

State and Politics in India

COURSE CODE: M23PS01DC

Postgraduate Programme in Political Science

Discipline Core Course

Self Learning Material



SREENARAYANAGURU OPEN UNIVERSITY

The State University for Education, Training and Research in Blended Format, Kerala

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Semester - I

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Rest assured, the university's student support services will be at your disposal throughout your academic journey, readily available to address any concerns or grievances you may encounter. We encourage you to reach out to us freely regarding any matter about your academic programme. It is our sincere wish that you achieve the utmost success.

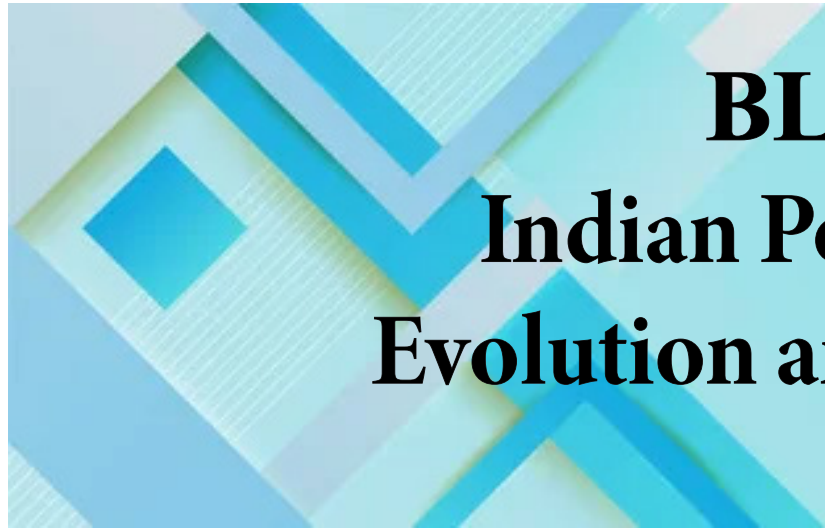


Regards,
Dr. Jagathy Raj V. P.

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BLOCK 1

Indian Political System: Evolution and Development

UNIT 1

Colonialism to the Modern State and the Formation of the Constituent Assembly

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ understand various historical events which resulted in the formation of the Indian Constituent Assembly
- ▶ analyse the role played by various committees in the functioning of the Indian Constituent Assembly
- ▶ explain the diverse compositions and representative nature of the Indian Constituent Assembly and its impact on the inclusivity of the Constitution-Constitution-making process.
- ▶ understand the major criticism levelled against the Constituent Assembly

Background

The transformation from colonialism to a modern state is a defining chapter in the history of any nation. For India, this journey parallels profound political, social and economic changes. This topic explores the evolution of India from the grip of British colonial rule to the establishment of an independent, sovereign republic, focusing on the pivotal role played by the Constituent Assembly in shaping the nation's constitution.

Colonialism profoundly influenced India's socio-economic landscape, altering its traditional structures and imposing new administrative frameworks. The British colonial administration introduced significant changes in land revenue systems, education and legal frameworks, which left lasting impacts on Indian society. Understanding these changes is essential to grasp the complexities and motivations behind India's struggle for independence.

The quest for freedom, driven by leaders like Mahatma Gandhi, Jawaharlal Nehru and Sardar Vallabhbhai Patel, was not just a fight against foreign rule but also a movement to reclaim and redefine Indian identity and governance. As the movement gained momentum, it became clear that a coherent plan was needed to govern a post-colonial India.

This led to the formation of the Constituent Assembly in 1946, a body composed of representatives from various regions, communities and political ideologies. Tasked with drafting the constitution, the Assembly faced the monumental challenge of uniting a diverse population under a common governance framework. The debates and discussions within the Assembly reflected the aspirations, concerns and visions of a newly independent nation.

This unit sets the stage for exploration of India's transition from a colonial state to a modern republic. It highlights the enduring impact of colonial rule, the fervent drive for independence and the meticulous Constitution-making process. By examining these themes, we gain insights into the foundational principles that have guided India towards becoming the world's largest democracy, balancing the ideals of liberty, equality and justice.

Keywords

Constituent Assembly, Drafting Committee, Indian National Congress, Debates and Deliberations

Discussion

1.1.1 The Making of the Indian Constitution

The Constituent Assembly, which drafted the Indian constitution, began its work on December 9, 1946. Over two years, 11 months, and 18 days, the Assembly held 114 sessions, thoroughly debating and discussing every aspect of the constitution that would govern an independent India. Although the Constituent Assembly undertook the primary task of drafting the constitution, the roots of this process extend back to 1858. The path to the formation of the Constituent Assembly is marked by significant legislative reforms and political movements, starting with the Government of India

❑ Evolution of the constitution



Act of 1858, which initiated direct British rule in India after the East India Company's control ended.

❑ Increased Indian participation

Subsequent legislative acts, such as the Indian Councils Act of 1861, Minto- Morley Reforms of 1909, Montagu -Chelmsford Reforms of 1919 and Government of India Act of 1935, gradually established frameworks for self-governance and increased Indian participation in the legislative processes. These reforms, combined with the relentless struggle for freedom led by key figures like Mahatma Gandhi, Jawaharlal Nehru and Sardar Vallabhbhai Patel, laid the groundwork for the Constituent Assembly's creation. The Constituent Assembly was established on the Cabinet Mission Plan of 1946, which proposed the formation of a body to draft a constitution for India. This Assembly included representatives from various regions, communities and political ideologies, reflecting India's diverse and pluralistic society.

❑ 26th November 1949

The studious efforts of the Assembly members culminated in adopting the constitution on 26th November 1949, which came into effect on January 26, 1950. This marked the transformation of India from a colonial entity to a sovereign republic, embodying the aspirations and values of its newly independent people.

1.1.1.1 History of the Constitution: From the Government of India Act to the Enactment of the Constitution

❑ Political-historical wants that led to constitution Assembly

The creation of the Indian Constitution was not merely a task completed by a group of delegates over a few years but the culmination of a century-long journey of political awakening, legislative reforms and an unwavering quest for independence. The Constituent Assembly's work symbolises India's evolution from a British colony to an independent, democratic state. The following political-historical events contributed to the history of the evolution and making of the Indian Constitution.

The Government of India Act, 1858

The Government of India Act of 1858 marked the end of the East India Company's rule in India, transitioning governance to direct control by the British Crown. This act was a response to the Indian Rebellion of 1857, and it effectively dissolved the East India Company's administrative authority. The powers of governance were transferred to the British Crown, exercised by the Secretary of State for India, aided by a council of fifteen

members. This council included both Crown representatives and former Directors of the East India Company, predominantly comprising English men. The Secretary of State-operated through the Governor-General, who, along with an Executive Council, oversaw the administration of India and was accountable to the British Parliament. This act was pivotal in India's Constitutional evolution as it marked a significant shift in authority from a private company to the British Crown.

The Indian Councils Act, 1861

☐ System of local representation

The Indian Councils Act of 1861 introduced a system of local representation in India's governance by including non-official members in the Governor-General's Executive Council. Before this, the council was entirely composed of official members. The non-official members, although given limited power, could review legislative proposals presented by the Governor-General. The act maintained the significant authority of the Governor-General while establishing legislative councils in provinces, which had minimal powers. Any legislation required the Governor-General's sanction. The act also established the Imperial Legislative Council as an advisory body without real power.

The Indian Councils Act, 1892

☐ Expanded membership in bodies

The Indian Councils Act of 1892 broadened the scope of government functions and allowed greater participation of Indians in governance. This act expanded the membership of the Imperial Legislative Council and the Provincial Councils. While maintaining an official majority, the Act permitted the indirect election of representatives by Indians. Local bodies, such as universities and municipalities, were empowered to nominate non-official members to the provincial councils. The councils' powers were enhanced, allowing them to discuss annual budgets.

The Indian Councils Act, 1909

The Indian Councils Act of 1909, known as the Morley-Minto Reforms, marked a significant move towards popular representation. The Act increased the size of the Imperial Legislative Council and Provincial Councils, introducing more elected members. The legislative councils gained the power to pass resolutions on budget, foreign affairs and matters



of public interest. This Act ended the official majority in provincial legislatures, based on the advice of Gopal Krishna Gokhale. However, it also introduced separate representation for Muslims, sowing the seeds of communal division.

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

☐ Diarchy in provinces

The Government of India Act of 1919 or Montagu-Chelmsford Reforms, increased Indian involvement in administration. Despite not adopting a Parliamentary system, the act introduced diarchy in provinces, dividing subjects of administration between central and provincial governments. Provincial subjects were further classified into transferred and reserved categories. The transferred subjects were managed by ministers accountable to the Legislative Council, while the Governor and his Executive Council oversaw the reserved subjects. The Act also introduced bicameralism at the central level with the Legislative Assembly (lower house) and the Council of States (upper house). The Federal Public Service Commission was established, marking a significant development in civil service examinations held in India.

The Government of India Act, 1935

☐ Provinces autonomy

The Government of India Act proposed a federation of states and provinces, with optional participation by the units. It granted provinces autonomy, defining legislative powers between central and provincial legislatures. The Act replaced the diarchy at the provincial level with full provincial autonomy and extended the diarchy to the centre. The Governor, representing the Crown, acted on ministers' advice. A Federal Court was established to interpret the Act and resolve inter-provincial disputes. Although it did not grant the dominion status promised by the Simon Commission, the act laid down several constitutional provisions later adopted by the Constituent Assembly.

Cripps Mission

In 1942, Sir Stafford Cripps, a senior British cabinet member, was sent to India with proposals to gain Indian support during World War II. The Cripps Mission suggested forming a constituent assembly elected by Indians to draft a new constitution, granting India a dominion status and forming a union of states and provinces. But, both the Congress and the Muslim League rejected the proposals, leading to a stalemate.

Cabinet Mission

❑ Power transfer

In 1946, British Prime Minister Clement Attlee sent a Cabinet Mission to India to negotiate a power transfer. The mission aimed at forming a constituent assembly to draft a constitution for independent India. It proposed a union comprising British India and the Princely States with shared jurisdiction over defence, communication and foreign affairs. Residuary powers were assigned to provinces and the union would include both a legislature and an executive body with provincial and state representatives. The mission's proposals set the framework for the eventual transfer of power.

Indian Independence Act

❑ Abolished office of Secretary of States

Based on the Mountbatten Plan, the Indian Independence Act of 1947 authorised the partition of India into the Dominion of India and the Dominion of Pakistan, each with sovereignty and autonomy. The act abolished the office of the Secretary of State and declared the Crown no longer the source of authority. It transferred legislative powers to the Constituent Assemblies of India and Pakistan, abolished the title of Emperor of India and provided for the appointment of Governors-General as the Crown's representatives in both countries. This Act marked the final step towards India's independence and sovereignty.

Formation of the Constituent Assembly and making of the Constitution.

The Formation of the constitution Assembly was one of the main events in the process of constitution-making. The Assembly was constituted in November 1946 as per the recommendations of the Cabinet Mission plan. The features of the Assembly were as follows.

The total strength of the Assembly was to be 389. Of these, 296 seats were to be elected from the provinces and 93 seats were to be nominated from the Princely States. Out of the 296 seats, 292 were to be drawn from the eleven Governor's provinces and four members were to be nominated from the four chief commissioners' provinces, one from each.

1. Each province and Princely State was to be allotted seats in proportion to their population.
2. Seats were further allocated to three communities - Muslims, Sikhs and the general in proportion to their population of ten lakhs.



3. The representatives of each community were to be elected by members of that community in the provincial legislative Assembly and voting was by proportional representation, using a single transferable vote system.
4. The representatives of the Princely States were to be nominated by the heads of the Princely States.

The above scheme meant that the Constituent Assembly was to be partly nominated and partly elected.

The elections to the Constituent Assembly were held in July-August 1946. In the election, out of the 296 seats allotted to the British Indian Provinces, the Indian National Congress won 211 seats, the Muslim League secured 73 seats and a small group of independents got the remaining 15 seats. However, the 93 seats allotted to the Princely States were not filled; so they decided to stay away from the Constituent Assembly. Although the people of India did not directly elect the Assembly, the Assembly had representatives from all sections of the Society - Hindus, Muslims, Sikhs, Parsis, Anglo Indians, Christians, SCs, and STs. The Assembly was a galaxy of top-ranking leaders of the Congress and the Muslim League, except Mahatma Gandhi and M. A. Jinnah.

❑ Composition of Assembly

Working of the Constituent Assembly

The Assembly was formed on 6 December 1946. The first session of the Assembly took place on 9 December 1946. The session was boycotted by the Muslim League, who demanded the partition of the country. Only 211 members attended the session. On the first day of the session, Dr Sachidanada Simha, the oldest member, was elected the temporary president of the Assembly. Two days later, Dr. Rajendra Prasad was unanimously elected the permanent president of the Assembly. H. C. Mukherjee and T. T. Krishnanachari were elected the Vice-presidents of the Assembly. B. N. Rao was appointed the constitutional advisor to the Assembly.

❑ 6 December 1946

Objective Resolution

On 13 December 1946, Jawaharlal Nehru moved the Assembly's historic "Objective Resolution." It was described as a solemn pledge to the people. The main principles emphasised in the resolution are given below.

1. India would be a sovereign independent Republic in which both British India and Indian states were to be included.
2. All powers and authority of the Sovereign independent India would be derived from the people.
3. All people of India would be guaranteed justice - social, economic and political and equality of status and opportunity and equality before the law. They were guaranteed freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and morality.
4. Adequate safeguards would be provided for the minorities, backward and tribal areas and the depressed and other backward classes.
5. Adequate safeguards shall be maintained for the integrity of the territory of the Republic and its Sovereign rights on land, sea and air according to justice and law of civilised nations.
6. This ancient land would attain its rightful and honoured place in the world and make its full, willing contribution to the promotion of world peace and the welfare of mankind.

The Assembly unanimously accepted the Resolution on 22 January 1947. A modified version of it formed the preamble of the constitution of India.

Changes by the Indian Independence Act

❑ Indian Independence Act and Division of Assembly

The representatives of the Princely States, who had stayed away from the Assembly, gradually joined it on 3 January 1947. The British Prime Minister announced in the House of Commons the final decision of the British government to transfer power to the people of India at the earliest possible moment. The decision led to the passing of the Indian Independence Act of 1947 by the British Parliament. The Act, which came into force on 15 August 1947, partitioned India and set up two independent states - India and Pakistan. As a result, the Muslim League from the Indian Domain also entered the Assembly.

The Independence Act also divided the Constituent Assembly. The members representing the areas included in Pakistan formed a separate constituent Assembly of Pakistan and the remaining members constituted the constituent



Assembly for India. Consequently, the total strength of the Assembly came down to 299, as against 389, which was originally fixed by the Cabinet Mission plan. The strength of the British Indian Provinces was reduced from 296 to 279, and those of the Princely States from 93 to 70.

Committees of the Constituent Assembly

To facilitate the work of the making of the constitution the Constituent Assembly set up many committees. Of these, eight were major committees and the others were minor committees. The names of the committees and their chairmen are given below.

Major committees

1. Union power committee (Jawaharlal Nehru).
2. Union Constitution Committee (Jawaharlal Nehru).
3. Provincial Constitution Committee (Sardar Patel).
4. Drafting Committee (Dr. Ambedkar)
5. Advisory Committee on Fundamental Rights (Sardar Patel)
6. Rules of Procedure Committee (Dr. Rajendra Prasad.)
7. States Committee (Committee for negotiating with states (Jawaharlal Nehru)
8. Steering Committee (Dr. Rajendra Prasad).

Minor Committees

1. Finance and Staff Committee (Dr. Rajendra Prasad)
2. Credentials Committee (Alladi Krishna Swamy Ayyar).
3. House Committees (B. Pattabhi Sitaramayya).
4. Order of Business Committee (Dr. K. M. Munshi).
5. Ad - hoc Committee on National Flag (Dr. Rajendra Prasad).
6. Committee on the Functions of the Constituent Assembly (G. V. Mavalankar).

7. Ad - hoc Committee on Supreme Court (S. Varadachari).
8. Committee on Chief Commissioner's province. (Pattabhi Sitaramayya)
9. Expert Committee on the Financial Provisions of the Union Constitution (Nalini Ranjam Sarkar).
10. Linguistic Provinces Commission (S. K. Dar)
11. Special committee to examine the Draft Constitution . (Jawaharlal Nehru).
12. Press Gallery Committee (Usha Nath Sen).
13. Ad - hoc Committee on Citizenship (S. Varadhachari).

Drafting Committee

The most important of all committees was the Drafting Committee headed by Dr. Ambedkar. It was entrusted with the task of preparing the Draft constitution. The committee consisted of seven members, including Dr. Ambedkar. The other members were:

1. N. Goplaswami Ayyangar
2. Alladi Krishna Swami Iyer
3. Dr. K. M. Munshi
4. Sayed Mohammad Saadullah
5. N. Mahadeva Rao
6. T. T. Krishnamachari

❑ Stages of draft constitution

The drafting committee prepared the first draft after considering the proposals submitted by another committee. It was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of public comments, criticisms and suggestions, the drafting committee proposed the second draft published in October 1948.

Dr. Ambedkar introduced the final draft in the Assembly on 4 November 1948 (First reading). The Assembly had a general discussion on it for five days.



❑ Complete Independence

The second draft reading started on 15 November 1948 and ended on 17 October 1949. During this stage, as many as 7635 amendments to the draft were tabled. Out of these, 2473 were moved and discussed.

For the third reading, the Assembly met on 14 November 1949 and finalised it on 26 November 1949, adopted it on the same date and received the signature of the President and other members. Out of the 299 members of the Assembly, 284 members were present on that day and signed the constitution. This is also the date mentioned in the preamble on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this constitution.

As adopted on 26 November 1949, the constitution contained a preamble, 395 Articles and 8 Schedules. The preamble was enacted after the entire constitution had already been enacted. The provisions relating to citizenship, election, provisional Parliament and temporary and transitional provisions were given immediate effect, i.e., from 26 November 1949. The rest of the Constitution came into force on 26 January 1950, referred to in the constitution as the date of its commencement. The date is also celebrated as the Republic Day. The 26th day of January was chosen as the date of commencement because of its historical importance, as this day has been celebrated annually as India's Independence Day even since the Resolution of "Complete Independence" of India passed by the Indian National Congress at its Lahore Sessions in 1929 December 29.

In addition to making the constitution, the Constituent Assembly performed the following functions.

1. It ratified India's membership of the Commonwealth in May 1949.
2. It adopted the National Flag on 22 July 1947.
3. It adopted the National Anthem on 24 January 1950.
4. It adopted the National Song on 24 January 1950.
5. It elected Dr Rajendraprasad as the First President of India on 24 January 1950.

The Constituent Assembly held 11 sessions and sat altogether for 165 days. Of these, 114 days were spent on the consideration of the Draft. The Assembly completed the task in two years, 11 months, and 18 days.

In this context, we cannot but remember Dr. Ambedkar in the framing of the constitution of India. He piloted the Draft constitution. He took a very prominent part in the discussions and debates in the Assembly. He was known for his logical, forceful and persuasive arguments on the floor of the Assembly. He was recognised as the Father of the constitution of India. He was a brilliant writer, constitutional expert, undisputed leader of the scheduled casts and the chief architect of the constitution of India, also known as ‘Modern Manu.’

1.1.2 Criticism against the Constituent Assembly

The Indian Constituent Assembly, tasked with drafting the constitution of India, has faced several criticisms despite its historic achievements. The major criticisms that have been raised are:

Lack of Representative Character

One major criticism is regarding the composition of the Constituent Assembly. Provincial legislatures and Princely States appointed their members rather than being directly elected by the people. Critics argue that this lack of direct popular mandate, as the representatives were not chosen by universal adult franchise, undermined the Assembly’s democratic legitimacy and did not truly reflect the people’s will.

Dominance of Elites

Another criticism concerns the dominance of elites within the Constituent Assembly. Many members came from privileged backgrounds with substantial education and political influence. Critics claim this resulted in skewed representation, overlooking the interests and concerns of the common masses. The limited presence of diverse voices and perspectives might have restricted the Assembly’s ability to address the entire population’s needs effectively.

Absence of Women and Minority Representation

The Constituent Assembly’s inadequate representation of women and minority groups has also been criticised. With only 17 women among 389 members, the gender imbalance was clear. Critics also point out the insufficient representation



of Dalit sections. Critics argue that excluding these groups from the drafting process may have led to a constitution that is incapable of addressing the issues of these sections.

Limited Time for Deliberations

The Constituent Assembly faced considerable time constraints while drafting the constitution, operating under intense pressure to complete the task within a set timeframe due to escalating political and administrative challenges. Critics argue that these time limitations may have compromised the quality of discussions and debates. Additionally, the rushed process likely hindered broader public participation in the constitution-making process, which could have enriched the final document with more diverse perspectives and inputs.

Lack of Regional and Linguistic Diversity

The underrepresentation of different regions and linguistic groups in the Constituent Assembly has also been criticised. This underrepresentation may have led to the neglect of regional concerns and aspirations, potentially impacting the federal nature of the Indian Constitution. By not fully incorporating the voices and needs of all regions, the Assembly might have overlooked important cultural and linguistic considerations, thereby affecting the overall inclusivity and balance of the constitution.

Not a Sovereign Body

Critics point out that the Constituent Assembly lacked sovereignty as it originated from proposals put forth by the British Government. Moreover, they highlight that the Assembly conducted its sessions under the auspices of the British Government, raising doubts about its autonomy.

Dominated by Congress

Criticism has been levelled against the Constituent Assembly for its perceived dominance by the Congress party. Granville Austin, a renowned British Constitutional expert, observed: “The Constituent Assembly operated as a one-party entity in what was essentially a one-party state. The Assembly and the Congress were synonymous, effectively making the Congress synonymous with India.”

Lawyer-Politician Domination

Critics also argue that the Constituent Assembly was dominated by lawyers and politicians, with other sections of society not sufficiently represented. They argue that this is why the constitution ended up long and hard to understand.

These criticisms highlight the challenges and limitations faced by the Constituent Assembly in its efforts to draft a comprehensive and representative constitution for India.

Despite all these criticisms and shortcomings, the Indian Constituent Assembly has survived the test of time and contributed the most precious political text to the political history of India. The Indian Constitution, irrespective of all its pitfalls, has gained wide acclaim as a democratic document capable of determining the political and socio-economic fate of millions of people.

Summarised Overview

Drafting the Indian Constitution by the Constituent Assembly was a monumental endeavour that spanned nearly three years, from December 9, 1946, to November 26, 1949, with the constitution coming into effect on January 26, 1950. This process was the culmination of a century-long journey of political awakening and legislative reforms, dating back to the Government of India Act of 1858, which initiated direct British rule in India after the dissolution of the East India Company's control. Subsequent legislative acts, such as the Indian Councils Act of 1861 and the Montagu-Chelmsford Reforms of 1919, gradually increased Indian participation in governance and set the stage for the Constituent Assembly's creation.

Key figures like Mahatma Gandhi, Jawaharlal Nehru, and Sardar Vallabhbhai Patel played crucial roles in India's struggle for freedom, laying the groundwork for the Constituent Assembly's establishment following the Cabinet Mission Plan of 1946. The Assembly, comprising representatives from diverse regions, communities and political ideologies, drafted a constitution for independent India. Chaired by Dr. B. R. Ambedkar, the Drafting Committee meticulously crafted the final document, incorporating inputs from various committees within the Assembly.

Despite criticisms regarding its composition and process, including concerns about lack of direct popular mandate, dominance of elites and limited representation of

women and minorities, the Constituent Assembly succeeded in producing a comprehensive and democratic constitution. The Indian Constitution, which embodies the aspirations and values of a newly independent nation, has endured over the decades, guiding India's democratic governance and legal system. Despite its flaws, the Constituent Assembly's work remains a landmark achievement in India's political history, earning acclaim as a democratic document capable of shaping the nation's socio-economic destiny.

Self-Assessment

1. Analyse the role of legislative reforms, such as the Government of India Act of 1858 and subsequent Acts, in laying the groundwork for the formation of the Indian Constituent Assembly. How did these reforms contribute to India's journey towards independence?
2. Evaluate the significance of the Cabinet Mission Plan of 1946 in the context of India's Constitutional evolution. How did the proposals put forth by the Cabinet Mission set the framework for the eventual creation of the Constituent Assembly?
3. Discuss the composition of the Indian Constituent Assembly, highlighting the various methods through which members were selected. How did this diverse composition reflect the complex social, cultural and political landscape of India at the time?
4. Examine the role of key political parties, particularly the Indian National Congress and the All-India Muslim League, in the Constituent Assembly. How did the withdrawal of the Muslim League impact the dynamics within the Assembly?
5. Critically analyze the criticisms levelled against the Indian Constituent Assembly, including issues of representativeness, dominance of elites and limited time for deliberations. To what extent are these criticisms valid, and how do they impact perceptions of the Assembly's achievements?
6. Explore the role and functions of important committees within the Constituent Assembly, such as the Drafting Committee, Union Powers Committee and Committee on Fundamental Rights. How did these committees contribute to the drafting process?

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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.





Selected Debates: Secularism and the Role of the Governor

| Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ understand the depth and diversity of deliberations and debates carried out in Indian Constituent Assembly
- ▶ be familiar with the divergent perceptions of the Constitution Makers regarding the role of the Governor
- ▶ understand the divergent perceptions of the Constitution Makers regarding the idea of Secularism

| Background

The Constituent Assembly debates played a key role in shaping the principles embedded in the Constitution. Two significant topics that emerged during these debates were secularism and the role of the Governor. Understanding these discussions is vital for grasping the complexities and intentions behind these Constitutional provisions.

Secularism was a heated topic during the Constituent Assembly debates. With its multitude of religions, India needed a framework that could harmoniously accommodate its diverse religious communities. The concept of secularism adopted by the Assembly was not about irreligion but about equal respect and treatment for all religions by the state. The role of the Governor was another significant topic discussed in the Constituent Assembly debates. Debates on this topic focused on the Governor's appointment, powers and functions. There was a consensus that the Governor should act as a neutral figurehead, not influenced by political pressures.

The Constituent Assembly debates on secularism, and the role of the Governor was pivotal in shaping the Indian Constitution. They reflect the foresight and deliberations of India's founding leaders in addressing the nation's unique challenges. Understanding these debates is essential for comprehending the Constitutional principles that govern India today and the ongoing discourse on these critical issues.

Keywords

Governor, Secularism, Ambedkar, Debates and Discussions, Making of Constitution

Discussion

1.2.1 Indian Constituent Assembly and Debates: An Introduction

Debates and Discussions in the constituent assembly form the base of the values the constitution cherishes. These debates carried out by the constitution makers reflected the vision and values that the nation as a whole possesses. The constitution that exists today is the output of these debates and discussions. Constituent Assembly met for the first time on December 9, 1946, and the assembly met for 166 days for 2 years and 11 months, and 1600 sessions were held to finalise the constitution's text. The final session of debates was held on 24 January 1950. The constitution came into force on 26th January 1950. With that, the constituent Assembly ceased to function, transforming itself into the provisional Parliament of India till 1952, when the new Parliament was constituted.

❑ Debated various subjects and issues

Constituent Assembly debated various subjects and issues ranging from secularism to the mode of constitutional amendments. The complete set of these debates, which consisted of five books, was later published by the Lokasabha Secretariat. In this unit, we examine the important debates in the constituent Assembly related to the themes of secularism and the Role of the Governor.

1.2.2 Meaning and Importance of Constitutional Assembly Debates

The Constituent Assembly Debates encompass discussions and deliberations held by elected representatives within India's Constituent Assembly between 1946 and 1950. Entrusted with drafting the constitution for the newly independent nation, these deliberations extended over 1600 sessions. Distinguished members, including notable figures such as Jawaharlal Nehru and B. R. Ambedkar, engaged in extensive dialogue concerning the values, philosophy and vision of the constitution as well



☐ Represented democratic character

as the structure of the government. These debates reflect the representative and democratic character of the constituent assembly. The Constituent Assembly Debates shed light on and serve as inspiration for establishing unwritten principles that uphold foundational values. Vivid perspectives and diverse opinions were expressed on various themes discussed and final decisions were made based on vote. These debates facilitated amendments to the clauses of the draft constitution, leading to over two thousand modifications.

1.2.3 Secularism

The term secularism was first used in 1648 when the Treaty of Westphalia was signed. Secularism, as understood in the West, is based on two principles:

1. Separation of religion from the state;
2. Treating religion as the private affair of the individual.

☐ Secularism and democracy

India is the home of eight major religions in the world; even after the creation of Pakistan, India could not afford to have a theocratic state. However, the original constitution did not contain any reference to secularism. It was only in 1976 that the ruling establishment, through the 42nd Amendment Act, added the word 'secular' to the preamble to the constitution. However, a definition of either secularism or religion was not supplied. In the absence of a definition in the Indian Constitution, secularism has always been debated and discussed. However, the secular state is important to the future of Indian Democracy itself. It stands or falls as a basic and inseparable component of Indian democracy.

☐ Concept of secularism

Before discussing the process of secularisation in India, it is desirable to consider the concept of secularism as viewed by scholars. As Donald Smith says, a secular state is a state that guarantees individual and corporate freedom of religion and deals with individuals as citizens irrespective of their religion. In contrast, to Venkataraman, a state may be called secular, which is neither religious nor anti-religious but wholly detached from religious dogmas and activities and thus neutral in religious matters. Asghar Ali Engineer, an eminent Islamic scholar, has another interpretation. To him, secularism means liberation of politics from the hegemony of religion. The Supreme Court of India, in DAV College Jullundur Vs. State of Punjab, held that secularism means developing understanding

and respect for different religions. In addition to the above interpretations, the court observed that secularism is a principle of accommodation and tolerance and could be derived from diverse cultural traditions in India; the state will have no religion and secularism does not mean the constitution of an atheist society.

Though we have adopted secularism based on the interpretation in the West, we have a more liberal interpretation of secularism. Secularism in the Indian context cannot be stated as hostility to religion. As a secular state, we have no state religion. This implies that no particular religion would receive special treatment from the state. The individuals decide which religion or faith they would profess, practise and propagate. However, such practice is subjected to certain constitutional limitations such as public order, morality and health.

In the light of what we have discussed above, we can derive three points.

1. There shall be no state religion in India. The state shall neither establish a religion nor confer any special patronage upon any religion.
2. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate any religion;
3. The freedom is guaranteed not only to individuals but also to every religion.

As has already been referred to, the founding fathers of the constitution did not use the word secular or secularisation in any part of the constitution. However, they have incorporated various provisions that tend towards the secularisation process in India. The principles of secularism are embodied in various parts of the constitution of India, especially in part III, dealing with Fundamental Rights and in Article 325, which provides for “one general electoral role for every territorial constituency.” Further, the secular objective of the state has been specifically expressed by inserting the word “secular” in the preamble of the 42nd Amendment in 1976. Discussing the constitutional provisions would be appreciated to get a clear understanding.

Secularism in Indian Constitution

Constitutional provisions

In India’s constitution, the preamble specifically guarantees liberty of thought, expression, faith, belief and worship for all citizens in India. It means that the constitution guarantees religious freedom to all citizens according to their choices.



❑ Provisions
related to
secularism

Article 15 guarantees religious equality and assures the citizens of non-discrimination on religious grounds. Article 15 (2) states that no citizens shall be debarred from entering any public place, like restaurants, hotels, places of worship etc., based on religion, race etc.

Article 16 guarantees equality in matters of public employment and bans discrimination based on various factors, including religion.

Regarding the Right to Religion, **Article 25** provides freedom of conscience and freedom to profess, practice and propagate religion.

Article 26 guarantees the freedom to manage the religious affairs of every religion.

Article 27 prohibits the payment of taxes for the promotion of a particular religion.

Article 28 provides freedom to attend religious instruction or religious worship in certain educational institutions.

In the Articles on Cultural and Educational Rights, Article 29 protects the interest of minorities, and Article 30 guarantees minorities the ability to establish and administer educational institutes of their own choice.

In short, India has no state religion—all religions are treated equally. There is individual and collective religious freedom. The rights of minorities have been protected. All citizens, irrespective of their religions, enjoy equality before the law and equal opportunities in services.

The communal electorate has been abolished. All these constitutional provisions boldly declare that India is a secular state. In this context, D. B. Basu observed: "The total of the constitutional provisions makes our state more secular than even the U. S. A." Nehru was the grand champion of the concept of a non-communal secular state. Norman D. Palmer says that creating India as a secular state is one of Nehru's greatest achievements. Nehru stated: "Our constitution is based on the secular concept and gives freedom to all religions." He stood for the abolition of a 'caste-ridden' society in India. However, Gandhiji believed that religion and politics should go together, and he wanted modernisation or the spiritualisation of politics.

1.2.4 Debates on Secularism

❑ Secularism as a fundamental principle

A rich tapestry of ideological diversity and nuanced perspectives characterised the debates on secularism within the Indian Constituent Assembly. Members engaged in spirited discussions, reflecting on the implications of secularism for India's nascent democracy. While some, such as Jawaharlal Nehru and B. R. Ambedkar, championed secularism as a fundamental principle essential for fostering national unity and protecting minority rights, others, like Sardar Patel and Rajendra Prasad, expressed reservations, fearing potential erosion of India's cultural and religious heritage. These deliberations underscored the Assembly's commitment to navigating the delicate balance between religious pluralism and the imperative of forging a cohesive national identity. Ultimately, the debates culminated in adopting a secular framework in the Indian Constitution, affirming the state's neutrality in matters of religion and its commitment to ensuring equal treatment for all faiths.

1.2.4.1 Arguments in support of Secularism

Heated debates took place in the Constituent Assembly on the adoption of Secularism. The arguments put forth by members of the Indian Constituent Assembly in support of adopting secularism were multifaceted and reflected various perspectives. The main arguments in support of adopting secularism were as follows.

■ Promotion of Unity and National Integration:

Many members, including Jawaharlal Nehru, B. R. Ambedkar and Maulana Abul Kalam Azad, emphasised that secularism was essential for fostering national unity and integration in a diverse country like India. They argued that by treating all religions equally and ensuring the state's impartiality in religious matters, secularism would prevent communal tensions and contribute to the harmonious coexistence of India's various religious communities.

■ Protection of Minority Rights:

Several members advocated secularism to safeguard the rights of religious minorities. They argued that without secular principles, minority groups might face discrimination and marginalisation and the dominance of the majority religion could threaten their cultural and religious freedom.

❑ National unity and integrity



❑ Religion and politics

❑ Long history of religious pluralism and tolerance

■ Preservation of Democratic Principles:

Members such as H. V. Kamath and K. M. Munshi highlighted secularism as fundamental to upholding democratic values such as equality, freedom of conscience and religious pluralism. They argued that in a secular state, individuals should be free to practice their religion without interference from the government, thus ensuring the protection of individual liberties and the separation of religion from politics.

■ Prevention of Religious Hegemony:

Some members, including Nehru and Ambedkar, warned against the dangers of allowing any one religion to dominate the state or influence its policies. They argued that secularism would prevent the establishment of a theocratic state and ensure that no particular religion received preferential treatment from the government, thereby preserving the principle of religious neutrality.

■ Recognition of India's Pluralistic Heritage:

Proponents of secularism, such as Nehru and Azad, celebrated India's long history of religious pluralism and tolerance. They argued that secularism was not a rejection of religion but a recognition of India's diverse religious traditions and a commitment to respecting and accommodating them within the framework of the state.

Overall, the arguments in support of adopting secularism in the Indian Constituent Assembly reflected a commitment to building a democratic and inclusive nation that respected the rights and freedoms of all its citizens, regardless of their religious beliefs.

1.2.4.2 Proposal to Include "God" in the Preamble

One of the most important debates in the Indian Constituent Assembly concerned secularism was whether to include a reference to God at the beginning of the constitution. H.V. Kamath, a member known for his interest in incorporating spiritual elements, proposed that the Preamble should open with a reference to God. Kamath believed that mentioning God would lend a moral and ethical foundation to the constitution, making it a document rooted in universal principles of truth, justice, and righteousness.

Kamath argued that the invocation of God would unite people of different religious and cultural backgrounds by appealing to a shared belief in a higher power. He stated, “It would be proper to invoke the name of God, the fountain of all knowledge and truth before we begin the constitution.” According to Kamath, this would remind the citizens and leaders that they are answerable to a higher moral authority, making the government and society more righteous.

Arguments for a Moral Foundation

Kamath and other supporters believed that the reference to God would serve as a guiding light for moral governance. They argued that India, as a diverse nation with many religious communities, could embrace a broad spiritual principle without endorsing a specific religious view. By including a universal concept of God, they argued, the Constitution would acknowledge India’s deep spiritual heritage, while promoting ethical values.

Kamath further clarified that he did not intend for this reference to favour any particular religion. He stated that this was not about establishing a religious identity for the nation but about providing an ethical foundation for governance. According to Kamath, having "God" in the Preamble would inspire a sense of responsibility among leaders and citizens alike, encouraging them to follow a moral code in their duties.

Secular Opposition Led by Dr. B.R. Ambedkar

The proposal met with strong opposition from prominent members, especially Dr. B.R. Ambedkar, the chairman of the Drafting Committee. Ambedkar believed that referencing God in the constitution would conflict with the principle of secularism, a fundamental value for India as a new, independent nation. He argued that India’s constitution should represent all citizens equally, regardless of their religious beliefs, and that including a reference to God would undermine this neutrality.

Ambedkar was firm in his stance that the constitution must be a secular document, stating that the government must be independent of any religious affiliation. He argued that the Preamble should emphasize the people’s collective will, not religious or divine authority. Ambedkar said, “We are not here to legislate for a community based on religion, but for one that is secular, where people have diverse religious beliefs.”



Concerns About Favoring One Religion

Other members also voiced concerns that including "God" in the Preamble could be misinterpreted as a step toward favoring one religion over others, potentially leading to divisions within the society. Some argued that in a multi-religious country like India, where people follow different faiths, the constitution should refrain from appearing biased.

To avoid any association of the constitution with specific religious sentiments, members argued that India's secular character would be best preserved by not mentioning God. By doing so, the government would be established as a non-religious entity, representing all citizens without prejudice.

Final Decision: "We, the People of India"

After extensive debate, the Constituent Assembly ultimately decided against Kamath's proposal. The final Preamble begins with "We, the people of India," emphasizing that the constitution derives its authority from the people rather than from any divine source. This decision symbolized the commitment to a secular, democratic state, where the power and authority rest with the people.

This debate reflects the Assembly's intent to frame a constitution that would be inclusive and fair to all communities. By choosing a secular approach, the Assembly set a strong foundation for Indian democracy, ensuring that the nation's guiding document would remain neutral and committed to the principles of justice, liberty, and equality.

1.2.5 Nehru and his arguments in support of Secularism

Jawaharlal Nehru's advocacy for secularism during the debates in the Indian Constituent Assembly was pivotal in shaping India's identity as a secular state. In the Constituent Assembly Nehru emphasised the need for a secular state. Nehru wanted India to be a secular state, mainly for the following reasons.

- **Unity in Diversity:** Nehru emphasised that India's vast diversity necessitated a secular approach to ensure national unity. He believed that secularism

❑ Protection of minorities

❑ State should not attach to any religion

❑ Essential for progress and modern development

❑ Secularism upholds democratic equality

would allow people of different religions to coexist peacefully. “We talk about a secular state in India. It is not a matter of religion or no religion, but the freedom of religion, the protection of the minorities, the protection of every citizen to express his religion without any fear or favour” was the argument he raised in support of secularism.

- ▶ **Individual Freedom and Rights:** Nehru argued that secularism was essential for safeguarding individual freedoms and ensuring that citizens could practice their religion freely without state interference. Nehru said secularism meant a state that honours all faiths equally and gives them equal opportunities. He explained that the state should not allow itself to attach to any religion or faith, which would then become the state religion.
- ▶ **Prevention of Religious Conflicts:** Given the communal tensions that had led to violence during the Partition, Nehru stressed that a secular state would help prevent such conflicts by not aligning itself with any particular religion. He substantiated his position in the debate: “It is not the business of the state to intervene in the religious beliefs of individuals and communities. This is the only way to prevent the growth of communalism and religious bigotry.”
- ▶ **Modernisation and Progress:** Nehru believed that secularism was vital for India’s progress and modernisation, fostering a scientific temper and rationality free from religious dogma. He emphasised the importance of keeping the secular ideal in our hearts, as he believed it was essential for the progress and modern development of the country. He stressed that it would keep them away from religious bigotry and obscurantism.
- ▶ **Democratic Principles:** Nehru linked secularism to the broader democratic values of equality and justice, arguing that a secular state would ensure no religion dominated others, thus upholding democratic equality. He stated that the basis of democracy lay in ensuring that every citizen had equal rights and opportunities, emphasising that the state should not discriminate against citizens based on religion.
- ▶ **Historical and Cultural Legacy:** Nehru often referred to India’s historical and cultural heritage of

religious tolerance, suggesting that secularism continued this legacy. Nehru asserted the long history of the nation's religious tolerance and coexistence, which they must continue in their independent nation. For him, secularism was not denying religion, but rather recognising all religions and their equal status before the law.

Nehru's advocacy for secularism laid the groundwork for India's identity as a secular republic. His efforts aimed to guarantee equal treatment for all citizens by the state, irrespective of their religious beliefs, thus solidifying the principles of equality and non-discrimination within the nation.

The debates in the Indian Constituent Assembly on secularism were pivotal in shaping the foundational principles of the Indian state. Through rigorous discussions, the members sought to balance the nation's diverse religious landscape with the need to establish a democratic, inclusive framework that upheld individual freedoms and equality. The adoption of secularism aimed to ensure that the state remained neutral in religious matters, promoting harmony and preventing discrimination based on faith. These debates highlighted the framers' commitment to creating a constitution that respected India's pluralistic heritage while fostering a unified national identity. Ultimately, the principle of secularism enshrined in the Indian Constitution reflects the vision of an India where citizens can coexist peacefully, regardless of religious beliefs.

1.2.6 Debates on Governor

1.2.6.1 Governor and Indian Constitution

□ Governor as the constitutional Head

The Governor is the executive head of a state as defined by Articles 153 and 154 of the Indian Constitution. Article 154 grants the Governor the executive powers of the state, allowing these powers to be exercised directly or through the subordinate officials in line with the Constitution. According to Article 163, the Governor, as the Constitutional head, exercises these powers based on the aid and advice of the council of ministers. This includes duties such as calling and ending state legislature sessions, issuing ordinances, approving bills and appointing the Council of Ministers.

The Governor's appointment, powers and responsibilities are outlined in the Articles ranging from 153 to 162. The Gov-

ernor's role mirrors that of the President of India but at the state level. As the executive head of the state, the Governor's functions are similar to those of the President, reflecting the structure of the central government.

The Governor has a dual role:

1. As the Constitutional head of the state, they act on the advice of the Council of Ministers.
2. As a crucial link between the Union and State Governments.

Constitutional Provisions Related to the Governor

The Governor's appointment and powers are detailed in Part VI of the Indian Constitution. Article 153 states that each state shall have a Governor and one individual can serve as Governor for multiple states. The Governor operates in a dual capacity: as the state's Constitution alhead and as a centre's representative. This position is integral to the federal system of Indian polity, acting as a bridge between the central and state governments.

Articles 157 and 158 set forth the eligibility criteria for the position of Governor, which include:

- ▶ Being a citizen of India.
- ▶ Being at least 35 years old.
- ▶ Not being a member of either House of Parliament or the state legislature.
- ▶ Not holding any office of profit.
- ▶ The Governor's term is generally five years but can end earlier due to:
- ▶ Recall by the President based on the advice of the council of ministers.
- ▶ Resignation by the Governor.

The President must only dismiss a Governor with valid reasons. However, the President must remove a Governor if the courts deem their actions unConstitutional or malicious.

