SYLLABUS

UNIT I	**NATIONAL MOVEMENT & PROCESS OF CONSTITUTION MAKING & DEVELOPMENT** ⇨ Indian National Movement ⇨ Sources and process of Constitution making ⇨ Salient features of Indian Constitution ⇨ Preamble of the Indian Constitution.
UNIT II	**FUNDAMENTAL RIGHTS AND DUTIES AND ELECTION** ⇨ Fundamental rights and duties in Indian Constitutions ⇨ Election commission and election reforms
UNIT III	**OFFICE BEARERS AND SUPREME COURT** ⇨ Central Government- President, Parliament, Prime Minister ⇨ Supreme Court
UNIT IV	**STATE GOVERNMENT AND HIGH COURT** ⇨ State Government Governor, State legislature ⇨ Chief Minister, Council of Ministers, High Court
UNIT V	**MISCELLANEOUS** ⇨ Centre-State relations. ⇨ Political parties-National and Regional. ⇨ Factors affecting Indian politics-Caste, Religion, Language, Region & Poverty ⇨ Judicial Reforms

INDIAN NATIONAL MOVEMENT

INDIAN FREEDOM STRUGGLE (1857-1947)

In ancient times, people from all over the world were keen to come to India. The Aryans came from Central Europe and settled down in India. The Persians followed by the Iranians and Parsis immigrated to India. Then came the Moghuls and they too settled down permanently in India. Chengis Khan, the Mongolian, invaded and looted India many times. Alexander the Great too, came to conquer India but went back after a battle with Porus. He-en Tsang from China came in pursuit of knowledge and to visit the ancient Indian universities of Nalanda and Takshila. Columbus wanted to come to India, but instead landed on the shores of America. Vasco da Gama from Portugal came to trade his country's goods. The French came and established their colonies in India.

Lastly, the Britishers came and ruled over India for nearly 200 years. After the battle of Plassey in 1757, the British achieved political power in India. And their paramountcy was established during the tenure of Lord Dalhousie, who became the Governor-General in 1848. He annexed Punjab, Peshawar and the Pathan tribes in the north-west of India. And by 1856, the British conquest and its authority were firmly established. And while the British power gained its heights during the middle of the 19th century, the discontent of the local rulers, the peasantry, the intellectuals, common masses as also of the soldiers who became unemployed due to the disbanding of the armies of various states that were annexed by the British, became widespread. This soon broke out into a revolt which assumed the dimensions of the 1857 Mutiny.

THE INDIAN MUTINY OF 1857

The conquest of India, which could be said to have begun with the Battle of Plassey (1757), was practically completed by the end of Dalhousie's tenure in 1856. It had been by no means a smooth affair as the simmering discontent of the people manifested itself in many localized revolt during this period. However, the Mutiny of 1857, which began with a revolt of the military soldiers at Meerut, soon became widespread and posed a grave challenge to the British rule. Even though the British succeeded in crushing it within a year, it was certainly a popular revolt in which the Indian rulers, the masses and the militia participated so enthusiastically that it came to be regarded as the First War of Indian Independence.

Introduction of zamindari system by the British, where the peasants were ruined through exorbitant charges made from them by the new class of landlords. The craftsmen were destroyed by the influx or the arrival of the British manufactured goods. The religion and the caste system which formed the firm foundation of the traditional Indian society were endangered by the British administration. The Indian soldiers as well as people in administration could not rise in hierarchy as the senior jobs were reserved for the Europeans. Thus, there was all-round discontent and disgust against the British rule, which burst out in a revolt by the 'sepoys' at Meerut whose religious sentiments were offended when they were given new cartridges greased with cow and pig fat, whose covering had to be stripped out by biting with the mouth before using them in rifles. The Hindu as well as the Muslim soldiers, who refused to use such cartridges, were arrested which resulted in a revolt by their fellow soldiers on May 9, 1857.

The rebel forces soon captured Delhi and the revolt spread to a wider area and there was uprising in almost all parts of the country. The most ferocious battles were fought in Delhi, Awadh, Rohilkhand, Bundelkhand, Allahabad, Agra, Meerut and western Bihar. The rebellious

forces under the commands of Kanwar Singh in Bihar and Bakht Khan in Delhi gave a stunning blow to the British. In Kanpur, Nana Sahib was proclaimed as the Peshwa and the brave leader Tantya Tope led his troops. Rani Lakshmibai was proclaimed the ruler of Jhansi who led her troops in the heroic battles with the British. The Hindus, the Muslims, the Sikhs and all the other brave sons of India fought shoulder to shoulder to throw out the British. The revolt was controlled by the British within one year; it began from Meerut on 10 May 1857 and ended in Gwalior on 20 June 1858.

END OF THE EAST INDIA COMPANY

Consequent to the failure of the Revolt of 1857 rebellion, one also saw the end of the East India Company's rule in India and many important changes took place in the British Government's policy towards India which sought to strengthen the British rule through winning over the Indian princes, the chiefs and the landlords. Queen Victoria's Proclamation of November 1, 1858 declared that thereafter India would be governed by and in the name of the British Monarch through a Secretary of State.

The Governor General was given title of Viceroy, which meant the representative of the Monarch. Queen Victoria assumed the title of the Empress of India and thus gave the British Government unlimited powers to intervene in the internal affair of the Indian states. In brief, the British paramountcy over India, including the Indian States, was firmly established. The British gave their support to the loyal princes, zamindar and local chiefs but neglected the educated people and the common masses. They also promoted the other interests like those of the British merchants, industrialists, planters and civil servants. The people of India, as such, did not have any say in running the government or formulation of its policies. Consequently, people's disgust with the British rule kept mounting, which gave rise to the birth of Indian National Movement.

The leadership of the freedom movement passed into the hands of reformists like Raja Rammohan Roy, Bankim Chandra and Ishwar Chandra Vidyasagar. During this time, the binding psychological concept of National Unity was also forged in the fire of the struggle against a common foreign oppressor.

Raja Rammohan Roy (1772-1833) founded the Brahmo Samaj in 1828 which aimed at eradication by the society of all its evil practices. He worked for eradicating evils like sati, child marriage and purdah system, championed widow marriage and women's education and favoured English system of education in India. It was through his effort that sati was declared as an offence by the British.

Swami Vivekananda (1863-1902), the disciple of Ramakrishna Paramahansa, established the Ramkrishna Mission at Belur in 1897. He championed the supremacy of Vedantic philosophy. His talk at the Chicago (USA) Conference of World Religions in 1893 made the westerners realize the greatness of Hinduism for the first time.

