judicial safeguards against arbitrary detention.

The judgement laid the groundwork for future constitutional amendments and judicial interpretations that sought to balance state autonomy with the protection of individual rights. This balance is crucial in a federal system where both the Union and State governments have distinct but sometimes overlapping powers.

2 Golaknath vs State of Punjab (1967)

This is an important judgement of the Supreme Court regarding the amending powers of the Parliament with respect to the Fundamental Rights. In 1953, the then Punjab government enacted the Punjab Security of Land Tenures Act, 1953. The Act imposed a ceiling on land holdings and aimed to redistribute surplus land to the landless farmers. The Act was placed under the Ninth Schedule of the Constitution by the 17th Amendment Act, 1964.



Golaknath, the petitioner, filed a writ petition under Article 32 of the Constitution and challenged the validity of the Act. He contended that the said Act violated his Fundamental Rights to hold and dispose of the property.

The case involved two important legal issues:

1. Whether the Parliament, by law, can amend the Fundamental Rights or not; and
2. Whether such an amendment is a law within the meaning of Article 13 of the Constitution.

The Judgement

Prior to the Golaknath case, the Supreme Court, in *Shankari Prasad v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965), upheld the Article 368 of the Constitution. The Court in both occasions observed that the Parliament under Article 368 can amend any provisions of the Constitution, including Fundamental Rights.

It was also held that the "law" under Article 13 referred to ordinary legislation and would not include the amendment of the Constitution.

However, in Golaknath, the Supreme Court overruled the position and held that Fundamental Rights cannot be subjected to the process of amendment under Article 368. The Court held that the power of the Parliament to amend the Constitution is derived from Articles 245, 246, and 248 and not from 368, which only deals with procedure. The Court said:

"We hereby declare that the Parliament will have no power from the date of this decision to amend any provision in Part III, so as to take away or abridge the Fundamental Rights."

It was also held that an Amendment is a law within the meaning of Article 13 and that there is no distinction between constitutional law and ordinary law. Thus, the Parliament could not amend Fundamental Rights. The Court also held that all the Amendments, including the 17th amendment, which were violative of Fundamental Rights were invalid. However, the Court said on the application of the "prospective overruling", they were deemed to be valid. The American doctrine of prospective overruling was adopted in order to preserve the past and protect the future.

Impact on Federalism

Limiting Parliamentary Power: The Golaknath judgement significantly limited Parliament's power to amend the Constitution, particularly in relation to fundamental rights. This limitation had profound federal implications, as it curtailed the Union Government's ability to unilaterally alter the balance of power between the Centre and the States through constitutional amendments.

Strengthening State Autonomy: By protecting fundamental rights from parliamentary encroachment, the judgement indirectly strengthened state autonomy. It ensured that states could not be overruled by central laws that might infringe upon the rights of individuals within their jurisdictions, thereby preserving the federal balance.

Future Constitutional Amendments: The ruling created a constitutional stalemate, leading to the 24th Amendment in 1971, which overturned the Golaknath decision by explicitly granting

Parliament the power to amend any part of the Constitution, including the fundamental rights. The amendment also made clear that the amendment will not be considered as a law. This amendment restored the central government's ability to pass laws affecting the federal structure, but also highlighted the tension between central authority and state autonomy.

3 Kesavananda Bharathi vs State of Kerala (1973)

Background and Constitutional Context

The Kesavananda Bharati case arose from a challenge to the Kerala Land Reforms Act, 1963, by Swami Kesavananda Bharati, the head of a religious mutt (monastery) in Kerala. The Act, which aimed to redistribute land to the landless, significantly affected the mutt's land holdings. Bharati filed a petition under Article 26 (right to manage religious affairs) and other fundamental rights, challenging the constitutionality of the Act. The case quickly expanded to address the broader question of whether Parliament had unlimited power to amend the Constitution, including fundamental rights, under Article 368. This issue had gained prominence following the Golaknath case (1967), where the Supreme Court had ruled that Parliament could not amend fundamental rights.

The central issue in the Kesavananda Bharati case was the scope of Parliament's power to amend the Constitution. The government argued that Parliament had the absolute authority to amend any part of the Constitution, including fundamental rights, to achieve its vision of social and economic justice. Similarly, the case also highlighted the ongoing conflict between fundamental rights and Directive Principles of State Policy (Part IV of the Constitution). While fundamental rights were seen as justiciable and enforceable, the Directive Principles were non-justiciable guidelines for governance, aimed at promoting social welfare and justice. The government argued that Parliament needed the power to amend fundamental rights to implement Directive Principles effectively.