1.2.6.2 Ambedkar on the Role of Governor

In the Indian Constituent Assembly, one prominent member who opposed the role of the governor was Dr B. R. Ambed-



❑ Grounds of opposition

kar. Dr Ambedkar, a key architect of the Constitution and chairman of the Drafting Committee, expressed reservations about the extensive powers vested in the governor's office.

Dr Ambedkar's opposition to the role of the governor was primarily grounded in his concerns about the potential misuse of power and interference in the affairs of the states by the central government. He argued against the appointment of governors by the central authority, fearing that it could lead to political partisanship and undermine the principles of federalism and state autonomy. Additionally, Dr Ambedkar objected to the provisions granting governors significant discretionary powers, particularly in dismissing state governments or withholding assent to state bills. He believed that such powers could be prone to misuse and could threaten the democratic functioning of the states.

Dr. Ambedkar's opposition to the role of governor stemmed from his commitment to ensuring a robust and equitable federal structure that respected the autonomy and sovereignty of the states within the Indian Union. He stood for mechanisms limiting central interference in state affairs and promoting cooperative federalism, which works on the pillars of mutual respect and cooperation between the centre and the states.

1.2.6.3 Major Oppositions against the Role of Governor

Several members raised strong arguments against the inclusion of the post of Governor in the Indian Constitution. They questioned the necessity of the Governor's role and shared severe concerns regarding the possibility of the Governor's role as a serious threat to state autonomy and democratic values, which the Constitution upholds.

Significant Criticisms are as follows

- **Lack of Democratic Legitimacy:** The primary argument was that an appointed Governor lacked democratic legitimacy and accountability to the state's people, potentially undermining the democratic framework of state governance. K. T. Shah, who was a strong advocate for democratic principles, questioned the governor's appointment mode, stating that the Governor's appointment is undemocratic. He argued that the Governor, being an appointed, rather than an elected position, would not represent the will of the people.

❑ Governor's appointment is undemocratic

ple in the state. He believed that this could undermine the democratic foundation of the state government. Shah was concerned about the lack of accountability of an appointed Governor to the people of the state. He believed that an elected Governor would be more accountable and responsive to the needs and aspirations of the state's populace.

❑ Powers could be misused

❑ Governor could act as an agent of central government

❑ Bias towards central control

- **Broad Discretionary Powers:** Those who opposed the role of the Governor were concerned about the broad discretionary powers granted to the Governor. They argued that these powers could be misused to dismiss elected governments or interfere in state affairs, leading to political instability. H. V. Kamath expressed significant concerns about the discretionary powers granted to the Governor. He argued that these powers were too broad and could be misused to dismiss elected state governments or to interfere unduly in state affairs.
- **Threat to State Autonomy:** The role of the Governor was seen as a potential threat to state autonomy. Opponents feared that the Governor could act as an agent of the central government, undermining the federal structure and reducing the independence of state governments. H. V. Kamath was wary of the potential for the central government to misuse the office of the Governor to exert undue influence over state governments. He feared this could lead to an erosion of state autonomy and democratic governance at the state level. Prof. Saxena highlighted the risk of the Governor interfering in state matters, particularly in ways that could disrupt the functioning of democratically elected state governments. He feared that the Governor's role could be used to destabilise state administrations for political reasons.
- **Potential for Central Interference:** There was significant apprehension about the potential for the central government to use the Governor's office to exert undue influence over state governments. This could lead to a centralised form of governance contrary to the federal principles of the Constitution. T. T. Krishnamachari argued that the appointment of the Governor by the President created a bias towards central control. He believed this could lead to a centralisation of power and reduce the effective functioning of state governments. Krishnamachari emphasised the need for Constitutional safeguards to ensure that the Governor's office did not become a tool for central interference. He was concerned about the lack of clear limitations on the Governor's powers and functions. Saxena highlighted the risk of the Governor interfering in state matters, particularly in ways that could



disrupt the functioning of democratically elected state governments. He feared that the Governor's role could be used to destabilise state administrations for political reasons.

These arguments reflected a deep concern for maintaining the balance of power between the central and state governments, ensuring democratic accountability and preserving the autonomy and integrity of state administrations within the federal structure of India.

1.2.6.4 Positions of Support

During the Constituent Assembly debates on the role of the Governor in the Indian Constitution, several key members supported the post of Governor, presenting arguments focused on maintaining national unity, ensuring neutrality and balancing state autonomy with central supervision. Here are the primary proponents and their arguments:

Major Arguments in Support of the Governor

Ensuring Neutrality and Impartiality: Proponents argued that an appointed Governor would remain neutral and impartial, free from local political influences, thereby ensuring fair and objective governance. Dr Ambedkar argued that an appointed Governor would be more impartial than an elected one, as the Governor would not be involved in local politics and could, therefore, act objectively, especially in times of political instability. He believed that an elected Governor might become politically aligned with the state government, compromising their ability to act impartially. On the other hand, an appointed governor could better serve as a neutral arbiter.

❑ Free from local political influence

Maintaining National Unity and Integrity: The Governor was seen as crucial in maintaining national integrity and unity. By being appointed by the President, the Governor could act as a check against secessionist tendencies and ensure that state governments acted in line with national interests. Sardar Patel emphasised the Governor's role in maintaining national integrity and unity. He argued that a centrally appointed Governor could check against secessionist tendencies and ensure that state governments did not act against national interests.

❑ Check against secessionist tendencies

Balancing State Autonomy with Central Supervision: Supporters believed that the Governor's role was essential in balancing state autonomy with necessary central supervision. This balance was crucial for maintaining the federal structure envi-

☐ Stabilising force

sioned in the Constitution. Govind Ballabh Pant argued that the Governor acted as a stabilising force during political instability in the states. By having a centrally appointed Governor, the central government could ensure that state administrations did not deviate from Constitutional principles.

Discretionary Powers and Emergency Functions: Proponents acknowledged the necessity of discretionary powers for the Governor in specific situations. They argued that while the Governor should generally act on the advice of the Council of Ministers, certain powers were needed to protect the interests of the state and the nation in times of emergency. Govind Ballabh Pant argued that the Governor acted as a stabilising force during political instability in the states. By having a centrally appointed Governor, the central government could ensure that state administrations did not deviate from Constitutional principles.

Governor as a Stabilising Force: The Governor was seen as a stabilising force, especially during political instability. This role was crucial for ensuring that the state administration continued functioning smoothly and adhered to Constitutional principles. Alladi Krishna Ayyar supported the post of an appointed governor, believing it would help the Governor act as a neutral arbiter in conflicts between the state and central governments. This neutrality was essential for upholding the Constitutional framework and preventing political biases from influencing the Governor's actions.

Link between Union and States: Nehru pointed out that the Governor was a vital link between the central and state governments. This connection was essential for ensuring cohesion and uniformity in governance across India, helping to maintain the federal structure. Nehru argued that the Governor's role was crucial in ensuring that state administrations adhered to the broader national framework and Constitutional mandates.

These arguments reflected a vision of a federal structure that respected state autonomy while maintaining a strong, unified central authority. The role of the Governor was designed to be a mediator and stabiliser, ensuring that state governments operated within the Constitutional framework and in harmony with national interests.

1.2.7. Various Positions of Debates

The debates in the Constitutional Assembly over the role and functions of the Governor were extensive and involved numerous arguments from various members. These debates were



crucial in shaping the final provisions of the Governor's position in the Indian Constitution. Here is a detailed explanation of the discussions and the key arguments raised:

Overview of the Debate

The Constituent Assembly's discussions on the Governor's role primarily revolved around three main issues:

- ▶ Mode of Appointment
- ▶ Powers and Functions
- ▶ Role in the Federal Structure

❑ Election would make Governor more accountable

Mode of Appointment: The debate was mainly over whether the governor should be elected or appointed by the President. Many of the members stood for an elected Governor. They demanded an elected mode of appointment on democratic lines. K. T. Shah argued that an elected Governor would be more democratic and represent the people's will. He believed that election would make the Governor more accountable to the people. Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, contended that an appointed Governor would ensure neutrality and avoid political partisanship. He stressed that the Governor's role required impartiality, which could be compromised if they were elected. Dr Ambedkar and other members like Alladi Krishnaswamy Ayyar supported the idea of the Governor being appointed by the President to maintain the unity and integrity of the nation. They argued that this method would prevent the possibility of regionalism and ensure that Governors acted in the broader national interest.

Powers and Functions: This debate revolved around the extent and nature of the Governor's powers and their relationship with the state's executive and legislature. There was a consensus that the Governor should have executive powers, but these should be exercised based on the advice of the Council of Ministers. K. M. Munshi emphasised the importance of aligning the Governor's powers with the democratic principles enshrined in the Constitution.

The discretionary powers of the Governor were a contentious issue. Some members, like H. V. Kamath, were wary of giving too much discretionary power to the Governor, fearing misuse. They argued for clearly defining and limiting these powers to prevent potential overreach.

❑ Governor's role during emergency

Govind Ballabh Pant and other members highlighted the importance of the Governor's role during emergencies and legislative matters such as summoning, proroguing and dissolving the state legislature. They argued that the Governor should be a stabilising force in political instability.

Role in Federal Structure: The Governor's role as a bridge between the Union and State Governments was debated in the assembly. The dual role of the Governor as a link between the Union and State Governments was widely discussed. Members like Jawaharlal Nehru supported this view, stating that the Governor should ensure that the state administration conformed to the provisions of the Constitution and did not act against national interests.

Sardar Vallabhbhai Patel emphasised the need for a centrally appointed Governor to safeguard against secessionist tendencies and ensure the smooth functioning of the federal system. Members like K. T. Shah and T. T. Krishnamachari highlighted the need for a federal structure that allowed states significant autonomy while maintaining a strong central authority. They debated the delicate balance between granting states enough independence to manage their affairs effectively and ensuring that the centre had sufficient authority to intervene, when necessary, to preserve national unity.

Conclusion of the Debate

The Constituent Assembly debates concluded with a nuanced compromise that balanced state autonomy with the need for central supervision. The key outcomes included:

The President would appoint the Governor to ensure neutrality and alignment with national interests.

The Governor would act as the Constitutional head of the state, primarily exercising powers based on the advice of the Council of Ministers, except in specific discretionary situations.

The federal structure would allow states significant autonomy in managing their affairs while ensuring that the centre had enough authority to maintain national unity and integrity.

These provisions were designed to create a federal system that respected state autonomy while ensuring a strong, unified national framework. The role of the Governor was carefully crafted to serve as a mediator and stabiliser, reflecting the diverse and often conflicting viewpoints within the Assembly.

Summarised Overview

The debates in the Indian Constituent Assembly on secularism and the role of the governor were crucial in defining the democratic ethos and federal structure of the nation. The deliberations on secularism underscored the commitment to creating a state that respected all religions without endorsing any, ensuring equality and preventing religious discrimination. This principle aimed to protect the diverse religious fabric of India while fostering national unity.

Similarly, the debates on the role of the governor highlighted the complexities of balancing central authority with state autonomy. The discussions emphasised the governor's role as a Constitutional head, ensuring that the position would be a bridge between the central and state governments without undermining the federal spirit of the Constitution. These debates reflect the framers' foresight in addressing potential conflicts and ensuring a robust democratic framework.

The Constituent Assembly's debates demonstrate efforts to create a balanced, inclusive and democratic system of governance. The principles of secularism and delineating the governor's role are testaments to the Assembly's vision of a united yet diverse India, capable of evolving while adhering to its foundational values.

Assignments

1. Analyse the main arguments that support secularism during the Constituent Assembly debates. How did these arguments shape the secular framework of the Indian Constitution?
2. Evaluate Jawaharlal Nehru's perspective on secularism. What were his key arguments, and how did he justify the need for a secular state in India?
3. Analyse the arguments made by supporters of the Governor's role in the Constituent Assembly. What reasons did they provide for maintaining a centrally appointed Governor?
4. Compare and contrast the debates on the appointment of the Governor. What were the key points of contention regarding whether the President should elect or appoint the governor?
5. Reflect on the legacy of the Constituent Assembly debates on secularism and the role of the Governor. How do these debates continue to influence contemporary Indian politics and governance?

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.





Fundamental Principles and Core Values of the Constitution: Fundamental Rights and Directive Principles of State Policy

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ understand the significance and scope of Fundamental Rights
- ▶ analyse the interrelationship Between Fundamental Rights and Directive Principles
- ▶ assess the role of Directive Principles in ensuring good governance

Background

Fundamental Rights and Directive Principles of State policy reflect the core ideas enshrined in the Constitution. The philosophy that guides the politics of the Constitution is concretely detailed in the Preamble of the Constitution and it is given legitimacy through Part III and Part IV of the Constitution. These parts deal with the Fundamental Rights and Directive Principles of State Policy. Fundamental rights protect the freedom of individuals by limiting state action. At the same time, Directive Principles of State Policy act as a guiding principle that governments must consider when enacting laws and policies for the nation. This unit helps to have a detailed vision of these two core parts of the Indian Constitution, which offers insight into the values embedded in the Indian Constitution.

Keywords

Justiciable Rights, Fundamental Rights, Writs, Judiciary

1.3.1 Meaning of Fundamental Rights

❑ Fundamental rights ensures true democracy

Fundamental Rights form a notable feature of the Indian Constitution, which ensures that the doctrine of true democracy is not violated in the country. Constitutional makers included the provision of Fundamental Rights to ensure that justice and equality are delivered to all citizens of the country. They are the basic human rights encompassed in the Constitution. They are justiciable rights guaranteed to all citizens without discrimination based on caste, creed, colour, sex, gender or religion. They are justiciable rights enforced by the court of law. Anyone can approach the court to restore these rights if they are violated. Still, they are not absolute rights as certain conditions are applied in their execution.

These rights play a crucial role in enriching justice, liberty and equality by protecting individuals from state actions that violate their dignity and individuality. The Constitutional provision of Fundamental Rights limits arbitrary actions of the state.

Fundamental rights are essential in ensuring the freedom of individuals and so they are called the Magna Carta of the Indian Constitution. Magna Carta, signed by King John of England in 1215, opened the doors of rights and liberties to ordinary people of the country, later becoming the cornerstone of the British Constitution. Indian Constitutional makers adopted the concept of Fundamental Rights from the Constitution of the U. S. In the Indian Constitution, Articles 12 to 35 deal with fundamental rights and they are part of Part III of the Constitution.

These rights are not absolute. Certain limitations are attached to these rights to maintain public order. Fundamental duties are included in the Constitution and a level of balancing between rights and Fundamental Duties is duly expected and sustained.

1.3.1.1 Difference between Fundamental Rights and Legal Rights

Six Fundamental Rights are included in the Indian Constitution. Initially, property rights were fundamental Rights (Article 31), which were repealed in 1978 by the 44th Amendment, which removed them from the list of fundamental

rights and placed them among ordinary rights. Now, it forms part of Article 300 A, which is a legal right. Fundamental rights are more significant than legal rights as the former are protected by the Constitution of India, which requires a Constitutional amendment to initiate any alteration. On the other hand, legal rights are protected by the ordinary law of the land and can be changed by the legislature through the ordinary process of lawmaking. Fundamental rights are “sacred rights” as they form the heart of the basic structure of the Constitution. Legal rights are not a part of the basic structure.

1.3.2 Importance of Fundamental Rights

Through the provision for Fundamental Rights, the Constitution guarantees protection to individuals against the state. Fundamental Rights are relevant as these rights are in effect against the state. It prevents the state from doing certain things. It limits state action from becoming undemocratic and anti-people. The fundamental idea behind these rights is the supremacy of people and their rights against the acts of the state. In case of violation of ordinary laws, ordinary legal remedy prevails, but in the event of violating Fundamental Rights, Constitutional remedies arise for restoring these rights to individuals. A definition of the word State is given in Article 12, which forms a part of Fundamental Rights. This definition says that unless the context otherwise requires, the term state includes the legislative and executive branches of the union and states and local governments like Panchayati raj institutions and other authorities. The term state action thus has a wide meaning and orbit. Fundamental rights are also available against private actors. If Y violates the Fundamental right of X, Y, who is a private actor, X can approach the court against the act of Y, who is not a state actor but a private party. Thus, fundamental rights protect not only the rights of individuals from acts of the state but also those of other private parties.

❑ Limits state action from becoming undemocratic

❑ Part of basic structure

According to Ambedkar, Fundamental Rights form the most citizen-friendly part of the Constitution. It prevents the state from hindering the individuals from enjoying their rights, without which their individual growth and social existence are challenged. As fundamental Rights are justifiable, the government is responsible to the Constitution to safeguard them. The Supreme Court, the protector of the Constitution, is entrusted with scrutinising any act, law or action of the legislative and executive branches of the government. Fundamental rights are

a part of the basic structure of the Constitution. The basic structure of the Constitution is considered the most valuable part of the Constitution.

These freedoms ensure that people are not vulnerable against the state. Fundamental rights ensure that people can criticise the state, freely express their opinions and challenge any governmental action in court. In countries where democracy and fundamental rights are absent, people are denied the right to criticise the government and authority even if it acts against public opinion. Thus, fundamental rights act as a guarantee of individual freedom and dignity. The purpose of including Fundamental Rights was to establish a government of the law. It protects the rights of minorities of all kinds against the tyranny of the majority, which happens to be tyranny in all democracies. Rule of Law works through the instrument of Fundamental Rights.

1.3.3 Features of Fundamental Rights

Fundamental Rights guaranteed by the Constitution are characterised by certain features, which may be given below:

1. Some of the rights are guaranteed only to citizens, while others are available to all persons, whether citizens, foreigners or legal persons like corporations or companies. For instance, freedom of speech and expression, freedom of association, free movement throughout the territory of India and the like are secured only to citizens. At the same time, rights relating to the protection of life and personal liberty are guaranteed to every person irrespective of his or her being a citizen.
2. Fundamental Rights are not absolute but qualified and limited. They are not absolute because the state can impose reasonable restrictions on their enjoyment. The Parliament, through legislation, can impose reasonable restrictions and limitations on exercising these rights. However, whether such restriction is reasonable is to be decided by the courts. Thus, they balance the rights of the individuals and those of society.
3. Fundamental Rights can be restricted and suspended. During a period of National Emergency, the Fundamental Rights except articles 20 and 21 can be suspended. Further, the six freedoms guaranteed under Article 19 can be



suspended only when the emergency is declared on the grounds of war or external aggression, not armed rebellion.

4. Like other provisions of the Constitution, Fundamental Rights can also be amended. Since the Constitution was promulgated, the Fundamental Rights have been amended and property rights have been removed from the list of Fundamental Rights. Thus, Fundamental Rights are not sacrosanct or permanent. However, such an amendment can be made only without affecting the basic structure of the Constitution.
5. The Fundamental Rights are justiciable. These rights are legally enforceable. This means individuals can move to an appropriate court of law to enforce these rights. This right is itself a fundamental right under the category of the right to Constitutional remedies (Article 32).
6. Some of the Fundamental Rights are negative in character and place limitations on the authority of the state, while others are positive, conferring certain privileges on persons.
7. The scope of operation of Fundamental Rights is limited by Article 31(A) (saving of laws providing for the acquisition of estate, Article 31(B) (Validation on of Acts and Regulation in the 9th Schedule) and 31(c) (Saving of laws giving effect to certain directive principles).
8. Application of Fundamental Rights to the members of Armed forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 330).
9. Application of these rights can also be restricted while martial law is in force. It is different from the imposition of a national emergency.
10. Most of these Rights are directly enforceable, for example, the right to Equality. Such rights are called self-exercising rights. At the same time, there are certain perfect rights that need further legislation to make them enforceable, as the Right to Education, the right against untouchability and the like.
11. Fundamental Rights under the Indian Constitution comprise individual rights and group rights.
12. Indian citizens everywhere are entitled to the Fundamental Rights.

13. Fundamental Rights are available against the state. However, certain rights are designed to protect the individual against private citizens. They are Articles 15(2), 17, 23, and 24.

The purpose of the Fundamental Right is to Establish the Rule of Law. They aim to maintain certain standards of conduct, citizenship, justice and fair play. In this context, in *Manaka Gandhi Vs. Union of India* (1977), Justice Bhagawati observed:

“Fundamental Rights represent basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent”

1.3.4 Classification of Fundamental Rights

The Fundamental Rights guaranteed under the Constitution are grouped into six categories. They are:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to Religion
5. Cultural and educational rights;
6. Right to Constitutional remedies.

1. Right to Equality (Article 14-18)

The Right to Equality is guaranteed in Articles 14 to 18. Article 14 provides that; “the state shall not deny to any person equality before law or equal protection of law within the territory of India.”

These two phrases, “equality before law” and “equal protection of law,” have been taken from the British and the American Constitutions, respectively. The term equality before the law implies an absence of any special privilege in favour of any individual. “Equal protection of law” connotes equal treatment under equal circumstances. It aims to establish equality of status and opportunity as envisaged in the Constitution’s preamble. That means the complete absence of any discrimination is envisaged through this article. However, the Article prevents discrimination only by the state and not by the individuals.

☐ Equal treatment under equal circumstances



While Article 14 forbids classification, it permits the reasonable classification of persons, objects and transactions by law. But the classification should not be arbitrary, artificial or evasive. Rather, it should be based on “an intelligible difference” and substantial distinctions.

The Supreme Court held that equals should be treated alike and unequal should be treated differently. In *E. P. Royappa Vs. State of Tamilnadu*, the Supreme Court laid down a new concept of equality. It is the antithesis of arbitrariness.

This provision confers rights to all persons, whether citizens or foreigners. Moreover, ‘the present’ includes legal persons like those corporations, companies, registered societies or any legal person.

Prohibition of Discrimination on Certain Grounds (Article 15)

Article 15 provides that the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex or place of birth or any one of these; on these grounds, no citizen can be refused access to the shops, public places, well tanks, bathing ghats and other places. But there are four exceptions.

1. The state can make special provisions for women and children. For example, there is a reservation of seats for women in local bodies and provision for free education for children.
2. The state can make special provisions for social and educationally backward classes or for the SCs and STs—for example, reservation of seats and fee concession in public educational institutions.
3. The state is empowered to make special provisions for advancing socially and educationally backward classes of citizens or for SCs and STs for their admission to educational institutions.
4. The state is empowered to make special provisions for advancing any economically weaker section of citizens other than socially and educationally backward classes or the SCs and STs.

The third provision was added by the 93rd Amendment Act of 2005. The centre enacted the Central Educational Institutions (Reservation in Admission) Act 2006 to make this provision. It provides a quota of 27% reservation for candidates belonging

to the OBCs in all central higher educational institutions. In 2008, in *Ashokkumar Thakkur V Union of India*, the Supreme Court upheld the validity of the amendment and the quota.

The fourth provision of the Constitution was made by the 103rd Amendment in 2019. It provides a quota of 10% reservation for the above-said economically backward sections other than the OBCs, SCs and STs in all central educational institutions. The Supreme Court in *Janahit Abhiyan Vs. Union of India* upheld the validity of the law granting 10% of reservation to the economically weaker sections.

Equality of Opportunity in Matters of Public Employment (Article 16)

Article 16(1) declares that ‘there shall be equality of opportunity for all citizens in matters relating to employment or appointment to an office under the state. Religion, race, caste, sex, descent, place of birth or residence cannot disqualify a person from getting public employment. However, there are four exceptions to this rule.

1. The state can make necessary provisions for the reservation of posts in favour of any backward classes that are not adequately represented in the state services;
2. Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority;
3. A law can provide that religious qualifications can be prescribed for an incumbent of religious institutions or member of its governing body should belong to a particular religion or denomination.
4. The state can make up 10% of reservation to economically weaker sections.

The Supreme Court in *Sawhney Vs. Union of India* (1002) examines the scope of the first exception (Article 16(4)), which provides reservation for OBCs. After thoroughly examining the arguments and counter-arguments, the court upheld the validity of 27% reservation for backward classes in public employment. The court observed that advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation.

The fourth exception was added in 2019 as a result of the 103rd Constitutional amendment. This was also called into



question on various grounds. However, the Supreme Court in *Janahit Abayan Vs. Union of India* held that the amendment was Constitutional.

Abolition of Untouchability (Article 17)

❑ Practice of untouchability in all forms are forbidden

Article 17 declares that untouchability is abolished, and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable by law. The Untouchability (offence) Act of 1955 further strengthened the provision. 1976, this Act was amended and renamed the Protection of Civil Rights Act. An act provides punishment for enforcing social and religious disabilities. Punishment is also provided for refusing admission to hospitals, places of public entertainment and places of public worship. There is also a provision for punishment for refusing to sell goods or render services to the untouchables under the act. The practice of untouchability shall be punished by imprisonment and a fine up to Rs.500, or both. A person convicted of untouchability is disqualified for election to Parliament or the state legislatures. Another act, the SC and ST (Prevention of Atrocities) Act, 1989, was passed to take punitive measures. It was amended in 2014. In *People's Union for Democratic Rights Vs. Union of India* (1982), the Supreme Court observed that Article 17 is available against private individuals and it is the state's Constitutional duty to see that these rights are not violated.

Abolition of Titles (Article 18)

Article 18 abolishes the old system of conferring titles and honours and makes four provisions.

1. The state shall not confer a title (except academic and military distinction) on anybody, whether a citizen or a foreigner;
2. No citizen of India shall accept any title from any foreign state;
3. The person who is not a citizen of India holding an office of profit or trust shall accept any title from any foreign state without the consent of the President of India.
4. No person holding an office of profit or trust under the state shall accept any present, emolument or office from or under any foreign state without the president's consent.

In the later years of the Indian Republic, the central government began to confer titles like Padma Bhushan, Padma Shri and Bharat Ratna. However, in 1977, the Janata Government of the Centre decided to discontinue the institution of National awards. But Mrs. Indira Gandhi's government in 1980 decided to reinstitute the awards.

II. Right to Freedom (Articles 19-22)

Personal liberties are the most fundamental of all Fundamental Rights. Articles 19 to 22 discuss the different aspects of these basic rights. These four Articles form the Charter of Personal Liberties.

Six Freedoms (Article 19)

Article 19 guarantees six valuable freedoms to the citizens of India. These rights are not available to non-citizens and legal persons. The six freedoms are

- a. Freedom of speech and expression.
- b. Freedom to assemble peaceably and without arms.
- c. Freedom to form associations, unions or co-operatives.
- d. Freedom to move freely throughout the territory of India.
- e. Freedom to reside and settle in any part of the territory of India.
- f. Freedom to practice any profession or to carry on any occupation, trade or business.

Originally, Article 19 contained seven freedoms. However, the freedom to acquire, hold and dispose of property (19(1)f) was deleted from the list of Fundamental Rights through the 44th Amendment Act in 1978. These freedoms are protected against only state action and not private individuals. However, these freedoms are not unrestricted. The state can impose reasonable restrictions by law on grounds of:

1. Sovereignty and integrity of India
2. Security of state
3. Friendly relation with foreign states
4. Public order
5. Decency



6. Morality
7. Contempt of court
8. Defamation
9. Incitement of offence

Protection in Respect of Conviction for Offences (Article 20)

Article 20 provides protection against arbitrary and excessive punishment to any person, whether citizen or non-citizen. It contains three provisions:

1. No ex-post-facto law: No person shall be convicted of an offence except for violation of a law in force at the time of commission of the act charged as an offence. He is not subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
2. No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
3. No self-incrimination: No person accused of an offence shall be compelled to be a witness against himself.

The first clause implies that legislation in India could not pass retrospective criminal registration. However, this limitation is imposed not on civil laws or tax laws. In other words, civil liability or tax liability can be imposed retrospectively.

The protection against double jeopardy is available if a person is prosecuted and punished for an offence. But if there was no punishment and only prosecution, he could be prosecuted and proceeded against. Further, the proceedings must be before a court of law or judicial tribunal and not before departmental or administrative authority.

The protection against self-incrimination extends to both oral evidence and documentary evidence. Thus, a person cannot be forced to give oral or documentary evidence against himself if that person is accused of an offence. The Article covers confession and incriminatory statements by his free will, without any influence, force or coercion; so, he cannot invoke the provision.

Protection of Life and Personal Liberty (Article 21)

Article 21 states: “No person shall be deprived of his life and personal liberty except according to the procedure estab-

❑ Procedure established by law

lished by law.” Thus, imprisonment or any other physical restraints cannot be made without legal justification. The term “procedure established by law” means that the legislative has the final authority to determine the limit of personal liberty by law. Such a law should not conflict with the other provisions of the Constitution. The term differs from the famous “Due Process of Law” contained in the American Constitution, which acts as a restraint on the legislature and empowers the judiciary to pronounce the last word regarding life and personal liberty.

Before the leading case of *Maneka Gandhi Vs. Union of India*, Article 21 guaranteed the right to life and personal liberty to citizens only against arbitrary action of the executive and not legislative action. After this case, protection was even given against the legislative branch.

Present Status

A person can be deprived of his life and personal liberty if the following conditions exist:

- a. There must be a law;
- b. There must be a procedure established by law;
- c. Both the law and procedure must be just, fair and reasonable.
- d. The law must satisfy the requirement of Articles 19 and 14.
- e. It must also satisfy the requirements of National Justice.

Over the years, the Article has undergone a sea change. The Supreme Court, through a liberal interpretation of the article, has derived several inferred rights; a few of such rights are given below.

- ▶ Right to privacy
- ▶ Right to travel abroad
- ▶ Right to life with human dignity
- ▶ Right to healthy environment
- ▶ Right to speedy trial.
- ▶ Right to free legal aid.
- ▶ Right to free education
- ▶ Right to medical treatment

- ▶ Right against public smoking
- ▶ Right to live in a pollution-free environment
- ▶ Right to avoid noise pollution
- ▶ Right against public hanging
- ▶ Right to information and the like.

Right to Education (Article 21A)

Article 21A provides that:

The state shall provide free and compulsory education to all children of the age between 6 and 14 years in such a manner as the state may by law determine.

This Article was inserted by the 86th Amendment in 2002. It came into force on 1 April 2020. The Amendment only made elementary education a Fundamental Right, not higher or professional education.

The main features of the Amendment are

1. It made the Right to Education a Fundamental Right for children from the age of 6 to 14 years;
2. It made education for all children below six years under the directive principles of state policy,
3. It made the opportunity to educate a child a fundamental duty of the child's parents.

Undoubtedly, the amendment is a milestone in the country's aim to achieve education for all.

Protection against Arbitrary Arrest and Detention (Article 22)

Article 22 provides an important safeguard for personal liberty. It guarantees protection against arbitrary arrest and detention. This Article has two parts – the first deals with cases of ordinary law, and the second discusses preventive detention laws.

The first part guarantees four rights to persons arrested under ordinary law. They are:

- a. The right to be informed as soon as may be possible the ground of the arrest;

- b. The right to consult and to be represented by a lawyer of his own choice;
- c. The right to be produced before the nearest magistrate within twenty-four hours of the arrest;
- d. The right to be released after twentyfour hours unless the magistrate authorises further detention.

These rights are not available for an action or a person arrested under the preventive detention laws. Further, the Supreme Court held that this part of the Article does not cover arrest under the order of courts, civil arrest or arrest on the failure to pay income tax. Given the wide misuse of the power of arrest and detention, the Supreme Court in *D. K. Basu Vs. State of West Bengal* (1997) has given a detailed direction for arrest and detention to be followed by the police.

Preventive Detention Laws

The Constitution prescribes the following protections to a person detained under the preventive detention laws:

- a. No preventive detention law shall authorise detention for more than three months unless an advisory board so authorises it;
- b. Detaining authority shall communicate the ground of arrest and afford an opportunity to represent against it. However, the facts considered against the public interest need not be disclosed.

In this connection, it may be noted that no democratic country has made preventive detention an integral part of its Constitution. It is unknown to the U.S.A. It was resorted to in Britain only during the world wars. In India, preventive detention existed even during the British rule.

III. Right against Exploitation (Articles 23 and 24)

Prohibition of Traffic in Human beings and Forced Labour (Article 23)

Article 23 prohibits traffic in human beings, begar and other similar forms of forced labour. It also states that any contravention of this provision shall be an offence punishable by law. It protects the individual not only against the state but also against private individuals. This article, however, authorises the state



❑ Slavery, bonded labour, devadasi systems etc

to compose compulsory service for public purposes, provided that in imposing such services, the state shall not discriminate based on religion, race, or class.

The expression traffic in human beings means selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purposes. It includes slavery, bonded labour, Devadasi system and the like. The word 'begar' denotes compulsory labour or service without remuneration. The word 'forced labour' denotes compelling a person to work against himself.

Prohibition of Employment of Children in Factories (Article 24)

The Article prohibits the employment of children below 14 in factories, mines and other hazardous work. But it does not prohibit their employment in any harmless or innocent work.

The Child Labour (Prohibition and Regulation) Act of 1986 is the key law governing and preventing child labour in India. It provided scope for the employment of children in selected non-hazardous family enterprises.

The act was amended in 2015. The act was renamed 'Child and Adolescent Labour' (prohibition and Regulation) Act 1986. It prohibits the employment of children in all occupations and adolescents in hazardous occupations (It created a new category of adolescents (14-18 years) who can be employed in non-hazardous occupations). Further, the act makes child labour a cognisable offence.

In M. C. Mehta Vs. State of Tamilnadu (1997) and Bandhu Mukti Morcha Vs. Union of India (1984), the Supreme Court issued guidelines on child labour under Article 23 of the Constitution.

IV. Right to Freedom of Religion (Articles 25 to 28)

The state in India is secular. It is neutral in religious matters. This fact is echoed in the freedom of religion.

1. Freedom of Conscience and Freedom to Profess, Practice and Propagation of Religion (Article 25)

Article 25 declares that it is subject to public order, morality, health and other provisions of para III.

All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

From the above provision, one can understand that the Article covers religious beliefs and practices. However, the state is permitted to

1. Restrict any economic, financial, political or secular activity associated with religious practice.
2. Provide for social welfare and reforms in society or throw open Hindu religious institutions of a public character to all sections of Hindus.

Article 25 has two explanations;

1. Wearing and carrying a Kirpan is part of the profession of the Sikh religion.
2. The word 'Hindus' includes a person professing Sikh, Jain and Buddhist religions.

Freedom to Manage Religious Affairs (Article 26)

Article 26 provides that, subject to public order, morality and health, every religious determination or section of it shall have the following rights:

1. To establish and maintain institutions for charitable and religious purposes;
2. To manage its affairs in matters of religion;
3. To own and acquire movable and immovable properties;
4. To administer such properties by law.

The rights guaranteed by Article 25 are individual, while rights guaranteed under Article 26 are the rights of an organised body.

Freedom from taxes for the promotion of any particular religion (Article 27)

Article 27 declares that no person shall be compelled to pay any tax to promote or maintain any particular religion or religious determination. Obviously, this provision is one of the essential consequences of secularism.

It also states that the state cannot spend public money collected by tax to promote any particular religion. However, this



provision prohibits only levies of tax and not fees. If the government has done any service for a particular religious determination, the government is free to charge fees from the devotees.

Prohibition of Religious instructions in state-aided educational institutions (Article 28)

❑ No religious instruction

Article 28 says that no religious instructions shall be provided in an educational institution wholly run 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. Further, it also says that no person attending an educational institution aided by the state shall be compelled to participate in religious instructions without his consent.

In Aruna Raj Vs. Union of India (2002), the Supreme Court held that education for value development based on all religions is neither violative of Article 28 of the Constitution nor is against the concept of secularism.

V. Cultural and Educational Rights (Articles 29 & 30)

Cultural and educational rights were incorporated in the Constitution to protect the interests of minorities and to enable them to conserve their culture.

Protection of the interest of minorities (Article 29)

Article 29 secures every minority the right to have a distinct language, script or culture and shall have the right to conserve the same. Further, no citizen shall be denied admission to an educational institution maintained by the state based only on religion, race, caste, language or any of them.

Article 29 grants protection to both religious and linguistic minorities. This Article confers the important right of equality in admission to educational institutions that are state-maintained or state-aided. Discrimination is prohibited only based on religion, race, caste or language. Thus, the grounds of sex, place of birth or residence are not prohibited, and any discrimination on these grounds would not be illegal.

Right of minorities to establish and administer educational institutions (Article 30)

Article 30 (1) provides that all minorities, whether based on religion or language, shall have the right to establish and

administer educational institutions of their choice.

Clause (2) says that the state while granting aid to educational institutions, shall not discriminate against any educational institution because it is under the management of a minority. However, the term 'minority' has not been defined anywhere in the Constitution.

Clause (2) confers two rights to the minorities

- a. Right to establish educational institutions;
- b. Right to administer educational institutions of their own choice.

Minority educational institutions are of three types:

1. Institutions that seek recognition as well as aid from the state;
2. Institutions that seek only recognition from the state and not aid;
3. Institutions that neither seek recognition nor aid from the state.

The first two categories of institutions are under the state's regulatory power regarding syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and more. The third type of institution is free to administer its affairs. However, they will soon be subject to the operation of general laws like contract law, industrial law and economic regulation.

VI. Right to Constitutional Remedies (Article 32)

A right without a remedy is a worthless declaration. Therefore, the framers of the Constitution adopted a special provision in Article 32, which provides a remedy for violating Fundamental Rights. Dr Ambedkar called Article 32 the Fundamental of all Fundamental Rights and the Heart and Soul of the Constitution, an Article without which the Constitution would be a nullity.

Article 32 empowers the Supreme Court to issue writs, orders and directions when there is a question of violating fundamental rights. Article 226 also confers similar rights on high courts. A person may go straight to the Supreme Court to enforce Fundamental Rights rather than going to the high courts.

❑ Heart and soul of the constitution



Articles 32 and 226 empower the Supreme Court and the High Courts, respectively to issue the writs such as Habeas corpus, Mandamus, Certiorari, Prohibition and Quo warranto.

Writ of Habeas Corpus

☐ Produce the body

The word Habeas Corpus originated from Latin. It means ‘to have the body’ or to ‘produce the body.’ It is known as the protector of personal freedom. The writ is the direction of the court to a person who has detained another person to bring the body of the person before the court. The court then examines the cause and legality of the detention. It would set the detained person free if the detention is illegal.

The writ can be issued against public authorities and private individuals. However, the writ is not issued where;

1. The detention is lawful;
2. The proceeding is for contempt of a legislature or a court;
3. The detention is by a competent court;
4. The detention is outside the jurisdiction of the court.

Writ of Mandamus

It literally means ‘we command.’ It is a command issued by the court to a public authority asking him to perform his public duties that he has failed or refused to perform. The duty must be obligatory under the law and not optional or discretionary. A person whose rights have been infringed may apply for the writ.

The writ cannot be issued against the President, Governors, Private Individuals, foreigners or chief justice of the High Court acting in a judicial capacity.

Writ of Prohibition

☐ Keep inferior courts within the limit

It is issued by the Supreme Court or High Court to a lower court or a tribunal to prevent the latter from exceeding its jurisdiction or acting contrary to Natural Justices. It is an order to prohibit the proceedings before an order is made. It aims to keep the inferior courts within the limit of their jurisdiction. It is not a proceeding between private litigants. It is a proceeding between two courts.

It is not issued against administrative authorities, legislative bodies and private individuals or bodies.

❑ Cannot be issued against private individuals

Writ of Certiorari

It means ‘to be certified’ or ‘to be informed.’ It is issued by a higher court to a lower court or tribunal either to transfer a pending case or to question the lower court’s order. The writ is issued for excess jurisdiction, lack of jurisdiction or an error of law. Certiorari can be issued against judicial authorities and administrative authorities. It cannot be issued against private individuals or private authorities.

The writ of prohibition and certiorari are issued for the same purpose and in similar circumstances. The only difference is the stage at which they are issued. The writ of certiorari is issued to quash an already passed order, while the writ of prohibition is issued when the proceedings are going on.

Writ to Quo-warranto

It means “By what warrant?” or “What is your authority?”. The writ is issued to prevent a person from acting in an office to which he is not entitled. The writ aims to ensure that a person holding a public office is qualified to hold the office. Hence, it prevents illegal usurpation of a public office by a person.

Conditions

1. The office must be a public office and must be created by a statute or the Constitution ;
2. The office must be substantive one;
3. There has been a contravention of the statute or the Constitution in appointing such a person to that office.

Any member of the public can application.

1.3.5 Supreme Court: The Guardian of Fundamental Rights

Article 32 empowers the Supreme Court to function as the protector of Fundamental Rights. The Supreme Court guarantees fundamental rights in its capacity as the agency for Constitutional remedies.

The Supreme Court and Indian judiciary have the Constitutional power to check the Executive and Legislature’s actions if they violate Fundamental Rights. The Supreme Court guarantees fundamental rights against arbitrary action by the execu-



❑ Court act against any arbitrary act of the state

tive and legislative branches through judicial review. The court has the right to review any executive act and law passed by legislature if it is found violative of the Fundamental Rights; the court is empowered to declare that specific law or action as null and void. The Supreme Court can act against any arbitrary act of the state. It often exercises its power suo moto and is based on Public Interest litigation. Courts also act against private individuals' violation of fundamental rights. The right of Judicial review escalates the authority of the Supreme Court as the protector of Fundamental Rights.

The Rights guaranteed by the Constitution shall not be suspended except during an Emergency Proclamation, and the government is expected to follow the procedure established by law for this purpose. If it is violated, the court can declare the act invalid.

The judiciary can issue various writs to enforce fundamental rights. As per Article 32 of the Constitution, both the Supreme Court and the High Courts have the authority to issue writs. It enforces the rights against the state whenever the rights of the individuals are violated. The writs are Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warrant. These writs entitle courts to interfere in the state or private action that abridges the fundamental rights guaranteed by the Constitution. Through these writs, the judiciary holds the government accountable, and the rule of law is maintained.

1.3.6 Directive Principles of State Policy

The Directive Principles of State Policy (DPSP) are a unique feature of the Indian Constitution, outlined in Part IV (Articles 36 to 51). They provide guidelines and fundamental principles for the country's governance to ensure social and economic justice. While these principles are not enforceable by the courts, they serve as a critical framework for the government to formulate policies that aim to create a fair and equitable society. The DPSPs are inspired by the Irish Constitution and reflect the aspirations of the Indian people, emphasising the importance of a welfare state. Through these principles, the Constitution seeks to promote the welfare of the citizens by ensuring an adequate means of livelihood, a fair distribution of resources and equal access to opportunities for all. Directive Principles of State Policy deal with the social, economic and political objectives the state is urged to pursue in governance. Unlike Fundamental Rights, which have legal enforceability,

❑ Inspired by Irish constitution

Directive Principles serve as guiding principles for governmental policymaking and are not subject to enforcement by courts. These principles are crafted in response to the socio-economic landscape of India, aiming to establish a welfare state. They are classified into several categories within the Indian Constitution:

Gandhian Principles

Mahatma Gandhi's ideology influences Gandhian Principles within the DPSP, emphasising decentralised governance, self-reliance and community-oriented development. They advocate grassroots democracy, rural empowerment and sustainable livelihood. Gandhian principles require the state:

- ▶ Article 40: To organise village panchayat and endow them with the necessary power and authority to function as a self-government unit.
- ▶ Article 43: To promote cottage industries individually or cooperatively in rural areas.
- ▶ Article 46: To promote the educational and economic interests of SCs, STs and other weaker sections.
- ▶ Article 47: To prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- ▶ Article 48: To prohibit slaughtering of Cows, Calves and other milch and draught cattle and improve their breeds.

Liberal Intellectual Principles

The principles included in the category represent the ideology of Liberation. They direct the state

- ▶ Article 44: To secure a uniform civil code throughout the country for all citizens.
- ▶ Article 45 : To provide early childhood care and education for all children up to the age of six.
- ▶ Article 48 : To organise agriculture and animal husbandry in modern and scientific forms.
- ▶ Article 48A: To protect and improve the environment and safeguard forest and wildlife.
- ▶ Article 49 : To protect the monuments and places of national and historical importance.