RISE OF NATIONAL MOVEMENT

At the beginning of the 19th century India was regarded as one of the few countries with least possibilities for the rise of nationalism or the growth of national movement. The main reason for such assumptions was that the vast population of India was not only politically backward but also disunited by barriers of language, religion, culture etc. The lack of unifying sense of nationalism and patriotic feelings was one of the strong contributing factors to the foundation and consolidation of the British rule in India. Certain colonial scholars did not even regard India as a nation. But India, throughout the course of her history had enjoyed inherent unity in diversity. This unity in diversity greatly helped in the rise and growth of Indian National Movement. The 19th and early 20th centuries were an age of democratic, liberal and nationalist ideas. The American War of Independence, the French Revolution, the Russian

Revolution of 1917 etc., greatly inspired the rise and growth of the National Movement in India. No doubt all these external events, internal turmoils and self-realisation together inspired the rise and growth of the Indian National Movement.

India's National Movement was truly Indian in the respect that it was world's first struggle for freedom based on truth and non-violence and its foundations was laid by the socio-religious reform movement of the 19th century.

Causes of Indian National Movement:

Among the many causes responsible for the rise of the national movement the following deserve special mention:

1) The Macaulavian system of education though conceived in the interests of efficient administration opened to the newly educated Indians the foodgates of liberal European thought. The liberal and radical thoughts of European writers inspired the Indian intelligentsia with the ideals of liberty, nationality and self-government. The spread and expansion of the English language gave to the Indians living in different linguistic regions a common language-lingua franca.

2) In the nineteenth century the development of vernacular languages was also phenomenal. The neo-educated class conveyed their ideas of liberty and equality to the masses through the media of these vernaculars. The vernacular literature greatly helped in arousing Indian nationalism.

3) Socially, British Imperialism destroyed the old, order of society in India. After the Rebellion of 1857 and the British administrators realised that the reactionary and feudal elements of society could serve as strong props of Imperialism. This change in policy exposed the hollowness of British professions and drove the English Administrators and the progressive elements in opposite camps.

4) The development of the various socio-religious movements prepared the ground for the growth of national movements and watered the plant of patriotism. The reform movements sought an all-round improvement of the Indian society. They gave the people a sense of pride in Indian culture and heritage and taught them the gospel of patriotism.

5) The economic policy pursued by the British in India had resulted in a lopsided development of Indian economy and impoverishment of the people. The economy of India was geared to the production of raw materials needed for the developing machine industry of England. Such a policy also made India as a growing market for English manufactured goods. The cumulative effect of British economic policies had resulted in chrominisery and found expression in mass unrest. Periodical famines became a regular feature of Indian economy.

6) The natural process of conquest and consolidation brought the whole of India under a single political set-up. A network of roads and railways linked the bigger towns and the country with the world market. The setting up of efficient posts and telegraphs system and the accompanying developments gave India the appearance of unity and fostered the spirit of one-mindedness.

7) The growth of the modern press and with it the public opinion was an offshoot of the English rule in India. Despite the numerous restrictions imposed on the press from

time to time, Indian journalism made rapid strides. The Indian press created a strong public opinion opposed to imperialist policies, and played no insignificant role in fostering patriotism and developing nationalism.

8) The short-sighted acts and policies of Lord Lytton acted like catalytic agents. The maximum age limit for the I.C.S. examination was reduced from 21 years to 19 years, thus making it impossible for Indians to compete for it. Lytton put o the statute book two obnoxious measures the Vernacular Press Act and Indian Arms Act (1878). Lytton's unpopular acts provoked a great storm of opposition in the country and led to the organisation of various political associations for carrying on anti- Government propaganda in the country.

9) One unfortunate legacy of the Rebellion of 1857 was the feeling of racial bitterness between the rulers and the ruled. The Anglo-Indian bureaucracy developed an attitude of arrogance and contempt towards the Indians. The Indians were dubbed as belonging to an inferior race and no longer worthy of any trust. This narrow approach evoked a reaction in the Indian mind and put the educated Indians on the defensive.

10) ILLBERT BILL (1883 CONTROVERSY): In 1880, there was a change of Government in England, and the Liberal Party under Gladstone came into power. He was known for his liberal ideas and was a believer in moral principles. "Good Government" he pronounced, "was no substitute for self-government", "It is our weakness and calamity", he said that we have not been able to give India the blessing of free institutions". He sent Lord Ripen, a close friend and follower, to "reform the structure of the Indian Government. The new Governor-General repealed the Vernacular Press Act of 1878, commenced industrial legislation by passing the first Factories Act, and took steps to promote local self-government in big cities and towns.

Ripon also sought to remove the individual distinction existing at that time between the European and Indian members of the judiciary. Indian sessions judges and magistrates were not re-empowered to try European offenders, and this was a cause of great annoyance to the educated community of the country. In 1883, the Law Member of the Viceroy's Executive Council, Sir Courtenay Illbert, introduced in the Imperial Legislature a Bill, known after his name as Illbert Bill, designed to remove 'The disability of Indian judges. The Anglo-Indian community opposed the enactment of the Bill vehemently, and asserted that the Indian judges were not fit to administer justice to a White offender. The European Defence Association, with branches in important cities of India, was formed to organize a campaign against the Bill. There were protest meetings and agitation, and it was proposed to kidnap Ripon and hold him to ransom. Even in England, the Government was under fire, Ripon had to bow to the storm and a compromise was made which provided that European and British subjects were to have a right to claim trial by Jury of twelve, atleast seven of whom, must be Europeans or Americans.

This manifestation of the British sense of racial superiority acted as a spark to the power magazine; it acted as an eye-opener to Indians. They learnt the lesson that they would have to undergo a long period of sacrifice and discipline if they wanted justice and equality in their own country. The educated class of people noted the extra-ordinary force of a minority when organized and directed by a single aim, and they applied the inference to their own situation. Demands began to arise for a national organization by means of which the grievances of the people against the British rule could be ventilated. A few thoughtful men, both Indians and English were not slow to measure the trends in the country and they took steps to organize the mass discontentment into a peaceful channel.

11. Certain external factors like home-rule movement in Ireland, Unification of Germany, Italy; Victory of Japan over an European power Russia in 1905 also produced nationalist and revolutionary feelings among the Indians.

It is from here that Swadeshi and Boycott became political weapons. The beginning of the Indian National Movement is rightly regarded with the foundation of the Indian National Congress in 1885, which united the Indian nationalists of all shades and opinions into a common front of the nationalists and soon the roots of national struggle for freedom spread to all parts of the country.