The Supreme Court Ruling in this case was by upholding the Parliament's power to amend the Constitution. The court also observed that Parliament has wide power of amending the constitution. It extends to all the Articles. But the amending power is not unlimited and it does not include the power to destroy or abrogate the 'Basic Structure' or 'essential features' of the constitution. There are implied limitations on the amending power under article 368. Within these limits the Parliament can amend every Article of the constitution. However, the court did not specify what constituted the basic structure. But the court held they would determine it on the basis of the facts and circumstances of each case. However, the court has given a few examples like those of supremacy of the constitution, the rule of law, separation of powers, judicial review and the like.

Influence on Federalism

Core Constitutional Principles: The Basic Structure Doctrine established that while Parliament has the power to amend the Constitution under Article 368, it cannot alter or destroy its basic structure. This doctrine serves as a safeguard against the abuse of constitutional amendment powers by the Union government, ensuring that the core principles of the Constitution, including democracy, secularism, and federalism, remain intact.



Evolving Jurisprudence: Although the Kesavananda Bharati judgement did not provide a definitive list of elements constituting the basic structure, it laid the groundwork for subsequent cases where the judiciary identified and expanded upon the basic structure, including the federal character of the Constitution, judicial review, and the independence of the judiciary.

Protection of Federal Structure: By incorporating federalism into the basic structure, the Kesavananda Bharati case ensured that the central government could not unilaterally alter the division of powers between the Union and the States through constitutional amendments. This protection preserves the autonomy of states and prevents centralisation of power, which is crucial for maintaining the balance in India's quasi-federal system.

Judicial Review as a Safeguard: The doctrine reinforces the role of judicial review in protecting the federal structure. Any amendment that threatens to disrupt the federal balance can be challenged in court, with the judiciary empowered to strike down such amendments if they violate the basic structure. This judicial oversight acts as a check on the central government's power, ensuring that federalism is preserved.

Impact on Central-State Relations: The Kesavananda Bharati judgement has had a long-term impact on central-state relations by curbing the central government's ability to make unilateral changes that could undermine state autonomy. This has allowed states to retain a significant degree of independence in managing their affairs, thereby strengthening the federal nature of the Indian polity.

Reinforcement of Cooperative Federalism: The protection of federalism as a part of the basic structure encourages a cooperative approach between the Union and the States. It underscores the necessity for the Centre and the States to work together within the constitutional framework, promoting harmonious relations and preventing the concentration of power at the Centre.

Subsequent Developments

42nd Amendment and Its Reversal: In 1976, the Indira Gandhi-led government attempted to override the Kesavananda Bharati judgement through the 42nd Amendment, which sought to remove any limitations on Parliament's amending power. However, this move was effectively reversed by the 44th Amendment (1978), restoring the primacy of the Basic Structure Doctrine and reaffirming the inviolability of fundamental features like federalism.

Enduring Legacy: The Basic Structure Doctrine continues to be a cornerstone of Indian constitutional law, guiding judicial review of constitutional amendments and protecting the federal framework. It has been invoked in numerous cases to strike down amendments or laws that threaten the basic structure, including the federal character of the Constitution.

4 Maneka Gandhi vs Union of India (1978)

Background and Constitutional Context

Maneka Gandhi, a journalist and social activist, was issued a passport by the Indian government in 1976. However, shortly afterwards, the government impounded her passport under Section 10(3)(c) of the Passport Act, 1967, citing "public interest." No reasons were given for this action, and Maneka Gandhi was not provided an opportunity to be heard. She

filed a writ petition in the Supreme Court, challenging the government's decision on the grounds that it violated her fundamental rights under Articles 14 (right to equality), 19 (right to freedom of speech and expression), and 21 (right to life and personal liberty) of the Indian Constitution.

In this case, the Supreme Court overruled the decision in A.K. Gopalan's case. It has been held that the mere prescription of some kind of procedure is not enough to comply with the provisions of Article 21. The procedure prescribed by law under Article 21 must be 'fair, just and reasonable'. It must not be fanciful, oppressive, or arbitrary. A procedure to be fair and just must embody the principles of 'natural justice.' By introducing the concept of natural justice in Article 21, the Supreme Court has imported the American concept of 'due process of law' in the Indian Constitution. The Court also established that Articles 14, 19, and 21 are not mutually exclusive but are interconnected. This means that any law or executive action affecting life and liberty must not only follow a fair procedure but must also meet the tests of reasonableness, equality, and non-arbitrariness under Articles 14 and 19.