- ▶ Article 50 : The separate judiciary from the executive.
- ▶ Article 51 : To promote international peace and security and develop friendly relations among nations and encourage settlement of international disputes by arbitration.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state. They direct the state:

- ▶ Article 38: To promote the welfare of the people by securing a social order in which justice – socio, economic and political shall prevail.
- ▶ Article 39: To follow certain principles and policies by the state (a) adequate means of livelihood for all citizens; (b) equitable distribution of material resources for the common good; (c) prevention of the concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of health and strength of workers and opportunity for the healthy development of children.
- ▶ Article 39A: To promote equal justice and free legal aid.
- ▶ Article 42: To make provisions for humane conditions of work and maternity relief.
- ▶ Article 43: To secure a living wage, a decent standard of life and social and cultural opportunities for all workers.
- ▶ Article 43A: To secure the participation of workers in industrial management.
- ▶ Article 47: To raise the level of nutrition and the standard of living of people and to improve public health.

New Directive Principles

The 42nd Amendment Act of 1976 added four new directive principles. They require the state:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39A).

☐ Embodies deals

3. To take steps to secure workers' participation in individual management.
4. To protect and improve the environment and to safeguard forests and wildlife (Article 48A).

The 44th Amendment in 1978 added one more directive principle, which requires the state to minimise inequalities in income, status and opportunities (Article 38).

The 86th Amendment made elementary education a Fundamental Right. The amendment requires the state to provide early childhood care and education for all children up to the age of six years.

The 97th Amendment of 2011 added a new directive principle relating to cooperative societies. It requires the state to promote voluntary formation, democratic control and professional management of co-operative societies.

Importance of the Directive Principles

The court of law does not enforce these directive principles. However, these principles have been declared to be fundamental in the country's governance, and it is the duty of the state authorities to apply them. The sanction behind them is political, that is, public opinion. In this context, Alladi Krishna Swami Ayyar observed: "No democratic government responsible to the people can afford light-heartedly ignore the provision under Part IV" of the Constitution. In the same way, Dr Ambedkar said: "If any government ignores them, they will certainly have to answer for them before the electorate at the time of election. So, the non-implementation of the directive principles would be a patent weapon at the hands of the opposition to sever it from the government.

The directive principles do not enjoy the same position as that accorded to the Fundamental Rights. However, it does not remove their significance and render them meaningless and superfluous. As stated above, they are valuable since it shall be the duty of the government to make laws and formulate policies according to these directives. These principles embody high ideals, and their inclusion in the Constitution will act as a standing reminder to the state. They are the life-giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice. They are a must to ensure social justice.

☐ Formulate policies according to these directives



In this context, Justice Chagla's observation is also relevant. He observed: "If all these principles are fully carried out, our country would indeed be heaven on earth." Dr Ambedkar stated that these principles have great value because they lay down the goal of economic democracy, as distinguished from political democracy. Granville Austin opined that the directive principles aim to further the goal of social revolution.

Directive principles have a special significance in a democracy where the ruling party may change after periodic elections. In a democracy, different parties are in power at different times. Different parties with different political ideologies may come to power in accordance with change in popular opinion. However, the directive in the Constitution will ensure that no party can ignore these principles altogether. The success or failure of a government by a particular party can be judged by the extent of the directive principles it has implemented.

The judiciary has also accorded recognition to these principles. It becomes the duty of the court to apply these principles in interpreting the Constitution. These principles will serve as a code of interpretation. Further, they have helped the courts exercise the power of judicial review. Besides, these principles provide stability and continuity in foreign policies despite the changes in the party in power. Moreover, they are supplementary to the Fundamental Rights. Their implementation creates a favourable atmosphere for the full and proper enjoyment of the Fundamental Rights. Above all, these principles enable the opposition to control and influence government operations. The opposition can blame the ruling party if its activities oppose the directives.

They serve as a crucial test of the government's performance. People can examine the policies and programmes of the government against these principles. They also serve as a common political manifesto. A ruling party, irrespective of its political ideology, should recognise that these principles are guides, philosophers and friends in its legislative and executive acts.

M. C. Setalvad has further established the significance of the Directive Principles. He says that they are significant and useful in the following ways:

1. They are like “instruments of instruction” or general recommendations addressed to all in India. They remind them of the basic principles of the new social and economic order the Constitution aims to realise.
2. They have served as a useful beacon light to the courts and helped the court exercise their power of judicial review.
3. They form the dominating background for all actions, legislative or executive or even judicial.
4. They amplify the preamble to secure for all citizens justice, liberty, equality and fraternity.

1.3.7 Features of the Directive Principles

Indian Constitutional makers adopted the Irish Constitution’s Directive Principles of State Policy. Unlike the Fundamental Rights, DPSPs are non-justiciable. It does not mean that these policy instructions are less important. According to Granville Austine, Directive Principles of State Policy represent the “conscience of the Constitution.” For Ambedkar, Directive Principles form the “novel feature of the Indian Constitution.”

Instructions of the Constitution: Directive principles are the Constitutional instructions given to the State in dealing with legislative, executive and administrative matters. They are like instruments of instruction for the state while formulating policies and enacting laws.

Not Justiciable: Unlike the Foundational Rights, which are legally enforceable, the DPSPs are non-justiciable. The court cannot issue an order for the implementation of Directive Principles. This makes them beyond the legal reach of the courts for their violations, and no one can approach the court to implement DPSP.

Promoting Welfare State: They aim to realise the ideas of Justice, Liberty, Equality and Fraternity as envisaged in the Preamble of the Indian Constitution. So, they depict the notion of a “Wellbeing State” (welfare state).

Targeting Social-Economic Democracy: They are a mix of broad economic, social, and political initiatives that strive to create socio-economic democracy in the country. Thus, they are set to lay the groundwork for an inclusive democratic state.

Encourage Good Governance: They provide the impetus for



modification and novelty in governance to fulfil the goals of socio-economic growth, endorsing good governance and people-centric administration.

Assisting Judiciary: Although not justiciable, they do aid the courts in reviewing and ascertaining the Constitutional correctness of a law. Courts often interpret laws in light of DPSP to ensure that they align with the broad goals and objectives outlined in the Constitution, like promoting social justice, equality and the welfare of people.

The Supreme Court, in its interpretation of the Constitutionality of laws, considers whether the law in question aligns with Directive Principles. If it finds that the law seeks to implement a Directive Principle, the Court may deem such a law as “reasonable” concerning Articles 14 and 19 of the Constitution.

1.3.8. Differences between Fundamental Rights and Directive Principles

❑ Fundamental Rights are justiciable

Fundamental Rights and Directive Principles of State Policy deepen the idea of democracy by making the Constitution more people-centric and liberal. Ideals enshrined in the Constitution’s preamble are detailed and expanded through the provisions of Fundamental Rights and the Directive Principle of State Policy. Both serve different purposes and there are differences in their nature, justiciability and purview. The main differences between Fundamental Rights and Directive Principles of State Policy are as follows:

Fundamental Rights protect individual freedom by preventing the state from doing certain things. On the other hand, Directive Principles provide positive directions to the state to do certain things for the well-being of people. They are conceived as “instruments of instruction” for the government to achieve certain ends by directing state actions to ensure the well-being of the people. The government is expected to take these directives as the framework for formulating policies and laws.

❑ Legally enforceable rights

Fundamental Rights are Justiciable Rights; they are legally enforceable by courts in instances of violation. An individual can approach the courts to restore the violated fundamental Rights. It is the responsibility of the Court to ensure adequate measures to safeguard the fundamental rights of individuals if they are violated. Directive principles are non-justiciable and

are not enforceable by the court. Article 39 enjoins the state to secure Equal pay for equal work for both men and women. No worker can approach the court for legal action if the state fails to ensure equal pay for similar work for men and women until it is implemented by law. This means that courts are not competent in ordering the government to execute the directive principles of State Policy. These directives serve the role of instrument of instructions and guidance to state actions.

Specific legislation is required to implement directives, but Fundamental Rights do not require any particular legislation. Unless a law is formulated for implementing Directive Principles, neither the state nor individuals can violate an existing law or Right for following the Fundamental Principles.

Fundamental Rights envisage the implementation of political democracy, whereas Directive Principles of State policy deal with social and economic democracy primarily. Fundamental rights limit the state and protect the rights of individuals from state action. Directive principles give the state a social and economic foundation by prompting the government to act in a particular way to create a just socio-economic order in the state.

In times of Emergency, Fundamental Rights except Articles 20 and 21 are suspended. No one can move the court to restore fundamental Rights except Articles 20 and 21 when they are violated in times of emergency. However, no such provisions are related to the operation of Directive Principles of State Policy.

The role of the Judiciary is supreme in the matter of protecting Fundamental Rights. The Supreme Court is known as the protector of the Constitution primarily because of its capacity to declare any law or action by the remaining branches of government as null and void if it violates any of the provisions of Fundamental Rights. It is entirely different from the judiciary's role in dealing with the Directive Principles. The court has no authority to declare a law or state action that violates the core ideas of the Directive Principle of State Policy.

Fundamental Rights protect the rights in an individual manner and the Directive Principles envision promoting the socio-economic welfare of the people in a collective sense.



In this context, the Supreme Court's observation of the Minerva Mills case becomes significant. The court observed:

“The Indian Constitution is founded on the bedrock of the balance between Fundamental Rights and Directive Principles. They together constitute the core to commit social revolution. They are like two wheels of chariot, one less than the other. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. The harmony and balance between the two is the essential feature of the basic structure of the Constitution .”

Summarised Overview

Fundamental Rights, found in Part III (Articles 12 to 35) of the Indian constitution, provide civil liberties to all citizens and protect them from any unfair actions by the state. These rights include the right to equality, freedom, protection from exploitation, freedom of religion, cultural and educational rights and the right to seek legal remedies. They are enforceable by the courts and are crucial for preserving democracy and individual dignity.

The Directive Principles of State Policy (DPSP), mentioned in Part IV (Articles 36 to 51), are guidelines for the government to follow in promoting social and economic welfare. While these principles are not enforceable by the courts, they aim to create conditions that allow citizens to live well by ensuring adequate livelihoods, fair distribution of resources and access to education and health services. Together, Fundamental Rights and DPSPs show the Indian constitution's commitment to both protecting individual freedoms and ensuring social justice, seeking to balance personal rights with the need for a fair and just society.

Assignments

1. Define Fundamental Rights and Directive Principles of State Policy in the context of the Indian constitution. Discuss their significance in upholding democratic values.
2. Compare and contrast Fundamental Rights and Directive Principles of State Policy. How do they differ in their enforceability and implementation?

3. Analyse the role of Fundamental Rights in protecting individual liberties and freedoms in India. Provide examples of landmark cases where Fundamental Rights were upheld or violated.
4. Evaluate the importance of Directive Principles of State Policy in guiding governmental policies and programs for socio-economic development. Discuss their relevance in contemporary India.
5. Investigate the role of the judiciary in safeguarding Fundamental Rights and enforcing Directive Principles of State Policy. Discuss the significance of judicial activism in advancing constitutional values.

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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

Institutions of Governance: Functioning and Inter-Relationships

UNIT 1

Legislature: Composition and Functioning

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ Understand the Composition and Functioning of the Legislature
- ▶ Evaluate Parliamentary Control over the Executive
- ▶ Comprehend the Law-Making Process
- ▶ Understand the relationship between the Legislative and Executive branches of the Government

Background

The legislature is an essential component of democratic governance, responsible for creating laws, representing the people and overseeing the executive branch. In India, the legislative framework is divided into the Union Legislature and State Legislatures, mirroring the nation's federal structure. The Union Legislature, commonly known as the Parliament, is a bicameral institution consisting of the President of India and the two houses, the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Like a king in Parliament in England, India has a president in Parliament. The president is a part of the Parliament, though he is not a member.

The Lok Sabha directly represents the citizens, with its members elected through general elections. On the other hand, the Rajya Sabha represents the states and union territories, with its members selected by the elected members of the State Legislative Assemblies. This bicameral system ensures a balanced legislative process that includes popular and regional interests.

The President of India holds a vital role within the legislative structure, endowed with powers such as calling sessions of Parliament, assenting to bills and issuing ordi-

nances. The presiding officers of the two houses—the Lok Sabha Speaker and Rajya Sabha Speaker are responsible for maintaining order and facilitating legislative activities.

Parliament's responsibilities extend beyond law-making to include budget approval, executive supervision and addressing national concerns. It uses various procedural tools and committees to examine bills, oversee executive functions and manage public resources. The legislative process in Parliament involves several stages, ensuring comprehensive debate and discussion before a bill is passed into law.

While similar in structure, the state legislatures vary in composition and powers depending on whether a state has a unicameral or bicameral system. These legislatures are essential for addressing regional issues and enacting state-specific policies.

Understanding the composition and functioning of the Indian legislature is critical to grasping how democratic governance operates in India, how laws are made and enacted and how the executive is held accountable.

Keywords

Legislature, Lok Sabha, Rajya Sabha, The President, Money Bills

Discussion

2.1.1 The Lok Sabha

☐ Represents the people

The Parliament of India is a bicameral legislature consisting of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). These two houses serve distinct roles in India's Parliamentary democracy, as laid out in the Constitution of India. The Constitution provides a detailed framework for their composition, functions and powers; these elements are essential to understanding the legislative process in India. Let us explore the Lok Sabha and Rajya Sabha in detail to understand their significance in the Indian political system.

The Lok Sabha is the lower house of India's Parliament and represents the people of India directly. The people directly elect members of the Lok Sabha through general elections

based on universal adult suffrage. The maximum strength of the Lok Sabha is 552 members, as stated in Article 81 of the Constitution. This includes 530 members representing the states, 20 members representing the Union Territories and up to 2 members of the Anglo-Indian community, who may be nominated by the President of India if deemed necessary (a provision that the 104th Constitutional Amendment Act, 2019 recently abolished).

The Lok Sabha operates on a five-year term, but it can be dissolved earlier by the President of India on the advice of the Prime Minister. The primary function of the Lok Sabha is to introduce and pass legislation. It is also responsible for the government's fiscal policies, as all money bills can only be introduced in the Lok Sabha. The Lok Sabha holds significant power over the executive branch because it can force the resignation of the Council of Ministers through a vote of no confidence. This mechanism ensures that the government remains accountable to the people's representatives.

The Lok Sabha, as the lower house of India's Parliament, plays a crucial role in the democratic framework of the country. Its functions and powers are integral to the legislative process and governance in India.

The House has several key functions and powers, including legislative, executive, financial and supervisory roles.

Legislative Function: One of the primary functions of the Lok Sabha is to formulate and pass legislation. Bills can be introduced by the government or by individual members of the House. The legislative process involves multiple stages, including debates, committee reviews and voting. For a bill to become law, it must be approved by the Lok Sabha and the Rajya Sabha, the upper house of Parliament and receive the President's assent.

Executive Powers: The Lok Sabha plays a vital role in the formation and functioning of the executive branch of the government. The Prime Minister and the Council of Ministers are collectively responsible to the Lok Sabha. This means that the government must maintain the confidence of the house to remain in power. If the Lok Sabha passes a no-confidence vote against the government, the Prime Minister and the entire cabinet must resign.



Financial Powers: The Lok Sabha holds significant financial powers, particularly about the budget and taxation. The government must present the annual budget to the Lok Sabha, which then debates and approves or rejects it. Additionally, all money bills that pertain to taxation and expenditure can only be introduced in the Lok Sabha. The Rajya Sabha can only make recommendations on these bills, which the Lok Sabha may choose to accept or reject.

Supervision and Accountability: The Lok Sabha exercises supervision over the executive branch by scrutinising its actions and policies. Members of the Lok Sabha can question government officials, participate in debates and examine reports from various committees. This scrutiny ensures that the executive branch remains accountable to the legislature and by extension, to the people.

The Lok Sabha's functions and powers are fundamental to the democratic process in India. It not only legislates and approves budgets but also holds the executive accountable and plays a crucial role in the governance of the country. The effective functioning of the Lok Sabha is essential for the stability and transparency of India's democratic institutions.

2.1.2 The Rajya Sabha

The Rajya Sabha is the upper house of India's Parliament and represents the states and Union Territories. Unlike the Lok Sabha, the Rajya Sabha is a permanent body and cannot be dissolved, although one-third of its members retire every two years. The maximum strength of the Rajya Sabha is 250 members, as Article 80 of the Constitution specifies. Of these, 238 members are elected by the elected members of State Legislative Assemblies and the President of India nominates 12 for their expertise in specific fields such as literature, science, art and social service.

The Rajya Sabha plays a vital role in representing the interests of the states in the Parliament. Its powers are more limited than the Lok Sabha, particularly in financial matters. For instance, money bills cannot be introduced in the Rajya Sabha and it can only suggest amendments to money bills passed by the Lok Sabha. However, it does have co-equal powers with the Lok Sabha in all other legislative matters, including the passing of non-financial bills. The Rajya Sabha also serves as a revising

chamber, providing a platform for more thorough scrutiny of legislation, often revisiting and refining the bills passed by the Lok Sabha.

The Rajya Sabha represents the states and union territories of India and its members are not directly elected by the general populace. Still, they are chosen by the elected members of state legislative assemblies and by the President of India. This structure reflects the federal nature of the Indian Constitution and ensures that states have a voice in national legislation.

❑ More powers on Money Bills

Legislative Function: Like the Lok Sabha, the Rajya Sabha participates in the legislative process, which includes the consideration and passing of bills. Bills can be introduced in either house of the Parliament, but money bills, that relate specifically to taxation and public expenditure, can only be introduced in the Lok Sabha. The Rajya Sabha can only make recommendations on money bills, which the Lok Sabha may accept or reject. For other types of bills, the Rajya Sabha has the power to suggest amendments and delay legislation through debate and review.

Executive Oversight: Although the Rajya Sabha does not directly control the executive branch in the same manner as the Lok Sabha, it still plays a crucial role in overseeing the executive. Members of the Rajya Sabha can question ministers, participate in debates and examine reports from Parliamentary committees. This function ensures that the executive remains accountable and transparent in its operations.

State Representation: One of the distinctive roles of the Rajya Sabha is to represent the interests of states and union territories at the national level. This representation is vital for maintaining the federal balance of power within the Indian Union. The Rajya Sabha also provides a platform for states to voice their concerns and contribute to national policy-making, reflecting the diverse interests across different regions.

Judicial Functions: The Rajya Sabha has a role in the impeachment process of the President of India and the removal of Supreme Court and High Court judges. Both houses of the Parliament must participate in impeachment proceedings, with the Rajya Sabha playing a significant role in the deliberation and decision-making process.



The Rajya Sabha's functions and powers complement those of the Lok Sabha, contributing to a balanced and effective legislative process in India. Its roles in state representation, legislative review and executive supervision are crucial for India's federal democracy. By participating in the legislative process and providing a forum for state interests, the Rajya Sabha helps ensure that diverse perspectives are considered in national governance.

2.1.2.1 Special Powers of Rajya Sabha

☐ Representative of the States

The Constitution bestows two specific powers upon the Rajya Sabha. Acting as the representative of the States, it exercises two notable Powers. Firstly, according to Article 249, the Rajya Sabha can propose legislation on matters listed in the State List if deemed beneficial for the nation's welfare. Upon passing a resolution with a two-thirds majority, the Parliament can legislate for the entire country or specific regions for up to one year. Secondly, the Rajya Sabha holds sway over the establishment of All-India Services. If it passes a resolution with at least two-thirds of the members present and voting, Parliament acquires the authority to create one or more All-India Services applicable to both the Union and the States. These provisions elevate the Rajya Sabha from a mere ceremonial body to a significant entity within the Indian Legislature, akin to the House of Lords in England. Conceived by the framers of the Constitution, its role extends beyond thwarting hasty legislation to serving as a prominent advisory body. Its compact, enduring composition ensures continuity and stability, while the presence of seasoned statesmen among its members imparts credibility and respect.

2.1.3 Parliamentary Control over the Executive

In India's Parliamentary democracy, the legislature wields several mechanisms to exercise supervision and control over the executive branch, ensuring accountability and upholding democratic principles. The Mechanisms of Parliamentary Control over the Executive are as follows:

Question Hour (Article 102): During Question Hour, members of Parliament can pose questions to ministers regarding government policies, actions and plans. This mechanism allows for direct executive accountability to the legislature and

enables members to seek clarifications on various matters.

Adjournment Motion (Article 100): An adjournment motion allows Members of Parliament to interrupt the regular business of the House to discuss urgent matters requiring immediate attention. This device enables MPs to bring critical issues to the forefront and demand accountability from the executive.

No-Confidence Motion (Article 75): A no-confidence motion allows Members of Parliament to express a lack of confidence in the Council of Ministers. If the motion is passed, it can lead to the government's resignation, thereby ensuring accountability and responsiveness to the will of the legislature.

Censure Motion: Like a no-confidence motion, a censure motion allows MPs to criticise the government's actions or policies. While it does not directly result in the government's resignation, it serves as a means of expressing disapproval and demanding accountability.

Financial Supervision (Article 112, 113): The Parliament exercises control over government finances by approving the annual budget and appropriation bills. By scrutinising and approving government expenditures, the Parliament ensures that public funds are used responsibly and in accordance with legislative priorities.

Parliamentary Committees (Article 105): Several Parliamentary committees, including the Public Accounts Committee (PAC) and the Estimates Committee, hold significant importance in supervising the operations of the executive branch. These committees examine government policies, programs and expenditure in detail, holding the executive accountable for its actions.

Impeachment (Article 61): In cases of severe misconduct or violation of the Constitution, the President, Vice-President and other high officials can be impeached by the Parliament. This process ensures that individuals holding high offices are accountable for their actions and the rule of law is upheld.

These Parliamentary devices empower the legislature to control and oversee the executive, ensuring that it remains accountable to the people and operates within the bounds of democratic governance. The Indian Parliament plays a crucial role in safeguarding democratic principles and promoting

good governance by controlling the executive using Question Hour, no-confidence motions, financial supervision and the functioning of Parliamentary committees.

2.1.4. Parliamentary Committees

Indian Parliamentary Committees are integral to the Parliamentary framework in India, providing a structured mechanism for the thorough review and discussion of legislation, policies and various issues. These committees are crucial for the efficient operation of the Parliament, facilitating detailed examination and ensuring accountability.

2.1.4.1 Major Parliamentary Committees in India

❑ Efficient and proper use of public funds

The Public Accounts Committee (PAC): Established in 1921, the Public Accounts Committee (PAC) is reconstituted annually under the Parliamentary rules of procedure. The PAC, comprising 22 members (15 from Lok Sabha and 7 from Rajya Sabha), examines the annual audit reports of India's Comptroller and Auditor General (CAG). Its primary function is to ensure the efficient and proper use of public funds as sanctioned by the Parliament. The PAC scrutinises government accounts and public expenditure, highlighting financial irregularities, wastages or non-compliance with financial regulations. Although its recommendations are not binding, they significantly influence financial administration reforms. The committee is chaired by an opposition member to maintain impartiality and it reports its findings and recommendations to the Parliament. The PAC operates under Articles 148 and 149 of the Constitution, which define the duties and powers of the CAG.

❑ Impact budgetary process

Estimates Committee: The Estimates Committee, constituted under Rule 310 of the Lok Sabha Rules of Procedure, comprises 30 members solely from Lok Sabha. This committee examines budget estimates and suggests ways to economise public expenditure. It evaluates the efficiency and effectiveness of fund allocation across ministries. Additionally, it reviews underlying principles and policies and proposes alternative strategies to enhance efficiency and economy. The Estimates Committee recommends organisational and administrative improvements but does not consider detailed expenditure. It submits its reports to the Lok Sabha, and while its recommendations are advisory,

they significantly impact budgetary processes, enhancing the efficiency of government spending.

❑ Reviews CAG reports of PSUs

Committee on Public Undertakings (COPU): Formed under Rule 312B of the Lok Sabha Rules of Procedure, the Committee on Public Undertakings (COPU) consists of 22 members (15 from Lok Sabha and seven from Rajya Sabha). The COPU examines Public Sector Undertaking (PSU) reports and accounts to ensure efficient management and alignment with objectives. The committee assesses the performance and operational efficiency of the PSUs, recommending improvements. It reviews CAG reports on PSUs to ensure adherence to financial prudence and transparency principles. COPU also addresses PSU autonomy and policy adherence issues, submitting its findings and recommendations to the Parliament. Though advisory, its recommendations significantly impact PSU governance and accountability, aiding national economic development.

Committee on Subordinate Legislation: Established under Rule 204 in the Lok Sabha and Rule 209 in the Rajya Sabha, the Committee on Subordinate Legislation scrutinises executive-made rules and regulations. It ensures that delegated legislation remains within the authority granted by Parliament and does not infringe on citizens' rights. The committee examines if the executive's actions align with the framework of the Parent Act, reviewing all rules, regulations and by-laws for legislative consistency and appropriateness. It can recommend modifications or annul inappropriate rules. Comprising members from both Houses, each having its own committee, it submits its findings and recommendations for approval. This committee maintains the balance of power between the legislature and executive, ensuring legality and propriety.

2.1.4.2 Importance of Committees

❑ Scrutinise government expenditure

Parliamentary Committees play several crucial roles. They conduct legislative scrutiny by examining bills in detail, suggesting amendments and improvements before the House debates. Committees like the PAC, Estimates Committee, and COPU provide financial supervision by scrutinising government expenditure and public enterprises' performance. Departmental Standing Committees review the workings of the ministries, policies and schemes, recommending necessary improvements. Committees such as the Committee on Petitions address public grievances by examining citizens' petitions. They also ensure



accountability and transparency by reviewing reports from supervisory bodies like the CAG.

The significance of the Parliamentary Committees lies in their capacity for in-depth examination of issues, policies and bills, often unfeasible in the time-constrained environment of a full House. Members develop expertise in specific areas, leading to more informed and effective scrutiny. These committees typically operate in a bipartisan manner, fostering cross-party cooperation. Additionally, they invite public feedback and expert opinions, making the legislative process more inclusive.

However, Parliamentary Committees face challenges and criticisms. Often, they lack sufficient time for a thorough examination. Resource constraints, such as inadequate research and administrative support, can hinder their functioning. Despite being intended as bipartisan, committees sometimes reflect the larger House's political divisions. Moreover, committee recommendations are not binding and their effectiveness hinges on the government's willingness to accept and implement them.

2.1.5. Phases of Law Making

The law-making process in the Indian Parliament is a comprehensive procedure that ensures thorough scrutiny and debate before a bill becomes law. This process is divided into several phases, each crucial to forming effective and well-considered legislation. The phases are as follows:

Drafting the Bill

The first phase involves drafting the bill, typically by the ministry or department concerned. The bill's objectives, provisions and framework are carefully crafted during this phase. Experts, legal advisors and stakeholders may be consulted to ensure the bill is comprehensive and addresses the intended issues effectively. The draft bill is then vetted and approved by the respective minister.

❑ Various stages of Law making

Introduction of the Bill

The second phase is the introduction of the bill in the Parliament. A bill can be introduced either in the Lok Sabha (House of the People) or the Rajya Sabha (Council of States) by a minister (government bill) or by a non-government member

(private member's bill). The introduction of a bill is known as the First Reading, where the bill's title and objectives are read out, and no debate on the bill's content occurs at this stage. A bill must receive the Speaker's (Lok Sabha) or Chairman's (Rajya Sabha) approval for introduction.

The First Reading

The bill is discussed at this stage, and copies are distributed to all members. The bill's basic structure and intent are presented, but detailed discussions are deferred to later stages. This stage ensures members have adequate time to study the provisions of the bill.

The Second Reading

The Second Reading is a critical phase involving detailed examination and discussion. This phase has three stages:

General Discussion: Members debate the bill's principles and overall objectives.

Committee Stage: The bill is referred to a Standing Committee or a Select Committee for detailed scrutiny. The committee scrutinises the bill clause by clause, consults experts and stakeholders and may seek public opinion. The committee then submits a report with recommendations to the House.

Consideration Stage: The House considers the bill clause by clause and the committee's recommendations. Amendments can be proposed, debated and voted upon during this stage.

The Third Reading

During the Third Reading, the focus shifts to the bill's final approval. Debate is limited to arguments for or against the bill without delving into details. Members vote on the bill and if it passes by a simple majority, it moves to the other House for consideration. If the bill is introduced in the Lok Sabha, it is then sent to the Rajya Sabha for consideration, and if introduced in the Rajyasabha, it is then sent to the Lokasabha.

Consideration by the Other House

The bill undergoes a similar process in the other House, including introduction, readings, committee scrutiny and voting.



The second House can pass the bill, suggest amendments or reject it. If the second House suggests amendments, the bill will be returned to the originating House for approval. If both Houses pass the bill with or without amendments, it proceeds to the next stage. In cases of disagreement between the Houses, a joint session may be convened to resolve the differences.

Assent of the President

The final phase is obtaining the President's assent. After both the Houses pass the bill, it is forwarded to the President for approval. The President can:

Give Assent: The bill becomes law and is enacted.

Withhold Assent: The bill is effectively vetoed.

Return the Bill: The President can return the bill with recommendations for reconsideration by the Parliament. If the Parliament passes the bill again with or without modifications, the President must give assent.

Publication and Commencement

After receiving the President's assent, the bill is published in the Official Gazette, marking its official status as a law. The law comes into effect immediately or on a date specified within the bill.

The law-making process in the Indian Parliament is designed to ensure that each bill undergoes rigorous scrutiny and debate, allowing for input from various stakeholders and thorough examination by both the Houses of Parliament. This multi-stage process helps craft well-rounded and effective legislation that aligns with the democratic principles of governance and addresses the needs and concerns of the populace.

Summarised Overview

The Indian Parliament, comprising the **Lok Sabha** and **Rajya Sabha**, plays a central role in governance. **The Lok Sabha**, representing the people, holds primary authority in legislative, financial, and executive matters, including the passage of laws and approval of the budget. It exercises significant control over the executive through debates and questioning.

The Rajya Sabha, or Council of States, represents states and union territories, providing a forum for state interests. Although it lacks the power to introduce money bills, it has special powers like recommending the creation of All-India Services and approving state emergency provisions.

Parliamentary Committees are vital to effective governance, enabling in-depth examination of bills, financial policies, and government actions. Major committees like the Public Accounts Committee and Estimates Committee enhance accountability and legislative efficiency. These committees ensure detailed scrutiny, contributing to transparent, informed decision-making in the legislative process, and play a crucial role in maintaining a balanced democratic system.

Assignments

1. Describe the structure, composition and functions of the Union Legislature in India. How does it reflect the federal nature of the country?
2. Discuss the legislative powers of the President of India. How do these powers influence the functioning of the Union Legislature?
3. Discuss the various functions of the Indian Parliament. How does the Parliament exercise control over the executive branch?
4. Describe the role and importance of Parliamentary Committees in the Indian legislative process.
5. Critically analyse the factors contributing to the perceived decline of legislative bodies 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

The Executive: Relationship between the President, the Prime Minister and the Council of Ministers

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ analyse the relationship between the President, Prime Minister and the Council of Ministers and how it shapes executive functions in India
- ▶ understand the powers, term of office and impeachment procedure of the President of India.
- ▶ be familiar with the powers and responsibilities of the Prime Minister and their impact on governance and policy-making.
- ▶ analyse the increasing role and influence of the Prime Minister's Office (PMO) in administrative and policy decisions within the executive framework.
- ▶ understand the functions and significance of the Council of Ministers and the Cabinet and their collective responsibility to the Parliament.

Background

The Executive Branch of the Indian government serves as the administrative arm responsible for implementing and enforcing laws enacted by the legislature. Comprising key officials such as the President, the Prime Minister and a Council of Ministers, this branch wields significant powers and responsibilities in the country's governance. As the ceremonial head of state, the President holds symbolic and Constitutional authority, while the Prime Minister, as the head of the government, exercises executive powers and leads the administration. Supported by the Council of Ministers, the Prime Minister oversees various ministries and departments, each tasked with specific functions to ensure the smooth functioning of the government. These entities form a complex network of relationships and functions, contributing to India's effective governance and administration.

Keywords

President, Prime Minister, Executive Branch, Collective Responsibility

Discussion

2.2.1 Concept of the Executive Branch of Government

The executive branch of government is responsible for the implementation and enforcement of laws, as well as overseeing the administration of government policies and programmes. It functions alongside the legislative and judicial branches, forming one of the three pillars of the government. This branch is crucial in translating laws and policies into actionable measures. The leadership of the executive branch varies by country, typically featuring a President, Prime Minister or another head of state or government.

2.2.1.1 Functions of the Executive Branch

Major functions of the Executive Branch are as follows:

Law Enforcement: A key duty of the executive branch is to ensure the effective implementation and compliance with laws enacted by the legislature. This task involves various law enforcement entities such as the police, federal agencies and regulatory bodies that work to enforce laws, investigate crimes and maintain public safety. The executive branch's responsibilities in law enforcement also include prosecuting crimes, upholding public order and ensuring that justice is administered according to legal standards.

Policy Making: Although the legislature creates laws, the executive branch plays a crucial role in policy-making, especially in areas requiring specialised expertise and prompt decision-making. This role involves developing regulations, guidelines and administrative rules to make the laws operational. The executive branch collaborates with experts, stakeholders and advisory groups to formulate policies addressing complex issues like healthcare, education, environmental protection and economic management. The executive's capacity for rapid

❑ Develop regulations and guidelines



response to emerging challenges enables timely and effective policy adjustments.

Administration: The executive branch manages the daily operations of the government, overseeing public services and various agencies to ensure effective administration. This includes implementing government programmes, managing public resources and delivering education, healthcare, transportation and social welfare services. The executive branch ensures that government operations are efficient and effective, coordinating the efforts of civil servants and public sector employees to meet citizens' needs and uphold public interest.

☐ Formulate defence policies

Defence and Foreign Affairs: The executive branch is responsible for national defence and managing international relations, ensuring the country's security and diplomatic interests. This responsibility involves directing the military, formulating defence policies and overseeing national security agencies. In foreign affairs, the executive conducts diplomacy, negotiates treaties and represents the country in international organisations and forums. The executive branch protects national sovereignty, promotes global cooperation and responds to international crises, striving for a stable and secure global environment.

☐ Monitors financial performance

Budget Implementation: The preparation and execution of the national budget are key functions of the executive branch, involving the management of public resources and government expenditure to meet national needs. This process includes drafting budget proposals, allocating funds to government departments and programmes and ensuring fiscal discipline. The executive branch monitors financial performance, oversees revenue collection and adjusts spending to address economic changes. Effective budget implementation supports economic stability, public investment and the provision of essential services to the population.

2.2.1.2 Three Kinds of Executive Forms of Government

The Presidential System

In a presidential system, the President serves as both the head of state and the head of government. This system is characterised by a clear separation of powers between the

executive and legislative branches, with the President elected independently of the legislature. Presidents typically serve fixed terms, usually ranging from four to six years. They wield significant executive powers, including vetoing legislation, appointing key officials and often controlling foreign policy and the military. The presidential system of government exists in countries like the United States, Brazil and Mexico.

The Parliamentary System

❑ UK, India and Canada have parliamentary system

In a Parliamentary system, the executive branch gains legitimacy from the legislature and is directly accountable to it. The head of government, the Prime Minister, is a legislature member chosen by the majority party or coalition within the Parliament. This system features a fusion of powers between the executive and legislature, with the Prime Minister's term being flexible and subject to the confidence of the Parliament. In a Parliamentary system, the cabinet, under the leadership of the Prime Minister, bears collective responsibility for government policies and actions. This means that decisions made by individual ministers are considered decisions of the entire cabinet. The United Kingdom, India and Canada operate under this system of governance.

Semi-Presidential System

❑ France, Russia and Portugal

A semi-presidential system incorporates elements of both presidential and Parliamentary systems, featuring a dual executive consisting of a President and a Prime Minister. In this system, the President is usually elected by the public and holds significant powers. At the same time, the Prime Minister is appointed by the legislature to manage day-to-day government operations. Powers are shared between the President and Prime Minister, with the President often handling foreign policy and defence while the Prime Minister focuses on domestic policy. The balance of power can vary depending on the political context and Constitutional provisions. Examples of countries with a semi-presidential system include France, Russia and Portugal.

2.2.2 The President of India

In India, the President serves as the ceremonial head of state, representing the nation's unity and integrity. Despite the pri-



marily symbolic nature of the role, the President possesses certain executive powers and carries out essential functions in the country's governance.

The President's executive powers are detailed in Articles 53 to 78 of the Indian Constitution. Here is a comprehensive overview of these powers:

Appointment

❑ Single transferable vote system

Article 54 outlines the election process for the President. The president is elected by an electoral college composed of elected representatives from both the Rajya Sabha and the Lok Sabha, as well as legislative assemblies of states and union territories. The election is held by proportional representation using a single transferable vote system. The candidate who secures a simple majority of votes is declared elected. This method ensures broad-based support for the President, reflecting the federal structure of India.

Term

According to Article 56, the President's term is five years from the date they assume office. The President can be re-elected for multiple terms without any restriction. If the office becomes vacant before the end of the term due to death, resignation or removal, the vice-president acts as the president till a new president is elected. This provision ensures continuity in the highest Constitutional office and avoids any leadership vacuum.

Eligibility

Article 58 sets forth the eligibility criteria for the President. A candidate must be an Indian citizen, have completed 35 years of age and be qualified to join the Lok Sabha (House of the People). Furthermore, the candidate must not hold any office of profit under the government of India or any state government. Once elected, he has the office for five years.

Impeachment

Article 61 provides the procedure for the impeachment of the President on grounds of Constitutional violations. An impeachment charge against him can be initiated by at least

- ❑ A two third majority in both houses of Parliament

one-fourth of the total members of either House of Parliament and moved after giving at least 14 days of advance notice. A committee then investigates the charges. If the committee finds the charges substantiated, the House can vote. A two-thirds majority in both Houses of Parliament is required to remove the President from office. This process ensures the impeachment mechanism is rigorous and not subject to frivolous charges.

2.2.2.1 Powers of the President

The President of India enjoys a wide range of powers, which can be divided into the following heads:

Executive Powers

■ Appointment of Prime Minister and Council of Ministers

As per Article 75(1), the President appoints the Prime Minister, generally the leader of the majority party or coalition in the Lok Sabha. The Prime Minister, in turn, advises the President on appointing other ministers. This ensures that the executive branch is led by representatives who have the confidence of the majority in the Lok Sabha, thus reflecting the will of the electorate.

■ Appointment of High-Level Officials

Article 76(1) grants the President the authority to appoint key officials such as the Attorney General of India, Governors of States and Judges of the Supreme Court and the High Courts. These appointments are crucial for maintaining the integrity and functionality of the executive and judicial branches. The President's role in these appointments ensures that highly qualified individuals are selected for these important positions.

■ Power to Declare Emergency

The emergency powers of the President of India are outlined in the Indian Constitution to address exceptional circumstances that threaten the stability or security of the nation. These powers are crucial for maintaining the Constitutional order during periods of crisis.

Types of Emergencies: The Indian Constitution provides for three emergencies: national, state and financial. Each type of emergency has specific implications and triggers distinct powers for the President.



☐ Also known as
President's Rule

1. **National Emergency:** This type of emergency can be declared under Article 352 of the Constitution when there is a threat to the sovereignty, integrity or security of India due to war, external aggression or armed rebellion. The President can proclaim a national emergency on the advice of the Council of Ministers and both houses of the Parliament must approve such a proclamation within a stipulated period. During a national emergency, the central government can override state legislation and fundamental rights under Article 19 may be suspended.
2. **State Emergency:** Under Article 356, a state emergency, also known as President's Rule, can be imposed when the President believes that the governance of a state cannot be carried out according to the provisions of the Constitution. This often occurs when there is a breakdown of Constitutional machinery in a state. The President can dissolve the state legislative assembly, assume direct control of the state administration and appoint a Governor to oversee the state's affairs. The state legislature's powers are transferred to the Parliament during this period.
3. **Financial Emergency:** Proclaimed under Article 360, a financial emergency can be declared when the President believes that the financial stability or credit of India is threatened. This type of emergency allows the central government to control state finances and review the state's financial policies. It also empowers the central government to take measures to ensure fiscal discipline and to reduce expenditure by states if necessary.

Consequences and Procedures: The proclamation of an emergency affects the distribution of powers between the central and state governments. For a national emergency, the President can assume legislative powers over subjects that are normally under state jurisdiction. In a state emergency, the central government takes over the functions of the state government. During a financial emergency, the central government can issue directives to state governments regarding financial matters.

The emergency powers of the President are meant to be used sparingly and only in genuine crises. The Constitution provides for mechanisms to ensure that these powers are not misused, including the requirement for Parliamentary approval of emergency proclamations and the provision for judicial review.

❑ Active role
in Legislative
process

Legislative Powers of the President

The legislative powers of the President of India are pivotal in the functioning of the Indian Parliamentary system. As outlined in the Indian Constitution, these powers enable the President to play an active role in the legislative process.

Role in the Legislative Process: The President's legislative powers are integral to the functioning of the Parliament. The President's role encompasses several key functions that facilitate the passage of laws and the smooth operation of Parliamentary procedures.

- 1. Summoning and Proroguing the Parliament:** The President has the authority to summon and prorogue both houses of the Parliament, namely the Lok Sabha and the Rajya Sabha. Summoning refers to calling the houses to meet, while proroguing means ending a session without dissolving it. This power ensures that Parliament convenes regularly and can undertake its legislative functions.
- 2. Dissolution of the Lok Sabha:** The President has the power to dissolve the Lok Sabha, the lower house of the Parliament. This can occur upon the advice of the Prime Minister and the Council of Ministers or if the Lok Sabha fails to pass a vote of confidence. Dissolution triggers general elections for the Lok Sabha, ensuring that a new house is elected to represent the people.
- 3. Addressing the Parliament:** The President addresses the Parliament at the commencement of the first session of each year and at the beginning of the first session after the general elections. The President's address outlines the government's policies and legislative agenda, providing a framework for Parliamentary discussions and actions.
- 4. Assent to Bills:** For a bill to become law, it must receive the President's assent. Once a bill is passed by both houses of the Parliament, it is sent to the President for approval. The President can either give assent, withhold assent or return the bill with a request for reconsideration. If the bill is returned and passed again by the Parliament, the President must give assent. This process ensures that the legislative proposals undergo thorough scrutiny.
- 5. Issuance of Ordinances:** The President can issue ordinances when the Parliament is not in session and



when there is an urgent need for legislation. Ordinances have the same force as laws passed by the Parliament but must be ratified by the Parliament within six weeks of its reassembly. This power enables the President to address immediate legislative needs in the absence of the Parliament.

6. **Calling Joint Sessions:** In cases of disagreement between the Lok Sabha and the Rajya Sabha on a bill, the President can summon a joint session of both houses. This procedure helps in resolving deadlocks and ensuring that legislation progresses effectively.

The legislative powers of the President of India are crucial for the operational dynamics of the Parliamentary system. These powers ensure the proper functioning of Parliament, facilitate the passage of legislation and allow for the resolution of legislative impasses. The President's role, while largely ceremonial, is essential for maintaining the legislative process and upholding the principles of democratic governance.

Supreme Commander of the Armed Forces

❑ Represents nation in defence matters

Article 53 designates the President as the Supreme Commander of the armed forces, symbolizing the highest military authority. Although the operational command is vested in the Prime Minister and the Ministry of Defence, the President's role includes representing the nation in defence matters and participating in ceremonial functions. This underscores the importance of civilian supervision of the military.

Pardoning Powers

Article 72 grants the President the power to pardon, reprieve, respite, remit or commute sentences of individuals convicted of offences. This power can be exercised in cases of death sentences, court-martial and other offences under federal jurisdiction. The President's pardoning power is typically based on the advice of the Council of Ministers, ensuring that clemency decisions are balanced and fair.