***Reasons that caused the emergence of Indian National Congress*–**
Though the Indian National Congress was founded in 1885, its origin can be traced from the various forces at work since the mid-nineteenth century. They can he summarized as follows—

a. ***Effects of the First War of Indian Independence (1857)*** – In this war of independence, for the first time rulers, soldiers and leaders from different parts of India came in close contact with each other. Though it failed in achieving its main goal due to lack of resources, coordination and appropriate planning, it helped in generating national consciousness throughout India.

b. ***Impact of the socio-religious movements***—The socio religious movements of the nineteenth century, such as Arya Samaj founded by Swami Dayanand Saraswati, Brahmo Samaj founded by Raja Rammohan Roy, Ramakrishna Mission founded by Swami Vivekanand and the Theosophical Society founded by Madame Blavatsky and Olcott played a very vital role creating a new awakening amongst the people of India. They became proud of their splendid past and looked ahead for renaissance in India.

c. ***Effects of the British Rule*** – Though the foreign rule of the British was Unresponsive to the sentiments of the people, it proved to be a blessing in disguise. The network of railways and telegraphs aroused and fostered a feeling of Unity amongst the people hailing from different parts of India.

d. ***Western education***—The spread western education brought the people in touch with the philosophies of the western thinkers with their emphasis on nationalism, democracy and scientific outlook.

e. ***Economic exploitation***—The policies of the British Government in India were based on economic exploitation. They purchased raw materials from India at very cheap rates and sent them to England to feed the needs of the British Industries. The readymade goods of the British industries were sold in India at very high rites. The government discouraged cottage industries of India and dumped the Indian market with goods manufactured in England.

f. ***Oppressive agricultural policy***—The British Government charged heavy land revenues on the poor peasants of India who heavily depended on the vagaries of nature. This caused a lot of resentment amongst Indian peasants against the British rule.

g. ***Severe famines***—In the first half of the nineteenth century, there occurred seven famines, with an estimated total of one million deaths while in the second hall, there

were twenty-four famines resulting in twenty million deaths. The British Government did not come out with any substantial help to relive the suffering people.

h. ***Vernacular press***—When the people of India noted that the English newspapers were hostile to the cause of Indians, they started newspapers in Indian Languages. These newspapers began to expose the anti-people policies of the British Government. This led the Government to enact Vernacular Press Act that restricted the freedom of local newspapers. This provoked a lot of resentment both in India and in England. This resulted in its revocation. However the British Government adopted other measures to deny freedom of speech and expression to the people of India.

i. ***Repressive measures of Lord Lytton***—During the Governor Generalship of Lord Lytton, steps were taken which caused bitter feelings against the British Government. While there was a severe famine in India in 1876, which took away toll of thousands of Indian life, Lord Lytton held a durbar at Delhi in 1877 to announce that Queen Victoria had assumed the title of the Empress of India. Lord Lytton forced India into an Afghan war that caused enormous loss in the form of men and money. He imposed heavy penalties on Indians for bearing arms without licence, there was no such restriction on the Europeans.

j. ***Ilbert Bill Controversy***—According to the then existing law, an Indian Magistrate was not empowered to try and punish Europeans. The Ilbert Bill wanted to remove this discrimination against the Indians. The European Community organized such a strong opposition against it that it was eventually withdrawn. This rooted a feeling in the minds of the Indian people that they could not get justice from the British Government.

FORMATION OF INDIAN NATIONAL CONGRESS (INC)

The foundations of the Indian National Movement were laid by ***Suredranath Banerjee*** with the formation of Indian Association at Calcutta in 1876. The aim of the Association was to represent the views of the educated middle class, inspire the Indian community to take the value of united action. The Indian Association was, in a way, the forerunner of the Indian National Congress, which was founded, with the help of ***A.O. Hume***, a retired British official. The birth of Indian National Congress (INC) in 1885 marked the entry of new educated middle-class into politics and transformed the Indian political horizon.

The first session of the Indian National Congress was held in Bombay in December 1885 under the presidentship of Wyomesh Chandra Banerjee. Congress was an all India institution and had the support and cooperation of the Hindus, Muslims, Parsis, Sikhs, Christians, Anglo Indians and Europeans. W.C. Bannnerji, the first president of the Indian National Congress, was an Indian Christian. Its next president was Dadabhai Naorojee, who was a Parsi. The third President was Badruddin Tayyabji, who was Muslim. The fourth and fifth Presidents were George Mool and William Baderburn, who were Britishers.

At the turn of the century, the freedom movement reached out to the common unlettered man through the launching of the "Swadeshi Movement" by leaders such as Bal Gangadhar Tilak and Aurobindo Ghose. The Congress session at Calcutta in 1906, presided by Dadabhai Naoroji, gave a call for attainment of 'Swaraj' a type of self-government elected by the people within the British Dominion, as it prevailed in Canada and Australia, which were also the parts of the British Empire.

Meanwhile, in 1909, the British Government announced certain reforms in the structure of Government in India which are known as "***Morley-Minto Reforms***". But these reforms came as a disappointment as they did not mark any advance towards the establishment of a representative Government. The provision of special representation of the Muslim was seen as

a threat to the Hindu-Muslim unity on which the strength of the National Movement rested. So, these reforms were vehemently opposed by all the leaders, including the Muslim leader Muhammad Ali Jinnah. Subsequently, King George V made two announcements in Delhi: firstly, the partition of Bengal, which had been effected in 1905, was annulled and, secondly, it was announced that the capital of India was to be shifted from Calcutta to Delhi.

The disgust with the reforms announced in 1909 led to the intensification of the struggle for Swaraj. While, on one side, the activists led by the great leaders like Bal Gangadhar Tilak, Lala Lajpat Rai and Bipin Chandra Pal waged a virtual war against the British, on the other side, the revolutionaries stepped up their violent activities. There was a widespread unrest in the country.

To add to the already growing discontent among the people, ***Rowlatt Act*** was passed in 1919, which empowered the Government to put people in jail without trial. This caused widespread indignation, led to massive demonstration and hartals, which the Government repressed with brutal measures like the Jaliawalla Bagh massacre, where thousand of unarmed peaceful people were gunned down on the order of General O'Dyer.

JALLIANWALA BAGH MASSACRE

Jallianwala Bagh massacre of ***April 13, 1919*** was one of the most inhuman acts of the British rulers in India. The people of Punjab gathered on the auspicious day of Baisakhi at Jallianwala Bagh, adjacent to Golden Temple (Amritsar), to lodge their protest peacefully against persecution by the British Indian Government. General Dyer appeared suddenly with his armed police force and fired indiscriminately at innocent empty handed people leaving hundreds of people dead, including women and children.

After the First World War (1914-1918), Mohandas Karamchand Gandhi became the undisputed leader of the Congress. During this struggle, Mahatma Gandhi had developed the novel technique of non-violent agitation, which he called '***Satyagraha***', loosely translated as 'moral domination'. Gandhi, himself a devout Hindu, also espoused a total moral philosophy of tolerance, brotherhood of all religions, non-violence (ahimsa) and of simple living. With this, new leaders like Jawaharlal Nehru and Subhash Chandra Bose also emerged on the scene and advocated the adoption of complete independence as the goal of the National Movement.