Scope of Federalism

Impact on State Actions: The Maneka Gandhi judgement also had implications for federalism by reinforcing the idea that both Union and State laws must conform to the expanded interpretation of fundamental rights. This has increased judicial scrutiny over state actions, ensuring that state governments cannot enact or enforce laws that violate the broader interpretation of rights under Article 21.

Limiting State and Central Overreach: By expanding the scope of fundamental rights, the judgement has limited the ability of both the Central and State governments to infringe upon individual liberties. This has strengthened the federal structure by ensuring that state autonomy does not come at the expense of fundamental rights and that citizens have a robust legal framework to challenge violations of their rights, whether by state or central authorities.

Encouraging Uniform Standards Across States: The judgement also promotes uniformity in the application of fundamental rights across India. States cannot impose restrictions on individual rights that are harsher or more arbitrary than those permitted under central laws, ensuring a consistent standard of rights protection throughout the country. This contributes to a more balanced and equitable federal system.

Subsequent Developments

Judicial Review and Activism: The principles laid down in the Maneka Gandhi case have been invoked in numerous subsequent cases to strike down laws and executive actions that are found to be arbitrary or unreasonable. The judgement has also empowered the judiciary to play a more active role in shaping social and legal policies in India.

Role in Strengthening Democracy: By expanding the scope of fundamental rights and enhancing judicial review, the Maneka Gandhi case has played a crucial role in strengthening Indian democracy. It ensures that citizens have robust legal protections against the arbitrary exercise of power, contributing to the overall health of the democratic process.





SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 1

Course Code: **M23PA01DC**

Course Title: **Introduction to Public Administration**

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

*Answer any **ten** questions in a word or a sentence. Each question carries **one** mark.*

(10X1 = 10 Marks)

1. Name a proponent of the Integral view of public administration?
2. The period 1887-1900 marks which era in the evolution of public administration?
3. NPM stands for?
4. "If our civilization fails, it will be primarily due to the breakdown of administration." Who made this remark?
5. Which theory assumes that individuals make decisions by weighing the costs and benefits of different options to maximize their self-interest?
6. Which approach to the study of public administration says that bureaucracy is not a neutral instrument but a mechanism that perpetuates the dominance of the ruling class?
7. Which was the first form of Internet?
8. The National eGovernance plan of India was launched in?
9. Name the G2G initiative implemented by the Government of Andhra Pradesh to modernize governance and enhance service delivery through the use of technology?
10. E-Choupal initiative was launched by which company?
11. Udyog Aadhar is an example of which type of eGovernance interactions?
12. Name the phase in the development of Information and Communication Technologies (ICTs) where the primary focus is on providing basic access to information and communication services.
13. Aadhar initiative was launched in which year?
14. Who defined public administration as the detailed and systematic application of the law?
15. "Industrial and General Management" was authored by?

SECTION B

*Answer any **five** questions in two or three sentences. Each question carries **two** marks.*

(5X2 =10 Marks)

16. Give the meaning of the term administration?
17. Write a note on New Public Management
18. What do you mean by “entrepreneurial government”?
19. Write a note on the Rational Choice theory.
20. What do you mean by globalisation?
21. How does ICT help in the workflow management?
22. How does the use of Artificial Intelligence help in administration?
23. Write a note on the National eGovernance Plan.
24. What do you mean by G2G interactions?
25. Write a note on eChoupal.

SECTION C

*Answer any **five** questions in one paragraph. Each question carries **four** marks.*

(5X4 = 20 Marks)

26. Differentiate administration, management and organisation.
27. Write a note on the nature of public administration
28. Differentiate between public and private administration.
29. How has sociology as a discipline impacted the study of public administration?
30. How does ICT help in providing citizen-centric services.
31. Write a note on transactional stage of eGovernance.
32. Write a note on G2B interactions with examples.
33. What is NALSA?

SECTION D

*Answer any **three** questions in two pages. Each question carries **ten** marks.*

(3X10 =30 Marks)

34. Elaborate on the scope and significance of public administration?
35. Trace the evolution of NPM. Describe the characteristics?
36. What is the relationship between political science and public administration? How has it evolved over time?
37. How does ICT transform administration? What are the challenges faced in adapting to ICT?
38. How has ICT transformed the landscape of citizen-state relationship?
39. Elaborate on the role of AKSHAYA in delivering services to citizens?



SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 2

Course Code: **M23PA01DC**

Course Title: **Introduction to Public Administration**

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

*Answer any **ten** questions in a word or a sentence. Each question carries **one** mark.*

(10X1 = 10 Marks)

1. Name a proponent of the Managerial view of public administration?
2. Expand POSDCoRB?
3. Who is known as the Father of Public Administration?
4. Who is the author of the seminal work Politics and Administration?
5. Expand ASPA?
6. Which theory argues that politicians and administrators often act to maximize their own power and influence, which may not always serve the public interest?
7. DMS in Information and Communication Technology stands for?
8. The Cybersecurity Information Sharing Act (CISA) that promotes the sharing of cybersecurity threat information between government agencies and the private sector was passed in which country?
9. Which eGovernance model is centered on the distribution of information from the government to the public through digital channels?
10. Expand SWAYAM?
11. Name the digital library initiative of India
12. What do FRIENDS stand for in the realm of eGovernance?
13. Name the e-governance platform introduced by the Government of Kerala to streamline and enhance the planning, management, and execution of local development projects?
14. VPN stands for?
15. Name the IT infrastructure designed for the smooth operation of GST in India?

SECTION B

*Answer any **five** questions in two or three sentences. Each question carries **two** marks.*

(5X2 =10 Marks)

16. What does the term 'dichotomy' mean?
17. Write a note on the Public Choice Approach?
18. What does Structural-Functionalism mean?
19. Write a note on the Case-Method Approach.
20. What are the essential components of ICT in Public Administration?
21. What do you mean by Decision Support Systems?
22. How does ICT help in improving transparency and accountability in governance?
23. Write a note on the UMANG app.
24. Write a note on the Broadcasting model of eGovernance.
25. Write a note on the Aanavandi app.

SECTION C

*Answer any **five** questions in one paragraph. Each question carries **four** marks.*

(5X4 = 20 Marks)

26. What are core principles and values underlying public administration?
27. Write a note on the era of identity crisis in the evolution of public administration.
28. Write a note on the implications of privatisation on public administration.
29. Explain the political economy approach to public administration.
30. Differentiate between e-Governance and traditional administration.
31. Compare the transactional model and networked model of eGovernance.
32. Write a note on eCommerce.
33. How has AKSHAYA helped in the governance in Kerala?

SECTION D

*Answer any **three** questions in two pages. Each question carries **ten** marks.*

(3X10 =30 Marks)

34. How did the era of challenge lead to an identity crisis in the evolution of public administration?
35. What are the key differences between public and private administration?
36. Write a note on the public policy approach to the study of public administration?
37. Compare traditional administration with eGovernance?
38. Differentiate between G2B and G2G interactions?
39. Write a note on eChoupal?



SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 1

Course Code: M23PA02DC

Course Title: Polity and Governance in India

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

Answer any **ten** questions in a word or a sentence. Each question carries **one** mark.

(10X1 = 10 Marks)

1. In which year did the British introduce Morely-Minto reforms?
2. In which year Sir Stafford Cripps was sent to India by the British Government?
3. Which act laid down the framework for the creation of the Constituent Assembly?
4. Who moved the Objective Resolution in the Constituent Assembly?
5. Which article is described as the "heart and soul" of the Constitution?
6. The term Habeas Corpus means.....
7. Which article of the Constitution abolishes untouchability?
8. The term of Lok Sabha is.....
9. The minimum age to be the president of India is.....
10. Who is the chairman of the Cabinet Committee?
11. The total number of ministers shall not exceed..... percent of the total members of the Lok Sabha.
12. Which High Court has jurisdiction over Lakshadweep?
13. The first reported case of PIL was in.....
14. The 7th schedule of the Constitution is concerned with.....
15. *Hind Swaraj* is authored by.....

SECTION B

Answer any **five** questions in two or three sentences. Each question carries **two** marks.

(5X2 =10 Marks)

16. Sarvodaya
17. Natural Rights

18. *Habeas corpus*
19. Article 32
20. Suspensive Veto
21. Commutation
22. Financial Emergency
23. Vertical Asymmetry
24. Concurrent list
25. Statutory Grants

SECTION C

*Answer any **five** questions in one paragraph. Each question carries **four** marks.*

(5X4 = 20 Marks)

26. Key provisions of Morely-Minto reforms.
27. Structure of Constituent Assembly
28. Anti-Colonialism and the Constitution
29. Fundamental Duties
30. Article 13
31. Money Bill
32. Emergency powers of the President
33. Original Jurisdiction
34. Public Interest Litigation (PIL)
35. GST Council

SECTION D

*Answer any **three** questions in two pages. Each question carries **ten** marks.*

(3X10 =30 Marks)

36. Discuss the key provisions of the Government of India Act in 1935, and its impact on Indian Constitution.
37. Discuss various ideological approaches enshrined in Directive Principles of State Policy (DPSP).
38. Compare and contrast Directive Principles of State Policy and Fundamental Rights in the Indian Constitution
39. Critically evaluate the role and impact of Judicial activism in India.
40. Analyse the peculiar features of Indian federalism and their significance.
41. Discuss the idea of Gram Swaraj and its relevance to grassroots democracy in India.



SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 2

Course Code: M23PA02DC

Course Title: Polity and Governance in India

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

Answer any **ten** questions in a word or a sentence. Each question carries **one** mark.

(10X1 = 10 Marks)

1. In which year did the British introduce Motague-Chemsford Reforms?
2. Who was the chairman of the Constituent Assembly?
3. Who was the chairman of the drafting committee of the Constitution?
4. On which date the Objective Resolution was passed in the Constituent Assembly?
5. The Directive Principles of State Policy (DPSP) enshrined in Part.....
6. Certiorari means.....
7. In which case did the Supreme Court uphold the doctrine of "Basic Structure"?
8. Which article of the Constitution mandates the separation of the judiciary from the executive?
9. Which amendment of the Constitution introduced Fundamental Duties?
10. The maximum strength of Rajya Sabha is.....
11. Who appoints the Comptroller and Auditor-General (CAG) of India?
12. Which High Court has jurisdiction over Dadra and Nagar Haveli?
13. The 7th schedule of the Constitution deals with.....
14. Who is the chairman of the NITI Aayog?
15. Expand GST

SECTION B

Answer any **five** questions in two or three sentences. Each question carries **two** marks.

(5X2 =10 Marks)

16. Diarchy
17. Political Rights

18. Adult Suffrage
19. *Mandamus*
20. Pocket Veto
21. Remission
22. State Emergency
23. Horizontal Asymmetry
24. Residuary powers
25. Discretionary Grants

SECTION C

*Answer any **five** questions in one paragraph. Each question carries **four** marks.*

(5X4 = 20 Marks)

26. Government of India Act, 1935
27. Proposals of Cripps Mission.
28. Gandhism and its impact on the Constitution.
29. Fundamental Duties
30. Article 226
31. Private Bill
32. Collective responsibility
33. Appellate Jurisdiction
34. Subordinate Courts
35. Gram Sabha

SECTION D

*Answer any **three** questions in two pages. Each question carries **ten** marks.*

(3X10 =30 Marks)

36. Analyze the salient features of Indian polity, highlighting its unique characteristics
37. Discuss the provisions of citizenship as outlined in the Indian Constitution.
38. Examine the need and importance of judicial review in the Indian legal system
39. Critically analyze the role and functions of the Prime Minister in Indian polity.
40. Analyze the role of the Goods and Services Tax (GST) in Centre-State financial relations, along with its challenges.
41. Examine the concept of federalism in India with reference to the role of the Governor.



SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 1

Course Code: **M23PA03DC**

Course Title: **Introduction to Public Policy**

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

Answer any *ten* questions in a word or a sentence. Each question carries *one* mark.

(10×1 = 10 Marks)

1. Name any one characteristic of public policy
2. What is Code of Hammurabi?
3. Who proposed the concept of bounded rationality?
4. Who developed mixed scanning model?
5. The group think theory was proposed by whom?
6. What are the components of Iron triangle?
7. Name the phase in the policy process which results in the drafting of policy proposals and the selection of preferred options?
8. Identify any two challenges in policy legitimization?
9. What are the six major criteria employed in policy evaluation?
10. What is CEA?
11. Which political culture is typically characterised by a strong emphasis on maintaining established hierarchies and social structure?
12. What does the term official policy actor mean?
13. Which are the two types of agenda according to Cobb and Elder?
14. Which approach in policy implementation view implementation as a process which involves interaction within a multiplicity of organisations?
15. Identify the key components of a policy subsystem

SECTION B

Answer any *five* questions in two or three sentences. Each question carries *two* marks.

(5×2 =10 Marks)

16. What do you mean by regulatory policies?
17. What do you mean by globalisation?
18. What are the advantages of mixed scanning model?
19. List the key stages in the policy making process according to process theory.
20. Identify the three types of interest groups
21. Differentiate between public problem and private problem?
22. Explain the concept of Civic Culture
23. How does parochial political culture differ from participant political culture?
24. How do citizens primarily influence public policy?
25. What is the primary role of judiciary in policy formulation ?