While the President's powers are significant, they are primarily exercised based on the advice of the Council of Ministers. This framework ensures that the President's role remains largely ceremonial and symbolic, aligning with the principles of Parliamentary democracy.

President and the Council of Ministers

Article 74 of the Indian Constitution establishes the President's relationship with the Council of Ministers. This article specifies that the President must act according to the advice of the Council of Ministers, which the Prime Minister heads. The key points are:

- 1. Role as Head of State:** The President, as the ceremonial head of state, is expected to act on the advice of the Council of Ministers. This reflects the principle of Constitutional monarchy adapted to the Indian context, where the real executive power rests with the elected government, not the President.
- 2. Advisory Function:** According to Article 74, the President is bound by the Council of Ministers' advice, which must be provided by the Prime Minister and the cabinet collectively. The President's role is largely ceremonial, focusing on formal duties such as appointing the Prime Minister and other ministers based on their advice.
- 3. Exceptions to Advice:** Although Article 74 mandates that the President act according to the advice of the Council of Ministers, there are instances where the President may act contrary to such advice. For example, if the advice given is unconstitutional or the President believes that the Council of Ministers has lost its majority, the President may call for a vote of confidence or dissolution of the Lok Sabha.

Appointment of the Prime Minister and the Council of Ministers

Article 75 outlines the powers and responsibilities of the President concerning the appointment of the Prime Minister and the Council of Ministers. The key provisions are:

- 1. Appointment of the Prime Minister:** The President appoints the Prime Minister, who must be a member of the either houses of the Parliament and is expected to command the confidence of the majority of the lower (Low Sabha) house. If no single party has a clear majority in the Lok Sabha. The President may need to exercise discretion to appoint a leader who can form a coalition government.

2. **Council of Ministers:** Upon appointing the Prime Minister, the President also appoints other members of the Council of Ministers, who are chosen based on the Prime Minister's advice. The Council of Ministers collectively holds executive authority and runs the government.
3. **Tenure and Accountability:** The Prime Minister and the Council of Ministers hold office at the pleasure of the President, meaning they serve because the President has permitted it. However, in practice, this pleasure is exercised based on the confidence of the Lok Sabha. If the Prime Minister and the Council of Ministers lose the confidence of the Lok Sabha, they are required to resign, and the President must either dissolve the house or appoint a new government.
4. **Resignation and Removal:** The President can also accept the Prime Minister's and other ministers' resignation. If a Prime Minister resigns or is removed, the President must appoint a new Prime Minister who can command a majority in the Lok Sabha.

Articles 74 and 75 of the Indian Constitution define the President's role in relation to the executive branch. While the President acts on the advice of the Council of Ministers and has the ceremonial power to appoint the Prime Minister and other ministers, the real executive power lies with the elected government. The President's functions are designed to ensure the smooth functioning of the Parliamentary system while upholding democratic principles.

2.2.3 The Vice President

The Vice President of India assumes a critical role within the executive arm of the Government of India, standing as the second-highest constitutional authority. Governed by Constitutional provisions, the Vice President holds substantial sway over the nation's governance and operations.

Selection of the Vice President

The Vice-President is elected by an electoral college consisting of members of both Houses of Parliament, by the system of proportional representation by means of the single transferable vote and the voting in such election is by secret

ballot. The Electoral College to elect a person to the office of the Vice-President consists of all members of both Houses of Parliament.

Tenure of Office

Article 67 of the Constitution specifies the tenure of his office. The Vice President serves a term of five years from assuming office. Like the President, the Vice President has no fixed term limit and can be re-elected for multiple terms. In a vacancy due to resignation, demise or removal before the term's expiry, a new Vice President is elected to fill the remainder of the term.

Eligibility Criteria

Article 66 lists the eligibility criteria for the Vice President of India, requiring candidates to be Indian citizens, at least 35 years of age and eligible for Rajya Sabha membership. Additionally, candidates must not hold any office of profit under the Government of India, the State government or any other local authority under governmental control.

Impeachment Process

The Vice-President can be removed from office by a resolution of the Rajyasabha passed by an absolute majority, which is agreed to by the Loksabha by a simple majority. The Constitution has mentioned no ground for his removal.

2.2.3.1 Roles and Functions of the Vice President

As per Article 63, the Vice President holds the second-highest constitutional office in India, just below the President, crucial for maintaining the structure of the executive branch. The role of the Vice President is as follows:

☐ Ex-officio
Chairman of
Rajya Sabha

Presiding Officer of the Rajya Sabha: A primary function is to serve as the ex-officio Chairman of the Rajya Sabha, overseeing its proceedings as stipulated in Article 64.

Session Leadership: The Vice President presides over sessions within the Rajya Sabha, ensuring adherence to Parliamentary procedures and maintenance of decorum. He possesses the authority to interpret rules and guide discussions, facilitating the smooth functioning of the house.



Casting Vote: He has no right to vote in the House. However, he exercises a casting vote in the case of a tie in the House.

Appointment of Deputy Chairman: Although not explicitly stated, it is customary for the Vice President to appoint a Deputy Chairman for the Rajya Sabha.

Succession to the Presidency: Whenever the president's office falls vacant by death, resignation or impeachment, the vice-president acts as the president until a new president is elected.

Functions of the Vice President

Legislative Role: In the capacity to Act as the Chairman of the Rajya Sabha, the Vice President plays a significant role in the legislative process, ensuring orderly debates, facilitating discussions on bills and overseeing the passage of legislation.

Representational Role: The Vice President represents India domestically and internationally, attending official functions, ceremonies and diplomatic events, often serving as the government's face, particularly in the President's absence.

Advisory Role: While primarily focused on legislative matters, the Vice President may offer advice and insights on governance matters to the President and the government. However, unlike the President's, their advice is not binding.

Constitutional Safeguard: The Vice President ensures continuity and stability of governance, acting as a bulwark against abuse of power by the executive and maintaining constitutional balance and integrity.

In essence, the Indian Vice President holds a multifaceted role within the executive, primarily as the Chairman of the Rajya Sabha, embodying a symbol of Constitutional continuity and balance, contributing significantly to India's Parliamentary democracy as enshrined in the Constitution.

2.2.4 Council of Ministers

The Constitution provides a Parliamentary system modelled on the British pattern. The council of ministers headed by the Prime Minister is the real executive in India's politico-administrative system. The Council of Ministers assumes a piv-

- ❑ Selected from members of both the houses of Parliament

total role as part of the Executive branch of government. Led by the Prime Minister, it comprises ministers appointed by the President, as stipulated in Article 74. Article 75(1) states that the President appoints the Prime Minister and other ministers. The President appoints ministers on the advice of the Prime Minister. The ministers are selected from among the members of both the Houses of Parliament. However, a person who is not a member of either house of Parliament can also be appointed as a minister, with the condition that he becomes a member within six months. Otherwise, he would not continue as a minister.

According to the 91st Amendment, the total strength of the ministers, including the prime-minister, shall not exceed 15% of the total strength of the Lok Sabha.

The Constitution also provides that a person disqualified on the grounds of defection shall also be disqualified from being appointed as a minister until he is again elected.

2.2.4.1 Council of Ministers and Cabinet

- ❑ Independent charge of a department

A distinction is made between the Cabinet and the Council of Ministers. The cabinet consists of certain senior and important ministers. However, the Council of Ministers comprises three categories of ministers: Cabinet Ministers, ministers of state and deputy ministers. Cabinet Ministers attend Cabinet meetings; other ministers attend only if specially invited. The Cabinet Ministers hold independent charge of a department. They oversee vital portfolios like Home Affairs, Finance, Defence and External Affairs. Unlike the broader Council of Ministers, the Cabinet focuses on significant policy deliberations and policy formulation. It is central to decision-making and policy formation within the Executive branch.

The Council of Ministers and the Cabinet are vital components of India's Executive branch; the Cabinet functions as its core decision-making body within the broader framework of the Council of Ministers.

2.2.4.2 Role and Functions of the Council of Ministers

Advisory role

The advisory role of the Council of Ministers in India forms



a fundamental aspect of the Executive branch of government. Enshrined in the Constitution this role ensures that the President receives expert advice and guidance in exercising his functions, except in areas where the President is required to act on his discretion. Here is a detailed explanation of the advisory role of the Council of Ministers, along with the relevant Constitutional provisions.

Article 74 of the Indian Constitution establishes the advisory role of the Council of Ministers. It states that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in exercising his functions, except in cases where the President is required to act at his discretion. The advisory role of the Council of Ministers is primarily aimed at providing assistance and counsel to the President in matters concerning the governance and administration of the country. It covers various issues, including policy formulation, decision-making and the execution of governmental functions.

❑ Principle of collective responsibility

The Council of Ministers advises the President on various aspects of governance, such as enacting laws, implementing policies, appointing officials and conducting foreign affairs. The advice extends to all areas of government where the President's decision-making is not bound by his discretion. The advisory role of the Council of Ministers operates on the principle of collective responsibility. Article 75(3) of the Constitution makes it clear that the Council of Ministers is collectively responsible to the House of the People (Lok Sabha). This means that all ministers share accountability for the decisions and actions of the government. The advisory relationship between the Council of Ministers and the President is characterised by dialogue and communication. Ministers regularly engage with the President, providing updates, briefing on key issues and seeking guidance on matters requiring presidential consideration.

The advisory role of the Council of Ministers in India, as outlined in the Constitution, is integral to the functioning of the Executive branch. It ensures that the President receives expert advice and assistance from a collective body of ministers, led by the Prime Minister, in executing his functions, thereby facilitating effective governance and decision-making.

2.2.4.3 Collective Responsibility

The idea of collective responsibility among the Council of

- ❑ Collectively accountable for all decisions and actions.

Ministers is crucial in India's governmental system, particularly within the Executive branch. It ensures that ministers work together cohesively and are collectively accountable for all the decisions and actions of the government. Article 75(3) states that all ministers are collectively responsible to the Lok Sabha. This means they swim or sink together, regardless of their specific roles; every minister shares accountability for the government's policies and decisions. Collective responsibility emphasises the unity of purpose within the Council of Ministers and highlights the importance of supporting government policies.

A significant outcome of collective responsibility is that ministers must be answerable to the Parliament, especially the Lok Sabha. They are expected to participate in debates, respond to questions and defend government policies transparently. This ensures that the government remains accountable to the people's elected representatives. Moreover, ministers are also accountable to the public for effective governance and policy implementation, reflecting democratic transparency and responsiveness to principles.

If the government fails to maintain the confidence of the Lok Sabha on a crucial matter, it is customary for the entire Council of Ministers to resign collectively. This action underscores the seriousness of collective responsibility and the government's acknowledgement of its accountability. Furthermore, collective responsibility promotes unity and cohesion within the Council, surpassing political differences or personal opinions. Ministers are obliged to abide by collectively made decisions, irrespective of their individual views, ensuring a united stance in presenting and defending government policies before both the Parliament and the public.

Furthermore, collective responsibility entails Cabinet solidarity, where Cabinet members publically support government decisions, even if they disagree privately. This enhances the government's credibility and authority in policymaking and governance. In summary, collective responsibility is vital for maintaining the integrity, accountability and effectiveness of India's Executive branch, ensuring that the government remains responsive to the needs and aspirations of its citizens.

2.2.5 The Prime Minister

❑ Head of government

According to the Indian Constitution, the Prime Minister is the head of government and the most senior executive authority in the country. As the chief executive, the Prime Minister is critical in the nation's administration, policy-making and governance.

Appointment: Article 75(1) states that the President appoints the Prime Minister. The appointment is made based on the President's discretion. Still, in practice, the leader of the majority party or coalition in the Lok Sabha (Lower House of Parliament) is invited by the President to form the government and assume the role of the Prime Minister.

Terms and Criteria of Selection: The term of the Prime Minister is not fixed by the Constitution. Instead, it depends on their ability to command the confidence of the Lok Sabha. In other words, the Prime Minister holds office as long as he continues to enjoy the majority support in the Lower House of Parliament. If the Prime Minister loses the majority support in the Lok Sabha he must resign.

The important Functions and Powers of the Prime Minister are as follows:

Leader of the Government

❑ Guides the Council of Ministers

The Prime Minister leads the Council of Ministers, as mentioned in Article 74 and Article 75(1) of the Indian Constitution. The Prime Minister's leadership role is inherent in their position as the head of the government. As the head of the government, the Prime Minister guides the Council of Ministers in policy formulation, decision-making and the execution of government programmes. The Prime Minister acts as the government's chief spokesperson, representing its policies and positions before the public and the Parliament.

Advisor to the President

Article 74 of the Indian Constitution establishes a Council of Ministers with the Prime Minister as the head to advise the President in exercising his functions. The Prime Minister serves as the President's chief advisor on matters of governance. They offer counsel on policy decisions, administrative matters, and

other issues concerning the functioning of the government. While the President acts on the advice of the Council of Ministers, including the Prime Minister, he can seek clarification or send back advice for reconsideration.

Policy Formulation

The Prime Minister's role in policy formulation is derived from his leadership position within the government, as well as the collective responsibility of the Council of Ministers. Prime Ministers provide direction and vision to the government's agenda, setting priorities and guiding policies that address national challenges and aspirations. In this regard, the Prime Minister's leadership influences the legislative agenda and the overall direction of governance.

Administrative Head

The Prime Minister's administrative role is implicit in his position as the head of the government and leader of the Council of Ministers. The Prime Minister oversees the functioning of various ministries and ensures the effective implementation of government policies. They coordinate the activities of different ministries and guide ministers. He also exercises general supervision over the working of different ministries and resolves inter-ministerial conflicts. Through their administrative supervision, the Prime Ministers ensure the smooth functioning of the government machinery and the delivery of public services.

Legislative Role

The Prime Minister plays an important role in the legislative process. They formulate government bills, guide legislative strategy and represent the government's position on various issues during Parliamentary debates and proceedings. The Prime Minister's leadership in the legislative arena influences the enactment of laws and the implementation of government policies.

International Representation

The Prime Minister represents India globally, conducting diplomacy, negotiating treaties and representing the country's interests abroad. They engage with foreign leaders, participate



in international forums and promote India's foreign policy objectives. Through their international engagements, the Prime Minister enhances India's stature and fosters diplomatic relations with other countries, advancing India's strategic interests and promoting global cooperation.

2.2.6 Constitutional duties of the Prime Minister

Article 78 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's affairs and proposal for legislation,
- b) to furnish such information relating to the administration of the affairs of the union and proposals for legislation as the president may call for and
- c) Submitting for the consideration of the council of ministers, if the President so requires, any matter on which a decision has been taken by a minister but has not been considered by the Cabinet. Thus, it is clear that the Prime Minister communicates the "decisions" and does not merely render advice to the Cabinet. India's Prime Minister's Office (PMO) has historically played a crucial role in shaping and implementing government policies and decisions. Over the years, there has been a noticeable increase in the influence and significance of the PMO in the country's governance landscape. This trend reflects broader shifts in power dynamics within the Indian political system, characterised by a growing centralisation of authority in the hands of the Prime Ministers and their office.

❑ Increasing role of Prime Minister's Office

The PMO serves as the government's nerve centre, coordinating the activities of various ministries and departments to ensure coherence in policy formulation and implementation. With the Prime Minister at its helm, the PMO wields considerable power in setting the policy agenda, prioritising key initiatives and monitoring their execution across different sectors. Several factors contribute to the expanding role of the PMO. One significant factor is the rise of coalition politics, where the Prime Minister often leads a coalition government comprising multiple political parties. In such scenarios, the

PMO acts as a unifying force, reconciling divergent interests and maintaining cohesion within the coalition.

Moreover, the increasingly complex challenges facing India, both domestically and internationally, necessitate swift and decisive decision-making, which the PMO is well-positioned to provide. The PMO's centralised structure enables rapid responses to emerging issues, streamlining bureaucratic processes and ensuring effective governance.

Furthermore, advancements in communication technology have facilitated closer monitoring and supervision of government activities by the PMO. Real-time access to information and data analytics empowers the PMO to make informed decisions and course corrections as required, enhancing governance efficiency.

However, the growing influence of the PMO has also raised concerns about democratic accountability and transparency. Critics argue that excessive centralisation of power in the PMO may undermine the principles of decentralisation and checks and balances enshrined in India's democratic framework. Moreover, the opacity surrounding the functioning of the PMO and its decision-making processes has called for greater measures of transparency and accountability.

2.2.7 Relationship between the President and the Council of Ministers

❑ President act according to the advice of the Council of Ministers

The relationship between the President of India and the Council of Ministers is crucial to the operation of the Parliamentary system as outlined in the Indian Constitution. Article 74(1) specifies that a Council of Ministers, led by the Prime Minister, shall aid and advise the President in performing his duties. This ensures that the President acts based on the collective advice of the Council, embodying the principle of collective responsibility. The 42nd Amendment to the Constitution reinforces this by making it mandatory for the President to act according to the advice of the Council of Ministers. However, the 44th Amendment provides that the President may require the Council of Ministers to reconsider such advice, and the President shall act following such advice tendered after such reconsideration.

Article 75(1) establishes that the President appoints the Prime Minister, creating a link between the head of state and the head of government. After appointing the Prime Minister,



the President appoints the other ministers based on the Prime Minister's recommendations, highlighting the Prime Minister's primary role in selecting the Council of Ministers.

Article 75(2) also indicates that ministers serve at the President's pleasure, which formally grants the President authority over their tenure. However, in practice, within the framework of Parliamentary democracy, the true power resides with the Prime Minister and the Council of Ministers, who must maintain the confidence of the Lok Sabha.

The President's role in relation to the Prime Minister is mainly ceremonial. When the President appoints the Prime Minister, this is done in accordance with democratic principles, requiring that the Prime Minister be the leader of either the majority party or coalition in the Lok Sabha. Thus, the President's function is largely formal in the appointment process, with the executive authority vested in the Prime Minister and his Council of Ministers.

Despite significant Constitutional powers, the President of India functions within the bounds of the advice provided by the Council of Ministers, led by the Prime Minister, as stipulated in Articles 74(1) and 75 of the Indian Constitution. This framework ensures that the government's executive actions are carried out by elected representatives accountable to the legislature, thereby supporting the principles of Parliamentary democracy.

Summarised Overview

The President, as the head of state, holds significant ceremonial duties and acts on the advice of the Council of Ministers, with appointment done by an electoral college. The Vice President's role primarily presides over the Rajya Sabha, stepping in as acting President when required. The Prime Minister leads the Council of Ministers, guiding national policy and administration, with ministers responsible for implementing government functions. Together, these offices ensure cohesive governance and administrative continuity.

Assignments

1. Analyse the powers, term of office and impeachment procedure of the President of India.
2. Evaluate the powers and responsibilities of the Prime Minister of India, providing examples of their impact on governance.
3. Discuss the functions and significance of the Council of Ministers and the Cabinet in policy formulation and implementation.
4. Compare the roles and responsibilities of the President and the Prime Minister in the Indian political system.
5. Examine the Constitutional and functional dynamics between the President and the Council of Ministers in a detailed research paper.

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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

The Judiciary

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ identify and analyse the Constitutional provisions and legal mechanisms that ensure judicial independence in India
- ▶ understand the different types of jurisdictions of the Supreme Court: original, appellate, advisory and review jurisdictions
- ▶ assess the composition of the Supreme Court and the High Courts, including the qualifications for judges and the process of appointing judges

Background

The Indian judiciary performs the function of upholding the rule of law and delivering justice. It operates independently from the executive and legislative branches, as mandated by the Indian Constitution, to ensure a system of checks and balances. India's judicial structure is hierarchical, with the Supreme Court at the apex, followed by the High Courts in each state and various subordinate courts beneath them. Judicial appointments, particularly in the Supreme Court, follow a collegium system to maintain judicial independence while ensuring accountability. Through Public Interest Litigation (PIL), the judiciary enables citizens to bring issues of public concern to the courts, fostering judicial activism. The Supreme Court's authority to conduct judicial review allows it to nullify laws and executive actions that conflict with Constitutional principles. The Basic Structure Doctrine further safeguards the Constitution's core values from being undermined by amendments. This comprehensive framework ensures that the Indian judiciary continues to uphold democratic values and protect fundamental rights. This unit helps the learners to have a clear outlook regarding the structure and functioning of the Indian Judiciary.

Keywords

Supreme Court, Judicial Activism, Judicial Review, Writs, Justice.

India has an integrated judicial system. The Supreme Court of India is the nation's highest judicial body and the ultimate appellate Court. It enforces both central laws and state laws. The Supreme Court plays a vital role in Constitutional interpretation, safeguarding fundamental rights and administering justice.

Discussion

2.3.1 Composition of the Supreme Court

❑ Appointed by President

The Supreme Court of India comprises a Chief Justice of India and 33 other judges. The President appoints the Chief Justice and other judges. The Chief Justice of India serves as the head of the judiciary and is responsible for the administration of the Supreme Court. Apart from the Chief Justice of India, the President of India appoints other judges based on recommendations from the collegium system, which consists of the Chief Justice of India and four senior judges of the Supreme Court. The Parliament determines the number of judges in the Supreme Court, which has the authority to increase the number through legislation. This composition aims to ensure a diverse and knowledgeable bench capable of adjudicating various legal issues.

2.3.1.1 Collegium and the appointment of Judges in the Supreme Court

❑ Merit, seniority and expertise in the law

The appointment process for judges in the Supreme Court follows a rigorous procedure outlined in the Indian Constitution. The President appoints judges based on the recommendations of the collegium system. This system evolved through judicial interpretation rather than explicit Constitutional provision. In the Collegium system, the Chief Justice of India, along with a panel of the four senior-most judges of the Supreme Court, holds the authority to recommend appointments and transfers of judges. The collegium evaluates candidates based on their merit, seniority and expertise in the law. Merit is a crucial criterion to ensure that only qualified persons are appointed to the bench. Seniority within the judiciary is also given significant



weight in the appointment process, reflecting the importance of experience and institutional knowledge. Additionally, the collegium considers diversity in its recommendations, aiming for representation from different regions and genders to ensure a balanced and inclusive judiciary.

Despite its significance, the appointment process in the Supreme Court has faced criticism, primarily concerning transparency and accountability. Critics argue that the collegium system lacks transparency, as its deliberations are not public, leading to concerns about favouritism and arbitrariness in appointments. Significant Merits and drawbacks of the Collegium system are as follows:

2.3.1.2 Qualification, Term of the Office and Impeachment of Judges

Judges are crucial in upholding the law and ensuring justice within a nation. In India, the qualifications required for judges vary based on the level of the judiciary.

Supreme Court Judges:

A person must be a citizen of India.

- ▶ The individual must have served as a judge of a High Court or of two or more such Courts in succession for at least five years or
- ▶ He or she should have been an advocate of a High Court or two or more such Courts in succession for at least ten years or
- ▶ The person must be, in the opinion of the President, a distinguished jurist.

High Court Judges:

A person must be a citizen of India.

- ▶ He or she should have held a judicial office in the territory of India for at least ten years or
- ▶ The individual should have been an advocate of a High Court or of two or more such Courts in succession for at least ten years.
- ▶ These qualifications ensure that individuals appointed to the

judiciary have sufficient legal knowledge, experience and understanding to interpret and apply the laws effectively.

Term of Office of Judges

The term of office for judges is another significant aspect designed to protect judicial independence. Supreme Court judges hold office until the age of 65, while High Court judges serve until they reach the age of 62. Judges may resign from their positions by submitting their resignation to the President of India. Furthermore, they can be removed from office through impeachment on the grounds of proven misbehaviour or incapacity. This fixed tenure and the provision for resignation or removal are essential in safeguarding the judges from external pressures and influences, allowing them to perform their duties with impartiality and independence.

Impeachment of Judges

Impeachment is a critical procedure that ensures judges' accountability while protecting them from frivolous or politically motivated removal attempts.

☐ Rigorous process

The impeachment process can be initiated in either House of the Parliament and requires a motion supported by a minimum of 100 members of the Lok Sabha or 50 members of the Rajya Sabha. Upon acceptance, a committee comprising a Supreme Court judge, a High Court Chief Justice and a distinguished jurist investigates the allegations. If the committee finds the judge guilty, the motion is debated in Parliament and it must be approved by a two-thirds majority of the members present and voting in each House. Once both the Houses approve the motion, the President of India orders the judge's removal. This rigorous process ensures that judges are removed only in cases of genuine misconduct or incapacity, thereby upholding the judiciary's independence and preventing its misuse for political purposes.

The qualifications, term of office and impeachment procedures for judges in India are meticulously designed to maintain a competent and independent judiciary. The rigorous qualifications ensure that only experienced and knowledgeable individuals are appointed as judges. The fixed term of office, coupled with the stringent impeachment process, protects judges from undue influence, allowing them to uphold the law and the Constitution without fear or favor.



2.3.2 Independence of Judiciary: Meaning and Mechanism

Judges play an important role in society. Their functions are important and many. They cannot perform these functions impartially unless they are independent from outside pressure. They should be free from the influences and pressure from the other two branches, political parties, pressure groups and vested interests. Only an important and independent judiciary can protect the individual's rights and provide equal justice without any fear or favour. The Constitution has made several provisions to ensure the independence of the judiciary. The factors for the independence of the judiciary are given below.

1. Method of Appointment

The method of appointment ensures independence. There are three different methods of appointing judges;

(1) Election by the legislature (2) Election by the people and (3) appointment of judges by the executive. Among these methods, the method of appointment by the executive is considered the most commendable. This method is also not free from defects, but the other two methods are not advisable. To make this method free from defects, the power of appointment should not be vested in the chief executive alone. It shall be ideal if prior consultation with judicial authority is made obligatory for the chief executive.

❑ Method ensure independence of Judges

The Constitution of India does not leave the appointment of the judges of the Supreme Court to the discretion of the executive. The executive is required to consult the judges of the Supreme Court and High Courts in the appointment of the judges of the Supreme Court.

2. High Qualifications

The interpretation of law requires technical skills and legal qualifications. The judges must be legal luminaries, learned and skilled in their profession. It is preferable if the judges are selected from the lawyers who have shown their merit at the bar. The independence of the judiciary demands high legal qualifications for the judges.

3. Security of Tenure

The judges should be given security of tenure. Once appointed, they hold office during good behaviour and not during the pleasure of the Executive. In India, a difficult process is prescribed by the Constitution to remove the judges from the bench. They can be removed from office by an order of the President on the grounds of proved misbehaviour or incapacity. It is a quasi-judicial process known as impeachment.

High Salaries

The salary of the judges is fixed and not subject to the vote of the legislature. These salaries and allowances are fixed by the Constitution and charged to the consolidated fund of India. They are not subject to the vote of the legislature. During the term of their office, their salaries and allowances cannot be altered to their disadvantage except in financial emergencies. Besides, the judge needs a sufficiently high salary so that his social position and method of living inspire confidence.

Separation of the judiciary from the executive

The independent administration of justice by the judiciary is largely determined by the degree to which the judiciary is immune from executive control. Article 50 of the Constitution directs the state to take steps to separate the judiciary from the executive. It emphasises the need to secure the judiciary from interference by the executive.

Power to Punish for its Contempt

The Supreme Court and the High Courts have the power to punish any person for contempt of court. This power is essential for maintaining the impartiality and independence of the judiciary.

Prohibition of Practice After Retirement

The independence of the judiciary demands that the judges do not practice after retirement. A judge who desires to practice after retirement may not remain fair in discharging his functions. Therefore, there should be a legal ban on practice by the judges of the High Court after retirement. In India, Article 124 (7) prohibits a retired judge of the Supreme Court from appearing

and pleading in any court or before any authority within the territory of India.

Ban on Appointments after Retirement

The independence of the judiciary demands that no retired judge be made eligible for any political or administrative office. Judges should be legally forbidden from holding any office of profit after retirement.

However, the above-mentioned factors are not enough to make the judges independent. In reality, independence and impartiality depend upon the consistency of the judge. Justice is considered one of the divine functions, and judges are described as the gods on earth. If the judges lack legal insight, integrity and freedom of conscience, the whole edifice of the judiciary will collapse like a house of cards. Therefore, it is suggested that the judges possess integrity, wisdom, faithfulness to the Constitution, firmness of character and above all, honesty and independence.

2.3.3 Jurisdiction of the Supreme Court

❑ Three important jurisdiction

The authority granted to a legal body, such as a court, to administer justice within a specified area of responsibility is commonly known as Jurisdiction. This authority enables the Court to hear and decide cases, interpret and apply laws and enforce legal judgements within its scope. The powers and jurisdiction of the Supreme Court may be divided into three:

1. Original Jurisdiction (Article 131)
2. Appellate Jurisdiction (Article 132)
3. Advisory Jurisdiction (Article 143)

Original Jurisdiction

Original Jurisdiction refers to its authority to hear original examining witnesses and finally give decisions. The Supreme Court has exclusive jurisdiction over disputes involving the Government of India and one or more States or between different States, if the dispute involves any legal or factual question affecting the existence or scope of a legal right.

❑ Initial adjudicator

The Supreme Court's Original Jurisdiction encompasses its authority to hear cases that begin directly at the Supreme Court level rather than on appeal from lower courts. This Jurisdiction is especially crucial in certain disputes and Constitutional matters, allowing the Supreme Court to act as the initial adjudicator. The primary aspects of the Supreme Court's original Jurisdiction include:

1. Disputes between the Centre and States or between States: The Supreme Court holds exclusive original Jurisdiction over any dispute between:
 - The Government of India and one or more States.
 - The Government of India and any State or States on one side and one or more other States on the other side.
 - Two or more States.
2. This jurisdiction is applicable when the dispute involves a legal or factual question affecting the existence or extent of a legal right. This provision helps resolve significant inter-governmental conflicts, impacting federal relationships and governance.
3. Enforcement of Fundamental Rights: Article 32 grants the Supreme Court the original jurisdiction to enforce Fundamental Rights. Citizens can directly approach the Supreme Court if they believe their Fundamental Rights have been violated. The Court can issue various writs to implement these rights, including:
 - Habeas Corpus: To release a person from unlawful detention.
 - Mandamus: To compel a public official or the government to perform a mandatory duty.
 - Prohibition: To prevent lower courts from exceeding their Jurisdiction.
 - Quo Warranto: To challenge a person's claim to a public office.
 - Certiorari: To transfer a case from a lower court to itself for review.
4. Transfer of Cases: The Supreme Court can transfer civil or criminal cases from one High Court to another or from

one subordinate Court to another of equivalent jurisdiction if it deems such a transfer is necessary for ensuring justice. This is vital in cases where impartiality, convenience or other significant reasons are questioned.

5. **Withdrawal of Cases:** If cases involving the same or substantially similar legal questions are pending before one or more High Courts, which are of general importance, the Supreme Court can withdraw those and decide such cases. This ensures uniformity and consistency in the interpretation of the law across the country.
6. **International Commercial Arbitration:** The Arbitration and Conciliation Act of 1996 empowers the Supreme Court to entertain applications and make decisions related to International Commercial Arbitration. This enhances India's role as a center for international arbitration and provides a streamlined process for resolving international commercial disputes.

Through these facets of its original jurisdiction, the Supreme Court plays a pivotal role in maintaining Constitutional balance, protecting fundamental rights and providing a direct forum for resolving significant disputes that affect the country's federal structure and governance.

Appellate Jurisdiction

☐ Substantial question of law

Article 132 provides for the appellate jurisdiction of the Supreme Court. It is in the power of the Supreme Court to hear appeals over the decision of the High Courts' judgments, decrees, or final order if the High Court certifies that the matter involves a "substantial question of law." The court has appellate jurisdiction over civil, criminal and Constitutional cases.

Appeals in Constitutional, Civil and Criminal Matters: Article 132 of the Constitution allows an appeal to the Supreme Court from any judgment, final order or degree of a High Court in India if the High Court certifies that the case involves a matter of substantial question of law as to the interpretation of the Constitution. This ensures that significant Constitutional issues receive final adjudication from the highest court.

Through its appellate jurisdiction, the Supreme Court ensures that errors in the application of the law by lower courts are corrected, significant legal questions are uniformly resolved,

and the principles of justice are upheld throughout the country. This role is crucial for maintaining the integrity of the legal system and the rule of law in India.

Appeal by Special Leave (Article 136)

Article 136 grants special leave to appeal any judgement or matters passed by any court. However, there is no special leave to appeal to appeal over the decision of a tribunal constituted by or under any law relating to the armed forces.

Advisory Jurisdiction

The Supreme Court has been granted advisory jurisdiction by Article 143 of the Indian Constitution. The President can seek the Supreme Court's opinion on any significant question of law or fact when the President deems it expedient. This advisory jurisdiction has its roots in the Government of India Act of 1935, specifically Section 213(1), which established the advisory role of the Federal Court. The essence of this section was adopted into Article 143 of the Indian Constitution.

☐ Purely advisory

It is important to understand that the Supreme Court's jurisdiction under Article 143 is purely advisory and does not bind the President or the Government. The Court provides its opinion to the President without issuing any orders or decrees.

The President of India has, so far, referred 13 matters to the Supreme Court under this provision. The advisory jurisdiction stands out because, unlike other types of jurisdiction, it does not resolve disputes but offers legal advice on significant national issues. Notable cases under this jurisdiction include the Berubari Union (1960), the Kerala Education Bill (1958) and the Ayodhya Dispute (1993).

Review Jurisdiction

The Supreme Court exercises review jurisdiction under Article 137 of the Constitution, which empowers it to revisit its own judgements and orders. This authority is also outlined in Order XL, Part VIII of the Supreme Court Rules, 1966.

A review petition can be filed before the Supreme Court within 30 days of the relevant judgement, accompanied by certification from an advocate on record.

Notably, the exercise of review jurisdiction is at the discretion



of the court, which may decline to review its earlier decision. A review will lie in the Supreme Court on:

1. the discovery of new and important matter of evidence
2. mistake or error in the face of the record, and any other sufficient reason.

In R. D. Sugar Vs. Nagaraj case the Supreme Court observed that a judgement of the final court of the land is final. A review of such judgement is an exceptional phenomenon. It is permitted only in case of glaring error or other established ground is made out. In a case of substantial error, it can be reviewed.

Supreme Court as a Court of Records

Supreme Court is a court of records. Its records (decisions, rulings, etc.) are admitted to be of evidentiary value, and they are not to be questioned when they are produced before any court; they are recognised as legal precedents and references.

According to Article 141, a law the Supreme Court declares is binding on all courts. However, the Supreme Court is not bound by its decision.

2.3.4 Judicial Review

❑ Examine the constitutionality

A prominent feature of the Indian Constitution is an independent judiciary having the power of judicial review. As the custodian of the Constitution, the judiciary is vested with the power of judicial review. It is the power of the judiciary to examine the constitutionality of legislative enactments and executive orders. It means that the Constitution is the supreme law of the land and any law inconsistent with the Constitution is void.

Need for Judicial Review

Judicial review is needed for the following reasons:

1. To uphold the principle of supremacy of the Constitution;
2. To maintain federal equilibrium;
3. To protect the Fundamental Rights of citizens.

The function of judicial review is a part of the Constitution. It is a part of the Constitutional interpretation itself. The essential

❑ Union, State and concurrent lists

requisites of a system of judicial review are a written and rigid Constitution and a federation involving the division of powers and Fundamental Rights. All these requisites are there in the Indian Constitution. However, the term “Judicial Review” is nowhere in the Constitution. However, the court’s power is inherent in several provisions of the Constitution. For instance, Article 13 provides that a law inconsistent with Fundamental Rights is void. The same Article also prohibits the state from making laws that take away or abridges the Fundamental Rights.

According to Article 246 (3), the state legislature has the exclusive power to make laws on any subject in the state list. This means that the Parliament shall not make any law on the subject in the state list, except during an emergency under Article 249. The Supreme Court can decide this. Further, Article 251 lays down that if the Parliament made a law in the state list under Article 249 (in the national interest) and under Article 250 (in times of emergency) and if it conflicts with any law made by the state legislature on the same subject, the law made by the state legislature shall be inoperative. The Supreme Court again determines this. Similarly, Article 254 provides that in case of inconsistency between the central and state laws on any item in the concurrent list, the central laws shall prevail over the state laws. The Supreme Court can also decide this. Thus, it will appear that the power of judicial review is very much a part of the Indian political system.

The Constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the ground that:

1. It infringes the Fundamental Rights;
2. It is outside the competence of the authority which has framed it;
3. It is repugnant to the Constitutional provisions.

On various occasions, the Supreme Court struck down acts as violative of the Constitution. For instance, the Gold Control Act was partially struck down in 1967, and the nationalisation of 16 banks was held ultra-vires Constitution by the court. The Supreme Court struck down the presidential de-recognition order of the princes and their private purses and privileges were restored. Similarly, the Supreme Court used the power

of judicial review in the Kesavananda Bharati case (1973), Minerva Mills case (1980), Bommai case (1994) and so on. The Parliament overcame the judgements in certain cases by suitably amending the Constitution.

In 2007, in a significant judgement (IR Coelho V State of Tamil Nadu), the Supreme Court held that there could be no blanket immunity from judicial review of the IX Schedule of the Constitution. The court held that judicial review is in the basic structure of the Constitution. The court also held that the laws placed in the IX schedule since the Kesavananda Bharati case are subject to judicial review to examine whether they violate the “Basic structure of the Constitution.”

However, there are many criticisms against the doctrine. The criticisms can be seen as follows:

1. Frequent interference of the judiciary in governmental policies and decisions can create uncertainty and instability in governance.
2. Another problem is that it delays legal dispute resolution and creates a backlog in the court system.
3. It is also feared that judicial review can lead to judicial overreach. It may encroach upon the domain of the legislature and the executive.
4. Critics argue that the activism of unelected judges can undermine the powers of elected representatives. This goes against the basic principle of democracy.

In conclusion, judicial review is the cornerstone of Constitutional law in India. Whatever the criticisms, it may be stated that its role in safeguarding Constitutional governance and preventing the abuse of power cannot be questioned. It ensures that the Constitution is the supreme law of the land and that the government’s actions remain within the bounds of the Constitution.

Public Interest Litigation

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

❑ Protect interest of the public

The credit for the inauguration of this trend goes to the two learned judges of the Supreme Court, Justice V. R. Krishna Iyer and Justice P. N. Bhagavati. 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 Vs. 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 Vs. 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.

☒ Rights of public

PIL is not confined to enforcing the Fundamental Rights of an individual or a group of individuals. It would take 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 Bhagavati, 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.



The court took a quick liberal view. They took the stand 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 for the weaker sections. However, the Supreme Court observed that PIL is not a pill or panacea for all wrongs.

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.

Judicial Activism

❑ Override the powers of Parliament

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.

The judiciary can declare an act violative of Fundamental Rights 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.

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.

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. Through its activism, the court ordered the release and compensation of children and bonded labourers, the closing down of factories omitting poisonous gases or amending the outdated prison laws.

In a major judgement, the Supreme Court held that the bonded labourers should be identified, released and rehabilitated after the release (Neerja Chandran Vs. State of Madhya Pradesh). Likewise, in M. C. Mehta Vs. State of Tamilnadu, 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 to attract disqualification.

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 the 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.

2.3.4.1 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 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 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.

2.3.4.2 Criticism and Controversies

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

- ▶ **Judicial Over reach:** 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 over reach.
- ▶ **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.
- ▶ **Resource Constraints:** The increasing number of PILs and activist judgements can strain the judiciary's resources, affecting its ability to dispense justice efficiently. The judiciary's capacity 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.

The Basic Structure of the Constitution

The doctrine of “Basic structure” of the Constitution is a principle introduced by the Supreme Court in the landmark judgement in *Kesavananda Bharati and Others Vs. Union of India* (1973). As per this doctrine, certain core principles and features of the Constitution are inviolable and cannot be amended or altered by the Parliament. Any amendment that seeks to alter

❑ Landmark judgement



or abolish a basic feature is deemed unconstitutional and void. Thus, it safeguards against any arbitrary or radical changes in the Constitution.

The evolution of the basic structure can be traced from the issue of the right to property and the first Constitutional amendment in 1951. The validity of the First Amendment (which curtailed the property right) was challenged in the Supreme Court in *Shankariprasad Vs. Union of India* (1952). The Supreme Court held that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend fundamental rights. The court observed that the word law under Article 13 includes only ordinary law and not Constitutional amendments. In *Sajjan Singh Vs. State of Rajasthan* (1965), the Supreme Court also agreed with its earlier decision in *Shankariprasad*.

But in *Golak Nath Vs. State of Punjab* (1967), the Supreme Court overruled its earlier decision. The court held that the Parliament cannot abridge or take away any fundamental right. Further, the court observed that constitutional amendments are also law within the meaning of Article 13. In other words, the court held that Fundamental Rights cannot be amended to implement the Directive Principles of State Policy.

To counter this widely criticised decision, the Parliament passed the 24th Amendment. The act amended Article 368. It declares that the Parliament can amend any part of the Constitution, including Fundamental Rights under Article 368. The court also said that the amendment is not a law within the meaning of Article 13. The Amendment was challenged in *Kesavanand Bharati Vs. State of Kerala* (1973). The court, by a majority judgement, upheld the 24th Amendment. However, the court observed that the Parliament has wide powers to amend the Constitution. It extends to all the Articles of the Constitution. However, the amending power is not unlimited and does not include the power to destroy or abrogate the “Basic structure or essential features” of the Constitution. The Supreme Court, however, did not lay down what it meant by the “Basic structure.”

The Parliament developed the 42nd Amendment of 1976 to overturn the Basic Structure theory. This Act amended Article 368 and declared that there are no limitations on the constituent power of the Parliament. No amendment can be called into question in the court of law on any ground, including that of the

contravention of Fundamental Rights. The Amendment was challenged in the Supreme Court in the case of *Minerva Mills Vs. Union of India* (1982). The Supreme Court invalidated the amendment as it excluded judicial review, which is the basic structure of the Constitution. This ruling was again upheld by the Supreme Court in *Waman Rao Vs. Union of India*, *Indra Sawhney Vs. Union of India* and *S. R. Bommai Vs. Union of India*.

The present position is that the Parliament can amend any part of the Constitution, including Fundamental Rights, but added a restriction, namely, “that it cannot amend the basic structure of the Constitution.” However, the court does not indicate what is intended to be covered by this basic structure. However, the following have emerged from various judgements as “the basic structure of the Constitution”:

1. Supremacy of the Constitution.
2. Republican and Democratic form of government.
3. Separation of powers.
4. Secular character of the Constitution.
5. Federal character of the Constitution.
6. Unity and integrity of the nation.
7. Welfare state.
8. Judicial Review
9. Parliamentary system
10. Rule of Law
11. Fundamental Rights and Directive Principles in certain cases.
12. Principles of equality
13. Free and fair elections.
14. Independence of judiciary
15. Limited power of the Parliament to amend the Constitution.



16. Principle of reasonableness
17. Powers of the Supreme Court under Articles 32, 136, 141 and 142
18. Powers of the High Court under Articles 226 and 227.

The doctrine of the Basic structure stands as a cornerstone of Constitutional jurisprudence. It provides a framework for preserving the fundamental principles and values of the Constitution.

2.3.5 The High Court and Subordinate Courts

In the Indian judiciary, high courts and subordinate courts are pivotal elements in dispensing justice.

- ▶ **High Courts:** Serving as the apex judicial bodies within their respective states or union territories, High Courts exercise authority over designated territorial domains and wield both original and appellate jurisdiction.
- ▶ **Appellate Jurisdiction:** High Courts predominantly operate as appellate courts, adjudicating appeals from lower courts, tribunals and quasi-judicial bodies within their territorial purview. They meticulously scrutinise decisions made by subordinate courts to ensure the correct application of legal principles and the administration of justice.
- ▶ **Original Jurisdiction:** Additionally, High Courts possess original jurisdiction in matters involving Constitutional issues, inter-state disputes and other significant matters of public concern, thereby serving as the primary forum for addressing critical legal disputes.
- ▶ **Supervisory Role:** High Courts assume a supervisory role over subordinate courts within their jurisdiction, overseeing their operations to ensure the effective administration of justice. They wield the authority to issue writs, orders or directives to uphold fundamental rights and maintain the rule of law.
- ▶ **Subordinate Courts:** Constituting the backbone of the judiciary, subordinate courts handle the bulk of civil and criminal cases at the grassroots level.
- ▶ **District Courts:** At the district level, District Courts function as the primary trial courts presided over by District Judges. They possess jurisdiction over civil and criminal

cases within their territorial boundaries.