THE NON-COOPERATION MOVEMENT

The Non-Cooperation Movement was pitched in under leadership of Mahatma Gandhi and the Indian National Congress from ***September 1920 to February 1922***, marking a new awakening in the Indian Independence Movement. After a series of events including the Jallianwala Bagh Massacre, Gandhiji realised that there was no prospect of getting any fair treatment at the hands of British, so he planned to withdraw the nation's co-operation from the British Government, thus launching the Non-Cooperation Movement and thereby marring the administrative set up of the country. This movement was a great success as it got massive encouragement to millions of Indians. This movement almost shook the British authorities.

SIMON COMMISSION

The Non-cooperation movement failed. Therefore there was stillness in political activities. The Simon Commission was sent to India in 1927 by the British Government to suggest further reforms in the structure of Indian Government. The Commission did not include any Indian member and the Government showed no intention of accepting the demand for Swaraj. Therefore, it sparked a wave of protests all over the country and the Congress as well as the Muslim League gave a call to boycott it under the leadership of Lala Lajpat Rai. The crowds were lathi charged and Lala Lajpat Rai, also called Sher-e-Punjab (Lion of Punjab) died of the blows received in an agitation.

CIVIL DISOBEDIENCE MOVEMENT

Mahatma Gandhi led the Civil Disobedience Movement that was launched in the Congress Session of ***December 1929***. The aim of this movement was a complete disobedience of the orders of the

British Government. During this movement it was decided that India would celebrate 26th January as Independence Day all over the country. On 26th January 1930, meetings were held all over the country and the Congress tricolour was hoisted. The British Government tried to repress the movement and resorted to brutal firing, killing hundreds of people. Thousands were arrested along with Gandhiji and Jawaharlal Nehru. But the movement spread to all the four corners of the country. Following this, Round Table Conferences were arranged by the British and Gandhiji attended the second Round Table Conference at London. But nothing came out of the conference and the Civil Disobedience Movement was revived.

During this time, Bhagat Singh, Sukhdev and Rajguru were arrested on the charges of throwing a bomb in the Central Assembly Hall (which is now Lok Sabha) in Delhi, to demonstrate against the autocratic alien rule. They were hanged to death on March 23, 1931.

QUIT INDIA MOVEMENT

In ***August 1942***, Gandhiji started the 'Quit India Movement' and decided to launch a mass civil disobedience movement ***'Do or Die***' call to force the British to leave India. The movement was followed, nonetheless, by large-scale violence directed at railway stations, telegraph offices, government buildings, and other emblems and institutions of colonial rule. There were widespread acts of sabotage, and the government held Gandhi responsible for these acts of violence, suggesting that they were a deliberate act of Congress policy. However, all the prominent leaders were arrested, the Congress was banned and the police and army were brought out to suppress the movement.

Meanwhile, Netaji Subhash Chandra Bose, who stealthily ran away from the British detention in Calcutta, reached foreign lands and organized the Indian National Army (INA) to overthrow the British from India.

The Second World War broke out in September of 1939 and without consulting the Indian leaders, India was declared a warring state (on behalf of the British) by the Governor General. Subhash Chandra Bose, with the help of Japan, preceded fighting the British forces and not only freed Andaman and Nicobar Islands from the Britishers but also entered the north-eastern border of India. But in 1945 Japan was defeated and Netaji proceeded from Japan through an aeroplane to a place of safety but met with an accident and it was given out that he died in that air-crash itself.

"Give me blood and I shall give you freedom" - was one of the most popular statements made by him, where he urges the people of India to join him in his freedom movement.

PARTITION OF INDIA AND PAKISTAN

At the conclusion of the Second World War, the Labour Party, under Prime Minister Clement Richard Attlee, came to power in Britain. The Labour Party was largely sympathetic towards Indian people for freedom. A Cabinet Mission was sent to India in March 1946, which after a careful study of the Indian political scenario, proposed the formation of an interim Government and convening of a Constituent Assembly comprising members elected by the provincial legislatures and nominees of the Indian states. An interim Government was formed headed by Jawaharlal Nehru. However, the Muslim League refused to participate in the deliberations of the Constituent Assembly and pressed for the separate state for Pakistan. Lord Mountbatten, the Viceroy of India, presented a plan for the division of India into India and Pakistan, and the Indian leaders had no choice but to accept the division, as the Muslim League was adamant.

Thus, India became free at the stroke of midnight, on August 14, 1947. (Since then, every year India celebrates its Independence Day on 15th August). Jawaharlal Nehru became the first Prime Minster of free India and continued his term till 1964. Earlier, a Constituent Assembly was formed in July 1946, to frame the Constitution of India and Dr. Rajendra Prasad was elected its President. The Constitution of India which was adopted by the Constituent Assembly on 26th November 1949. On January 26, 1950, the Constitution came into force and Dr. Rajendra Prasad was elected the first President of India.

SOURCES AND PROCESS OF CONSTITUTION MAKING

The Constitution of India was not prepared in haste but the process of the evolution of the Constitution began many decades before India became independent in 1947. The process continued unabated since it originated in the freedom struggle till a new Constitution was drafted after prolonged debates and discussions in the Constituent Assembly.

The day 26th of January, 1950 was a red-letter day in the history of India. On that day the written constitution of India came into operation. January 26th was purposefully chosen (as the date on which the constitution became operative) because since 1930, the day has been celebrated as the day of complete independence throughout India by millions of people. It is very befitting to declare such a historic day as the day of operation of the Constitution of Republic of India. The Constitution of India was the longest written Constitution having the best elements of all the existing Constitutions up to that date.

The Constitution of India is the modern sacred text of the contemporary India. It reflects the new aspirations and values of the people of India and testifies how the people of India are the supreme masters in all matters concerning the welfare of Indians.

A galaxy of learned wise men interested in the longevity of the emerging nation of India framed the Constitution in its present form after a thorough debate and discussion of each proposal. The nationalists consciously, popularized the concepts of parliamentary democracy, republicanism, civil liberties, social and economic justice which happen to be the most basic tenets of the constitution.

Bipan Chandra rightly remarks, "When the constitution in 1950 adopted a parliamentary form of government, with a cabinet led by a prime minister it was not, as is commonly supposed, the British parliament that it was emulating. It was formalizing nationalist practices, which the people were already familiar with". Even the spirit of democracy was familiarized by the national movement. Bipan Chandra correctly points out, "this found expression in widespread mass participation. It ensured a place for adult franchise after independence".

A view is in circulation that the British initiated a modern responsible constitutional government in India and the constitution was merely the culmination of the series of constitutional initiatives made by them in 1861, 1892, 1909, 1919 and 1935. This view is not totally correct as the British government conceded reluctantly and belatedly only partially the demands of the leaders of the national movement and tried to reduce the intensity of the movement as a last resort from time to time.