SECTION C

Answer any *five* questions in one paragraph. Each question carries *four* marks.

(5×4 = 20 Marks)

26. Differentiate between distributive and redistributive policies
27. Analyse the contribution of Harold Lasswell in the evolution of public policy and policy science
28. Explain the scope of policy research in public administration
29. Explain the concept of bounded rationality proposed by Herbert Simon
30. Analyse the advantages and limitations of game theory
31. Compare official and unofficial policy actors
32. Define policy formulation and its importance in the policy process
33. Explain the role of political culture in policy formulation and implementation

SECTION D

Answer any *three* questions in two pages. Each question carries *ten* marks.

(3×10 =30 Marks)

34. Analyse the nature, scope and significance of public policy
35. Analyse the impact of globalisation in public policy
36. Explain the concept and features of rationalism and incrementalism. And also compare both.
37. Explain group theory and public choice theory and analyse how group theory differ from public choice theory.
38. Critically analyse the role of unofficial policy actors in public policy making
39. Explain the different stages involved in policy process



SREENARAYANAGURU OPEN UNIVERSITY

QP CODE:

Reg. No :

Name :

M.A PUBLIC ADMINISTRATION Semester I - Discipline Course MODEL QUESTION PAPER - SET 2

Course Code: **M23PA03DC**

Course Title: **Introduction to Public Policy**

Maximum Time: 3 Hours

Maximum Marks: 70 Marks

SECTION A

Answer any *ten* questions in a word or a sentence. Each question carries *one* mark.

(10×1 = 10 Marks)

1. What is the primary focus of regulatory policies?
2. Who is considered as the father of policy science?
3. Who wrote the article *The Science of Muddling Through*?
4. What are the components of Black Box Model?
5. Identify any four unofficial policy actors
6. What are the three types of political culture identified by Daniel J Elazar?
7. Name the phase in policy process which helps in identify areas for improvement and informs future policy cycles?
8. Identify any two factors that influence agenda setting?
9. What is CBA?
10. What are the three primary political culture identified by Daniel J Elazar?
11. What are the two sub approaches in interorganisational interaction approach?
12. Name the model which integrates the elements of both top-down and bottom-up approach of policy implementation?
13. List any two methods of policy impact assessment?
14. Which phase in the policy process bridges goals and outcomes?
15. Define public policy analysis

SECTION B

Answer any *five* questions in two or three sentences. Each question carries *two* marks.

(5×2 =10 Marks)

16. What do you mean by constituent policies?
17. List any two features of incrementalism?
18. What are the three types of neo institutionalism?
19. What is policy subsystem?
20. Differentiate between systemic agenda and governmental agenda?
21. How does parochial political culture differ from participant political culture?
22. Briefly explain the role of institutions in policy formulation
23. What is top-down approach in policy formulation?
24. What do you mean by policy impact?
25. Identify any two challenges in policy legitimization?

SECTION C

Answer any *five* questions in one paragraph. Each question carries *four* marks.

(5×4 = 20 Marks)

26. Explain the features of public policy
27. What are the five pivotal political events in the evolution of policy science identified by Deleon?
28. Analyse the relationship between public policy and public administration
29. Compare policy making and decision making
30. Explain the concept of elite theory
31. Analyse the role of political culture in policy formulation and implementation
32. Analyse the constraints to rationality and limitations of rational approach
33. Explain the techniques of policy evaluation

SECTION D

Answer any *three* questions in two pages. Each question carries *ten* marks.

(3×10 =30 Marks)

34. Explain the four types of public policy identified by Theodore Lowi with examples
35. Trace the evolution of public policy and policy science from the period before 1950s to the period after 1970s
36. Explain the political systems theory and the elements involved in it.
37. Explain the concept of Iron Triangle and analyse its effect in policy making
38. Explain the different approaches in policy implementation
39. Compare institutionalism and neo institutionalism in detail.

സർവ്വകലാശാലാഗീതം

വിദ്യാൽ സ്വതന്ത്രരാകണം
വിശ്വപൗരരായി മാറണം
ഗ്രഹപ്രസാദമായ് വിളങ്ങണം
ഗുരുപ്രകാശമേ നയിക്കണേ

കുതിരുട്ടിൽ നിന്നു ഞങ്ങളെ
സൂര്യവീഥിയിൽ തെളിക്കണം
സ്നേഹദീപ്തിയായ് വിളങ്ങണം
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