- ▶ **Specialised Tribunals:** In addition to District Courts, specialised tribunals and courts have been established to address specific types of disputes. These include Family Courts, Labour Courts, Consumer Courts and Sessions Courts, each dedicated to resolving family disputes, labour disputes, consumer grievances and serious criminal offences, respectively.
- ▶ **Appellate Structure:** Appeals on decisions rendered by subordinate courts are elevated to the respective High Court within the jurisdiction for further review. Subordinate courts play a pivotal role in the judicial process by promptly and efficiently adjudicating disputes, ensuring justice for all.

High Courts and subordinate courts collaborate within a hierarchical judicial framework, aiming to deliver justice effectively across all social strata. While High Courts serve as appellate bodies and exercise supervisory functions, subordinate courts function as trial courts, resolving disputes at the grassroots level. This multi-tiered system guarantees the fair and efficient administration of the rule of law and safeguarding citizens' rights.

Summarised Overview

The Indian judiciary, particularly the Supreme Court, plays a crucial role in upholding constitutional values and protecting citizens' rights. Its independence is safeguarded by specific appointment processes for judges, ensuring neutrality and integrity. Judicial activism has allowed the judiciary to interpret laws progressively, often through Public Interest Litigations (PIL), which empower citizens to seek justice on broader social issues. The Supreme Court's powers include original, appellate, and advisory jurisdictions. The "basic structure doctrine" reinforces the judiciary's role in protecting fundamental constitutional principles, preventing amendments that could alter the Constitution's core framework, and ensuring the democratic foundations of governance.



Assignments

1. Evaluate the appointment process of judges in the Indian judiciary and suggest reforms for improving transparency.
2. Discuss the various functions of the Indian judiciary and how they contribute to the maintenance of law and order.
3. Critically examine the concept of judicial review in India and its significance in upholding the Constitution.
4. Investigate landmark judicial review cases in India and their implications on the legal and political landscape.
5. Assess the challenges faced by the Indian judiciary in delivering timely and effective justice and propose potential solutions.

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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

Federalism: Process and Operational Dynamics



UNIT 1

Features of Indian Federalism and Constitutional Provisions

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ understand the concept of federalism and its various forms across the world
- ▶ gain insights into the evolution of federalism in India
- ▶ able to identify the essential features of Indian federalism
- ▶ analyse the federal and unitary features of the Indian Constitution
- ▶ explore the dynamics of cooperative and competitive federalism in India
- ▶ examine the constitutional provisions related to Indian federalism

Background

Federalism is a system of governance where power is constitutionally divided between a central government and various political subdivisions, such as states or provinces. This structure permits multiple levels of government to function simultaneously, each with its distinct jurisdiction and powers, thereby harmonising the requirements of national unity with regional diversity. The core principle of federalism is shared sovereignty, meaning that national and regional governments have supreme power within their respective spheres.

Keywords

Federalism, Division of Powers, Unity in Diversity, Cooperative Federalism, Competitive Federalism

3.1.1 Federalism: Meaning of the Concept

❑ National unity and autonomy

Federalism is a political system in which powers are divided and distributed between a central government and regional governments, such as states or provinces, allowing each level to have authority in certain areas. This system is designed to balance the need for national unity and the benefits of local autonomy. Renowned political scientist Daniel J. Elazar describes federalism as “a mode of political organisation that unites separate polities within an overarching political system, allowing each to maintain its fundamental political integrity.” This arrangement ensures that different levels of government can operate independently in their spheres while cooperating on shared interests.

❑ Kenneth Wheare on federalism

Constitutional scholar Kenneth Wheare states that federalism involves a “method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.” This dual sovereignty allows for diverse policies that reflect different regions’ unique preferences and needs while maintaining a cohesive national framework. Federalism promotes democracy by bringing government closer to the people, encouraging political participation and preventing the concentration of power in a single entity. This balance of governance helps to accommodate diversity and fosters innovation through localised experimentation.

3.1.1.1 The Historical Origins and Evolution of Indian Federalism

Ancient and Medieval India

❑ Maurya and Gupta empires

India’s federalism can be traced back to ancient and medieval times. Diverse political entities and administrative systems characterise the history of the Federal Structure. Ancient India, known for expansive empires like the Maurya and the Gupta, implemented decentralised governance with a central authority overseeing provincial administrations. The Mauryan Empire, led by Emperor Ashoka, exemplified this with a sophisticated administrative setup where appointed officials managed provinces (called Janapadas), marking an early form of federal

governance with local autonomy under central supervision. The Gupta era further cemented these ideas, emphasising local self-governance through village councils and regional autonomy, establishing fundamental principles of decentralisation. This ancient Indian federalism balanced central authority and regional independence, promoting stability and prosperity across the subcontinent.

Medieval Period and the Islamic Empires

The medieval era witnessed the ascendancy of Islamic empires in India, notably the Delhi Sultanate and later the Mughal Empire. These regimes introduced centralised governance while respecting diverse regional identities and cultural practices. For instance, the Delhi Sultanate organised provinces (Iqtas) governed by appointed officials (Iqtadars), granting significant autonomy in administrative affairs. Under the Mughal Empire, India experienced a blend of centralised authority and regional self-rule. Provinces (Subahs) were governed by Subahdars, who wielded substantial administrative control under the overarching authority of the Mughal emperor. This period featured diverse cultures and regional identities coexisting within a unified imperial structure, influencing subsequent concepts of federalism in India.

❑ Iqtas and Iqtadars

British Colonial Rule and Administrative Reforms

The onset of British colonial rule in India brought about a significant transformation in governance, introducing reforms that shaped the evolution of federalism. The British East India Company was initially governed through presidencies and provinces, each enjoying varying degrees of autonomy under the Company administration. The Regulating Act of 1773 and subsequent reforms progressively concentrated power in the British hands, gradually reducing local autonomy. The Government of India Acts of 1858, 1909 and 1919 further restructured governance by establishing legislative councils and expanding central authority while introducing limited provincial autonomy. The Montagu-Chelmsford Reforms of 1919 introduced dyarchy in provinces, dividing powers between “transferred” and “reserved” subjects under British supervision. These reforms laid the groundwork for Indian aspirations toward self-governance and greater autonomy, paving the way for the demand for federalism during the independence movement.

Independence Movement and the Constituent Assembly Debates

□ Union, State and concurrent list

The Indian independence struggle, led by figures like Mahatma Gandhi, Jawaharlal Nehru and Sardar Patel, articulated a vision of federal governance to accommodate India's linguistic, cultural and regional diversity. Deliberations in the Constituent Assembly during the 1940s extensively discussed the post-independence structure of governance, culminating in the drafting of the constitution. The constitution enshrined federal principles by clearly defining powers between the Union and the States through the Union List, the State List and the Concurrent List, outlining responsibilities and mechanisms for resolving disputes, fostering cooperation between central and state governments and promoting cooperative federalism.

Post-Independence Developments and Contemporary Federalism

□ Finance Commission and Inter-State Council

Since independence, India's federalism has evolved through various phases, adapting to socio-economic changes and political dynamics. The landmark reorganisation of states along linguistic lines in 1956 acknowledged and respected regional identities within the federal framework. Economic reforms, including introducing GST, and streamlining taxation and fiscal policies promoted cooperative federalism through consensus-building and revenue-sharing mechanisms. Institutions like the Finance Commission and the Inter-State Council continue to play critical roles in balancing financial resources and promoting equitable development across regions. Judicial interpretations, particularly by the Supreme Court of India, have clarified federal principles and resolved disputes between the Union and the States, reinforcing the constitutional framework of federalism.

Indian federalism, rooted in ancient and medieval governance systems, has evolved over centuries through political and administrative transformations. From decentralised empires to colonial rule and independence, India's federal structure maintains a delicate equilibrium between centralised authority and regional autonomy. The constitution of India emphasises federal principles and mechanisms for cooperation and continues to guide the nation in navigating diverse challenges while upholding unity and integrity. As India progresses, federalism remains pivotal in its democratic governance, accommodating diverse aspirations and ensuring inclusive nationwide development.



❑ Central and regional governments

3.1.2 Features of Federal Polity

A federal polity is a system of governance in which authority and powers are constitutionally partitioned and distributed between a central or national government and regional or state governments. This division of power is crucial in balancing national unity with regional autonomy, ensuring that both levels of government have defined roles and responsibilities. The concept of federalism aims to promote effective governance, accommodate diverse regional interests and uphold principles of democracy and unity within a country.

Salient Features of a Federal Polity

- 1. Written Constitution:** A federal constitution must be a written constitution. The foundation of a federal state is a complicated document. It will be practically impossible to maintain the supremacy of the constitution unless the terms of the constitution have been written down.
- 2. Division of Powers:** One of the fundamental features of federalism is the clear division of powers between the central and state governments. This division is typically outlined in a written constitution, which specifies the areas of authority for each level of government. For instance, in India, the constitution delineates powers into Union List (for central government), State List (for state governments) and Concurrent List (for both). However, in cases of conflicts between the central law and the state law on any item in the concurrent list, the central law shall prevail over the state law.
- 3. Dual Government System:** Federalism involves two distinct levels of government that operate independently within their respective spheres of authority. Each level of government has its own legislative, executive and judicial branches to enact laws, implement policies and adjudicate disputes within its jurisdiction. This dual system allows for efficient governance and responsiveness to local needs.
- 4. Constitutional Supremacy:** In a federal polity, the constitution serves as the supreme law of the land. All powers- executive, legislative and judicial - are subordinate to and controlled by the constitution, whether they belong to the centre or the state. The constitution should be binding on

the federal and the state governments. Neither government should be able to override the constitution.

- 5. Independent Judiciary:** An independent judiciary plays a crucial role in federal systems by interpreting the constitution, adjudicating disputes between the central and state governments and safeguarding the rights of citizens. The judiciary ensures that actions taken by both levels of government comply with constitutional principles and limits on their authority.
- 6. Flexibility and Adaptability:** Federalism allows flexibility and adaptability to accommodate diverse regional interests and changing socio-economic conditions. States or regions within a federal system may have varying laws, policies and programmes tailored to their needs, provided they do not contravene the constitution or federal laws.
- 7. Cooperative Federalism:** While federalism emphasises division and autonomy, it also encourages cooperation and collaboration between different levels of government. Cooperative federalism involves joint decision-making, coordination of policies and shared responsibilities on issues of national importance, such as security, economic development and environmental protection.

The features of federalism—such as a written and rigid constitution, division of powers, dual government system, constitutional supremacy, an independent judiciary, flexibility and cooperative federalism—contribute to its success in managing diverse societies and addressing complex governance challenges. By fostering collaboration and respecting regional identities, federal systems can achieve inclusive development and uphold democratic values, making federalism a cornerstone of many modern democratic nations.

3.1.3 Unitary and Federal Features of the Indian Constitution

Unitary Features of the Indian Constitution

- 1. Single citizenship:** Generally, in a federation, there is a provision for double citizenship - citizenship of the union and citizenship of each state. In the U.S.A., dual polity is followed by dual citizenship. Though the constitution of India is federal, it provides for a single citizenship. In India,



there is only one citizenship, *i.e.*, Indian citizenship. There is no state citizenship. Every Indian is a citizen of India and enjoys the same right of citizenship no matter in what state he/she resides.

2. **Strong centre:** Division of power favours the centre. Firstly, the union list contains more subjects than the state list; secondly, more important subjects have been included in the union list. Thirdly, the centre has overriding authority on the concurrent list. Fourth, the residuary power of legislation has been left with the centre. However, in the U.S.A., they are vested with the states.
3. **States are not indestructible:** The state in India has no right to territorial integrity; unlike other federations, India is not “the indestructible union of indestructible states.” The Parliament of India, by unilateral action, may form new states, increase or reduce the area of the states, change the boundaries of the states or even change the names of the states. The very existence of the states thus depends upon the sweet will of the union government. Hence, the Indian Federation is “an indestructible union of destructible states.”
4. **Flexible Constitution:** Generally, a federal constitution is rigid, as in the case of the U.S.A. This has been done to assure the states that the centre cannot easily amend the constitution. In a true federation like the U.S.A., the constitution is rigid. However, in India, a good number of the provisions of the constitution can be amended by the Parliament with a simple majority.
5. **No equality of state representation:** In India, the states have not been given equal representation in the upper chamber of the Parliament (Rajyasabha). Representation is given to the states based on population. In the U. S. A.; on the other hand, all states are given equal representation in the upper chamber (Senate), irrespective of size and population.
6. **Appointment of Governor:** The Governors of the states are appointed by the President and answerable to him. He acts as an agent of the centre. Through him, the centre exercises its control over the states. There are provisions in the constitution under which the governor must send certain state laws for the President’s assent. The President has the power to veto those state laws.

- 7. Emergency Provisions:** The constitution envisages three kinds of emergencies - National, State, and financial. During emergencies, the distribution of powers undergoes a vital change. The centre becomes all-powerful, and the states go into total control of the centre. In a sense, during the period of emergencies, the whole government of India functions as a unitary form of government.
- 8. Integrated judiciary:** The constitution establishes a unified or integrated judicial system with the Supreme Court at the top and the states' High Courts below it. The single system of courts enforces both central and 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.
- 9. Common All India Services:** There are certain services common to the centre and the states, of which the IAS, IPS and IFS are the existing examples. Members of these services are recruited and trained by the centre. The centre also possesses ultimate control over them. Thus, these services violate the principle of federalism. The federal and state governments in the U. S. have separate public services.

Integrated audit machinery: The Comptroller and Auditor General of India audits the accounts of the central government and those of the states. However, the President makes his appointment and removal without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller General, on the contrary, has no role concerning the accounts of the States.

Appointment of the Judges of High Courts: High Courts are essentially states' courts. But their judges are appointed, transferred and removed by the President.

Federal Features of the Indian Constitution

- ▶ **Dual Polity (Article 1):** Article 1 declares India as a "Union of States," emphasising its federal structure. This recognises the dual polity comprising the Union (central government) and individual states, each possessing distinct spheres of authority.
- ▶ **Division of Powers (Articles 245-255):** Articles 245 to 255 delineate legislative powers between the Union, State, and Concurrent Lists. The Union government is authorised to



pass laws on any item in the union list. Regarding the concurrent list, the union and states can make laws on any item in the concurrent list.

- ▶ **Written Constitution (Part XI):** Part XI embodies India's written constitution, detailing the distribution of powers, rights and duties among the central government, states and other entities. This written document serves as the supreme law of the land, ensuring legal clarity and stability.
- ▶ **Supremacy of the Constitution (Article 245):** Article 245 establishes the supremacy of the constitution over all laws and actions within India. Union and State legislations must conform to constitutional provisions, with judicial review ensuring adherence to federal principles.
- ▶ **Independent Judiciary (Articles 124-147):** Articles 124 to 147 establish an independent judiciary that upholds the constitutional integrity. The judiciary interprets laws, resolves disputes between the Union and the states and safeguards individual rights, maintaining a balance of power in the federal structure.
- ▶ **Bicameral Legislature (Article 79):** Article 79 provides for a bicameral legislature — comprising the Lok Sabha (House of the People) and the Rajya Sabha (Council of States) — reflecting federal principles. Most states also feature bicameral legislatures, reinforcing representation and governance at multiple levels.
- ▶ **Supreme Court as Arbiter (Articles 131-136):** Articles 131 to 136 grant the Supreme Court jurisdiction to adjudicate disputes between the union and states, ensuring federal equilibrium. This role as arbiter promotes harmony and resolves conflicts within India's federal framework.
- ▶ **Election Commission (Articles 324-329):** Articles 324 to 329 establish the Election Commission of India, responsible for conducting free and fair elections at the Union and state levels. The Commission upholds federal principles by ensuring electoral integrity and empowering democratic representation.

These features underscore India's complex federal structure, balancing centralised authority with regional autonomy to accommodate its diverse socio-cultural landscape within a unified constitutional framework.

❑ Blends federal and unitary features

3.1.4 India as a Quasi-Federal State

India's federal structure is unique and is often described as "quasi-federal" because it blends federal and unitary features. This unique configuration is embedded in the constitution of India, which delineates the division of powers between the central government and the states while maintaining a strong central authority. This design balances the need for national unity and accommodating India's vast diversity.

The following are the features that make Indian Federalism a quasi-federal

- ▶ **Constitutional Framework and Central Dominance:** The Indian constitution creates a dual polity with a clear division of powers, outlined in three lists: the Union List, the State List and the Concurrent List. The Union List encompasses subjects only the central government can legislate, reflecting central dominance. The State List covers areas under the exclusive jurisdiction of state governments. The Concurrent List includes subjects where both the Centre and states can legislate, but central laws prevail in case of conflict. This structure, however, leans towards central supremacy, especially evident during emergencies. Articles 352, 356, and 360 grant the Centre extensive powers to intervene in state matters during national, state or financial crises, respectively.
- ▶ **Single Constitution and Appointment of Governors:** Unlike purely federal systems, India operates under a single constitution that governs both the centre and the states, underscoring the unitary aspect of the Indian polity. Furthermore, the central government appoints state governors who act as its representatives. Governors hold significant powers, such as reserving specific bills passed by the state legislature for the consideration of the President. This mechanism ensures that the centre retains influence over state legislation and administration.
- ▶ **Financial Dependency and Administrative Services:** States in India are financially dependent on the centre. The Finance Commission, appointed by the President, recommends distributing central taxes between the centre and the states. Grants and loans from the central government are crucial components of state budgets, leading to financial dependence that can limit state autonomy. Addition-

ally, All-India Services such as the Indian Administrative Service (IAS) and Indian Police Service (IPS) further centralise authority. Though recruited by the centre, officers from these services serve in both central and state administrations, ensuring a cohesive administrative framework across the country.

- **Implications of Quasi-Federalism:** The quasi-federal structure of India has several implications. On the one hand, a solid central control can lead to uniform policies and efficient administration in critical areas such as defence, foreign policy and economic management. This centralisation can promote national integration and coherence, essential in a diverse country like India. On the other hand, this structure can undermine state autonomy, leading to conflicts between state and central governments. Political dynamics often reflect this tension, mainly when different parties govern the centre and states, resulting in challenges to policy implementation and governance issues.
- **Regional Disparities and Political Dynamics:** The financial dependency of the states on the centre can exacerbate regional disparities. Wealthier states often demand more autonomy and a more significant share of resources, while less developed states seek increased central assistance. This dynamic creates a complex political landscape where regional identities and demands must be balanced against national interests. Moreover, the centralisation of power and the role of governors can sometimes lead to perceptions of biased interventions by the central government, further straining centre-state relations.

India's quasi-federal structure represents a pragmatic blend of federalism and unitarism, tailored to address the country's diverse and complex realities. While it allows a solid central leadership necessary for maintaining national unity and integrity, it also challenges state autonomy and inter-government relations. Effective governance in such a system requires continuous dialogue, constitutional reforms and mechanisms that promote cooperative federalism. Balancing the inherent tensions in this quasi-federal framework is crucial for India's political stability and equitable development, ensuring that national and regional aspirations are adequately addressed.

3.1.4.1 Co-operative Federalism in India

- ☐ Centre and States agree to cooperate

Indian federation is a classic example of cooperative federalism. Prof. Morris John observed that Indian Federalism is a kind of cooperative federalism where bargaining takes place between the centre and the states, but ultimately, a solution comes out, and both agree to cooperate. In India, common policies that affect the government are promoted through discussions, agreements and compromises. This is evident from many provisions of the constitution, such as the provisions enabling the Parliament to make laws on any subject in the state list at the joint request of two or more states. The scheme of administrative and financial relations between the centre and the states points towards the direction of cooperation. This is done through the allocation of funds from the union budget to the states and through the provision of grants in aid for specific purposes. In this context, a brief discussion of such cooperation is highly warranted.

1. Inter – State Council

- ☐ Advisory body

Article 263 of the constitution provides for the establishment of an Inter-State Council. The council is appointed by the President if it appears to him that the public interest will be served by its establishment. The council is responsible for examining, discussing and recommending methods for improving cooperation between the centre and the states. Its function is mainly advisory.

In June 1990, the Inter-State Council was formally constituted by the President. The Prime Minister heads the council, which includes six Cabinet Ministers and the Chief Ministers of all the states and the union territories. In 1996, a Subcommittee was appointed to go into the Sarkaria Commission Report and suggest acceptable recommendations.

2. Zonal Councils

Zonal Councils have been established by the State Reorganisation Commission to advise on matters of common interest to each of the five zones – northern, southern, eastern, western and central. The Council aims to secure cooperation and coordination between the States, Union Territories and the Union, particularly with respect to economic and social development. Creating the Zonal Council is a logical outcome of the re-organization of states.



Each Zonal Council consists of Chief Ministers and two other ministers of each state in the zone, as well as administrators in the case of Union Territories. The union home minister has been nominated to be the zonal councils' chairman.

3. Adjudication Mechanism

Article 262 authorises the Parliament by law to provide for the adjudication of disputes or complaints concerning the use, distribution or control of water of any interstate river or river valley. The Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction regarding such disputes or complaints. Accordingly, the Parliament passed the River Board Act of 1956 and the Interstate River Water Disputes Act. The Water Disputes Act empowers the union government to set up tribunals to settle interstate water-related disputes. The tribunals' decision shall be final and binding on all the parties in the dispute.

4. Full Faith and Credit Clause

Article 261 provides that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the union and all states. According to Article 261(3), the final judgement or orders delivered or passed by civil courts in any part of India can be executed anywhere in the country according to law. This is known as the full faith and credit clause.

5. All India Services

Besides the separate services for the union and the states, the constitution provides for creating All India Services, which are common to the union and the states. This is to ensure uniformity of Administration. According to Article 312, the Rajyasabha authorises the Parliament to create one or more All India services. The Union Public Service Commission recruits the members of the services. This provision aims to ensure greater centre-state cooperation and inter-state coordination. It also enables the centre to exercise control over states in matters of execution of union laws.

6. Integrated Judicial System

Though India has a double polity, there is no dual system of administration of justice. The constitution establishes an

integrated judicial system with the Supreme Court at the top and the state High Courts below. The single system of court enforces both central and state laws.

7. University Grants Commission (UGC)

UGC is a statutory body created to promote and coordinate university education and enhance teaching standards, examinations and research.

8. Democratic Decentralisation

The 73rd and 74th constitutional amendments provided the three-tier governing structure envisaging cooperation between national, regional and local governments as a further step toward a cooperative federation.

9. NITI Aayog (National Institution for Transforming India)

NITI Aayog is India's policy-making institution (think-tank). It aims to boost economic growth and foster cooperative federalism. It is a non-statutory body established in the year 2015. NITI Aayog replaced the 65-year-old Planning Commission. Unlike the Planning Commission, it has no power to allocate funds to the states, which is the responsibility of the Ministry of Finance. It is an advisory body with the Prime Minister as the chairman. A vice-chairman is appointed by the Prime Minister. The governing council comprises all the states' Chief Ministers and the Lt. Governors of Union Territories. In addition to this, some temporary members are selected from leading universities and research institutions. The Prime Minister creates regional councils for a fixed term to deal with specific issues. It consists of the state's Chief Minister and Lt. Governors of all the union territories. No doubt, NITI Aayog will go a long way in strengthening the federal spirit and cooperative federation.

□ Economic growth and foster cooperative federalism

GST Council

The GST Council was established in 2016 with the 101st constitutional Amendment. It inaugurated a new era characterised by the growth of centre-state relations and state-to-state cooperation. The centre and the states are authorised to impose taxes in India's constitutional scheme. In the spirit of cooperative federation, under GST, the constitution creates a



common platform for the GST council of both the centre and the states and gives up taxation power. It is levied directly on consumers by manufacturers to accomplish 'one nation and one tax' objectives.

In this context, Prof. Gram Vile Austin is right when he observed that Indian Federalism is a cooperative Federation. He said that though the constitution of India has created a strong central government, it has not made the state government weak and has not reduced them to the level of administrative agencies for the execution of the centre's policies. He described Indian federalism as a new kind of federalism to meet India's peculiar needs.

Competitive Federalism

On the other hand, Competitive federalism involves a vertical relationship between the Central and state governments, with a horizontal relationship among state governments. This concept gained prominence in India following the economic reforms of the 1990s. In a competitive federal system, states are encouraged to compete with one another to attract investments and resources. Economic endowments, resource availability and comparative advantages drive this competition. Globalisation has further highlighted disparities among states, intensifying this competitive environment.

Unlike Cooperative federalism, Competitive federalism operates outside the basic structure of the Indian constitution and is governed mainly by executive decisions. States compete among themselves and with the Union government to secure benefits and funds, incentivising improvements in administrative efficiency and developmental activities, thereby promoting growth and infrastructure development within each state.

❑ Vertical competition among governments

Cooperative federalism emphasises cooperation between the Centre and states for collective national goals, whereas Competitive federalism promotes vertical competition among governments to stimulate economic growth and development.

Competitive Federalism in India

Definition and Features: Competitive federalism focuses on competition among states to attract investment, improve governance and enhance public service delivery. It utilises the

autonomy of states to foster innovation and efficiency, driving national development through regional dynamism.

Constitutional Provisions

- ▶ **State Autonomy:** The constitution grants significant autonomy to states under the State List, allowing them to formulate and implement region-specific policies.
- ▶ **Devolution of Powers:** The 73rd and 74th Amendments promote decentralisation by empowering local self-governments (Panchayats and Municipalities), fostering competitive governance at the grassroots level.

Hindrances to Cooperative Federalism in India

The practice of cooperative federalism faces several challenges that hinder its smooth functioning.

1. **Centralisation of Power:** The central government often controls essential policies and resources. This can overshadow state governments' authority and decision-making capabilities, leading to tension and reduced autonomy for the states.
2. **Financial Disparities:** States depend heavily on central funding through grants and the Finance Commission's allocations. This financial dependency limits the ability of states to implement independent policies and exacerbates regional inequalities.
3. **Political Differences: Issues in India:** Different political parties in power at the center and the states can cause conflicts and reduce cooperation. Political rivalries often result in the central government withholding support for state initiatives or states resisting central policies.
4. **Legal and Constitutional Constraints:** The constitution delineates the distribution of powers between the centre and states, but rigid interpretations and legal disputes can cause friction. The overlapping jurisdiction in areas like education and health further complicates cooperative efforts.
5. **Coordination Issues:** Bureaucratic delays, communication gaps and ineffective intergovernmental mechanisms hinder coordination. A robust framework for dialogue and



collaboration is needed to ensure efficiency and reduce conflicts.

- 6. Uneven Development:** Disparities in economic development among states lead to tensions. Wealthier states often demand more autonomy and resources, while poorer states seek more support from the centre, complicating cooperative governance.
- 7. Regionalism and Linguistic Differences:** Strong regional identities and linguistic diversity can cause states to prioritise local issues over national interests. This regionalism sometimes leads to resistance against central policies, perceived as undermining state cultures and priorities.

Cooperative federalism is vital for a diverse and vast nation like India to foster unity and balanced development. However, the practice faces significant challenges, including centralisation of power, financial disparities, political differences, legal constraints, coordination issues, uneven development and regionalism. Addressing these hindrances requires reforms to promote decentralisation, economic independence for states and improved mechanisms for intergovernmental collaboration and dialogue. India can strengthen its federal structure and ensure harmonious and effective governance through concerted efforts.

Summarised Overview

The evolution of Indian federalism reflects the country's diverse socio-political landscape and historical context. Key features include a strong central government alongside significant state powers, embodying both unitary and federal characteristics. The constitution promotes cooperative federalism, encouraging collaboration between the centre and states in policy-making and implementation. However, challenges such as regional disparities, centralisation of power, and economic imbalances persist, complicating governance. Despite these hurdles, opportunities for strengthening federalism lie in enhancing state autonomy, fostering inclusive policies, and promoting greater participation of local governments, ultimately aiming for a more equitable distribution of resources and responsibilities across the federation.

Assignments

1. Define federalism and discuss its key characteristics.
2. Explain the historical evolution of federalism in India.
3. Compare and contrast different types of federal constitutions found around the world.
4. What are the essential features of Indian federalism?
5. Discuss the federal features of the Indian constitution.
6. Analyze the unitary features of the Indian constitution and their implications.
7. How does cooperative federalism operate in India? Provide examples.
8. Evaluate the challenges and opportunities of federalism in the Indian context.

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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

Conflicts and Issues in Center - State Relations

Learning Outcomes

After the completion of the course, the learners will be able to:

- ▶ understand the legislative, administrative, and financial aspects of centre-state relations
- ▶ analyse the role of the Governor in the context of Centre-State dynamics
- ▶ evaluate the financial relations between the centre and the states, including the impact of GST
- ▶ assess the implications of emergency provisions on state autonomy
- ▶ explore the demands for greater state autonomy and its implications for federalism
- ▶ identify and discuss major issues affecting center-state relations

Background

India's centre-state relations, characterised by a federal union with a centralising inclination, are inherently complex and often contentious. The Indian constitution outlines a cooperative framework where legislative, administrative and financial powers are shared between the centre and the states. However, this balance is frequently disrupted by various conflicts arising from the dynamic interaction of these powers. Legislative disputes arise when both levels of government legislate on concurrent subjects, leading to jurisdictional ambiguities. The central government's overriding powers during national emergencies further complicate these relations, often perceived as encroachments on state autonomy. Administratively, the role of the Governor, appointed by the centre but operating within states, is a consistent source of tension. The dual control over officers of All India Services creates friction between state governments and central authorities. Emergency provisions, such as the imposition of President's Rule, are contentious due to their potential misuse for political purposes. States' demands for greater autonomy

my to address regional aspirations and economic needs add another layer of complexity. Issues like language policies and cultural imposition further strain center-state relations. Effective measures, including recommendations from the Sarkaria Commission and the functioning of the Inter-State Council, are essential to mitigate these conflicts. Addressing these issues is essential for preserving the delicate balance of India's federal system and promoting equitable development across the nation.

Keywords

Legislative Relations, Administrative Relations, Financial Relations, Governor's Role, Emergency Provisions, GST (Goods and Services Tax), State Autonomy.

Discussion

3.2.1 Legislative Relations between the Centre and State in India (Articles 245-255)

A complex structure intended to balance power and promote cooperative federalism defines the legislative relations between the centre and the states in India. The Indian constitution outlines this relationship in detail, specifying the distribution of legislative powers and mechanisms to resolve conflicts. The critical components of legislative relations are summarised below, along with the relevant constitutional provisions.

Distribution of Legislative Powers

The constitution divides legislative powers between the centre and states into three distinct lists in the Seventh Schedule:

- **Union List (List I):** Contains subjects only the Parliament has the exclusive power to legislate. These subjects are of national importance and require uniform laws across the country. Examples include defence, foreign affairs, banking and atomic energy. Article 246(1) confers exclusive powers to the Parliament to make laws concerning any of the matters enumerated in the Union List.
- **State List (List II):** Contains subjects on which only the state legislatures have the exclusive power to legislate. These subjects are of local or state importance. Examples



include police, public health, agriculture, local governments, Fisheries, markets and soon. Article 246(3) confers exclusive powers to the state legislatures to make laws concerning matters enumerated in the State List.

- **Concurrent List (List III):** Contains subjects on which both Parliament and State Legislatures can legislate. The central law shall prevail in case of a conflict between central and state law on a concurrent subject. Examples include education, marriage and divorce, bankruptcy and forests. Article 246(2) empowers the Parliament and State Legislatures to make laws concerning matters enumerated in the Concurrent List.

■ Doctrine of Repugnancy

When both the centre and states legislate on a subject in the Concurrent List and there is a conflict between central and state laws, the doctrine of repugnancy applies. **Article 254(1)** states that if any provision of a law made by the state legislature is repugnant to a law made by the Parliament, the law made by the Parliament shall prevail, and the state law shall be void to the extent of the repugnancy. However, there is an exception to this rule. **Article 254(2)** specifies that if a state law made concerning a matter in the Concurrent List receives the President's assent, it can prevail in that state even if it is inconsistent with a central law, provided it does not conflict with any future legislation.

❑ Article 254(1)
and Article
254 (2)

■ Residuary Powers

Residuary powers are the authority to legislate on subjects not enumerated in the three lists. Article 248 confers upon the Parliament the sole authority to legislate on subjects not specifically listed in the three lists. This includes the power to levy residuary taxes.

Power of the Parliament to Legislate on State Subjects

Under specific circumstances, the Parliament can legislate on subjects in the State List:

- **Article 249:** If the Rajya Sabha declares by resolution supported by not less than two-thirds of its members present and voting, it is necessary in the national interest.
- **Article 250:** The Parliament can legislate on any subject in the State List during a national emergency.

- ▶ **Article 252:** When two or more states consent, the Parliament can legislate for those states on a matter in the State List.
- ▶ **Article 253:** The Parliament has the power to make laws for the whole or any part of the territory of India to implement international agreements, treaties and conventions.

Centre's Control Over State Legislation

Besides, the constitution empowers the centre to exercise control over the state legislation in the following ways:

1. The Governor can reserve certain bills passed by the state legislature for the president's consideration. The president enjoys absolute veto over them.
2. Bills on certain matters enumerated in the state list can be introduced in the state legislature only with the previous sanction of the president.
3. The centre can direct the state to reserve money bills and other bills passed by the state legislature for the Presidents' consideration during financial emergencies.

Thus, the constitution has assigned a position of superiority to the centre in the legislative sphere.

Administrative Relations between Centre and States

Part IX (Articles 256 to 263) discusses various provisions of administrative relations between the centre and the state.

3.2.2 Distribution of Executive Powers

The Executive power has been divided between the union and the states on the line of the distribution of legislative powers. Thus, the executive power of the centre extends to the whole of India regarding the matters on which the Parliament has exclusive power, the states' extend to their territory and the matters on which the state legislatures have exclusive power to make laws. Regarding matters of concurrent legislation, the executive power rests with the states except when a constitutional provision or Parliamentary law specifically confers it on the centre.

❑ Divided between the Union and States



Obligation of the states

The constitution has placed two restrictions on the executive power of the states:

The executive power of every state is to be exercised in such a way (a) as to ensure compliance with the law made by the Parliament and any existing law that applies in the state and (b) as not to impede or prejudice the exercise of the executive power of the centre in the state.

Centre's directions to the states

The centre is empowered to give directions to the states with regard to the exercise of the executive power of the states in the following matters:

1. the construction and maintenance of means of communication by the states;
2. the measures to be taken for the protection of the Railways within the state;
3. the provision of adequate facilities for instruction in the mother – tongue at the primary stage of education to children belonging to the linguistic minorities in the state and
4. the drawing up and execution of the specified schemes for the welfare of scheduled tribes in the state.

The coercive sanction behind the central directions under Article 365 is also applicable in these cases.

Co-operation between the Centre and the States

The constitution has certain provisions for maintaining the smooth working of the union and the state governments.

1. The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of water of any inter-state river and river valley (Article 262);
2. The President can establish an Inter-State Council (Article 263) to investigate and discuss subjects of common interest between the centre and the state; such a council was set up in 1990;
3. Full faith and credit to be given throughout the territory of India to public acts, records and judicial proceedings of the centre and every state;

4. The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to inter-state freedom of trade, commerce and intercourse. But no such authority has been appointed so far.

All India Services

The officers of the All India Services are recruited by the Union Public Service Commission by virtue of Article 312. These services are controlled jointly by the centre and the states. The ultimate control lies with the central government. They draw their salaries and allowances from the state as the centre determines. Still, the union home ministry can take any disciplinary action against these officers in consultation with the UPSC. The state cannot take any disciplinary action except suspending them.

□ Article 312

The object of the provision is to ensure greater interstate coordination and implementation of the central government's policies through these officers. This also enables the central government to exercise control over the state in matters of execution of union laws. However, the presence of All India Services further accords a predominant position to the centre.

Public Service Commission:

In the field of Public Service Commission, the centre-state relations are as follows:

1. The Chairman and members of the State Public Service Commissions, though appointed by the Government of the state, can be removed only by the President.
2. The Parliament can establish a joint public service commission for two or more states on the request of the state legislatures concerned. The President appoints the chairman and members of the commission.
3. The UPSC can serve the needs of a state at the request of the state Governor and with the approval of the President.
4. The UPSC assists the states (when requested by two or more states) in framing and operating schemes for joint recruitment of any service for which candidates possessing special qualifications are required.



Integrated Judicial System

Though India has a dual polity, there is no dual system of administration of justice. The constitution establishes an integrated judicial system. The integrated judicial system enforces both the central laws and state laws. Though High Courts are essentially state courts but the President appoints their judges. They can also be transferred and removed by the centre. The Parliament can establish a common High Court for two or more states.

Other Provisions

The constitution also contains the following provisions that enable the centre to exercise its control over the states.

1. Article 355: The Article imposes two duties on the centre;
 - a. to protect every state against external aggression and internal disturbances;
 - b. to ensure that the government of every state is carried out in accordance with the provisions of the constitution.
2. The Governor: Though the Governor is the constitutional head of the state, he is appointed by the President and holds office at the pleasure of the President. In actual practice, he acts as the agent of the centre in the state.
3. The State Election Commissioner: Though appointed by the state's governor, he /she can be removed only by the President.

3.2.3 Distribution of Tax Revenues (Articles 268 to 273)

☐ Division of tax revenues

- a. Taxes belonging to the union exclusively are customs, corporation tax, a surcharge on income tax and fees in respect of matters in the union list.
- b. Taxes belonging to the state exclusively are land revenue, stamp duties, except in documents included in the union list, succession duty, estate duty, income tax on agricultural land, tax on passengers and goods carried on in-land waterways, tax on land and building, tax on animals and boats, tax on on-road vehicles, tax on advertisements, tax

on entry of goods into local areas, sales tax, tolls, fee in respect of matters in the state list, tax on profession, trade etc.

- c. Duties levied by the union but collected and appropriated by the states, *e.g.*, stamp duties on the bills of exchange, excise duties on medical and toilet preparations (Article 268).
- d. Taxes levied and collected by the union but assigned to the states. Examples: 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, tax on the stock exchange other than stamp duties, tax on sale and purchase of goods other than newspaper *etc.* (Article 269).
- e. Taxes levied and collected by the union are distributed between the union and the states. For example, taxes on income other than agricultural income and duties of excise are included in the union list except for medical and toilet preparations (Article 270).

Grants-in-aid to the States

Under the constitution, the financial resources of the states are very limited, though they have to undertake many social welfare measures. Therefore, the constitution provides grants-in-aid to the states from central resources. There are two types of grants-in-aid: discretionary grants and statutory grants.

Statutory Grants

Article 275 empowers the Parliament to provide grants to the states that need financial assistance, but not to every state. Different sums may be fixed for different states.

Discretionary Grants

Article 282 empowers both the centre and the states to make grants for any public purpose, even if it is not within their legislative competence. Under this provision, the centre makes grants to the states. These grants are known as discretionary grants. The centre is under no obligation to give these grants and the matter lies at its discretion.



Other Grants

The constitution also provides a third type of grants-in-aid but for a temporary period. These grants are given for schemes of development, for the welfare of STs in raising the level of administration of scheduled areas and to the state of Assam for the development of tribal areas. 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.

Finance Commission

❑ The commission is required to make recommendations

Article 280 provides for a Finance Commission as a quasi-judicial body. It consists of a chairman and four other members. The chairman and members are appointed by the President every fifth year or earlier. The Parliament determines the qualifications. The commission is required to make recommendations to the president as to the distribution of net proceeds of taxes to be shared between the centre and the states. They also recommend the principles that should govern grants-in-aid.

Borrowing Powers of the Centre and the States

The following are the provisions about 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. The state can borrow within India (and not abroad) upon the security of the state's consolidated fund.
3. The central government can make loans to any state or give guarantees concerning loans raised by any state.
4. The state cannot raise any loan without the consent of the centre if any part of the loan which the government of India has made is still outstanding.

3.2.4 Role of the Governor in Centre-State Co operation and Tension in India

Governors in India play a crucial role in maintaining Centre-State cooperation and managing tensions, thereby

❑ Bridge between central and state governments

bridging the constitutional gap between the Union Government and the State governments. This role is defined by specific constitutional provisions and historical experiences that have shaped the dynamics of federalism in India.

Constitutional Provisions Governing the Governor's Role

The Governor's role in Centre-State relations is primarily governed by Articles 153 to 162 of the Indian constitution. These articles delineate the appointment, powers, duties and functions of the Governor, emphasising their dual role as the constitutional head of the State and the representative of the President of India.

Executive Powers and Discretion

The President appoints the Governor under Article 155 and holds office at the President's pleasure, ensuring accountability to the Union Government. Article 154 confers the executive authority of the State upon the Governors, making them the nominal head of the State government. While the Council of Ministers, headed by the Chief Minister, makes executive decisions, the Governor's approval is often required for certain decisions and appointments.

3.2.4.1 Role in Centre-State Relations

According to Article 159, the Governor pledges to uphold and defend the constitution and the law, thereby ensuring the adherence to constitutional principles in State governance. Article 163 provides the Governor with discretionary powers to intervene in specific situations, such as appointing a Chief Minister when there is a hung assembly or a breakdown of constitutional machinery.

3.2.4.2 Role in the Legislative Process

Article 174 empowers the Governor to summon and prorogue the State Legislature and dissolve the Legislative Assembly in case of a breakdown of the constitutional machinery. Additionally, Article 200 grants the Governor the authority to refuse to approve Bills passed by the State Legislature, commonly referred to as the Governor's veto power.



3.2.4.3 Role in Centre-State Cooperation

☐ Role in the federal structure

The governor of India serves as a crucial figure in fostering cooperation between the union government and the state governments. This role is pivotal in maintaining harmony and effective functioning within the country's federal structure. The Governor acts as a bridge, facilitating coordination across various domains, including administration, legislation and policy implementation.

In administration matters, the Governor's role involves ensuring that Union and State laws are effectively implemented within the State. They oversee the execution of policies and directives from the Centre, ensuring compliance, while also addressing state-specific concerns and needs. By convening meetings, consultations and discussions between the Centre and the States, Governors proactively resolve administrative issues promptly and foster a collaborative approach to governance.

☐ Advise state governments

Legislatively, the Governor's involvement extends to ensuring smooth legislative processes. They may advise the State government on matters of legislative importance, ensuring that State laws are in harmony with national policies and objectives. The Governor's role includes summoning and proroguing State legislatures, which is essential during critical legislative sessions or when a legislative deadlock needs resolution.

Moreover, in policy implementation, Governors act as catalysts for cooperative federalism. They facilitate dialogue between the Centre and the States, promoting consensus-building and joint initiatives on crucial national policies. By advocating cooperative federalism, Governors contribute to aligning State interests with national goals, thereby enhancing the overall effectiveness of governance.

☐ Role in the national crisis

Throughout history, Governors have played significant roles in promoting cooperation during various national crises and significant reforms. For instance, during periods of national crisis, Governors have convened meetings of the National Integration Council, emphasising their role in fostering unity and cooperation among States and the Centre. These councils have been instrumental in addressing inter-state disputes, promoting communal harmony and maintaining national unity.

Despite efforts towards cooperation, tensions between the Centre and the States may arise due to political instability or constitutional crises. In such situations, the Governor's discretionary powers are critical in restoring order and governance. According to Article 356, the Governor has the authority to propose a President's Rule in a State in the event of a breakdown of constitutional machinery. This intervention aims to stabilise governance and uphold democratic principles during times of crisis.