Gandhi's statement made in 1922 proves "***Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression. That it will be expressed through an act of Parliament is true. Swaraj can never be a free gift by one nation to another. It is a treasure to be purchased with a nation's best blood. It will cease to be a gift when we have paid clearly for it***".

This statement of Gandhi clearly proves beyond doubt that the British did introduce constitutional reforms by their voluntary initiative is a myth. No doubt, the British introduced the principle of election in the 1892 Indian Council Act in partial response to a sustained struggle by the press and the Indian nationalists for more than two decades and while the nationalists demanded elections to the councils and elected majorities and greater powers to the non-official members, the British by the Act of 1892 provided for election principle but limited it to minority only.

There was a see-saw battle between the demands of the national movement and the concessions granted through the Acts of 1909, 1919 and 1935. The leaders of the national movement started demanding for grant of responsible government in India from 1890 onwards and by 1916 they began to "espouse the doctrine of self-determination or the right of the Indians to frame their own

constitution". Thus, the desire to have a constitution based on self-determination was as old as 1916.

In response to the continuous demand of the national movement, the British government appointed all-white Simon Commission in November 1927 to recommend constitutional changes. The Secretary of State, Lord Borkenhead, challenged the Indians "Let them produce a constitution which carries behind it a fair measure of general agreement among the great people of India" in 1925 and reiterated the challenge again in 1927, moving a bill for the appointment of the Simon Commission.

In response the national movement as one man boycotted the Simon Commission in all parts of India and appointed a committee with Motilal Nehru as the Chairman in 1928 "to determine the principles of the constitution for India". The Nehru report was submitted on 10 August, 1928. It was an outline of a draft constitution for India. Most of its features were later included in the Constitution of India. It visualized a parliamentary system with full responsible government and joint electorates with time bound reservation of seats for minorities. The Nehru's report laid special emphasis on securing fundamental human rights for the people of India. Of the nineteen rights listed in the Nehru report, ten were incorporated into the constitution. The Nehru report has recommended that "the redistribution of provinces should take place on a linguistic basis".

This was followed by the declaration of complete independence as their objective and followed with the launching of mass civil disobedience movement in April 1930. In 1934, the Congress Working Committee rejected the white paper presented by the British government on further constitutional reforms and resolved that the "only satisfactory alternative to the white paper is a constitution drawn by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible".

After 1934 the demand for the Constituent Assembly became very frequent and they included it in the Congress manifesto for the year 1936-37 elections. The Congress won majority of states in 1937 elections and in its Faizpur session demanded the newly elected members of the assemblies to articulate the demand for a Constituent Assembly as soon as possible in the new legislatures.

The demand for the Constituent Assembly become vociferous and in the meanwhile the Second World War broke out in 1939 and in order to secure the cooperation of the Indians in the Second World War, the British for the first time announced in 1940 by August offer that the framing of the new constitution should be primarily the responsibility of the Indians themselves. It also offered to set up, after the end of the war, "a body representative of the principal elements in India's national life, in order to devise the framework of the new constitution".

This offer, unfortunately, did not spell out, how the body is going to be constituted, and also the method to be followed in deciding the membership of the body to be constituted. This vague aspect proves that the British reluctantly agreed to this idea of Constituent Assembly and were not serious about its implementation.

Consequently, this offer of 1940 was rejected by all the shades of nationalists and the Congress Party started the Individual Civil Disobedience movement to register their protest. In 1942, the British government appointed Cripps Mission. The Cripps proposals categorically stated that the constitution would be the sole responsibility of the Indians alone.

The idea of the Constituent Assembly was also accepted and they spelt out its modalities and in other respects, it failed. Once again there was confrontation between the Congress and the British, which resulted in the Quit India movement of 9 August, 1942. For the first time, openly and vehemently, the nationalists demanded the British to 'Quit India' and exhorted the Indians 'do or die' in this struggle. The Government of India took all measures to suppress this Quit India struggle and at the end of the war in 1945, they issued a white paper, which was followed by the abortive Simla Conference.

The victory of the Labour Party in England and change in the guard enabled the British government to declare and promise to convene a constitution-making body as soon as possible. The Cabinet Mission was appointed to carry out this purpose and it visited India in 1946, on 24 March. After a lot of deliberation between the Congress and the Muslim League and the British, finally the

Constituent Assembly came into existence. Although, our Constitution has been called a borrowed one by some people, yet the credit of its framers lies in this thing that they gathered the best features of other constitutions, avoided the faults which had been disclosed in their working and adapted those features to the requirements of our country.

Sources of Constitution of India can be enumerated as follows-

1. Government of India Act, 1909, 1919, and 1935.
2. British Parliamentary system.
3. Impact of other Constitutions
4. Debates in the Constituent Assembly
5. Commentries of the critics
6. System of Judicial review
7. Constitutional amendments
8. Ordinances.

A **Constitution** is a set of fundamental principles or established precedents according to which a State or other organization is governed. The drafting of the document called the Constitution was pursued by an assembly of elected representatives called the ***Drafting Committee***, which was chaired by ***Dr. B.R. Ambedkar.*** The above-said Committee prepared the draft of the Constitution. Then, several rounds of discussions took place. More than two thousand amendments were considered. Every document presented and every word spoken in the Constituent Assembly has been recorded and preserved under the name of ***Constituent Assembly Debates.*** Constitution was written by a committee headed by Dr. Bhimrao Ambedkar.

It took ***2 yrs, 11 months, 18 days*** for compilation. It was adopted on **26th November, 1949 (celebrated as Law Day)**, and enforced fully on **26th January, 1950 (celebrated as Republic Day)**.

SOURCE	PROVISION
BRITISH CONSTITUTION	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, citizenship, prerogative writs, parliamentary privileges and bicameralism.
UNITED STATES CONSTITUTION	Fundamental rights, independence of judiciary, judicial review, impeachment of the President, removal of Supreme Court and High Court judges and post of Vice-President.
IRISH CONSTITUTION	Directive Principles of States Policy, nomination of members to Rajya Sabha and method of election of President.
CANADIAN CONSTITUTION	Federation with strong centre, vesting of residuary power in the centre, appointment of state Governors by the Centre, and advisory jurisdiction of the Supreme Court.
AUSTRALIAN CONSTITUTION	Concurrent List, freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
WEIMAR CONSTITUTION OF GERMANY	Suspension of Fundamental Rights during Emergency. Soviet Constitution (USSR, now Russia) Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
FRENCH CONSTITUTION	Republic and the ideals of liberty, equality and fraternity in the Preamble.
SOUTH AFRICAN	Constitution Procedure for amendment of the Constitution and election of members of Rajya Sabha.
JAPANESE CONSTITUTION	Procedure established by Law.