Additionally, Governors intervene in resolving disputes over jurisdiction, legislative conflicts and administrative issues between the Centre and the States. By impartially adjudicating disputes and ensuring adherence to constitutional principles, Governors mitigate tensions and foster a conducive environment for effective federal governance.

The role of the Governor in India's Centre-State relations has increasingly become a source both of tension and collaboration, particularly in recent developments involving Tamil Nadu, Kerala and West Bengal. While the constitution envisions the Governor as a neutral figure promoting harmony between the Centre and State governments, the role often extends into political mediation, sometimes resulting in conflict. In Tamil Nadu, disputes have emerged due to the Governor's delay in approving bills passed by the State legislature, which the State perceives as an overstepping of constitutional boundaries. Similarly, in Kerala, tensions have risen following the Governor's refusal to endorse certain legislation and his public critiques of the State government, leading to accusations that he is acting under the central government's influence to curtail the State's autonomy. In West Bengal, the strained relationship between the Governor and the State government has underscored the political dynamics that often shape the Governor's actions, resulting in a stalemate in governance. These examples demonstrate how the Governor's role, rather than fostering cooperative federalism, can sometimes heighten centre-state tensions, highlighting the need for clearer constitutional guidelines and reforms to ensure that the Governor's office remains impartial and aligned with its intended purpose.

❑ Tension and collaboration

3.2.5 Sarkaria Commission and Center - State Relations

The Sarkaria Commission, established in 1983 under the chairmanship of Justice R. S. Sarkaria, holds significant



❑ Strengthen cooperative federalism

importance in the context of Indian federalism. Its formation was a response to growing challenges and complexities in Centre-State relations since adopting the constitution in 1950. The commission was tasked with comprehensively examining these issues and making recommendations to strengthen cooperative federalism while addressing the concerns of regional autonomy and national unity.

The commission's mandate included a thorough review of the distribution of powers between the Centre and the States as outlined in the constitution. It focused on clarifying and refining the roles and responsibilities of both levels of government to ensure effective governance and harmonious relations. This examination encompassed legislative powers, financial relations, emergency provisions like Article 356 (President's Rule) and the role of Governors in maintaining constitutional balance.

❑ Distribution of legislative powers

One of the primary areas of scrutiny for the Sarkaria Commission was the distribution of legislative powers delineated in the Union List, State List and Concurrent List under Schedule VII of the constitution. It aimed to streamline these lists to minimise overlaps and conflicts, thereby enhancing clarity in the division of responsibilities.

Financial relations between the Centre and the States was another point of critical focus. The commission analysed revenue distribution, grants-in-aid mechanisms and fiscal autonomy to ensure equitable resource allocation while supporting regional development.

The role of Governors in Centre-State relations was also scrutinised. The commission examined their appointment processes, discretionary powers and functions as constitutional heads of State. Recommendations were made to strengthen the impartiality and effectiveness of Governors in fostering cooperation and resolving disputes.

3.2.5.1 Recommendations and Impact

In 1988, the Sarkaria Commission submitted its report, which contained comprehensive recommendations to optimise Centre-State relations. These recommendations sought to strike a balance between the autonomy of States and the integrity of the Union. Essential suggestions included guidelines for the

❑ Importance in federalism

judicious use of emergency provisions, enhanced financial autonomy for the States and a refined Governor's role to promote cooperative federalism.

The impact of the Sarkaria Commission's recommendations has profoundly shaped subsequent policies and reforms related to federalism in India. While not all recommendations were immediately implemented, the report provided a foundational framework for continued discussions and amendments in Centre-State relations. It is a crucial reference point for policymakers, constitutional experts and stakeholders interested in strengthening India's federal structure.

The Sarkaria Commission stands as a landmark initiative in Indian constitutional history, instrumental in addressing the evolving dynamics of federal governance. Its insights and recommendations have contributed significantly to fostering greater harmony, cooperation, and efficiency in Centre-State relations, thereby reinforcing the principles of democratic governance and unity in diversity.

3.2.5.2 Punchhi Commission (2007)

The Punchhi Commission, established in 2007 under the chairmanship of former Chief Justice of India M. M. Punchhi, was constituted to review the Centre-State relations in India and suggest appropriate changes within the constitutional framework. The need for such a commission arose from the evolving political dynamics and the changing nature of Centre-State relations, which required a fresh examination of the existing arrangements to ensure a balanced and effective federal structure.

❑ Seven volume report

The Punchhi Commission submitted its report in 2010, which is comprehensive and consists seven volumes. The Commission's recommendations covered a wide range of issues, including the role of the Governor, emergency provisions, the sharing of resources between the Centre and the States and the deployment of central forces in the States. The Commission emphasised the need for a more transparent and consultative process in Centre-State interactions to foster cooperative federalism.

One of the key recommendations of the Punchhi Commission was regarding the role of the Governor. It suggested that Governors be selected through a consultative process involving



❑ Role of Governor and selection process

the Chief Minister of the State concerned to ensure that their appointment is non-partisan and commands the confidence of the State government. The Commission also recommended that the Governor's discretionary powers be clearly defined to prevent misuse, particularly in matters related to the dismissal of State governments or the reservation of bills for the President's assent.

The Commission further proposed reforms to Articles 355 and 356 of the constitution, which deal with the imposition of President's Rule in States. It advocated stricter safeguards and procedures to be followed before invoking these articles to prevent their misuse and protect State governments' autonomy.

The recommendations of the Punchhi Commission have not yet been fully implemented, but they continue to serve as an important reference for ongoing debates on Centre-State relations in India. The Commission's report highlights the need for a dynamic and responsive federal system to adapt to the changing needs of governance while maintaining the balance of power between the Centre and the States.

3.2.6 GST and Conflict in Centre-State Relations

The Goods and Services Tax (GST) is a significant indirect tax reform introduced in India to simplify the country's complex taxation structure. It replaced many central and state taxes, aiming to create a nationwide market for goods and services. GST is levied on the supply of goods and services at each stage of the supply chain, from manufacturing to the final consumption point. It is designed to be a destination-based tax, which means that the tax is ultimately paid by the consumer who purchases the goods or services. Envisioned to create a unified market and streamline taxation, GST has significantly impacted Centre-State relations regarding cooperation and conflict.

Introduction of GST: GST was introduced in India on July 1, 2017, after prolonged deliberation and negotiation among the central and state governments. It replaced a complex structure of indirect taxes, including central excise duty, service tax and state-level taxes such as VAT, entry tax and entertainment tax. Implementing GST was expected to simplify tax compliance, reduce cascading effects and create a common market across state borders.

Cooperation in GST Implementation: The introduction of GST required extensive cooperation between the Centre and the States. constitutional amendments were made to empower both levels of government to levy and collect GST, with the central government administering Integrated GST (IGST) on interstate transactions and dividing revenue between the Centre and States through the GST Council. The GST Council, consisting of the Union Finance Minister and State Finance Ministers, was established as a deliberative body to make recommendations on GST rates, exemptions and other related matters.

Initially, there was a significant effort towards cooperative federalism in the GST regime. The GST Council meetings became platforms for consensus building, where decisions were taken through discussions and voting, reflecting a spirit of mutual accommodation and shared responsibility. States were assured compensation for any revenue losses during the initial years of GST rollout, fostering a sense of financial security and cooperation.

3.2.7 Emergency Provisions and Centre-State Relations

As outlined in the constitution under Articles 352 to 360, emergency provisions in India are crucial mechanisms designed to address extraordinary situations threatening the nation's security, integrity or financial stability. However, invoking these provisions often leads to significant conflicts in centre-state relations for several reasons.

❑ Article 352, 356 and 360

Firstly, declaring a National Emergency under Article 352 grants the central government expansive powers, including suspending fundamental rights and issuing directives to states. States view this centralisation of power as a threat to their autonomy and constitutional rights. States argue that such emergency measures should be used sparingly and only in cases of grave national peril, not to undermine state governments or impose central authority.

Furthermore, the President's Rule, invoked pursuant to Article 356 following the breakdown of constitutional machinery in a state, suspends the elected state government and places the state under direct central administration. This action is perceived as a drastic interference in state affairs, disrupting the democratic mandate and structure of governance established by the constitution. It often leads to political turmoil, with opposition



parties accusing the central government of using emergency provisions for partisan political gains rather than to address genuine constitutional breakdowns.

Legal and constitutional interpretations also contribute to conflicts. States may challenge the imposition of emergency provisions in courts, questioning the criteria and necessity for central intervention. These legal battles prolong the uncertainty and deepen the rift between the centre and the states, impacting cooperative federalism and trust in the federal structure.

Economic implications further exacerbate tensions. During a Financial Emergency (Article 360), the central government can issue directives to states on financial matters affecting state budgets and developmental projects. This can lead to disputes about fiscal autonomy and resource allocation, heightening economic stress between the centre and states.

Moreover, the perception of central overreach during emergencies undermines the collaborative spirit of federalism envisioned in the Indian constitution. States argue for a balance between central authority during crises and preserving their constitutional rights and regional autonomy.

Even though emergency provisions are essential to safeguard national interests during crises, their application often triggers conflicts in centre-state relations. Balancing the need for central intervention with respect for state autonomy and constitutional principles remains a persistent challenge in India's federal governance framework. It is imperative to strengthen collaboration and foster mutual confidence between the central and state governments during emergency situations to uphold the integrity and efficiency of India's federal system.

Federalism and Demand for State Autonomy

The demand for greater state autonomy in India has been a persistent issue that significantly impacts centre-state relations, often leading to complex challenges and occasional conflicts. This demand stems from various factors such as the preservation of cultural identity, fiscal independence, administrative authority and historical grievances. Here, we delve into several key issues that illustrate the impact of these demands on centre-state relations, highlighting specific cases from different states:

3.2.7.1 Fiscal Autonomy

❑ Delayed GST compensation

Fiscal autonomy is critical in India's center-state relations, encapsulating the states' persistent quest for enhanced control over their financial affairs. At its core, fiscal autonomy entails states advocating the authority to independently determine tax rates, administer tax collections like the Goods and Services Tax (GST) and allocate funds aligned with their specific developmental agendas. This demand arises from the states' aspiration to cater effectively to local needs and priorities, ensuring sustainable economic growth and equitable development within their respective regions.

The implementation of the Goods and Services Tax (GST) in India marked a significant milestone aimed at streamlining the country's indirect tax structure. However, concerns swiftly emerged among states, including Kerala, regarding delayed GST compensation payments assured by the central government. The promise of compensation was pivotal for states transitioning from previous tax regimes to GST, ensuring they did not face revenue shortfalls during the initial years of GST implementation. Timely disbursement of these funds was crucial for states like Kerala, heavily reliant on revenue from sales taxes and VAT under the erstwhile system, to maintain fiscal stability and fund various developmental initiatives across sectors such as infrastructure, healthcare, education and social welfare.

The delayed compensation payments sparked debates and negotiations between the central and state governments, highlighting the broader issue of fiscal autonomy. States argued that timely and adequate compensation was essential for financial planning and fulfilling commitments made to their citizens regarding public service delivery and infrastructure development. The issue underscored the complexities of fiscal federalism in India, where balancing central supervision with state autonomy in financial matters remains a perpetual challenge.

In response to these concerns, efforts were made to expedite the disbursement of GST compensation funds and address states' apprehensions regarding their fiscal autonomy. The dialogue between the centre and states continued to evolve, emphasising the need for a cooperative framework that respects both national interests and regional autonomy in fiscal management. This ongoing discourse underscores the dynamic

interplay within centre-state relations in India, where the quest for fiscal autonomy holds pivotal significance in defining the landscape of cooperative federalism and fostering equitable economic progress nationwide.

3.2.7.2 Administrative Autonomy

Administrative and legislative autonomy represents a crucial aspect of India's federal structure, reflecting states' aspirations for self-governance and independence in managing internal affairs. This demand stems from the states' desire to exercise greater control over administrative functions and legislative processes within their respective jurisdictions, free from excessive interference from the central government.

❑ Disputes over administrative autonomy

West Bengal has frequently found itself embroiled in disputes over administrative autonomy, particularly regarding the deployment and operational control of its state police forces. Such conflicts often arise when the central government intervenes in state-level administrative decisions, asserting its authority under various constitutional provisions or in matters of national importance. These interventions can lead to jurisdictional clashes and debates over the extent of central authority *vis-à-vis* state autonomy, highlighting the complex dynamics inherent in centre-state relations in India.

The deployment and operational control of police forces are critical issues pertaining to state governments' fundamental responsibilities in preserving law and order, ensuring public safety and upholding the rule of law within their territories.

States argue that administrative decisions related to police deployments should be left to their discretion, as they are best positioned to effectively assess local security needs and respond to specific law enforcement challenges.

When the central government asserts control over state police forces or mandates specific deployments, states like West Bengal have contested these actions, citing constitutional provisions that guarantee autonomy in matters falling within the State List or concurrent jurisdiction. The resulting conflicts often necessitate legal adjudication or political negotiations to resolve disputes and clarify the boundaries of administrative authority between the centre and the states.

These disputes underscore broader debates within Indian federalism about the balance of power between the Union and the states, with states demanding greater autonomy to tailor administrative policies and legislative frameworks according to local needs and preferences. The evolution of these discussions reflects the ongoing quest to harmonise central supervision with state autonomy, ensuring effective governance, while respecting the principles of federalism and decentralisation in India's diverse political landscape.

3.2.7.3 Cultural and Linguistic Autonomy

States with distinct cultural identities advocate autonomy to preserve and promote their cultural heritage through policies on language, education and cultural programmes. Tamil Nadu has historically asserted its linguistic autonomy, advocating policies that reflect its Dravidian cultural identity. This stance sometimes conflicts with central policies on language imposition and educational frameworks, illustrating tensions between state cultural autonomy and uniform national policies.

❑ Tamilnad asserts linguistic autonomy

Political Autonomy

Political autonomy is another contentious issue where states seek greater control over governance structures, electoral processes and political decision-making. Jammu and Kashmir, before the abrogation of Article 370, enjoyed special autonomous status under the Indian constitution. Revoking this provision and bifurcating the state into Union Territories sparked significant political and constitutional debates, highlighting the clash between state autonomy and directives of central governance.

❑ Abrogation of Article 370

The demand for state autonomy in India reflects diverse aspirations for regional self-governance, cultural preservation and redressal of historical injustices. However, these demands pose significant challenges to centre-state relations, requiring nuanced approaches to maintain national unity, integrity and effective governance within India's federal structure. Resolving these issues necessitates continuous dialogue, constitutional safeguards and political negotiations to address state aspirations while ensuring harmonious relations between the centre and the states.



Measures and Recommendations for Harmonious Relations between Centre and State in India

Harmonious relations between the centre and states in India are crucial for effective governance, balanced development and national unity. Several measures can be implemented to foster cooperation and mitigate conflicts:

Clear Communication and Consultation: Establishing robust communication channels and regular dialogue forums between the centre and states is essential. Forums like the Inter-State Council and GST Council should be utilised to discuss policy matters and resolve differences through consensus. This proactive approach ensures that states are involved in the decision-making processes from the outset, preventing misunderstandings and promoting cooperative federalism.

Respect for Federal Principles: Upholding the principles of federalism is fundamental. This involves respecting the autonomy of states in legislative, administrative and financial matters as enshrined in the constitution. The centre should refrain from unnecessary interference in state affairs unless mandated by constitutional provisions, thereby fostering mutual trust and respect between different levels of government.

Financial Empowerment and Transparency: Ensuring financial empowerment and transparency is crucial for maintaining harmonious relations. Timely and adequate compensation under the Goods and Services Tax (GST) regime is vital for state finances. Moreover, increasing the share of central taxes devolved to states, as recommended by Finance Commissions, enhances fiscal autonomy and enables states to implement developmental initiatives effectively.

Conflict Resolution Mechanisms: Strengthening conflict resolution mechanisms is necessary to address disputes swiftly and effectively. This includes bolstering legal frameworks and establishing independent tribunals to adjudicate jurisdiction and legislative and administrative disputes. Mediation and arbitration mechanisms should also be promoted to prevent escalations and facilitate amicable solutions.

Promotion of Cooperative Federalism: Promoting cooperative federalism through joint initiatives on national priorities such as infrastructure development, healthcare and education is beneficial. Collaborative efforts between the centre and the states harness synergies and resources, ensuring efficient delivery of public services and fostering objectives of national development.

Empowering Local Governance: Empowering local governance institutions such as Panchayati Raj Institutions and urban local bodies is essential for effective grassroots administration. Strengthening these institutions enables decentralised decision-making and the implementation of policies tailored to local needs, thereby enhancing responsiveness and efficiency in governance.

Capacity Building and Training: Investing in capacity building and training programmes for administrative officials at both central and state levels enhances governance capabilities. Training initiatives focused on administrative skills, technology adoption and best practices improve service delivery, transparency and accountability in governance processes.

Promoting Cultural Understanding and Unity: Encouraging cultural exchanges and celebrating diversity promotes national integration and unity. Programmes and initiatives that foster an understanding of diverse cultures and traditions across states contribute to building a cohesive national identity, transcending regional differences.

Implementing these measures and recommendations requires commitment from the centre and the states to uphold federal principles, promote transparency and foster collaborative efforts towards common national goals. By ensuring effective communication, respecting autonomy, resolving conflicts promptly and empowering local governance, India can strengthen its federal structure and achieve harmonious relations between different tiers of government.

Summarised Overview

Conflicts in center-state relations in India often arise from legislative, administrative, and financial dimensions. The central government retains significant legislative power, which can undermine state autonomy, while administrative challenges frequently lead to tensions in implementation. The Governor plays a pivotal role, acting as a bridge between the centre and states, but this role can become contentious, especially in politically sensitive situations. Financially, the introduction of GST has redefined revenue-sharing, streamlining tax collection but also intensifying states' dependency on the centre. Growing demands for greater center-state autonomy reflect the need for balanced federalism, emphasizing states' rights to self-govern and manage resources effectively.



Assignments

1. Explain the legislative relations between the centre and states in India.
2. Analyse the financial relationship between the centre and states, with a special focus on GST.
3. Evaluate the role of the governor in maintaining centre-state relations.
4. Discuss the implications of emergency provisions on state autonomy.
5. Examine the major demands for state autonomy in India.
6. Assess the measures and recommendations for improving centre-state relations as proposed by the Sarkaria Commission.
7. Propose recommendations for enhancing centre-state relations in the context of contemporary political and economic challenges.

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UNIT 3

Challenges, Continuity and Change in Indian Federalism

Learning Outcomes

After reading this unit, the learner will be able to:

- ▶ identify the primary challenges confronting Indian federalism today
- ▶ analyse the impact of economic liberalisation on the federal structure of India
- ▶ evaluate the role of political dynamics in shaping federal relations in India
- ▶ explore the legal and constitutional challenges influencing Indian federalism
- ▶ recognize the continuity and transformations within Indian federalism over time
- ▶ develop critical thinking skills to propose solutions for improving federal relations in India

Background

Indian federalism, a unique blend of unitary and federal features, has been a cornerstone of the country's governance since its independence. Over the decades, this system has faced numerous challenges that have tested its resilience and adaptability. A significant challenge is India's linguistic and cultural diversity, which has led to demands for greater autonomy by various states. While a source of strength, this diversity has also been a point of contention, occasionally resulting in secessionist movements and calls for reorganising state boundaries. Additionally, the economic disparities among states have posed a challenge as wealthier states push for more financial independence while poorer states seek more and better central assistance. The centralisation of power, especially during periods of single-party dominance, has often strained the federal balance, leading to conflicts between state and central governments.



In response to these challenges, Indian federalism has undergone significant changes and exhibited various trends. The rise of coalition politics since the 1990s has led to a more collaborative approach between the central and state governments, as national parties often rely on regional parties to form governments. This has increased the influence of regional parties and allowed more localised concerns to be addressed at the national level. Economic liberalisation and the Goods and Services Tax (GST) have also brought changes, aiming to create a more unified market across states while balancing state autonomy. Furthermore, judicial interventions and constitutional amendments have continuously shaped the federal structure, striving to balance unity and diversity. These evolving dynamics underscores the complexity and adaptability of Indian federalism in addressing its inherent challenges.

Keywords

Decentralisation, Economic Liberalisation, Political Dynamics, Fiscal Federalism, Regionalism, Constitutional Amendments

Discussion

3.3.1 Challenges to Indian Federalism

❑ Tests federal structure faces

Indian federalism, a complex and dynamic system designed to accommodate the country's vast diversity, continually grapples with various challenges. These challenges arise from the need to balance the autonomy of individual states with the central government's authority. As India navigates its path of development and modernisation, the federal structure faces tests that threaten its stability and coherence. Addressing these challenges is crucial to ensuring effective governance and maintaining the nation's unity. The following are the major challenges faced by Indian Federalism:

Regionalism

Regionalism poses a significant challenge to Indian federalism by emphasising regional identities and interests, often at the expense of national unity. Linguistic diversity, economic disparities and historical grievances drive this phenomenon. States with distinct languages, cultures and

economic conditions frequently feel marginalised by central policies that may not fully address their unique needs. For instance, Tamil Nadu's resistance to the imposition of Hindi and the northeastern states' demand for greater autonomy highlights how regional identities clash with national policies. These regional demands can lead to calls for more state autonomy, separate statehood or even secession, thereby straining the delicate balance of power between the Centre and the States.

❑ Effects
governance and
national unity

The impact of regionalism on Indian federalism is profound, affecting governance and national unity. It complicates the policy-making process as the central government must navigate a complex landscape of regional demands while ensuring cohesive national policies. Economic and administrative conflicts, such as disputes over GST compensation and control over state police forces, further exacerbate these tensions. Regionalism can lead to political instability, as seen in the periodic demands for new states and particular autonomous regions. To address these challenges, the Indian federal system must continuously evolve, balancing regional aspirations with the broader goal of national integration and development.

Centralised Amendment Power

❑ Weakens
cooperative
federal structure

The centralised amendment power in the Indian constitution poses a challenge to federalism by allowing the central government to unilaterally modify constitutional provisions, often without adequate consultation or consent from the states. This centralisation of power undermines the federal principle of shared sovereignty and equal participation of the states in the legislative process. For instance, significant constitutional amendments, such as the introduction of the Goods and Services Tax (GST), which fundamentally altered the financial autonomy of states, were perceived as being pushed through with minimal state input. This central dominance in constitutional amendments can lead to disenfranchisement among states, fostering tensions and weakening the cooperative federal structure envisioned by the constitution.

Moreover, the ability of the central government to amend the constitution to address its policy objectives can create instability and unpredictability for state governments. States may find their powers and functions redefined or diminished through constitutional amendments, impacting their governance capabilities and fiscal independence. This centralisation



challenges the federal balance and risks centralising power in ways that might not reflect the diverse needs and aspirations of India's varied regions. Consequently, a more inclusive and consultative amendment process is essential to strengthen Indian federalism and ensure that states remain integral stakeholders in the constitutional framework.

Language Conflicts

Language conflicts present a significant challenge to Indian federalism, as linguistic diversity often translates into political and cultural disputes. India's linguistic plurality, with 22 officially recognised languages and numerous regional dialects, means that language policy is a highly sensitive issue. Efforts to promote Hindi as a national language have met with resistance from non-Hindi-speaking states, such as Tamil Nadu, which perceive these moves as an imposition on their cultural identity. This resistance can lead to widespread protests and violent clashes, disrupting national unity and highlighting the deep-seated regional loyalties that challenge the federal framework.

❑ Complicate administration and governance

These linguistic tensions complicate the administration and governance of the country, as policies need to accommodate the linguistic preferences of diverse populations. Language conflicts can also affect education, employment and public services, where language requirements may favour one group over another, exacerbating regional inequalities. To manage these challenges, Indian federalism must embrace a flexible and inclusive language policy that respects regional identities while promoting national integration. Balancing linguistic diversity with the need for a cohesive national identity remains a complex and ongoing challenge for Indian federalism.

Absence of Fiscal Federalism

The absence of true fiscal federalism in India significantly undermines states' autonomy and financial independence. Fiscal federalism refers to the financial relationships between government units in a federal system, allowing states to control their revenue generation and expenditure. In India, however, the central government retains significant control over major financial resources, including taxes and grants. This centralisation of financial power restricts the ability of the states to generate revenue independently and limits their capacity to address local developmental needs effectively. For instance,

❑ Delay in GST compensation

reliance on central grants and delays in GST compensation have exacerbated fiscal stress in states, leading to tensions and conflicts.

With adequate fiscal autonomy, states can often implement region-specific policies and programmes that cater to their unique socio-economic contexts. This lack of financial independence hampers their development and can lead to regional disparities, where economically more robust states progress faster than those reliant on central assistance. The central government's dominant role in fiscal matters also means that state governments may need more incentives or capability to innovate and optimise local governance. For Indian federalism to function effectively, there needs to be a more balanced distribution of fiscal powers that empowers states to manage their resources while ensuring equitable development across the country.

Unequal Representation of States

Unequal representation of states in Indian federalism challenges the principle of equality among the constituent units. In the Rajya Sabha (Council of States), representation is not proportional to the population, leading to larger states having disproportionately higher influence than smaller states. This imbalance affects legislative processes and the allocation of resources, often resulting in policies that may not adequately reflect the needs of the more populous states. For example, despite having large populations, states like Uttar Pradesh and Maharashtra find their representation diluted compared to smaller states like Sikkim or Goa, which enjoy greater relative power in the Rajya Sabha.

This unequal representation can foster resentment and a sense of disenfranchisement among larger states, as their larger populations and diverse needs might not receive appropriate legislative attention. Additionally, this imbalance can skew national policy decisions and resource allocations, potentially favouring smaller states over larger ones. Addressing this challenge requires re-evaluating the principles guiding representation in federal structures to ensure that all states, irrespective of size, have a fair and equitable voice in the legislative process. Ensuring proportional representation that balances regional interests with national coherence is crucial for maintaining the integrity and functionality of Indian federalism.

❑ Effects resource allocation



The Indestructible Union with Destructible Units

- ❑ Parliament can form a new State

The concept of an “indestructible union with destructible units” refers to the central government’s power to increase the area of a state, reduce the area of any state, alter the boundaries of any state or even change the name of any state by passing a law by simple majority. Thus, the very existence of a state depends upon the will of the central government. This provision (Article 3) demonstrates the flexibility of the Indian constitution. By a simple majority and an ordinary legislative process, the Parliament may form a new state and alter the boundaries and the like of the existing states and therefore, change India’s political map.

The Supreme Court observed: “India is an indestructible union of indestructible states. This has created resentment among the people. A recent example is the bifurcation of Andhra Pradesh into Andhra and Telangana in 2014. It led to significant political turmoil and protests. Such a unilateral action by the centre can undermine federal principles and generate friction between the centre and states. Therefore, it is suggested that the state reorganisation be undertaken after a comprehensive consultation, considering the interests of all concerned. This will go a long way in ensuring healthy centre-state relations.

Office of the Governor

- ❑ Source of contention

The office of the Governor in India, designed as a link between the centre and the states, often becomes a source of contention and challenge to federalism. Governors are appointed by the President of India and are perceived as representatives of the central government within states. This arrangement can lead to conflicts, especially when Governors are seen as overstepping their constitutional role and interfering in state politics. Instances where Governors have dismissed state governments or refused to assent to state legislation without clear constitutional grounds have sparked accusations of central overreach. Such actions can destabilise state administrations and erode the autonomy of elected state governments.

The Governor’s role becomes particularly contentious during political instability, such as hung assemblies or coalition governments, where their discretionary powers can influence government formation. The perceived partiality of Governors in such situations can lead to allegations of bias and misuse of power, exacerbating centre-state tensions. To mitigate

these challenges, it is essential to delineate the Governor's constitutional role and ensure their actions are guided by impartiality and respect for state autonomy. Strengthening the accountability mechanisms for the office of the Governor can help maintain the balance of power and trust between the centre and the states.

Single Constitution and Citizenship

The existence of a single constitution and unified citizenship in India, while promoting national unity, can also present challenges to federalism by limiting the scope of state specific legal and civic identities. States in India do not have their constitutions and a uniform set of constitutional laws governs all citizens. This centralisation can sometimes stifle the distinct legal and cultural frameworks that states may wish to implement to reflect their unique regional identities. For instance, personal laws, land rights and local governance issues often see states pushing for more tailored legislative powers to better address their specific contexts.

The abrogation of Article 370, which granted special autonomy to Jammu and Kashmir, exemplifies such tensions where removing state-specific constitutional provisions led to significant political and social unrest. Balancing the need for a unified national framework with respect for regional diversity and autonomy is crucial for the health of Indian federalism. Providing states with greater legislative flexibility within the overarching constitutional framework can help address these challenges and promote harmonious centre-state relations.

Integrated Services

Integrated services, such as the All India Services (IAS, IPS, IFS), which operate under central authority but serve both central and state governments, can challenge Indian federalism. While these services ensure uniform standards of administration nationwide, they also place centrally appointed officers in key state administrative positions. This dual control can lead to conflicts between state governments and central authorities, particularly when state interests diverge from national policies. State governments often express concerns about the lack of control over these officers, crucial for implementing state policies and maintaining local governance.

❑ Instrument of central control



The central control over these officers' career progression and disciplinary actions can sometimes result in a lack of accountability to the state governments they serve. This can create a scenario where state policies are ineffective, leading to administrative inefficiencies and political friction. Strengthening the cooperative framework between the centre and states in managing these services, including greater state input in appointments and performance evaluations, can help mitigate these challenges. Ensuring that integrated services align with national and regional priorities is essential for maintaining the balance and effectiveness of Indian federalism.

Centralised Planning

Centralised planning in India, historically characterised by the Planning Commission and now by the NITI Aayog, often leads to challenges in federalism by imposing centrally designed policies and development priorities on states. This top-down approach can overlook individual states' unique socio-economic conditions and needs, leading to inefficiencies and regional disparities. States have frequently voiced concerns that centralised planning does not adequately reflect their priorities, resulting in development projects that may not align with local requirements or cultural contexts. The centralisation of planning authority can thus stifle state innovation and autonomy in economic development.

Economic Incompatibilities of the States

Economic incompatibilities among India's states pose a considerable challenge to federalism, as stark disparities in development and resources lead to tensions over resource allocation and policy priorities. Wealthier states like Maharashtra and Tamil Nadu often contribute more to the central revenue pool but may not receive commensurate benefits. On the other hand, poorer states like Bihar and Uttar Pradesh depend heavily on central financial assistance and may need more support to meet development goals. These economic disparities can lead to friction over the distribution of central funds and the design of national economic policies.

❑ Friction over distribution of central funds

Moreover, economic incompatibilities affect the implementation of national schemes and policies, which may only be uniformly suitable across some states. States with differing infrastructure, industrialisation and human capital face unique challenges that a one-size-fits-all policy cannot

adequately address. This can result in inefficient use of resources and suboptimal policy outcomes, further widening regional disparities. To mitigate these challenges, Indian federalism must promote fiscal federalism that allows states more autonomy in managing their finances while ensuring equitable resource distribution. Tailoring national policies to account for regional economic conditions can help foster balanced development and reduce tensions arising from economic incompatibilities.

External Forces

External forces, such as international relations and global economic trends, also challenge Indian federalism by impacting states differently and often requiring coordinated responses that can strain centre-state relations. Border states like Punjab, Jammu Kashmir and the northeastern states face unique security challenges due to their proximity to international borders. These states often require significant central assistance for security and development, leading to tensions over the degree of autonomy they retain versus the level of control exercised by the central government. Additionally, the centre's foreign policy decisions can directly affect these border states, necessitating a delicate balance between national interests and regional sensitivities.

Global economic trends, such as trade policies and international market fluctuations, affect states with varying degrees of industrialisation and economic integration. States with robust export-oriented industries, like Gujarat, might support liberal trade policies, while more agrarian states might be adversely impacted by such policies and demand protective measures. The central government's challenge is crafting foreign and economic policies addressing these diverse regional impacts without undermining national coherence. Effective federalism in India requires mechanisms for states to participate in foreign policy discussions and financial planning, ensuring that external forces do not exacerbate regional disparities or erode the federal structure.

3.3.2 Challenges to Contemporary Fiscal Federalism

Fiscal federalism, a cornerstone of India's federal structure, refers to the financial relationships between the central and state governments. It encompasses the allocation of taxation powers, revenue-sharing mechanisms and financial transfers designed to ensure a balanced and equitable distribution of

☐ Revenue sharing mechanisms

resources across the country. However, several contemporary challenges have emerged in recent years that threaten the stability and effectiveness of fiscal federalism in India. These challenges include issues related to GST compensation, the centralisation of financial powers, fiscal imbalances and the impact of unforeseen crises like the COVID-19 pandemic. Understanding and addressing these challenges is critical for maintaining cooperative federalism and ensuring sustainable development across all states.

GST Compensation and Revenue Sharing

One of India's most significant contemporary challenges to fiscal federalism revolves around the Goods and Services Tax (GST) compensation and revenue sharing. The introduction of GST in 2017 aimed to create a unified tax structure by subsuming various state and central taxes. However, this transition promised states compensation for any revenue loss due to the shift to GST. States are supposed to receive compensation for the shortfall in GST collections relative to their previous tax revenues for five years. Delays and shortfalls in these compensation payments have led to significant friction between the centre and states. States like Kerala and Punjab have repeatedly voiced concerns over delayed payments, arguing that this hampers their ability to plan and execute development projects. The financial stress caused by delayed compensation affects states' fiscal health and erodes trust in the central government's commitments.

Centralisation of Financial Powers

The increasing centralisation of financial powers is another critical challenge. While the constitution of India envisages a balanced division of financial resources between the centre and the states, there has been a perceived shift towards centralisation over the years. The introduction of centrally sponsored schemes, where the centre provides a significant portion of the funding but retains control over implementation, exemplifies this trend. These schemes often come with stringent conditions and limited flexibility for states to adapt them to local needs. This centralisation diminishes states' financial planning and autonomy in prioritization, leading to a mismatch between central policies and regional requirements. The central government controls crucial tax components like corporate tax and customs duty, limiting states' fiscal autonomy.

☐ More central schemes

Fiscal Imbalances and Dependency

Fiscal imbalances and dependency on central transfers remain persistent challenges. States with weaker revenue bases, particularly those in the northeast and poorer regions, heavily depend on central grants and transfers for their budgetary needs. This dependency creates a power imbalance where states may feel compelled to align with central policies, even when they may not suit their regional contexts. Such fiscal imbalances undermine the principles of cooperative federalism as states struggle to achieve self-sufficiency and equitable growth. Moreover, the criteria for determining the distribution of central grants often spark debates and discontent among states, with some arguing that the formulae used do not reflect their actual needs or contributions to the national economy.

Impact of COVID-19

The COVID-19 pandemic has exacerbated these challenges, placing unprecedented strain on the fiscal relationship between the centre and states. The economic slowdown and the increased expenditure on health and welfare measures have drastically reduced states' revenue collections while increasing their expenditure. The centre's decision to borrow and transfer funds to states as GST compensation during the pandemic was contentious, reflecting deeper systemic challenges in the fiscal federal structure. The pandemic highlighted the need for more flexible and resilient fiscal frameworks to better accommodate such shocks while ensuring that states have the necessary resources and autonomy to respond effectively to crises.

❑ Pandemic effected fiscal federalism

Addressing these contemporary challenges to fiscal federalism requires substantial reforms and continuous dialogue between the centre and the states. Reforms include revisiting the GST compensation structure, enhancing the autonomy of states in financial matters and ensuring a more equitable distribution of resources. Strengthening institutions like the Finance Commission, which periodically reviews the financial relations between the centre and the states, is crucial for maintaining a balanced fiscal federal structure. Continuous and constructive dialogue through platforms like the GST Council and Inter-State Council can help resolve conflicts and build a more cooperative federal relationship, ensuring that the diverse needs of all states are met while maintaining national coherence and stability. This way, India's federal structure can adapt to contemporary challenges and support sustainable and inclusive growth nationwide.



3.3.3 Changing Trends in Indian Federalism: Economic Liberalisation

□ Impact of globalisation

Economic liberalisation in India, which began in earnest in the early 1990s, has significantly influenced the dynamics of Indian federalism. The relationship between the Centre and the States in India has undergone a significant transformation since the 1990s. The involvement of State governments in the reform process has steadily increased, largely due to the demands of a market-oriented economy, which necessitates more decentralised governance. States now have greater autonomy in adopting and implementing structural adjustment programmes, fostering industrialisation, promoting trade and commerce and embracing entrepreneurial governance. The growing importance of intergovernmental mechanisms, such as the Inter-State Council and the National Development Council, has further curtailed the role of centralised planning. The centralising tendencies of the post-independence era have given way to a more confederal operation within India's political system.

The impact of globalisation on Indian federalism has been profound. It has led to the decentralisation of power, granting States and local self-governments more authority and encouraging the assertion of State rights. This shift has attracted significant foreign investment and introduced new concepts such as New Localism and People's Empowerment. However, the ability of States to capitalise on the opportunities presented by globalisation has been uneven. Researchers have identified a distinction between "forward states" and "backward states" regarding development. Forward states, such as Andhra Pradesh, Gujarat, Maharashtra, Kerala, and Karnataka have performed better on various development indicators. Consequently, it can be concluded that globalisation has created a broader space for trade and commerce for certain States, allowing them to claim greater autonomy in their respective domains and achieve better governance with reduced corruption.

Political Dynamics and Federal Relations

In recent years, Indian federalism has undergone significant shifts driven by evolving political dynamics and changes in federal relations. One notable trend is the increasing centralisation of power, often attributed to the political dominance of the central government. This shift has been facilitated by the emergence of strong central leadership,

particularly when a single party or coalition holds a decisive majority in the Parliament. This concentration of power has sometimes resulted in tensions with state governments, especially those led by opposition parties, as they perceive an encroachment on their autonomy and decision-making authority. For instance, centrally sponsored schemes and direct transfers to local bodies have been points of contention, as they bypass state governments and are seen as tools to exert central influence over state affairs.

❑ More role to regional parties

Another aspect of changing political dynamics is the role and impact of regional parties on federal relations. Regional parties have gained prominence in state politics and become crucial players in national coalitions. Their influence often shapes the policies and priorities of the central government, especially in coalition scenarios. The rise of regional parties has led to a more fragmented political landscape, requiring the central government to negotiate and collaborate with diverse political actors. This has had both positive and negative impacts on federal relations. On the one hand, it has strengthened federalism by ensuring that regional voices and issues are represented nationally. On the other hand, it has also led to conflicts and inconsistencies in policy implementation as different states push for their agendas and interests. For example, issues such as implementing the Goods and Services Tax (GST) and agricultural reforms have highlighted the complex interplay between the centre and states, with negotiations often reflecting individual states' political power and bargaining capacity.

India's changing political dynamics and federal relations reflect a complex and evolving federal structure. While trends of centralisation raise concerns about the erosion of state autonomy, the significant role of regional parties underscores the continued importance of accommodating diverse regional interests within the national framework. The challenge for Indian federalism lies in balancing these dynamics to ensure cooperative governance and the integrity of the federal system.

Legal and Constitutional Developments in Indian Federalism

Judicial Interventions

The judiciary has significantly influenced Indian federalism through its interpretations of constitutional provisions. The Supreme Court of India has been instrumental in delineating



the boundaries of state and central powers, ensuring that the federal structure is upheld. A landmark judgment in this regard is the *S. R. Bommai Vs. Union of India*. (1994). This case set critical precedents for the invocation of Article 356, which allows President's Rule in a state under certain conditions. In this case, the Supreme Court's ruling emphasised that the dismissal of a state government under Article 356 must be based on objective criteria and subject to judicial review. This judgment reinforced the principle of federalism by protecting state autonomy and preventing arbitrary central intervention. Judicial activism in state autonomy and central intervention continues to shape federal relations in India. The courts often resolve disputes between states and the centre, ensuring that federal principles are respected and maintained.

Abrogation of Article 370

❑ Undermine federal principle

The abrogation of Article 370 in August 2019 represents a significant change in India's federal structure. Article 370 granted special autonomous status to the state of Jammu and Kashmir, allowing it to have its constitution and considerable autonomy over internal matters. The central government's decision to revoke this special status aimed at fully integrating the region into the Indian Union and bringing it under the same legal and administrative framework as the rest of the country. This move has sparked intense debates about federalism, autonomy and the central government's power to alter state boundaries and statuses. Critics argue that the abrogation undermines the federal principle by unilaterally changing the status of a state without its consent, while supporters claim it promotes national unity and integration. The abrogation of Article 370 has far-reaching implications for the federal structure, setting a precedent for how the central government can exercise its powers to alter state autonomy and special provisions.

Linguistic and Cultural Autonomy

Linguistic and cultural autonomy are pivotal aspects of federal debates in India. States with distinct linguistic and cultural identities, such as Tamil Nadu, have long argued for greater autonomy to preserve and promote their heritage. Tamil Nadu, for example, has a rich Dravidian culture and a distinct language predating many North Indian languages. The state has often resisted central policies perceived as imposing

Hindi or undermining its cultural identity. The “Anti-Hindi Imposition Agitations” of the 1960s and subsequent decades are emblematic of this resistance, highlighting the state’s demand for recognition and respect for its linguistic uniqueness.

The conflict between central policies and regional identities necessitates a delicate balance between national unity and regional diversity. While the central government aims to promote a unified national identity, regional governments emphasise the importance of preserving their unique cultural and linguistic heritage. This tension often surfaces in debates over language policy in education and administration, where regional languages vie for recognition alongside Hindi and English. The federal structure must accommodate these diversities to ensure that regional identities are respected while fostering a cohesive national framework.

Religious and Ethnic Tensions

Religious and ethnic dynamics significantly influence federal relations in India. States with significant religious or ethnic minorities often seek greater autonomy to address local grievances and manage their diverse populations effectively. For instance, the northeastern states of India, such as Nagaland and Mizoram, have substantial ethnic diversity and unique cultural practices. These states have long sought greater autonomy to protect their ethnic identities and manage local issues independently.

The central government’s policies on citizenship, migration and minority rights can exacerbate these tensions. The Citizenship Amendment Act (CAA) of 2019, for instance, led to widespread protests and concerns, particularly in states with significant Muslim populations and in the northeastern states where indigenous groups feared demographic changes. Policies perceived as favouring one religious or ethnic group over another can demand more decentralised governance, as states seek the power to implement policies that reflect their unique demographic compositions and address local needs.

The interplay between religious and ethnic identities and federal relations underscores the complexity of governance in a diverse nation. The central government must navigate these dynamics carefully, ensuring its policies promote inclusivity and respect for diversity. Simultaneously, states must work within the federal framework to address local grievances while

❑ The Citizenship Amendment Act (CAA) of 2019



contributing to national unity. Balancing these dual imperatives is essential for maintaining harmony and stability in India's federal system.

Summarised Overview

Indian federalism faces complex challenges as regional demands sometimes clash with national interests, testing the balance between unity and diversity. Centralised amendment powers strengthen the central authority, often limiting state autonomy, while language conflicts reflect deeper cultural and political divides.

Structural aspects also underscore the centralised nature of Indian federalism. The "indestructible union with destructible units" doctrine enables the central government to reorganize state boundaries, impacting stability. The Governor's role, acting as the centre's representative, often becomes contentious, and the single constitution limits states' authority.

Recent fiscal issues, such as GST revenue-sharing and post-pandemic dependency, have further increased states' reliance on the centre. Economic liberalisation and GST reforms continue to reshape federal dynamics, increasingly favouring centralisation. These shifts call for an ongoing reassessment of centre-state relations to ensure a balanced and cooperative federal system.

Assignments

1. Identify and discuss major challenges facing Indian federalism today.
2. Analyse the effects of economic liberalisation on federal relations in India. Examine the influence of political dynamics on Indian federalism with relevant examples.
3. Investigate significant legal and Constitutional developments in Indian federalism and their impacts.
4. Propose a policy solution to a specific challenge in Indian federalism, outlining its benefits and feasibility.