The Constitution of India is the longest written Constitution of any sovereign country in the world, containing 395 Articles in 22 Parts, 12 Schedules while the United States Constitution is the shortest

written Constitution, at 7 Articles. At the time of commencement, the Constitution had 395 Articles in 22 parts and 8 schedules.

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- The above-said Committee prepared the draft of the Constitution. Then, several rounds of discussions took place. More than two thousand amendments were considered.
- Every document presented and every word spoken in the Constituent Assembly has been recorded and preserved under the name of ***Constituent Assembly Debates.***

SALIENT FEATURES OF INDIAN CONSTITUTION

- The Constitution of India has some outstanding features which distinguish it from other Constitutions. The framers of our Constitution studied other Constitutions, selected their valuable features and put them with necessary modifications in our Constitution.
- The framers of the Constitution of India did not aim at a completely new or original Constitution. They just wanted to produce "a good and workable" Constitution. And they succeeded doing this. The fact that the Constitution, for last 59 years, has been working satisfactorily is a testimony to its quality and utility.

1) Written and lengthiest Constitution

- ✓ There are two types of Constitutions in the world. Most of the Constitutions are written. The first modern written Constitution was the American Constitution. On the other hand, the British Constitution is unwritten. It consists of customs and conventions which have grown over the years.
- ✓ In India, we have a **written Constitution**. The framers of our Constitution tried to put everything in black and white. Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 395 Articles and 12 Schedules.

There are various factors responsible for the long size of the Constitution. The Constitution became lengthy mainly due to the following factors:

(a) The Constitutional draftsmen wanted to put everything in black and white and that too in great detail.

(b) In other federations, there are two Constitutions: one for the federation and the other for the states. In India, the states do not have separate Constitutions. The powers of states along with the powers of the federation i.e. the Union have been vested in one Constitution.

(c) The Government of India Act, 1935 was in operation when India got independence. Our leaders were familiar with this Act. They borrowed heavily from this lengthy Act while framing our Constitution.

(d) India is a country of great diversity. It is a country of several minorities; it has many languages, castes, races and religions. The problems and interests of these different groups have found place in one Constitution leading it to be a long document.

(e) Good features of other Constitutions have been included, with necessary modifications, in our Constitution. For example, we have brought the 'bill of rights' from the American Constitution, parliamentary system of government from the British Constitution and Directive Principles of State Policy from the Irish Constitution.

While including these elements of other Constitutions in our Constitution, Dr. B.R. Ambedkar said the framers of our Constitution tried to remove their faults and suit them to our conditions.

2) Preamble

- ✓ The Preamble describes the source, nature, ideology, goals and objectives of the Constitution. The Constitution declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'secular' were added in the Preamble of the Constitution by 42nd amendment which was passed in 1976.
- ✓ It underlines the national objective of social justice economic justice and political justice as well as fraternity. It emphasises the dignity of the individual and the unity and integrity of the nation.

3) Federal government

- ✓ The Constitution provides for a federal form of government. In a federation, there are two governments - at the central level and at the state level. In India, the powers of the government are divided between the central government and state governments.
- ✓ **Article 1** of the Constitution of India says: - "India, that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the government is federal. A state is federal when (a) there are two sets of governments and there is distribution of powers between the two, (b) there is a written constitution, which is the supreme law of the land and (c) there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land. At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

- ✓ But in spite of all these essential features of a federation, Indian Constitution has a centralizing or a unitary tendency. While other federations like U.S.A. provide for dual citizenship, the India Constitution provides for single citizenship. There is also a single integrated judiciary for the whole country. The provision of All India Services, like the Indian Administrative Service, the India Police Service, and Indian Forest Service prove another unitary feature. Members of these services are recruited by the Union Public Service Commission on an All-India basis. Because these services are controlled by Union Government, to some extent this constitutes a constraint on the autonomy of states.

- ✓ A significant unitary feature is the Emergency provisions in the Indian constitution. During the time of emergency, the Union Government becomes most powerful and the Union Parliament acquires the power of making laws for the states. The Governor placed as the constitutional head of the state, acts as the agent of the centre and is intended to safeguard the interests of the centre. These provisions reveal the centralising tendency of our federation.

- ✓ Prof: K.C. Wheare has rightly remarked that Indian Constitution provides, "a system of government which is quasi-federal, a unitary state with the subsidiary unitary features". The framers of the constitution expressed clearly that there exists the harmony of federalism and the unitarism. Dr. Ambedkar said, "The political system adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances". We can say that India has a "Cooperative federalism" with central guidance and state compliance.

- ✓ There are three different lists of subjects given under the Seventh Schedule of the Constitution - **Union list, State list and Concurrent list.**

- ✓ The Union list contains **97 subjects of national importance** like Defence, Foreign Affairs, Currency, Post and Telegraph, Railways. On these subjects, only central legislature (Parliament) can make laws.

- ✓ The State list contains **66 subjects of local importance.** On these subjects, state legislatures make laws. These subjects include agriculture, police, and jails.
- ✓ Concurrent list contains **47 subjects which are of common concern to both the central and state governments.** These include education, roads, social security etc. On these subjects, both the parliament and state legislatures can legislate. However, if there is a conflict between a central law and the state law over a subject given in the concurrent list, the central law will prevail.

4) ***Parliamentary government***

- ✓ India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long and it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature.

- ✓ Indian Constitution provides for a parliamentary form of government. The majority party in the Lower House (Lok Sabha) forms government. The Council of Ministers is collectively responsible to the Parliament. The Cabinet is the real executive head. In Presidential form of government, the President is the executive head. In India, the President is only the nominal head.
- ✓ In Britain, the monarchy is hereditary. But in India, the post of President is elective.

5) ***Three Tier Government***

- ✓ Indian Constitution provides for a three tier government.
- ✓ Originally, it was two tier i.e. Centre and the State
- ✓ But by 73rd and 74th Amendment Act, 1992 three tier government has been established. (Centre, state & local self government)
- ✓ Panchayat raj system was adopted by way of these two amendments.

6) ***Fundamental rights and duties***

- ✓ These rights are fundamental because they are basic to the moral and spiritual development of the individual and these rights cannot be easily abridged by the parliament.
- ✓ Now the citizen enjoys six fundamental rights, originally there were seven fundamental rights. One of them was taken away from Part III of the Constitution by the Forty-fourth Amendment Act, 1978. As a result, the Right to Property is no longer a fundamental right. Since 1978, it has become a legal right.
- ✓ The idea of fundamental rights has been borrowed from the American Constitution.
- ✓ Any citizen of India can seek the help of High Court or Supreme Court of India if any of his fundamental rights is undermined by the government or any institution or any other government.
- ✓ Fundamental rights are **justiciable in nature.** (i.e. they are legally enforceable by the court of law). These are not absolute in nature & are subject to some restrictions. Parliament can amend them but not those provisions that form the **"basic structure"** of the Constitution.
- ✓ Suspended during National Emergency (Except Art 20 & 21).
- ✓ ***The Constitution of India guarantees six fundamental rights to every citizen.*** **These are:**
  - ***i.*** *Right to Equality.*[Article 14-18]
  - ***ii.*** *Right to Freedom.* [Article 19-22]
  - ***iii.*** *Right against Exploitation.* [Article 23,24]
  - ***iv.*** *Right to Freedom of Religion.* [Article 25-28]
  - ***v.*** *Cultural and Educational Rights.* [Article 29, 30]
  - ***vi.*** *Right to Constitutional Remedies.* [Article 32]

(Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act. 1978. It is now a legal right.)

7) Fundamental Duties

- ✓ Non-justiciable in nature (i.e. they are not legally enforceable by the court of law)
- ✓ Not present in the original Constitution. (Added by 42nd Amendment Act, 1976 on the recommendation by Swarn Singh committee.)
- ✓ Reminds people that while enjoying rights they have some duties to do.

8) Directive principles of state policy

- ✓ These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

- ✓ The Directive Principles of State Policy are enumerated in Part IV of the Constitution. The framers of our Constitution took the idea of having such principles from the Irish Constitution.
- ✓ These principles have been stated a; "fundamental in the governance of the country".
- ✓ They are instructions or directives from the Constitution to the state and the government. It is the duty of the government to implement them.
- ✓ **Non-justiciable in nature** (i.e. they are not legally enforceable by the court of law) but they are nevertheless fundamental in the governance of the country.
- ✓ Promotes social and economic democracy
- ✓ In general, the Directive Principles aim at building a Welfare State. These principles provide the criteria with which we can judge the performance of the government.

Some of the important Directive Principles are:

(1) There should not be concentration of wealth and means of production to the detriment of common man;
(2) Workers should be paid adequate wage & there should be equal pay for equal work for both men and women;
(3) Weaker sections of the people, Scheduled Caste and Scheduled Tribe people should be given special care;
(4) The state should promote respect for international law and international peace.

- ✓ *All the governments-Central, State and Local-are expected to frame their policies in accordance with these principles. The aim of these principles is to establish a welfare state in India. They, however, are not binding on the government-they are mere guidelines.*

9) Fundamental Duties

- ✓ A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundaments duties. Fundamental Duties did not form part of the Constitution. Ten Fundamental Duties were inserted in Part IV by the Constitution 42nd Amendment Act, 1976.
- ✓ A new Article - Article 51-A enumerates ten Fundamental Duties. These duties are assigned only to citizens and not to non-citizens. These duties are **not justifiable** (i.e. These cannot be enforced through the courts of law)
- ✓ The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

10) Partly rigid and partly flexible

- ✓ Whether a Constitution is rigid or flexible depends on the nature of amendment.

- ✓ The Constitution of India is neither wholly rigid nor wholly flexible. It is partly rigid and partly flexible. It is because of the fact that for the purpose of amendment, our Constitution has been divided into three parts:
  - (a) Certain provisions of the Constitution can be amended by a simple majority in the Parliament.
  - (b) Certain provisions can be amended by a two-third majority of the Parliament and its ratification by at least half of the states.
  - (c) The remaining provisions can be amended by the Parliament by two-third majority.
- ✓ These different amendment procedures make our Constitution partly flexible and rigid. In fact, there is a balance between rigidity and flexibility in our Constitution.
- ✓ Some amount of flexibility was introduced into our Constitution in order to encourage its growth.
- ✓ Pt. Jawaharlal Nehru feared that if a Constitution is too rigid, it will be stagnant and that the growth of the nation would be hampered.

11) Single citizenship

- ✓ In a federation, normally we have double citizenship. In the United States of America, there is double citizenship. An American is a citizen of America and at the same time he is also a citizen of one of the 50 States of America where he resides. In India, there is only single citizenship. Every Indian, irrespective of his place of birth or residence, is a citizen of India only. He is not a citizen of any Indian state. There is no citizenship of Madhya Pradesh, Delhi, Punjab, U.P. or so.
- ✓ Single citizenship is meant to ensure national unity and national integration.

12) Universal Adult Franchise

- ✓ Article 326 of the Constitution of India provides Universal Adult Franchise. It means that every citizen of India who has completed 18 years of age is eligible to vote in general elections irrespective of his caste, creed, sex, religion or place of birth. This is one of the most revolutionary aspects of Indian democracy.

13) Language Policy

- ✓ The Constitution has also defined the language policy. India is a country where different languages are spoken in various parts of the country. Hindi and English have been made official languages of the Central Government. A state can adopt the language spoken by its people in that state also as its official language.
- ✓ Although India is a multi-lingual nation, the Constitution provides that Hindi in Devnagri script will be the national language. It shall be the duty of the union to promote and spread Hindi language.
- ✓ At present, we have **22 languages** which have been recognised by the Indian Constitution. These are: ***Assamese, Gujarati, Konkani, Marathi, Sanskrit, Telugu, Bengali, Hindi, Maithili, Nepali, Santhali, Urdu, Bodo, Kannada, Malayalam, Oriya, Sindhi, Dogri, Kashmiri, Manipuri, Punjabi, Tamil.***

14) Independent judiciary

- ✓ The Indian Constitution provides for an independent judiciary as also envisaged as a directive principle laid down under Art. 50 i.e. "Separation of judiciary from executive". The judiciary has been made independent of the Executive as well as the Legislature.
- ✓ The judiciary in India is independent and impartial. It is an integrated and a hierarchical judiciary with the Supreme Court at the apex of the hierarchy. The High Courts stand in its middle, and the lower courts are located at its bottom.
- ✓ The Judges security of tenure and it is extremely difficult to remove any Judge of the Supreme or of the High Court through impeachment.

- ✓ Also, the Supreme Court and the High Courts have the power of Judicial Review. They have the power to declare acts of legislatures and actions of the Executive ultra vires and such acts or actions are found to be in conflict with the provisions of the Constitution.

15) A Constitution derived from many sources

- ✓ The framers of our Constitution borrowed many things from the Constitutions of various other countries and included them in our Constitution. That is why some writers call Indian Constitution a 'bag of borrowings'.

16) Emergency provisions

- ✓ The framers of our Constitution had realised that there could be certain dangerous situations when government could not be run as in ordinary time. Hence our Constitution contains certain emergency provisions.
- ✓ During emergency the fundamental rights of the citizens can be suspended and our government becomes a unitary one.