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BLOCK 4

Governance and Regulatory Institutions



Planning Commission to the NITI Aayog

Learning Outcomes

After the completion of the course, the learners will be able to:

- ▶ understand the role and functions of the Planning Commission in India's development
- ▶ analyse the reasons and implications of the dissolution of the Planning Commission
- ▶ identify the composition of the NITI Aayog and its differences from the Planning Commission
- ▶ evaluate the objectives and functions of the NITI Aayog
- ▶ assess the significance of the NITI Aayog in contemporary governance
- ▶ compare the Planning Commission and the NITI Aayog regarding their effectiveness and approach

Background

Economic planning in India has played a crucial role in shaping the nation's development trajectory since its independence in 1947. The primary goal of this planning was to ensure a systematic and balanced approach to economic growth, poverty alleviation and the optimal use of resources. India aimed to build a strong industrial base, enhance agricultural productivity, improve infrastructure and provide essential social services such as education and healthcare through a planned development. The Planning Commission, established in 1950, created and implemented the country's five-year plans to achieve these objectives. It was instrumental in directing investments, setting development targets and monitoring progress to ensure that the benefits of economic growth were distributed equitably across the society.

However, by the early 21st century, it became evident that the Planning Commission's centralised, top-down approach was no longer well-suited to the needs of a

fast-changing and increasingly complex economy. The rigid, one-size-fits-all framework struggled to accommodate the diverse challenges faced by India's various states, each with unique developmental priorities and challenges. The growing demands for a more inclusive and participatory governance model, coupled with the need for greater flexibility in economic planning, led to widespread criticism of the Planning Commission.

In response to these evolving needs, the Government of India decided to replace the Planning Commission with a more dynamic and adaptive institution. Thus, in 2015, the NITI Aayog (National Institution for Transforming India) was established. The NITI Aayog was designed to promote a bottom-up approach to development, emphasizing cooperative federalism by involving states in the decision-making processes. Unlike the Planning Commission, which primarily focuses on central planning, the NITI Aayog encourages innovation, technological advancements and data-driven policymaking. It also seeks to foster sustainable and inclusive growth, recognizing that the development needs of different states and regions vary widely. This transformation reflected a shift toward a more decentralised and flexible model of governance, better aligned with the demands of a modern and rapidly growing economy.

The NITI Aayog's approach is more collaborative, ensuring that states have greater autonomy in shaping their development agendas while the central government focuses on long-term strategic planning. By prioritising inclusive growth, sustainable development, and innovation, the NITI Aayog aims to address the pressing economic challenges of the 21st century, helping India achieve its developmental goals in an increasingly interconnected global economy.

Keywords

Planning Commission, the NITI Aayog, Development

Discussion

4.1.1. Planning Commission

- ☐ Aimed at national development

The Planning Commission of India was a non-constitutional body responsible for creating and implementing India's Five-Year Plans. Established on March 15, 1950, under Prime Minister Jawaharlal Nehru, the Commission aimed to ensure that everyone could contribute to and benefit from community service and national development. It directly reported to the



Prime Minister and was created by a government resolution, not by the constitution or any specific law.

The primary goals of the Planning Commission included elevating the living standards of Indians through effective resource utilisation, increasing production and ensuring inclusive participation in social service. The Commission was tasked with evaluating the country's resources, enhancing their value, developing plans for optimal and balanced use and setting priorities for national development. Pandit Nehru served as the first Chairman of the Planning Commission.

Composition of the Commission

❑ Prime Minister is the Chairman

In constituting the Planning Commission, an attempt has been made to establish a close relationship between the Commission and the cabinet. The prime minister was the chairman of the Commission. Three cabinet ministers - ministers in charge of defence, finance and planning were its members. There were four or five full-time members of the Commission. Eminent persons in economic and administrative matters were appointed as full-time members. There were no prescribed qualifications for the members. In appointing the members, the members' experience was given due regard.

All the members of the Planning Commission were to function as a body. However, there was a portfolio distribution among the full-time members. The finance minister was to be in close touch with the economic advisor of the Planning Commission and the finance ministry. The minister for planning was made the deputy chairman of the Commission. He was responsible for the Commission's activities to the union government and the Parliament.

❑ Membership of cabinet members

There had been a great controversy and difference of opinion on including the cabinet members in the Planning Commission. Some believed that the Planning Commission should be an independent organisation. It was alleged that the association of ministers with the Planning Commission had made it a 'super cabinet.' However, this association of ministers with the Commission was found essential to secure coordination between the cabinet and the Commission. The cabinet is responsible for the implementation of the plan. Implementation would be better if the cabinet ministers participated in the discussion and decisions of the Commission, it was argued.

4.1.1.1 Functions and Objectives of the Planning Commission of India

The Planning Commission of India, established in 1950, played a crucial role in the country's economic and social development through its strategy of meticulous planning and resource allocation. The primary functions and objectives of the Planning Commission were multi-dimensional.

Functions of the Planning Commission

- ▶ **Formulating Five-Year Plans:** The core function of the Planning Commission was to formulate a plan for the most effective and balanced utilisation of national resources. The plans outlined specific targets, strategy and investments for various sectors.
- ▶ **Resource Assessment:** The Commission had to assess the material capital and human resources of the country and investigate the possibilities of augmenting these resources in relation to the requirements of the nation.
- ▶ **Prioritising Development Programme:** The Planning Commission was instrumental in setting priorities for development initiatives, ensuring that resources were allocated efficiently to sectors that needed them the most.
- ▶ **Monitoring and Evaluation:** The Commission had to study from time to time the progress achieved in the execution of the plan and was to recommend adjustment of policies and necessary measures.
- ▶ **Coordination and Collaboration:** The Commission facilitated coordination among various government ministries and departments, ensuring a cohesive approach to national development.
- ▶ **Promoting Research and Innovation:** The Commission encouraged research and technological innovation by supporting research institutions, funding projects and promoting the adoption of new technologies.
- ▶ **Providing Economic Advice:** It provided crucial economic advice to the government on various policy matters, helping shape national economic policies and strategy..
- ▶ **Achieving Balanced Regional Development:** A key function was promoting balanced regional development by addressing disparities between states and regions.

- ▶ **Empowering Marginalised Groups:** The Commission stood for empowering marginalised groups, including women, minorities and disadvantaged communities, ensuring inclusive growth.
- ▶ **Encouraging Public Participation:** Recognising the importance of stakeholder involvement, the Commission promoted public participation to incorporate diverse perspectives and needs in the planning process. The Commission makes its recommendations to the cabinet, and the responsibility for implementing the recommendation rests with the cabinet.

Objectives of the Planning Commission

- ▶ **Balanced and Equitable Economic Growth:** One of the primary objectives was to ensure balanced and equitable economic growth across different sectors and regions. This involved reducing regional disparities, fostering the development of underdeveloped areas, and ensuring that all sections of society benefited from economic progress.
- ▶ **Efficient Resource Allocation:** The Commission aimed to allocate resources in a manner that optimised their use to achieve national goals. This involved identifying priority sectors, assessing resource needs and directing funds accordingly.
- ▶ **Employment Generation:** Promoting employment generation was a key objective, which involved policies to encourage labour-intensive industries, enhance skills and education and create job opportunities across various sectors.
- ▶ **Poverty Alleviation:** A central goal was to reduce poverty and improve living standards, particularly for the disadvantaged and marginalised communities. This included promoting inclusive growth, providing social safety nets and implementing targeted poverty alleviation programmes.
- ▶ **Infrastructure Development:** The Commission emphasised the development of critical infrastructure such as roads, railways, ports and airports to support economic growth and social development. This involved identifying key projects, assessing their feasibility and providing necessary funding and support.
- ▶ **Agricultural Development:** Recognising the importance of agriculture for food security and rural livelihood, the

Commission aimed to promote agricultural development through research, provision of inputs and credit and improving market access for farmers.

The Planning Commission of India was a pivotal institution in shaping the nation's economic and social policies. Its comprehensive approach to planning, resource allocation, monitoring and coordination helped lay the foundation for India's growth and development. Although the Commission faced challenges and criticism, its functions and objectives were crucial in guiding the country through various phases of development.

4.1.1.2 The Planning Commission and Five-Year Plans

❑ History of five year plans

India embarked on its journey of economic planning with the launch of the first Five-Year Plan in 1951. This initiative aimed to improve the country's economic landscape systematically. Following the initial plan, five additional plans were rolled out until 1965. However, this period of continuous planning faced a significant disruption due to the conflict with Pakistan. This conflict, coupled with two consecutive years of drought, depreciation of the rupee, rising prices and depletion of resources, interrupted the momentum of the planning process. Consequently, the nation had to adopt Annual Plans from 1966 to 1969 to manage the economic challenges during this tumultuous period. The fourth Five-Year Plan was eventually introduced in 1969, returning to a more structured planning approach.

The planning process encountered another hurdle with the eighth Five-Year Plan. Initially slated for implementation in 1990, the Plan was delayed due to political instability and changing conditions at the central government. As a result, the years 1990-91 and 1991-92 were governed by Annual Plans. It was not until 1992, with the advent of economic liberalisation, that the eighth plan was finally implemented. This period marked a significant shift in India's economic policy, emphasising the need for a more liberal and open market.

❑ Focus on heavy industries

The first eight Five-Year Plans focused primarily on expanding the public sector. These plans allocated substantial funds to heavy and essential industries, reflecting the belief that a robust public sector was crucial for economic development. Large-scale investments characterised the approach to building



a solid industrial base, essential for the country's growth and self-sufficiency.

❑ Top-down approach

However, the economic strategy began to change with the ninth Five-Year Plan, introduced in 1997. This Plan marked a departure from the earlier emphasis on heavy industries. Instead, it introduced the concept that planning should be more indicative than prescriptive. This shift was driven by the recognition that a rigid, top-down approach to economic planning was no longer suitable for the dynamic and rapidly changing global economy. The new approach aimed to provide broader guidelines and frameworks, allowing more flexibility and adaptability in addressing the country's diverse economic needs.

India's Five-Year Plans have undergone significant transformations since their inception. From a strong focus on public sector expansion to a more liberal and flexible approach, the planning process has adapted to the changing economic and political landscape, aiming to foster sustainable and inclusive growth.

4.1.1.3 Achievements of the Planning Commission

The Commission's efforts led to significant achievements across various sectors, including economic growth, infrastructure development, education, science and technology and foreign trade. Here, we outline some of the key accomplishments of the Planning Commission.

❑ Increase in national income and per capita income

- **Economic Growth:** One of the primary goals of the Planning Commission was to drive economic growth by increasing national income, per capita income and production in the agricultural and industrial sectors. The first Five-Year Plan implemented between 1951 and 1956, exceeded expectations by achieving a growth rate of 3.6 per cent, surpassing the target of 2.1 per cent. This early success set the tone for subsequent plans.
- **Agricultural Development:** Over the decades, food grain production grew substantially, from 51 million tonnes during the first Plan to 257.4 million tonnes in 2011-12. This growth was facilitated by various initiatives, including the Green Revolution, which introduced high-yielding varieties of seeds and modern farming techniques.

- ▶ **Industrial Development:** The diversification and expansion of Indian industries were significant achievements under the Planning Commission. India saw growth in key sectors such as transport, communications and electricity generation and distribution. Establishing a robust industrial base was critical for the country's self-reliance and economic stability.
- ▶ **Creation of Infrastructure:** The Planning Commission's focus on infrastructure development yielded considerable results. Expanding road and railway networks enhanced connectivity and facilitated economic activities nationwide. Additionally, domestic air travel saw significant growth, improving passenger and cargo transportation.
- ▶ **Irrigation and Hydro-Electric Projects:** Investments in irrigation and hydroelectric projects boosted agricultural productivity by ensuring a reliable water supply for farming. These projects also contributed to the country's energy needs, supporting industrial and residential consumption.
- ▶ **Urban Infrastructure:** Urban infrastructure development led to establishing growing towns and cities, accommodating the increasing urban population. Enhanced infrastructure in urban areas improved living standards and provided better services and amenities to the residents.
- ▶ **Communication Networks:** The expansion of communication networks, particularly mobile telephony and the internet, revolutionised connectivity in India. These advancements facilitated better communication, access to information and the growth of the digital economy.
- ▶ **Development in Education:** The Planning Commission's efforts in the education sector resulted in significant progress. The gross enrolment rate in schools increased to over 98 per cent, ensuring that more children had access to education. The literacy rate also saw a remarkable rise, from 18 per cent in the 1950s to 74.04 per cent, according to the 2011 Census. These improvements in education contributed to the development of human capital, which is crucial for the country's economic and social progress.
- ▶ **Development of Science and Technology:** India made notable strides in science and technology thanks to the initiatives and policies of the Planning Commission. The country saw increased technical and skilled manpower essential for supporting various industries and sectors.

- ▶ **Space Research:** India achieved significant milestones in space research with missions like Chandrayaan and the Mars Orbiter Mission. These achievements showcased India's capabilities in space technology and laid the foundation for private sector participation in the space industry.
- ▶ **Nuclear and Renewable Energy:** The Commission's support for nuclear and renewable energy projects enabled India to develop expertise in these areas. The country now exports technical experts to various regions, including the Middle East and Africa, highlighting its advancements in energy technology.
- ▶ **Expansion of Foreign Trade:** Industrialisation and economic growth reduced India's dependence on imports of capital goods. The country's exports grew from negligible levels at independence to over \$750 billion. This expansion in foreign trade underscored India's growing economic strength and integration into the global economy.

The Planning Commission's achievements in economic growth, infrastructure, education, science and technology and foreign trade laid the foundation for India's transformation into a modern and diversified economy.

4.1.1.4 Drawbacks of Planning in India

Despite the notable achievements mentioned earlier, there are several significant areas where planning in India has fallen short. These unfulfilled tasks highlight the ongoing challenges that must be addressed to ensure a comprehensive and inclusive development.

Failure to Completely Eradicate Poverty and Inequality

One of the critical drawbacks of India's planning efforts has been the inability to eliminate poverty and reduce inequality completely. According to the official estimates in 2011, 21.9% of the population still lived below the poverty line. Additionally, the Oxfam 2023 report reveals a stark disparity in wealth distribution, with just 5% of Indians owning more than 60% of the country's wealth. This indicates that economic growth and development have not been evenly distributed, and significant portions of the population live in poverty.

❑ Prevalence of poverty

❑ Backlog of unemployment

Persistent Problem of Unemployment

Unemployment remains a persistent issue in India, reflecting a major shortfall in the planning process. The country faces a substantial backlog of unemployment, primarily due to the insufficient creation of jobs each year. Compounding this problem is the lack of a skilled workforce, with only around 5% of workers possessing the necessary skills for available jobs. Furthermore, participation of the female labour force is notably low, at just 25.1% in 2020-21. This highlights significant gender disparities and underutilisation of a large segment of the population in the workforce.

Sluggish Industrial Development

Despite the emphasis on industrialisation in the Five-Year Plans, the industrial sector's contribution to India's GDP remains below 25%. This sluggish growth can be attributed to several factors, including the lack of development in labour-intensive sectors. Strict labour laws have often been cited as a barrier, discouraging investment and expansion in industries that could generate substantial employment. Consequently, this has perpetuated issues of unemployment and poverty, undermining the broader goals of economic planning.

❑ Prevalence of corruption and red tapism

Failure to Curtail Corruption and Black Money

Corruption and the presence of black money within the economy are significant challenges that the Planning Commission has not effectively addressed. India is 85th out of 180 countries ranking in the Corruption Perception Index and it underscores the prevalence of corruption and bureaucratic red tape. The International Monetary Fund (IMF) also estimates that black money constitutes around 50% of the GDP. This shadow economy undermines the formal economy, exacerbates income inequality and hampers the fair distribution of wealth.

While the Planning Commission of India has made several strides in various domains, it has also encountered significant drawbacks. The persistent issues of poverty and inequality, unemployment, sluggish industrial growth and rampant corruption highlight the complex challenges of economic planning. Addressing these areas is crucial for achieving a more equitable and sustainable development, ensuring that the benefits of growth reach all segments of society.

4.1.2 The NITI Aayog and Its Composition

❑ Replaced planning Commission in 2015

The NITI Aayog, or the National Institution for Transforming India, is the premier policy think tank of the Indian government, established to replace the Planning Commission in 2015. It aims to foster cooperative federalism through structured, continuous support initiatives and mechanisms with the states. The primary goal of the NITI Aayog is to propel India towards sustainable development and to create a roadmap for economic growth.

4.1.2.1 Composition of the NITI Aayog

❑ Prime Minister as ex-officio Chairman

The NITI Aayog, established to replace the Planning Commission, is designed to foster a more dynamic and inclusive approach to national development. At its helm, the Prime Minister of India serves as the ex-officio Chairperson, ensuring that the institution's strategies and policies are closely aligned with the country's highest priorities. The governing structure of the NITI Aayog emphasises cooperative federalism, with its Governing Council comprising Chief Ministers from all states and Union Territories with legislatures, as well as the Lieutenant Governors of Union Territories without legislatures. This inclusive composition comprehensively represents diverse regional perspectives in national policy-making.

Chairperson: The Prime Minister of India is the ex-officio Chairperson of the NITI Aayog. This underscores the institution's importance at the highest level of the government, ensuring direct supervision and alignment with national priorities.

Governing Council: The Governing Council of the NITI Aayog includes the Chief Ministers of all Indian states and the Chief Ministers of Union Territories with legislatures: Delhi, Puducherry, Jammu and Kashmir. Additionally, the Lieutenant Governors of the Union Territories without legislatures are part of this council. This composition ensures that the views and needs of all states and Union Territories are represented, promoting a federal approach to policy-making.

Regional Councils: The NITI Aayog also constitutes Regional Councils for specific tenures to address specific and particular issues affecting more than one state or region. These councils are created to handle contingencies and to find solutions for regional problems, ensuring that localised issues are addressed

promptly and effectively. The Prime Minister convenes the Regional Councils and they comprise Chief Ministers of states and Lt. Governors of the Union Territories in the region. These are chaired by the Prime Minister or his nominees.

Vice Chairperson: Appointed by the Prime Minister, the Vice Chairperson is pivotal in the NITI Aayog. This position is typically filled by a person with significant expertise in economics or public policy, ensuring that the institution benefits from specialised knowledge and experience.

Full-Time Members: The NITI Aayog includes several full-time members who are experts in various fields. These members bring in-depth knowledge and expertise to the institution, contributing to the formulation of policies and strategies that are both innovative and practical. They enjoy the rank of a minister of a state.

Part-time members: It consists of a maximum of two part-time members. They are appointed from leading universities, research institutions and other relevant institutions in an ex officio capacity. Part-time members would be on rotation.

Chief Executive Officer: The chief executive officer is nominated by the Prime minister for a fixed tenure in the rank of secretary to the government of India.

Ex-Officio Members: There are also ex-officio members in the NITI Aayog, which include four Union Ministers nominated by the Prime Minister. These ministers bring insights from their respective ministries, ensuring that policies are comprehensive and inclusive of various sectors.

Special Invitees: Besides the core composition, the NITI Aayog can have special invitees, including experts and specialists from different fields invited to contribute to specific discussions and projects. This ensures that the institution remains dynamic and it can tap into a wide range of expertise.

The NITI Aayog's composition reflects its mandate to foster cooperative federalism and to create a robust platform for the participation of state governments in the economic policy-making process. By including Chief Ministers, Lt. Governors and experts in its framework, the NITI Aayog ensures that policies are well-informed and practically implementable across diverse regions of the country. This inclusive and



collaborative structure is key to addressing India's multifaceted developmental challenges and steering the nation towards sustainable growth.

In addition to what is stated above, the NITI Aayog has several specialised wings. They are the research wing, consultative wing and team India wing. These wings function in close cooperation and coordination with the ministries of both the union government and state governments. While they make recommendations to the governments, the responsibility for taking and implementing decisions rests with them.

4.1.2.2 Why did the NITI Aayog Replace the Planning Commission?

The NITI Aayog, the National Institution for Transforming India, was established in 2015 to replace the Planning Commission, marking a significant shift in India's approach to economic planning and policy formulation.

Several key reasons contributed to the decision to replace the Planning Commission with the NITI Aayog:

❑ More decentralised approach

- 1. Shift from Centralised Planning to Cooperative Federalism:** Unlike the Planning Commission, which imposed centralised five-year plans and allocated resources based on set economic targets, the NITI Aayog embraces a more decentralised approach. It acts as a think tank or forum where leaders from all states, union territories, experts and central government representatives collaborate on policy formulation. This shift aims to foster cooperative federalism by involving states directly in the decision-making processes that affect their development.
- 2. Greater State Involvement and Empowerment:** Under the Planning Commission, states had limited direct involvement in policy planning, primarily through the National Development Council. In contrast, the NITI Aayog empowers states by allowing them to play a more active role in shaping policies that cater to their needs and priorities. This ensures that policies are more responsive to local challenges and developmental disparities across different regions of India.
- 3. Enhanced Role in Resource Allocation:** While the Planning Commission primarily played an advisory role

in policy formulation and resource allocation, the NITI Aayog has been granted greater authority in allocating resources to states based on their requirements. This allows more tailored and effective utilisation of resources, addressing specific developmental gaps and promoting balanced regional growth.

4. **Flexible and Adaptive Planning Approach:** The NITI Aayog adopts a flexible and adaptive planning approach, moving away from the rigid, standardised plans of the Planning Commission. It encourages innovation, research and experimentation in policy formulation, fostering dynamic solutions to complex developmental challenges.
5. **Direct Accountability to the Prime Minister:** The structure of the NITI Aayog ensures direct accountability to the Prime Minister of India, who serves as its chairperson. This direct supervision facilitates swift decision-making and implementation of policies aligned with national priorities and emerging challenges.

❑ Collaborative and inclusive governance

Replacing the Planning Commission with the NITI Aayog signifies a paradigm shift towards collaborative and inclusive governance. By integrating states and union territories into the policy-making process, empowering them with greater decision-making authority and adopting a more flexible planning approach, the NITI Aayog aims to catalyse India's transformation into a dynamic and equitable economy capable of addressing diverse developmental needs effectively.

4.1.2.3 Objectives of the NITI Aayog

Objectives of the NITI Aayog reflect a shift towards cooperative federalism and a proactive approach to addressing diverse socio-economic challenges.

- **Fostering Cooperative Federalism:** The NITI Aayog aims to strengthen India by fostering cooperative federalism through structured support initiatives and state partnerships. By involving state governments directly in policy formulation and implementation, the NITI Aayog seeks to recognise that strong states make a strong nation.
- **Development at Grassroots:** One of its key objectives is to develop mechanisms for formulating credible plans starting from the village level and aggregate progressively at higher levels of government. This approach ensures that



the needs and priorities of local development are integrated into broader national policies.

- ▶ **Integrating National Security with Economic Strategy:** The NITI Aayog ensures that the interests of national security are incorporated into relevant economic strategies and policies, safeguarding India's strategic interests while promoting economic growth.
- ▶ **Inclusive Growth:** A core objective of the NITI Aayog is to focus special attention on the sections of our society that may be at risk of not benefitting from economic progress. This includes addressing gender biases, caste disparities and economic inequalities through targeted policies and interventions.
- ▶ **Encouraging Partnerships and Innovation:** The NITI Aayog provides advice and encourages partnerships between stakeholders, including national and international think tanks, educational institutions, and policy research organisations. This collaboration fosters innovation, knowledge exchange and entrepreneurial support for sustainable development.
- ▶ **Resolving Inter-Sectoral Issues:** It serves as a platform for resolving inter-sectoral and inter-departmental issues to accelerate the implementation of the national development agenda. The NITI Aayog aims to streamline governance and enhance policy effectiveness by facilitating coordination and cooperation among different sectors.
- ▶ **Knowledge and Resource Center:** The NITI Aayog maintains a state-of-the-art Resource centre which is a repository of research on good governance and best practices in sustainable and equitable development. It disseminates this knowledge to stakeholders to promote informed decision-making and policy formulation.

Through its diverse objectives, the NITI Aayog endeavours to empower India to overcome complex challenges and achieve sustainable development. By promoting cooperative federalism, integrating grassroots development, ensuring inclusive growth and fostering innovation and partnerships, the NITI Aayog plays a pivotal role in shaping India's development trajectory in the 21st century.

☐ Enhance
cooperative
federalism

4.1.2.3.1 Functions of the NITI Aayog

The NITI Aayog is critical in India's policy framework, particularly in enhancing cooperative federalism, fostering innovation and driving sustainable development. It serves as a think tank for the government and provides a roadmap for India's long-term economic growth. The following are the key functions of the NITI Aayog:

Policy Formulation and Vision Setting

The NITI Aayog is responsible for creating a long-term strategic framework for India's economic development. It identifies key sectors and policy areas requiring attention and provides visionary inputs for government policies. Focusing on medium and long-term goals ensures that India's growth is aligned with future challenges and global economic trends.

Promoting Cooperative Federalism

One of the core objectives of the NITI Aayog is to foster cooperative federalism by promoting active participation from state governments. Unlike the centralised approach of the former Planning Commission, the NITI Aayog encourages states to engage in policy-making, ensuring that priorities of regional development are considered. This creates a platform for dialogue between the Centre and the states to discuss policies and address concerns related to development.

Fostering Innovation and Entrepreneurship

The NITI Aayog is pivotal in promoting innovation and entrepreneurship through various initiatives. It collaborates with industries, research institutions and other stakeholders to promote the use of new technologies and best practices. Programmes like the Atal Innovation Mission (AIM) aim to foster innovation at both grassroots and institutional levels, encouraging the development of start-ups and small businesses.

Data-Driven Policy Recommendations

The NITI Aayog emphasises the use of data and technology to provide evidence-based policy recommendations. Leveraging analytics and research offers insights into critical sectors such as agriculture, health, education and infrastructure. This data-

driven approach ensures that policy decisions are grounded in real-time information, enhancing their effectiveness and impact.

Monitoring and Evaluation of Government Programmes

Another significant function of the NITI Aayog is to monitor and evaluate the performance of various government schemes and Programmes. It regularly assesses the effectiveness of flagship initiatives such as Swachh Bharat Mission, Skill India and Digital India. By analysing outcomes, the NITI Aayog provides feedback to the government, suggesting improvements and ensuring that Programmes achieve their intended objectives.

Encouraging Sustainable Development

The NITI Aayog strongly emphasises the goals of sustainable development (SDGs) and is responsible for ensuring that India meets its international commitments. It works with various ministries and state governments to align national policies with SDGs, particularly in areas like environmental sustainability, poverty reduction and social inclusion.

Capacity Building and Knowledge Sharing

The NITI Aayog also focuses on enhancing the capacities of states and local governments. Through workshops, training Programmes and technical assistance, it helps improve the governance and administrative skills of public officials. It also acts as a knowledge repository, sharing best practices and lessons learned across different sectors to improve policy outcomes.

Encouraging Partnerships and Collaboration

The NITI Aayog facilitates collaboration among the government, private sector and civil society. By encouraging partnerships, it ensures that policy implementation is multi-dimensional and inclusive. It also works with international organisations to bring global best practices to India, ensuring that the country's development aligns with global standards.

Strategic Advice for Resource Allocation

The NITI Aayog provides strategic advice to the government on resource allocation and prioritization of projects. This involves reviewing national budgets, advising on expenditure priorities and ensuring that resources are used efficiently for maximum developmental impact. It focuses on optimising public funds to achieve the best outcomes for the country's growth.

The NITI Aayog serves as a key institution in India's policy-making architecture. It plays a crucial role in shaping the country's economic future by fostering cooperative federalism, promoting innovation and ensuring sustainable development. Its evidence-based, data-driven approach ensures that policy decisions are well-informed and aligned with the diverse needs of a rapidly growing and changing economy. Through these functions, the NITI Aayog helps India stay on the path to inclusive and sustainable growth.

4.1.2.4 Differences between the NITI Aayog and Planning Commission

The transformation from the Planning Commission to the NITI Aayog represents a significant shift in India's approach to governance and economic planning, characterised by several key differences:

1. Organisational Structure:

- **Planning Commission:** A deputy chairperson, a member secretary and full-time members led the Planning Commission. Secretaries or member secretaries were appointed through standard bureaucratic processes, reflecting a hierarchical organisational structure.
- **The NITI Aayog:** The NITI Aayog introduces new roles such as the CEO of secretary rank and a Vice-Chairperson. It also includes five full-time members and two part-time members. More importantly, four cabinet ministers serve as ex-officio members, emphasising political leadership in decision-making processes. The Prime Minister appoints the CEO, highlighting enhanced executive authority and alignment with national priorities.

❑ New role such as CEO



2. Planning Approach:

❑ Formulate national development strategies

- **Planning Commission:** The Planning Commission employed a top-down planning approach, formulating five-year plans dictating the goals of national development and allocating resources primarily from the public sector. This approach aimed at achieving predefined targets within set timeframes.
- **The NITI Aayog:** In contrast, the NITI Aayog formulates national development strategies within a market economy integrated with the globalised world. It emphasises flexibility, innovation and adaptation to dynamic economic conditions rather than rigid, centrally planned structures. The NITI Aayog's approach encourages state governments and other stakeholders to actively participate in policy formulation, promoting decentralised decision-making.

3. Relationship with States:

❑ Promote equitable growth

- **Planning Commission:** Historically, the Planning Commission operated as a central government institution with limited involvement of state governments in policy formulation. States had minimal representation and their role was largely indirect through mechanisms like the National Development Council.
- **The NITI Aayog:** The NITI Aayog embodies cooperative federalism by fostering partnerships with state governments. It provides a structured platform for regular interaction and collaboration between the central government and states. This inclusive approach ensures that state-specific developmental needs and priorities are integrated into national policy-making, promoting equitable growth across regions.

4. Focus on Innovation and Collaboration:

❑ Fosters innovation and knowledge exchange

- **Planning Commission:** While the Planning Commission focused on executing centrally planned developmental goals, its scope for innovation and collaboration with external stakeholders, including think tanks and research institutions, was limited.
- **The NITI Aayog:** The NITI Aayog encourages partnerships and collaboration with national and international stakeholders, including think tanks, educational institutions and organisations for policy research. This approach fosters innovation, knowledge exchange and the adoption of best practices in policy formulation and implementation.

5. Adaptive Governance and Policy Flexibility:

☐ Promote timely response

- **Planning Commission:** The Planning Commission operated under a structured, bureaucratic framework with predefined planning cycles and targets, which sometimes lacked the agility to respond swiftly to emerging challenges or economic shifts.
- **The NITI Aayog:** The NITI Aayog promotes adaptive governance and policy flexibility, enabling timely responses to dynamic economic and social conditions. It leverages data-driven insights and expert consultations to effectively tailor policies that address contemporary developmental challenges.

The transition from the Planning Commission to the NITI Aayog underscores India's evolution towards a more collaborative, flexible and inclusive governance model. The NITI Aayog's emphasis on cooperative federalism, innovative policy formulation and strategic partnerships reflects its role as a catalyst for sustainable and equitable development in a rapidly changing global landscape.

4.1.2.5 Criticism against The NITI Aayog

The NITI Aayog, while intended to modernise India's approach to economic planning and governance, has faced criticism on several fronts:

☐ Non accountable to Parliament

- ▶ **Non-constitutional Status:** Like its predecessor, the Planning Commission, the NITI Aayog operates as a non-constitutional body, which means it is not accountable to the Parliament. This lack of constitutional backing raises concerns about its authority and transparency in decision-making processes.
- ▶ **Lack of Consultation with States:** The dismantling of the Planning Commission to establish the NITI Aayog was undertaken without adequate consultation with state governments. This unilateral decision-making process has been criticised for not fully considering the perspectives and concerns of state leaders and their administrative needs.
- ▶ **Representation of Union Territories (UTs):** Unlike the states, Union Territories (UTs) are represented in the NITI Aayog by Lieutenant Governors (LGs) rather than Chief Ministers. This arrangement is seen as contrary to the principles of federalism, as it undermines the autonomy and representation of UTs in national policy-making processes.



- **Impact on Fund Allocation:** Critics argue that the transition to the NITI Aayog has affected fund allocations to welfare schemes, potentially reducing budgetary allocations for critical sectors. For instance, there has been reported dissatisfaction with a 20% reduction in gender budgeting, which could impact initiatives aimed at gender equality and empowerment.
- **Accountability and Supervision:** As a non-constitutional body, the NITI Aayog's mechanisms for accountability and supervision are perceived to be weaker than statutory bodies accountable to the Parliament. This raises concerns about the efficacy of its policy decisions and the scrutiny of its operational efficiency.

While the NITI Aayog aims to promote cooperative federalism, innovation, and inclusive growth, these criticisms highlight the challenges it faces in balancing centralised planning with regional autonomy and ensuring effective governance and accountability. Addressing these concerns will be crucial for the NITI Aayog to fulfil its mandate effectively and foster sustainable development across India.

Summarised Overview

The Planning Commission was created to steer national development through objectives like balanced economic growth, resource management, and regional equity, primarily implemented via Five-Year Plans. Though the Planning Commission achieved progress in poverty alleviation and infrastructure, its centralised structure often limited responsiveness to regional needs.

The NITI Aayog replaced the Planning Commission in 2015, with a focus on adaptive and cooperative governance to meet evolving economic demands. As a think tank, the NITI Aayog encourages state participation, fosters sustainable development, and prioritises flexibility in policy approaches. Differences between the two bodies underscore the move from a directive, centralised model to one based on federal partnerships and innovative, real-time policy development.

Assignments

1. Explain the primary roles and functions of the Planning Commission.
2. Discuss the reasons behind the dissolution of the Planning Commission.
3. Compare the composition of the NITI Aayog and the Planning Commission.
4. What are the key objectives of the NITI Aayog?
5. Analyse the major functions of the NITI Aayog.
6. Discuss the significance of the NITI Aayog in modern governance.
7. Compare and contrast the Planning Commission and the NITI Aayog in terms of their approach and effectiveness.

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Suggested Reading

1. “The New Economic Policies: India’s Experience” by R. Nagaraj.
2. “The Politics of Economic Reforms in India” by Jos Mooij.
3. “The Indian Economy: Problems and Prospects” by Bimal Jalan.
4. “India’s Long Road: The Search for Prosperity” by Vijay Joshi.
5. “Planning in India: Development Prospects and Policy Implications” by T. N. Srinivasan.
6. “Governance in India: Basics and Beyond” by Laxmikanth.
7. “Economic Policy Reforms and the Indian Economy” edited by Anne O. Krueger.
8. “India’s Reforms: How They Produced Inclusive Growth” by Shankar Acharya.

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

Finance Commission, Inter-State Council, Lok Pal and Lokayukta

Learning Outcomes

After the completion of the unit, the learners will be able to:

- ▶ understand the composition and functions of the Finance Commission
- ▶ evaluate the role and powers of the Inter-State Council
- ▶ analyse the evolution and role of the Lokpal
- ▶ identify the composition and powers of the Lokayukta
- ▶ discuss criticisms against the Lokpal and Lokayukta
- ▶ assess the effectiveness of these institutions in promoting transparency
- ▶ compare the roles of the Finance Commission, Inter-State Council, Lokpal, and Lokayukta

Background

The Finance Commission plays a crucial role in India's federal structure by ensuring a fair distribution of financial resources between the central government and the states. Its primary responsibility is to recommend how revenue from taxes should be shared to reduce fiscal imbalances among various states. This is essential in a diverse country like India, where states have different levels of development and varying financial needs.

Without the Finance Commission, the distribution of financial resources would lack a systematic and equitable approach. This could result in substantial disparities among states, with more prosperous states growing wealthier while poorer conditions face challenges in providing essential services and infrastructure to their populations. Such imbalances could cause regional tensions, hinder economic growth and exacerbate social inequalities. The Finance Commission's recommendations help maintain a balance, promoting national unity and ensuring all regions have the means to progress.

Keywords

Finance Commission, Inter-State Council, Lokpal, Lokayukta

Discussion

4.2.1 Finance Commission

The Finance Commission of India is a constitutionally mandated body established to define the financial relations between the central government and the individual states. Set up under Article 280 of the Indian constitution, the Commission is formed every five years to make recommendations on the distribution of tax revenues between the central and state governments and among the states themselves and the principles that govern grants in aid. The main idea behind the Finance Commission is to promote a balanced fiscal federalism, ensuring that states have adequate resources to meet their expenditure while maintaining financial stability and equity across the country.

❑ Distribution of tax revenues

❑ Overall stability and growth

The constitution entrusts the Finance Commission with the task of recommending the principles that govern grants-in-aid to the states from the Consolidated Fund of India. Additionally, it advises on measures to augment the Consolidated Fund of a state to supplement the resources of panchayats and municipalities. This framework ensures a systematic and equitable allocation of resources, addressing disparities and fostering harmonious economic development. The Finance Commission's role is vital in maintaining a cohesive and balanced economic structure, supporting central and state governments in achieving their developmental goals. Its recommendations aim to create a fair financial system, thus contributing to the overall stability and growth of the nation.

4.2.1.1 Composition

The Finance Commission of India comprises a chairman and four other members, all appointed by the President of India. These appointments are for a term specified by the President in the order of their appointment. The President holds the authority to appoint and reappoint the members of the Finance Commission. The Commission shall have all the powers of a civil court.

❑ Appointed by President



The Indian constitution grants the Parliament the power to determine the criteria and the process for selecting the members of the Finance Commission. The Parliament establishes the qualifications for both the chairman and the members of the Commission. The chairman of the Commission shall be selected from among persons 1) who have had experience in public affairs. The other four members shall be selected from among persons who are or have been qualified to be appointed as judges of high courts or 2) have special knowledge of finance and accounts of government or 3) have had wide experience in financial matters and in administration or 4) have special knowledge of economics.

The four other members bring diverse expertise to the Commission, contributing to a comprehensive approach to financial distribution and recommendations. Their collective experience in public affairs ensures that the Commission's recommendations are well-informed and balanced, considering the varying needs and circumstances of the states.

The Finance Commission's composition, determined by the President and the Parliament, is designed to bring together a team of experienced individuals capable of addressing India's financial challenges and opportunities. This structure ensures that the Commission can effectively fulfil its mandate of promoting fiscal federalism and equitable distribution of resources across the country.

4.2.1.2 Importance of Finance Commission

The Finance Commission of India, established under Article 280 of the constitution, is crucial in maintaining fiscal balance and equity within the federal structure. Appointed by the President every five years, the Commission's primary responsibility is to provide recommendations on the distribution of tax revenues between the central government and the states. These recommendations will be implemented over five years, ensuring a stable and predictable fiscal environment.

One of the key functions of the Finance Commission is to advise on the allocation of grants from the Consolidated Fund of India to the states. This ensures states have the financial resources to meet their expenditure, thus promoting balanced regional development. Additionally, the Commission recommends measures to augment the state revenues and enhance the financial health of panchayats and municipalities.

❑ Maintain fiscal balance and equity

This holistic approach ensures that local governments, critical for grassroots development, receive adequate funding.

The Finance Commission is an advisory body to the President, providing expert guidance on financial administration. While its recommendations are highly regarded and form the basis of fiscal policy, they are not binding on the President. The President has the discretion to accept or reject the Commission's suggestions, although, in practice, the recommendations are usually given significant weight in decision-making.

☐ Report not subjected to judicial review

Once submitted to the President, the Commission's report is final and not subject to judicial review. This underscores the Commission's authority and the importance of its role in the country's financial governance. By ensuring a fair and equitable distribution of financial resources, the Finance Commission helps to reduce fiscal disparities, support state and local governments and promote overall economic stability and growth in India.

The Finance Commission is a vital institution that facilitates cooperative federalism by ensuring that both the central and state governments have the resources needed to fulfil their responsibilities. Its role in advising on fiscal matters, distributing tax revenues and supporting local governance structures is essential for maintaining fiscal discipline and promoting balanced development across the country.

4.2.1.3 Functions of the Financial Commission

The functions of the Finance Commission can be detailed as follows:

- ▶ **Distribution of Tax Between Union and States:** The Finance Commission is responsible for recommending how the net proceeds of taxes should be distributed between the central government and the states. This involves determining the share of each state in the overall tax pool, ensuring that all states receive a fair portion of the tax revenues collected by the central government. This function addresses the vertical imbalances between the taxing powers and expenditure responsibilities of central and state governments.
- ▶ **Grant-in-Aid Principles:** The Commission sets out the principles that should govern the provision of grants-in-aid to the states from the centre. These grants are intended to help states manage their expenditure and provide neces-

sary public services, especially in areas where they may not generate sufficient revenue. The rules ensure that grants are allocated based on need and performance, promoting fiscal discipline and encouraging efficient use of resources.

- ▶ **Augmenting State Consolidated Funds:** The Finance Commission recommends measures to augment the Consolidated Fund of a state to support the financial needs of panchayats and municipalities, based on the recommendations made by the state finance Commission. By doing so, the Commission helps to strengthen local governance structures, enabling them to provide better services and infrastructure to their communities.
- ▶ **Other Matters Referred by the President:** The Finance Commission also addresses any other financial matter referred to it by the President in the interest of sound finance. This could include specific fiscal challenges or policy issues that require expert analysis and recommendations. This flexibility allows the Commission to adapt to changing economic circumstances and address emerging financial issues effectively.
- ▶ **Submission of Report:** After completing its analysis and deliberations, the Finance Commission submits its report to the President. The report will contain detailed recommendations on the distribution of taxes, grants-in-aid principles and measures for augmenting state funds. The President then lays this report before both houses of the Parliament, together with an explanatory memorandum.
- ▶ **Equalisation of Public Services:** One of the critical functions of the Finance Commission is to promote the equalisation of public services across the states. This involves making recommendations to ensure that all states can provide a minimum standard of public services to their residents regardless of their fiscal capacity. This helps reduce regional disparities and promotes balanced development across the country.
- ▶ **Redressing Vertical Imbalances:** The Finance Commission also addresses the vertical imbalances between the taxation powers and responsibilities of expenditure of the central and state governments. By recommending a fair distribution of tax revenues and grants, the Commission helps to ensure that states have adequate resources to meet their expenditure while maintaining fiscal stability at the national level.

In short, the Finance Commission of India performs a critical role in ensuring a balanced and equitable financial system within the country. Through its recommendations on tax distribution, grants-in-aid, augmentation of state funds and other financial matters, the Commission helps to promote fiscal federalism, reduce disparities and support sustainable development across India.

4.2.1.4 Criticism against the Finance Commission

The Finance Commission of India, despite its critical role in ensuring fiscal federalism, faces several criticisms that highlight its limitations and challenges.

Advisory Nature

❑ Undermine commissions authority

One of the primary criticisms against the Finance Commission is that its recommendations are only advisory and not binding on the government. This means that while the Commission provides crucial guidance on financial matters, the central government is not obliged to follow its recommendations. This advisory nature can undermine the Commission's authority, as the government can choose to ignore or selectively implement recommendations based on political or other considerations.

Discretion of the Union Government

Another significant criticism is the discretionary power held by the union government regarding implementing the Finance Commission's recommendations. The central government has the authority to decide how and to what extent it will follow the Commission's guidance, particularly concerning grants to states. This discretion can result in political bias, where funds may be allocated in a manner that favours certain states over others based on political considerations rather than on objective criteria. Such practices can exacerbate regional inequalities and erode trust in the fairness of fiscal transfers.

Timeliness and Relevance

Implementing the Finance Commission's recommendations often faces delays, which can diminish their effectiveness. Economic conditions and fiscal needs can change rapidly and delayed action on the Commission's report may render its recommendations less relevant or effective. Ensuring that recommendations are implemented promptly is crucial for

addressing periodic economic challenges and maintaining the relevance of fiscal policies.

Limited Scope

The scope of the Finance Commission's mandate is sometimes considered narrow. While it focuses on distributing tax revenues and grants-in-aid, it does not comprehensively address broader fiscal issues such as public debt management, deficit financing and overall fiscal discipline at both the central and state levels. Expanding the Commission's mandate to include these areas could enhance its role in promoting fiscal stability and sustainability.

Lack of Continuity

The Finance Commission is not a permanent institution but is reconstituted every five years. This periodic reconstitution can lead to a lack of continuity in the recommendations and implementation of fiscal policy. Establishing a permanent body or a secretariat could provide continuous supervision and evaluation of fiscal policies, ensuring a more consistent and long-term planning.

Susceptibility to Political Pressure

Political pressure can compromise the independence of the Finance Commission. The process of appointing the members of the Commission and the prevailing political climate can influence its impartiality. Ensuring a transparent, merit-based selection process for its members is essential to maintain the credibility and objectivity of the Commission.

Regional Disparities

The Finance Commission's formula for the distribution of revenue distribution sometimes fails to adequately address regional disparities. Wealthier states may continue to thrive, while poorer states struggle to meet their financial needs. Considering the unique economic and social contexts of different states, a more nuanced approach could promote a more balanced and equitable regional development.

While the Finance Commission of India is vital for fiscal federalism, addressing criticisms related to its advisory

nature, discretionary powers, timeliness, scope, continuity, susceptibility to political pressure and regional disparities can enhance its effectiveness and ensure a more equitable distribution of financial resources across the country.

4.2.1.5 State Finance Commissions

❑ 73rd and 74th Amendment Act

The State Finance Commission is a constitutional body established under Article 280 following the 73rd and 74th constitutional Amendment Act of 1992. This amendment was a significant step towards empowering local governments and ensuring their financial stability. The Governors of the respective states appoint the State Finance Commission every five years under Article 243-I of the Indian constitution. The primary role of the State Finance Commission is to perform functions at the state level as those of the central Finance Commission, including distributing state revenues among local bodies such as Panchayati Raj institutions and municipalities.

❑ Adequate resources to panchayats

The State Finance Commission's responsibilities include reviewing the financial position of local governments and recommending principles for the distribution of state taxes, duties, tolls and fees to these local bodies. This ensures that municipalities and panchayats receive adequate resources to effectively carry out their functions. The Commission also advises on measures to improve the financial management of local bodies and suggests grants-in-aid from the state's consolidated fund. These recommendations are crucial for enabling local governments to provide essential services and infrastructure, promoting effective local governance and administrative efficiency.

❑ Empowerment of local bodies

In addition to revenue distribution, the State Finance Commission plays a vital role in addressing fiscal disparities among different regions within a state, thereby fostering balanced regional development. This is essential for inclusive growth and reducing inequalities between urban and rural areas. By ensuring that local bodies have the necessary financial resources, the Commission supports the broader goal of decentralisation, enabling local governments to function as effective self-governance units.

The regular and effective functioning of the State Finance Commissions is critical to the overall development and empowerment of the local bodies. Their recommendations help create a more equitable and efficient allocation of resources,



promoting sustainable development across various state regions. This ensures that local governments can meet their expenditure for infrastructure development, public services and administrative functions, ultimately leading to stronger and more resilient local governance structures.

4.2.2 Inter-State Council

❑ Sarkaria
Commission
recommendation

An Inter-State Council (ISC) in India is established under Article 263 of the constitution to address issues of national importance that require cooperation and coordination between the states and between the centre and states. Instituted on May 28, 1990, by presidential order following the recommendations of the Sarkaria Commission, the Inter-State Council operates as a constitutional, advisory and quasi-federal body. It acts as a mechanism to support centre-state and inter-state coordination and cooperation in India. Chaired by the Prime Minister, it is convened regularly, with a mandate to facilitate dialogue, consensus-building and policy formulation across different tiers of governance.

The creation of the Inter-State Council was a response to the complexities of federal governance in India, recognising the need for periodic discussions and resolutions to enhance cooperative federalism. While Article 131 grants the Supreme Court exclusive authority to adjudicate interstate disputes, Article 263 empowers the Inter-State Council to conduct investigations and make recommendations to prevent such disputes. This administrative approach complements judicial mechanisms and emphasises proactive measures to maintain federal harmony and resolve interstate issues through consensus.

4.2.2.1 Composition

In the exercise of power under Article 263, the President of India constituted the council on May 28, 1990. It consists of the Prime Minister, Chief Ministers of 4 states, Chief Ministers of union territories having a legislative assembly and administrators of Union Territories not having a legislative assembly. The Prime Minister nominated six cabinet ministers of the union. The ministers of state having independent charge in the union government may be invited when any item relating to their ministry is to be discussed.

☐ Prime Minister
as the Chairman

The Prime Minister shall be the chairman of the council. He presides over its meetings. In his absence, he may nominate any union minister of cabinet rank to preside over its meeting. The council shall meet at least thrice in a year. Its meetings are held on camera, and all questions are decided by consensus.

There is also a standing committee of the council. It consists of the following members:

1. Union Home Minister as the chairman
2. Five union cabinet ministers
3. Nine chief ministers

The counsellor is assisted by a secretariat called the Interstate Council secretariat. This secretariat was set up in 1991 and is headed by a secretary to the Government of India. Since 2011, it has been the secretary of the zonal councils.

The diverse composition of the ISC underscores its pivotal role in promoting collaborative governance, ensuring effective policy coordination and fostering consensus on nationally significant issues. By facilitating regular interactions and deliberations among key stakeholders, the ISC plays a crucial role in strengthening federal relations and advancing the collective interests of India's diverse regions.

4.2.2.2 Significance of the Inter-State Council

In India's decentralised polity, characterised by significant interactions between multiple levels of government, the Inter-State Council is a foundational step towards effective governance and cooperative federalism.

Resolving Disputes and Promoting Cooperation

The Inter-State Council is instrumental in resolving disputes between different governments at the state or union level. By providing a structured platform for dialogue and mediation, it facilitates the resolution of conflicts through consensus building and mutual understanding. This function is crucial in maintaining harmony and stability within the federal structure of India.

☐ Platform for
dialogue and
mediation



Facilitating Dialogue and Accountability

As a forum for conversation and debate, the Inter-State Council holds the central and state governments accountable for their policies and actions. It serves as a mechanism to discuss public needs, address regional concerns and make decisions that benefit the entire nation. This open dialogue fosters transparency and ensures that governance is responsive to the diverse needs of the population.

Bridging Trust Gaps and Ensuring Constitutional Support

The Council is pivotal in bridging gaps in the trust between the federal government and the states. Unlike other collaborative platforms such as the NITI Aayog, the Inter-State Council derives its authority directly from the constitution, providing states with a robust foundation to assert their interests and participate in decision-making processes effectively.

Enhancing Crisis Management and Diplomatic Relations

During times of crisis or when contentious issues arise, the Inter-State Council serves as a critical tool for maintaining amicable relations between different administrative units. It enables swift and coordinated responses to state-specific demands, averting potential escalations and promoting stability in inter-governmental relations.

Promoting Trust and Effective Governance

☐ Collaborate decision making

By fostering interactions between states, the central government and union territories, the Inter-State Council builds trust and consensus on national policies. It ensures that decisions are made collaboratively, considering the diverse perspectives and priorities of different regions.

The Inter-State Council is a cornerstone of India's federal governance framework, promoting dialogue, resolving disputes and ensuring that governance is responsive and inclusive. Its constitutional mandate and role in fostering cooperative federalism make it an indispensable institution for advancing the collective interests and aspirations of the nation.

Activation of Council and Zonal Councils

Through regular meetings and consultation, the inter-state council facilitates consideration of all pending and emergency issues of centre–state and inter–state relations by zonal councils and inter-state councils.

In essence, the Inter-State Council serves as a cornerstone of cooperative federalism in India, facilitating dialogue, resolving disputes and ensuring that policies are inclusive and beneficial for all states. Its proactive approach to agenda setting, policy recommendations and monitoring reflects its crucial role in advancing harmonious inter-governmental relations and promoting balanced development across the nation.

4.2.2.3 Issues with the Inter-State Council

The Inter-State Council in India faces several critical issues that hinder its effectiveness and impact on inter-governmental relations and policy coordination.

Under- utilisation and Ineffective Conflict Resolution

❑ Sluggish approach

One of the foremost challenges plaguing the Inter-State Council is its under-utilisation. Over the past two decades, the Council has convened only a handful of meetings, limiting its ability to address and resolve inter-state conflicts promptly and actively. This sluggish approach diminishes its role as a proactive mediator and platform for dispute resolution.

Consultative Nature and Disregard for Recommendations

As a consultative body without binding authority, the Inter-State Council lacks the power to enforce its recommendations on state or federal governments. Consequently, governments often disregard its advice, leading to a gap between proposed solutions and actual implementation. This undermines the Council's credibility and ability to influence policy decisions effectively.

Lack of Autonomy and Professional Expertise

The Council lacks the autonomy necessary for its efficient operation. It lacks dedicated technical and managerial professionals who could enhance its capacity for research, analysis and strategic planning. Moreover, the absence



participation of civil society limits its inclusivity and diminishes opportunities for broader stakeholder engagement and input.

Absence of Permanent Constitutional Status

- ❑ Depends on presidential discretion

Unlike other statutory bodies, the Inter-State Council does not have permanent constitutional status. Its establishment and functioning depend entirely on presidential discretion, which can impact its stability and continuity over time. This lack of permanence may undermine its authority and hinder long-term strategic planning and policy formulation.

In conclusion, while the Inter-State Council is crucial in promoting cooperative federalism and resolving inter-governmental disputes, these inherent issues must be addressed to enhance its effectiveness. Reforms aimed at increasing its frequency of meetings, empowering it with greater authority, enhancing professional expertise and securing permanent constitutional status could significantly bolster its capacity to foster harmonious relations and facilitate inclusive governance across India.

4.2.3 Lokpal and Lokayuktha

- ❑ Corruption cases

Corruption undermines democracy by eroding public trust, weakening institutions and distorting policy-making. It hampers economic development, exacerbates inequality and restricts the participation of citizens by creating barriers to fair and equal opportunities. In a democracy, where power is derived from the people, corruption can lead to disenfranchisement and disillusionment, undermining the very foundations of democratic governance.

- ❑ Preventive mechanisms against corruption

The Lokpal and Lokayuktas function as preventive mechanisms against corruption in India. The Lokpal is a central body that addresses complaints against public officials, including the Prime Minister, while Lokayuktas operate at the state level. They have the authority to investigate allegations of corruption, initiate inquiries and recommend disciplinary actions. By providing a formal mechanism for accountability, they help deter corrupt practices and promote transparency and integrity in public administration, reinforcing democratic principles.

4.2.3.1 Lokpal

- ❑ Investigate and examine corruption charges

The Lokpal is a pioneering institution in independent India, established under the Lokpal and Lokayuktas Act of 2013. Its primary function is to investigate and examine corruption charges against public officials within its jurisdiction. The Lokpal is dedicated to addressing citizens' complaints and ensuring clean governance. Its purpose is to use its powers effectively to promote public interest and eliminate corruption in public life. In cases of alleged corruption, the Lokpal provides a mechanism for swift and unbiased investigation and prosecution, ensuring accountability and transparency. Notably, there are no limitations on who can file a complaint, making the institution accessible to all citizens.

- ❑ Enhances public trust

Establishing the Lokpal marked a significant step in India's fight against corruption. It serves as a crucial check on the abuse of power by public officials and promotes ethical conduct in public service. By providing a platform for citizens to voice their grievances, the Lokpal enhances public trust in the governance system. Its proactive approach in dealing with corruption cases ensures that corrupt practices are swiftly addressed, thereby contributing to a more transparent and accountable administration.

- ❑ Adequate representation of social structure

Composition of the Lokpal

The Lokpal consists of a chairman with a maximum of 8 members. Of these 50% shall be judicial members and 50% of the Lokpal shall be selected from among scheduled castes, scheduled tribes, OBC, minorities and women. It is seen that the composition aims to maintain legal scrutiny, administrative supervision and adequate representation of the social structure of Indian society. The chairman is usually an eminent person with a judicial and administrative background.

The chairman and members of Lokpal shall be selected by a selection committee consisting of the Prime Minister, the Speaker of Lok Sabha, the leader of opposition in the Lok Sabha, the Chief Justice of India or a sitting judge of the supreme court and an eminent jurist nominated by the President of India based on the recommendations of the first four members of the selection committee referred to above. A search committee will assist the selection committee in the process of selection.

Jurisdiction of the Lokpal will cover all categories of public servants, including group A, group B, group C and group D officers and government employees.

The Lokpal will have the power of superintendence and direction over any investigating agency, including the CBI, for cases referred to them by the Lokpal.

A high-powered committee chaired by the Prime Minister will recommend the selection of the director of the CBI. It also incorporates provisions for attachment and confiscation of property of public servants acquired by corrupt means, even while the prosecution is pending.

❑ Timelines for enquiry, investigation and trial

The Lokpal Act also lays down timelines for enquiry, investigation and trial. It is three months for preliminary enquiry, which is extendable by three months and six months for investigation, which may be extended by six months. For the trial, it is one year and extendable by one year. It also enhances the maximum punishment of imprisonment under the Prevention of Corruption Act from 7 to 10 years.

4.2.3.2 Lokayuktas

Lokayuktas are state-level institutions, similar to the Lokpal, established to address corruption and maladministration within state governments. The creation of the Lokayuktas was mandated by the Lokpal and Lokayuktas Act of 2013, which required each state to set up a Lokayukta to investigate charges against state officials. The jurisdiction of the Lokayuktas extends to all state government personnel, including the Governor, ministers, members of the legislative assembly and officials of religious institutions.

❑ Integrity and transparency in state administrations

The Lokayuktas play a crucial role in maintaining integrity and transparency in state administrations. They provide a direct platform for citizens to report allegations of corruption, nepotism or any other type of mal administration. This accessibility ensures that grievances are addressed promptly and effectively. Despite the statutory requirement, not all states have established Lokayuktas, which remains a challenge for uniform implementation nationwide. The presence of the Lokayuktas in states is vital for ensuring that state-level corruption is addressed with the same rigour as at the national level.

Composition of the Lokayuktas

❑ Former judge as Chairman

The composition of the Lokayukthas is not the same in all the states. Lokayuktas in states typically include a chairperson and several members, whose exact number and composition may vary from state to state. The chairperson is often a former judge of the Supreme Court or a High Court, ensuring judicial supervision. The members include individuals with expertise in public administration and law, providing a well-rounded approach to investigating and addressing corruption. The Lokayuktas operate as independent bodies, free from executive interference, to maintain their integrity and effectiveness. The Lokayukta is appointed by the Governor; in appointing the Lokayukta, the Governor in most states consults the chief justice of the state High Court and the leader of the opposition in the state legislative assembly.

Judicial qualifications are prescribed for the Lokayukta in some states, whereas no specific qualifications are prescribed in some other states. Once appointed, they hold office for five years or until age 65, whichever is earlier. He is not eligible for reappointment for a second term. In most states, the Lokayukta can initiate investigations either based on the complaints received from the citizens against unfair administrative actions or *suo moto*.

The Lokayukta takes the help of a state investigating agency to conduct enquiries. It can call for relevant files and documents from the Departments of State governments. The recommendations made by the Lokayukta are only advisory and not binding on the state government.

4.2.3.3 Importance of Lokpal and Lokayukta

The institutions of the Lokpal and Lokayukta were established in India to address corruption and maladministration, crucial issues that erode the nation's foundation and hinder effective governance. These institutions were created to function independently and ensure accountability within the public administration. While they represent a significant step forward in combating corruption, they also face several limitations that affect their overall efficacy.

Combating Corruption

The primary role of the Lokpal and the Lokayukta is to combat



corruption within the public sector. By providing a mechanism for the swift and unbiased investigation of corruption cases, these bodies help to reduce the prevalence of corrupt practices. This ensures that public officials adhere to ethical standards and are held accountable for their actions.

Promoting Good Governance

The establishment of the Lokpal and the Lokayukta promotes transparency and accountability in governance. These institutions provide a platform for citizens to lodge complaints against corrupt officials, fostering a culture of integrity and responsibility in public administration. This contributes to overall good governance and enhances public trust in the government.

Independent Functioning

Unlike many traditional anti-corruption organisations, the Lokpal and the Lokayukta are designed to function independently. This independence is crucial as it allows them to operate without undue influence from political entities, ensuring that their investigations and decisions are impartial and credible.

Filling Gaps Left by Advisory Bodies

Advisory bodies often lack the authority to enforce their recommendations. The Lokpal and the Lokayukta, however, have been endowed with significant powers under the Lokpal and Lokayuktas Act of 2013. This enables them to take concrete action against corrupt practices, filling the gaps left by merely advisory organisations.

Encouraging Public Participation

By allowing citizens to file a complaint without limitations, the Lokpal and Lokayukta enhance public participation in governance. This empowers citizens to engage in the fight against corruption actively and hold public officials accountable for their actions.

4.2.3.4 Powers and Functions of the Lokpal and the Lokayukta

- ❑ Investigate and present cases of corruption

The Lokpal and the Lokayuktas are critical institutions in India, established to combat corruption and ensure transparency and accountability in governance. The Lokpal operates at the national level, while the Lokayuktas function at the state level. Both bodies were created under the Lokpal and Lokayuktas Act of 2013, aimed at providing a mechanism for investigating and prosecuting cases of corruption involving public officials. Their establishment marks a significant milestone in India's fight against corruption, addressing both high-level and grassroots issues of governance.

Investigative Authority

Both the Lokpal and the Lokayuktas possess extensive investigative powers to probe allegations of corruption against public officials. The Lokpal can investigate the Prime Minister (with certain restrictions), ministers, members of the Parliament and central government employees. Similarly, the Lokayuktas have the authority to investigate the Chief Minister, state ministers, members of the state legislature and state government officials. They can initiate inquiries based on complaints or *suo moto* (on their own initiative).

Search and Seizure

The Lokpal and the Lokayuktas can conduct search and seizure operations to gather evidence. This involves confiscating documents, records and other pertinent material from the premises of the accused. These powers are crucial for collecting and preserving evidence to build a strong case against corrupt officials.

Prosecution

Upon completing an investigation, both bodies have the authority to recommend the prosecution of the accused officials. The Lokpal can direct the relevant authorities to file charges and initiate legal proceedings in special courts designated for corruption cases. The Lokayuktas have the same powers within their states, collaborating with state agencies of prosecution to ensure that those guilty of corruption face appropriate legal consequences.

Jurisdiction and Supervision

The Lokpal and the Lokayuktas have broad jurisdiction over public officials within their respective domains. They supervise and monitor the progress of investigations in corruption cases, ensuring that inquiries and trials are conducted impartially and without undue delay. This supervision is important in maintaining the integrity of the investigation process and ensuring accountability.

Whistleblower Protection

Both institutions protect whistle-blowers who report corrupt practices. This ensures that individuals who expose corruption are safeguarded against retaliation, harassment or victimisation. Protecting whistle-blowers is vital for encouraging the reporting of corruption and fostering a culture of transparency and accountability.

Advisory Role

In addition to their investigative and prosecutorial functions, the Lokpal and the Lokayuktas have an advisory role. They can recommend systemic reforms to prevent corruption and improve governance. These recommendations may involve changes to laws, policies and administrative procedures to enhance transparency, accountability and ethical conduct within government institutions.

Public Awareness and Engagement

The Lokpal and the Lokayuktas engage in public awareness campaigns to educate citizens about their rights and the harmful effects of corruption. By promoting transparency and encouraging public participation in governance, these campaigns help build a more informed and vigilant citizenry. Engaging the public is crucial for creating a collective demand for accountability and ethical governance.

The Lokpal and the Lokayuktas are pivotal in India's efforts to combat corruption and ensure transparent governance. Their powers to investigate, prosecute and recommend reforms are essential for maintaining accountability within the central and state governments. Protecting whistle-blowers and engaging the public, these institutions help foster a culture of integrity and ethical conduct. However, their effectiveness depends on

operational independence and strong political will to implement their recommendations. Strengthening these aspects will enable the Lokpal and the Lokayuktas to fulfil their mandate effectively, contributing to cleaner and more transparent governance across India.

4.2.3.5 Lokpal and Lokayukta Act of 2013

❑ Address rampant corruption

The Lokpal and the Lokayukta Act of 2013 was enacted to address rampant corruption in India by creating statutory bodies empowered to investigate allegations of corruption against public officials. The Lokpal, established at the central level and the Lokayuktas, established at the state level, were envisioned as independent bodies with the authority to probe and prosecute corruption cases.

Key Provisions

Establishment of Lokpal and Lokayuktas: The Act provided for establishing the Lokpal at the central level and the Lokayuktas in the states, each consisting of a chairperson and members appointed through a transparent selection process.

1. **Jurisdiction:** The Lokpal has jurisdiction over all public servants, including the Prime Minister, ministers, Members of Parliament and government officials, for investigating allegations of corruption. Similarly, the Lokayuktas have jurisdiction over state government officials.
2. **Investigation Powers:** The Lokpal is empowered to conduct preliminary inquiries, investigations and prosecutions related to corruption charges. It can summon and examine witnesses, gather evidence and recommend disciplinary action or prosecution.
3. **Complaint Mechanism:** The Act allows any citizen to file a complaint against corruption with the Lokpal, enhancing public participation in governance and accountability of public servants.
4. **Asset Declaration:** Public officials are mandated to declare their assets and liabilities, including those of their spouses and dependent children, to the Lokpal to prevent the accumulation of illicit wealth.
5. **Prosecution and Penalties:** Upon finding evidence of



corruption, the Lokpal can recommend penalties and prosecution, ensuring accountability and deterrence against corrupt practices.

Significance

The Lokpal and Lokayukta Act of 2013 is significant for several reasons:

- ▶ **Anti-Corruption Measures:** It represents a robust legal framework to combat corruption by establishing independent bodies with investigative and prosecutorial powers.
- ▶ **Transparency and Accountability:** By requiring asset declarations and empowering citizens to file complaints, the Act enhances governance transparency and ensures public officials' accountability.
- ▶ **Public Confidence:** It aims to restore public trust in government institutions by providing a mechanism for effectively addressing grievances related to corruption.
- ▶ **Legal Safeguards:** The Act provides legal safeguards to whistle-blowers and witnesses, encouraging them to come forward with information without fear of reprisal.

The Lokpal and the Lokayukta Act is a critical legislative milestone in India's fight against corruption, aiming to uphold integrity in public office and ensure fair governance. While its implementation has faced challenges, including delays in appointing the members of the Lokpal, the Act remains pivotal in shaping a more accountable and transparent administration. As India continues strengthening its anti-corruption measures, the Lokpal and the Lokayuktas remain indispensable in promoting ethical conduct and deterring corrupt practices across governmental levels.

4.2.3.6 Lokpal and Lokayukta Amendment Act 2016

The Lokpal and Lokayukta Amendment Act of 2016 introduced several key changes to the original 2013 Act. One of the notable amendments was related to the composition of the selection committee. Initially, the Act required the participation of the Leader of the Opposition in the Lok Sabha in the selection committee. However, recognising the absence of a recognised Leader of the Opposition, the amendment allowed the leader

of the largest opposition party in the Lok Sabha to become a member of the selection committee. This change aimed to ensure the functioning of the selection committee despite the absence of a formal Leader of the Opposition.

Another significant amendment pertained to Section 44 of the Act, which mandated public officials to declare their assets and liabilities within 30 days of assuming office. The 2016 amendment replaced this timeline with a requirement to declare assets and liabilities as the government prescribes without specifying a strict deadline. This flexibility aimed to streamline the reporting process and ensure comprehensive disclosure by public officials.

❑ Robust legislative framework to combat corruption

The Lokpal and Lokayukta Act of 2013, supplemented by the Lokpal and Lokayukta Amendment Act of 2016, represents India's robust legislative framework against corruption. These Acts empower independent institutions to investigate and prosecute corruption cases, ensuring public servants' accountability and promoting governance transparency. The amendments introduced in 2016, particularly regarding the composition of the selection committee and asset declaration requirements, aimed to strengthen the operational effectiveness of the Lokpal and broaden its scope of jurisdiction. As these institutions evolve, addressing challenges and adapting to changing governance needs, they will be crucial in enhancing their effectiveness in combating corruption across India.

4.2.3.7 Limitations of the Lokpal and the Lokayukta

Skewed Selection Process

❑ Biased appointments

One significant limitation is the skewed selection process for Lokpal members. The lack of clear guidelines for determining who qualifies as an "eminent jurist" or a "person of integrity" can lead to biased appointments. This compromises the independence and effectiveness of the institution.

Lack of Appellate Mechanism

There are no proper procedures for appealing the decisions made by the Lokpal, undermining its accountability. Without a clear appellate mechanism, addressing any potential errors or biases in its decisions becomes challenging.



Delayed Justice

The Lokpal and Lokayukta Act stipulates that no complaint against corruption can be filed until seven years have passed since the alleged offence. This delay can allow wrongdoers to escape scrutiny and reduce the effectiveness of these institutions in delivering timely justice.

Political Influence

The appointing committee for Lokpal includes representatives of political parties, which can influence the impartiality of the institution. This political involvement can affect the objectivity and fairness of the investigations and decisions of the Lokpal.

Lack of Political Will

Despite enacting the Lokpal and Lokayuktas Act in 2013, the delay in appointing a Lokpal indicates a lack of political will to implement and empower these institutions fully. This reluctance hampers their ability to function effectively and fulfil their mandate.

Exclusion of the Judiciary

One of the most serious limitations is the omission of the judiciary from the Lokpal's purview. This exclusion leaves a significant gap in the anti-corruption framework, as judicial corruption remains unaddressed.

The Lokpal and the Lokayukta are crucial in combating corruption and promoting good governance in India. Their independent functioning, significant powers and encouragement of public participation make them essential components of the country's anti-corruption framework. However, their effectiveness is compromised by several limitations, including a skewed selection process, lack of appellate mechanisms and political influence. Addressing these issues is vital to ensure that these institutions can operate independently and effectively, fulfilling their mandate to promote clean governance and accountability.

Summarised Overview

The Finance Commission, responsible for distributing financial resources between the centre and states, plays a critical role in fiscal federalism. Comprising members appointed every five years, its functions include assessing state needs and recommending fund allocations.

The Inter-State Council promotes cooperative federalism by facilitating dialogue among states and the central government. This body addresses inter-state issues and supports policy alignment, which is essential for national cohesion.

The Lokpal and Lokayukta were established as independent bodies to combat corruption at central and state levels, respectively. These institutions are important in upholding accountability in public offices, but they face challenges, such as operational delays and limited resources, which reduce their overall impact.

Assignments

1. Explain the composition and functions of the Finance Commission.
2. Discuss the role and powers of the Inter-State Council.
3. Trace the evolution of the Lokpal in India.
4. Analyse the composition and powers of the Lokayukta.
5. Identify the major criticisms against the Lokpal.
6. Discuss the criticisms faced by the Lokayukta.
7. Evaluate the effectiveness of the Lokpal in curbing corruption.
8. Compare the roles and responsibilities of the Lokpal and Lokayukta.

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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

The Election Commission of India

Learning Outcomes

A careful study of this unit will enable the learner to:

- ▶ understand the foundational role and purpose of the Election Commission of India
- ▶ analyse the composition and structure of the National Election Commission
- ▶ explore the roles and functions of State Election Commissions
- ▶ evaluate the key administrative, advisory, and quasi-judicial functions of the Election Commission
- ▶ assess the importance of the independence of the Election Commission
- ▶ discuss the challenges and criticisms faced by the Election Commission of India
- ▶ understand the significance and implications of NOTA (None of the Above) in the electoral process

Background

Without an agency to undertake elections, a country would face chaos and a breakdown of democratic processes. Elections could become disorganised, biased and corrupt, leading to disputes over legitimacy and potentially violent conflicts. The absence of a dedicated body would undermine transparency and fairness, eroding public trust in the electoral system and the broader democratic framework.

The Election Commission is crucial for a country like India due to its vast and diverse population. It ensures free and fair elections, upholding the principles of democra-

cy. The Commission's role includes preparing and updating electoral rolls, monitoring election campaigns to prevent malpractice and ensuring compliance with laws and regulations. By conducting elections efficiently and impartially, the Election Commission maintains political stability and public confidence in the democratic process, essential for India's unity and governance.

Keywords

Election Commission, State Election Commissions, Administrative Functions, Advisory Functions, Quasi-Judicial Functions

Discussion

4.3.1 The Election Commission of India

- ☐ Conduct elections

Article 324 of the constitution provides for the appointment of the election Commission to the superintendent, direct and control the preparation of the electoral roll and the conduct of the elections to the office of the President of India, the Vice President of India, the Lok Sabha, the Rajya Sabha and the legislative assemblies and legislative councils of the states. Thus, the Election Commission is an all-India body in the sense that it is common to the central government and the state governments.

- ☐ Multitude of functions

The functions of the Election Commission include the preparation and updating of electoral rolls, the registration of eligible voters, the setting of election dates and schedules and the scrutiny of nomination papers. It is also tasked with delimiting the geographic boundaries of electoral constituencies based on the Delimitation Commission Act of the Parliament. Furthermore, the Commission is responsible for creating electronic photo identity cards for voters, monitoring election campaign expenditures and addressing issues related to disqualifying sitting members of the state legislature and Parliament. In electoral malpractices, such as rigging or violence, the Commission has the authority to conduct inquiries and take necessary actions to ensure the integrity of the election process.



4.3.1.1 Composition of the Election Commission of India

- ❑ Holds office for six years or till years of age

The election Commission shall consist of the Chief Election Commissioner and such other election commissioners as the President may, from time to time, fix. The Chief Election Commissioner and other commissioners are appointed by the President, subject to the provisions of law made by the Parliament. When other election commissioners are appointed, the Chief Election Commissioner shall act as the election Commission's chairman. After consultation with the election commissioner, the President may also appoint regional commissioners as necessary to assist the Commission in its function. The Chief Election Commissioner can be removed from his office in the same manner and on the same grounds as a judge of the Supreme Court. Other election commissioners and regional election commissioners can be removed on the recommendation of the Chief Election Commissioner. The Election Commissioner holds office for six years or till 65 years of age, whichever is earlier. Their tenure and conditions of service cannot be changed to their disadvantage after appointment. Therefore, the Commission shall perform its duties without fear or pressure from the executive or party in power.

The Commission shall generally have a few members on his staff. The President or the Governors shall make available to the Commission such staff as may be necessary to discharge their functions.

The salary, pension and other conditions of service of the election commissioner are equivalent to those of a judge of the Supreme Court.

A multi-member Commission

- ❑ From single member to multi member body

Since its inception in 1950, and till October 1989, the Commission functioned as a single-member body consisting of only the Chief Election Commissioner. On 16th October 1989, the President appointed two more election commissioners on the eve of general elections to Lok Sabha in November - December 1989. However, the two commissioners ceased to hold office on 1st January 1990 when the two posts were abolished. Again, on 1st October 1993, the President appointed two more election commissioners through an ordinance. The article provided that

the three-member Commission's decision shall "as far possible be unanimous." However, in cases of difference of opinion, it shall be decided according to the opinion of the majority. In *T. N. Sheshan V/s union of India*, the Supreme Court unanimously upheld the validity of the ordinance equating the status, powers and authority of the two election commissioners with that of the Chief Election Commissioner. The general feeling was that a multi-member body would be fruitful in discharging its functions effectively and impartially.

Deputy election commissioners assist the election Commission. They are drawn from the Civil Service. They are assisted by the secretaries, joint secretaries, deputy secretaries and under-secretaries posted in the commissioner's secretariat. At the state level, the Commission is assisted by the chief electoral officer appointed by the Chief Election Commissioner in consultation with the state government. The district collector acts as the District Returning Officer at the district level. He appoints a Returning Officer for every constituency in the district and a Presiding Officer for every polling booth in the constituency.

❑ Make decision by a majority vote

The Election Commission functions as a collective body, making decisions by a majority vote. This structure balances power and prevents unilateral decision-making, further reinforcing the Commission's independence and credibility. The multi-member composition allows a more comprehensive and balanced approach to managing the complex electoral processes in a diverse and populous country like India. By maintaining a robust and impartial composition, the Election Commission of India ensures that it can effectively oversee the conduct of elections and uphold the principles of democracy in the country.

4.3.1.2 Independence of the Election Commission of India

The Election Commission of India is a vital institution that upholds the democratic process by conducting free and fair elections. The constitution of India provides several safeguards to ensure its independence and impartiality. They are given below-

Removal of the Chief Election Commissioner: The Chief Election Commissioner (CEC) enjoys security of tenure and can only be removed from office in the same manner and on

the same grounds as of a Supreme Court judge. This provision protects the CEC from arbitrary dismissal, thereby maintaining the office's independence from political pressures.

Removal of Other Election Commissioners: Other Election Commissioners and regional commissioners also have a layer of protection. The President only can remove them on the recommendation of the CEC. This ensures that their removal is not influenced by political motivations and is based on impartial judgment. The integrity of the Election Commission largely depends on the integrity and impartiality of the CEC.

Condition of Service and Tenure: The President determines the service conditions and tenure of the Election Commissioners, including the CEC. However, once appointed, the service conditions of the CEC cannot be changed to his disadvantage. This constitutional safeguard ensures that the CEC's operational independence is not compromised by changes in service conditions that could otherwise be used to exert pressure.

Fixed Term: The tenure of the Election Commissioners is fixed at six years or until they reach the age of 65, whichever comes earlier. This fixed term provides stability and continuity within the Election Commission, enabling it to carry out its functions without undue influence or interruptions.

These provisions collectively ensure that the Election Commission of India operates independently of the executive and legislative branches of government. The stringent removal process for the CEC, the requirement of the CEC's recommendation for the removal of other commissioners, and the protection of service conditions are all designed to protect the Commission's autonomy.

The constitution's provisions for the Election Commission's independence are crucial for maintaining the integrity and impartiality of India's electoral process. These safeguards allow the Commission to function without interference, ensuring that elections are conducted fairly and transparently.

4.3.1.3 Powers and Functions of the Election Commission of India

The Election Commission of India is a vital institution that ensures the democratic process in the country is conducted smoothly and fairly. Its powers and functions span various

aspects of electoral administration, from maintaining electoral rolls to enforcing election laws and regulations.

Compilation and Updating of Electoral Rolls: One of the primary responsibilities of the Indian Election Commission is supervision, direction and control of the preparation of the Electoral roll and conduct of elections to the Parliament, state legislatures and the offices of the President and the Vice President. The Commission continually verifies and revises these rolls to include new voters and remove ineligible ones.

Determining Geographic Limits of Electoral Seats: Based on the Delimitation Commission Act of the Parliament, the Commission determines the geographic boundaries of electoral constituencies. This process, known as delimitation, ensures that each constituency has an approximately equal number of voters, thereby maintaining balanced representation across the country.

Creation of Electronic Photo Identity Cards and Election Lists: The Commission is responsible for creating electronic photo identity cards (EPIC) for voters. These cards help prevent electoral fraud and ensure that only registered voters cast their votes. Additionally, the Commission prepares and publishes election lists detailing candidates contesting elections in various constituencies.

Monitoring Election Campaign Expenditures: The Indian Election Commission sets spending limits for each candidate's campaign. These campaigns are rigorously monitored to prevent excessive spending and to ensure a level playing field among candidates. The Commission scrutinises the financial accounts of candidates and political parties to enforce these limits.

Disqualification of Members: The Commission has the authority to recommend the disqualification of sitting members of state legislatures and Parliament in consultation with the President. The Commission provides advice to the President and the Governors on such matters.

Requesting Staff for Elections: The Commission can request the necessary staff from the President or Governors to conduct elections efficiently. This includes administrative personnel and security forces required to manage polling stations and ensure the safety and integrity of the electoral process.



Enrollment and Recognition of Political Parties: The Election Commission enrolls political parties for electoral purposes and grants them national or state party status based on their performance. In elections. This status affects the privileges and recognition of parties within the electoral framework.

Fixation of Election Expenses: The Commission fixes the limit of election expenses and examines the accounts of election expenditures submitted by the candidates.

Inquiry into Electoral Complaints: In cases of rigging, booth capturing, violence or other irregularities, the Commission has the authority to conduct inquiries. It can appoint officers to investigate these complaints and, if necessary, call off or reschedule elections to maintain fairness and order.

Recognition and Allocation of Election Symbols: Political parties are given recognition and allocated unique election symbols by the Commission. These symbols are crucial for voters, especially in a country with high rates of illiteracy, as they help identify parties and candidates on the ballot papers.

Establishing the Code of Conduct: The Commission establishes a code of conduct for political parties, candidates and voters. This code ensures that campaigns are conducted ethically and that there is no undue influence or malpractice.

Regulating the Media and Advertising: The Commission also regulates political advertisements on radio and television during elections. It sets a schedule and guidelines for how parties can use the media for their campaigns, ensuring equal opportunity and preventing misuse.

Ensuring Free and Fair Elections: Ultimately, the Commission oversees the entire election infrastructure and process to ensure that elections are free, fair and transparent. This includes setting up polling stations, training election staff and deploying security forces to maintain order.

In conclusion, the Election Commission of India plays a comprehensive role in safeguarding the democratic process by ensuring elections are conducted in an orderly, transparent and fair manner. Its wide-ranging powers and functions are crucial to maintaining the integrity and credibility of elections in India.

4.3.1.4 Criticism Against the Election Commission

The Election Commission of India faces various criticisms that challenge its effectiveness and independence in conducting free and fair elections.

Selection of Members: Election Commissioners are appointed by the President based on the advice of the Council of Ministers. This process is criticised for potential political influence, as the lack of a transparent and independent selection procedure may lead to biased appointments.

Qualification Not Prescribed: The constitution does not specify qualifications for members of the Election Commission. This absence of criteria raises concerns about the competence and suitability of appointees, potentially affecting the Commission's credibility and efficiency.

Ambiguity in Term: The constitution does not define a specific term for the Election Commissioners, creating uncertainty and potential vulnerabilities. This lack of clarity can influence their decision-making, particularly towards the end of their undefined tenure.

Post-Retirement Appointments: Retiring Election Commissioners are not barred from accepting government appointments, which can compromise their independence. The prospect of post-retirement benefits might affect their impartiality while in office.

Financial Independence: The budget of the Election Commission is not charged to the Consolidated Fund of India, limiting its financial autonomy. Reliance on government funding can hinder the Commission's independence and ability to function effectively.

Dependence on Local Governments: The Election Commission lacks a full time staff and relies heavily on state and local government personnel. This dependence can affect its ability to conduct impartial elections, especially if local governments have vested interests.

Unequal Position of Commissioners: While Election Commissioners are equal in appointment, their removal processes are unequal. The Chief Election Commissioner (CEC) can be removed the same way as a Supreme Court



judge. In contrast, other Commissioners can be removed based on the CEC's recommendation, leading to potential hierarchical imbalances and reduced independence.

Insufficient Regulatory Powers: The Election Commission has limited authority to regulate political parties. It cannot enforce inner-party democracy or control party finances effectively. Despite having the power to register political parties under Section 29A of the Representation of the People Act, 1951, it lacks the authority to de-register parties, even for significant violations.

Inefficiency in Handling Malpractices: The Election Commission struggles to curb the criminalisation of politics and the use of money and muscle power in elections. These persistent issues undermine the electoral process and public trust.

Perception of Losing Neutrality: There is a growing perception that the Election Commission is losing its independence and leaning towards the government in power. This perception negatively impacts the institution's image and its role as a neutral arbiter in the democratic process.

Addressing these criticisms through comprehensive reforms is essential to enhance the Election Commission's autonomy, impartiality and effectiveness in safeguarding India's democratic integrity.

State Election Commission

❑ Headed by
State Election
Commission

The State Election Commission (SEC) is a constitutional authority established under Articles 243K and 243ZA of the Indian constitution. It is headed by a State Election Commissioner, whom the Governor appoints. The SEC is entrusted with the superintendence, direction and control of preparing electoral rolls and conducting free, fair and impartial elections to the local bodies within a state. The appointment and tenure of the State Election Commissioner are governed by state legislation, ensuring that the Commissioner cannot be removed from office except under conditions similar to those applicable to a High Court Judge. This provision ensures the independence and integrity of the SEC. He cannot be removed from office except in the like manner or like ground as a high court judge. Article 243(C3) also mandates that the Governor

must provide the necessary staff to the SEC upon request to fulfil its functions. The SEC operates independently of the Election Commission of India, focusing solely on local self-government elections.

Functions of the State Election Commission

The primary functions of the State Election Commission include managing and conducting elections for the Panchayati Raj institutions and Municipalities. Key functions are:

- ▶ **Preparation of Electoral Rolls:** The SEC oversees the creation and updating of electoral rolls to ensure that all eligible voters are registered.
- ▶ **Appointment of Dates for Nominations:** It sets the schedule for the nomination of candidates, ensuring a structured and timely electoral process.
- ▶ **Public Notice of Election:** The SEC issues public notices about upcoming elections, informing citizens and stakeholders.
- ▶ **Nomination of Candidates for Election:** It handles the nomination process, verifying and approving candidates who wish to contest the elections.
- ▶ **Publication of List of Contesting Candidates:** After nominations are confirmed, the SEC publishes an official list of candidates participating in the election.
- ▶ **Fixing Time for Poll:** The SEC determines the polling schedule, ensuring voters have sufficient opportunity to cast their votes.
- ▶ **Adjournment of Poll in Emergencies:** In emergencies or disruptions, the SEC can adjourn polling to maintain order and safety.
- ▶ **Counting of Votes:** After polling, the SEC supervises the counting of votes and ensures the results are accurately tabulated and declared.

Through these functions, the State Election Commission plays a vital role in maintaining the democratic process at the local level, ensuring elections are conducted fairly, transparently and efficiently.



Summarised Overview

In Kerala, e-governance initiatives spearheaded by the Modernising Government Programme (MGP) have revolutionized administrative processes, enhancing efficiency, transparency, and citizen participation. Key projects like AKSHAYA, FRIENDS, and E-District Kerala have enabled seamless digital access to government services, fostering a more inclusive and responsive governance framework. Through these initiatives, Kerala has emerged as a beacon of digital transformation, leveraging technology to bridge the gap between government and citizens, and setting a precedent for effective e-governance implementation nationwide.

Assignments

1. Explain the primary roles and responsibilities of the Election Commission of India.
2. Discuss the composition and structure of the National Election Commission.
3. Describe the functions and duties of State Election Commissions.
4. Analyze the key administrative functions of the Election Commission.
5. Evaluate the advisory functions performed by the Election Commission.
6. Explain the quasi-judicial functions of the Election Commission.
7. Discuss the importance of the independence of the Election Commission in India.
8. Identify and analyze the major challenges and criticisms faced by the Election Commission of India.

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4. "Democracy and Development in India: From Socialism to Pro-Business" by Atul Kohli.
5. "Public Institutions in India: Performance and Design" by Devesh Kapur and Pratap Bhanu Mehta.
6. "Indian Government and Politics" by B. L. Fadia.
7. "The Puzzle of Indian Democracy: A Consociational Interpretation" by Arend Lijphart.
8. "The Indian Parliament: A Critical Appraisal" by M. A. Oommen.



Space for Learner Engagement for Objective Questions

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സർവ്വകലാശാലാഗീതം

വിദ്യായാൽ സ്വതന്ത്രരാകണം
വിശ്വപൗരരായി മാറണം
ഗ്രഹപ്രസാദമായ് വിളങ്ങണം
ഗുരുപ്രകാശമേ നയിക്കണേ

കുതിരുട്ടിൽ നിന്നു ഞങ്ങളെ
സൂര്യവീഥിയിൽ തെളിക്കണം
സ്നേഹദീപ്തിയായ് വിളങ്ങണം
നീതിവൈജയന്തി പാറണം

ശാസ്ത്രവ്യാപ്തിയെന്നുമേകണം
ജാതിഭേദമാകെ മാറണം
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