17) Federal Government with Unitary Bias

- ✓ India is a federation, although word 'federation' does not find a place in the whole text of the Indian Constitution. The elements of federation are present in the Indian Constitution. It is a written and rigid Constitution.
- ✓ There is dual polity and there is Constitutional division of powers between the centre and the states. There is also an independent judiciary. The Supreme Court arbitrates the disputes between the centre and the states.
- ✓ All these provisions make India a federation. But in Indian Federation, the centre is strong as compared to the states. The centre has more financial powers and the states largely depend upon it for their economic development. The Governor acts as the agent of the centre.
- ✓ The centre can reorganize a state, but a state cannot reorganize the centre. In other words, the centre is indestructible while the states are destructible. During emergencies, the powers of the centre considerably grow and the states become weak.
- ✓ K. C. Where has described the Indian government as 'quasi-federal'. India has also been characterised as 'a federal state with unitary spirit.'
- ✓ Indian Constitution establishes India as the federal system of government. Federal system means a political system where is there division of powers between centre and State. But Indian federal system is unique in itself as it has a strong centre.
- ✓ So, Indian Political structure can be rightly described as "federal system with strong centre"

PREAMBLE

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC

and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;

and to promote among them all

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

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

As originally enacted the preamble described the state as a "sovereign democratic republic". In **1976** the *42nd Amendment* changed this to read sovereign ***socialist secular*** democratic republic." Also through this amendment, the phrase "unity of the Nation" was changed to "***unity and integrity of the Nation***".

Preamble means a preliminary or introductory statement, especially attached to a statute or constitution setting forth its purpose. Preamble is an expressionary statement in a document that explains the document's purpose and underlying philosophy. When applied to the opening paragraphs of a statute, it may recite historical facts pertinent to the subject of the statute. The **preamble to the Constitution of India** is a brief introductory statement that sets out the guiding purpose and principles of the document.

In re BeruBari's case [AIR 1960 SC 858], it was held that the preamble is not an integral part of the Indian Constitution & therefore it can neither be regarded as a source of limitations or substantive powers nor it is enforceable in a court of law. However, Supreme Court of India has, in the *Keshavananda Bharti Case [*AIR 1973 SC 1461*]*, overruled earlier decisions and recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves.

Forty-second Amendment, 1976: As originally enacted the preamble described the state as a "sovereign democratic republic". In **1976** the *Forty-second Amendment* changed this to read "sovereign ***socialist secular*** democratic republic." Also through this amendment, the phrase "unity of the Nation" was changed to "***unity and integrity of the Nation***".

PURPOSE OF PREAMBLE

Preamble basically is a declaration of-

1. The source of the Constitution,
2. The statement of its objectives,
3. The date of its adoption and enactment.

- ✓ Preamble begins with a short statement of its basic values and it contains the philosophy on which our Constitution is built. It is just like an introduction or preface of a book. Preamble actually embodies the spirit of the Constitution.
- ✓ It is a key to the minds of the draftsmen.

It is also the soul of the Constitution.

PREAMBLE AND ITS INTERPRETATION

"We, the People of India..."

- This phrase simply indicates that it's ***we people***, ***the people of India*** who are the source of authority behind the Constitution.
- This also has an implication that the Constitution has been drawn up and enacted by the people through their representatives, and not just handed down to them by a king or any outside powers.

"..having solemnly resolved to constitute India.."

- That is to say that by declaring such a phrase we have actually abide ourselves in it's true spirits to follow and give full effect to the policies and principles laid down in the Constitution.

"sovereign"

- This indicates that India is a sovereign, a nation free from any external control or interference i.e. no external power can dictate the government of India. India is internally and externally sovereign i.e. externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.
- Constitution may appear to be sovereign as it is the supreme law of the land. However, a document cannot be a sovereign. The people of India, according to this Constitution have given to themselves this Constitution and therefore, we can say that the political sovereignty lies in "***We, the people..***" and the legal sovereignty lies in the Constitution of India.
- The word "Sovereign" emphasizes that India is no more dependent upon any outside authority.
- It's membership of that Commonwealth of Nations and that of the United Nations Organization do not restrict her sovereignty.

"socialist"

- The word "socialist" was not there in the original draft of the Constitution. This has been incorporated in the Preamble by the ***42nd Constitutional Amendment, 1976.***
- This is also reflected in the words "***..economic justice..***" in the preamble. In a democracy, socialism simply refers to a system of government in which the means of productions are wholly or partly controlled by the State.
- It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.
- In ***D.S. Nakara v. Union of India (UoI)***, the Supreme Court has observed that the basic framework of socialism is to provide a decent standard of living to the people and specially provide basic social security from cradle to grave. Therefore, it clearly marks the economic equality and equitable distribution of income. **{Art. 39(b) and (c)}**

"secular"

- The word "secular" also was not there in the original draft of the Constitution. This has also been incorporated in the Preamble by the ***Constitutional (42nd Amendment) Act, 1976.***
- It simply indicates that the State does not recognize any religion as its own religion and thus, treats all religions equally. It's a status of being neither pro-religion nor anti-religion. It is also not

based on total neutrality towards religion. It is based on equal respect for all religions. It embodies the age old concept of 'sarva dharma sambhava'.

- ***Art. 25 to 28*** constitutes the right to freedom of religion
- Citizens have complete freedom to follow any religion, and there is no official religion. The Government treats all religious beliefs and practices with equal respect and honour.
- In a secular State, the State regulates the relationship between man and man and it is actually not concerned with the relation of man with God.

"democratic"

- This is based on the legal status of ***"Damus Cratus"*** which means ***rule of people*** i.e. where the Government gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.
- There is a famous definition of democracy as given by ***Abrahim Lincoln*** that "democracy is by the people, of the people and for the people."
- The first part of the preamble "We, the people of India" and, its last part "give to ourselves this Constitution" clearly indicate the democratic spirit involved even in the Constitution. India is a democracy.
- This simply means that the government of our country is carried on by the people of the State through their representatives and the executive head of the State i.e. the President of India is an elected representative of the People (and not a hereditary monarch as like King of England). In India, President is elected by the people although he is elected indirectly. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

"republic"

- The Constitution of India is republican in nature as the executive head of India is not any hereditary monarch. This indicates the form of Government in which the Head of State will be an elected person and not a monarch like the King or the Queen in England. Such elected Head will be the Chief Executive Head.
- This concept of being republic is taken from France.
- As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure, the President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every single citizen of India is eligible to become the President of the country. The leaders of the state and local bodies are also elected by the people in similar manner.
- India became a republic on 26th January, 1950.

"..and to secure to all its citizens.." - This is a declaratory statement wherein the ultimate objective of the Constitution lies.

"..justice, social economic and political.."

Here, these words indicate that the Indian Constitution aims at achieving three-fold justice. It's simply about the attainment of common good and that the people cannot be discriminated on the basis of caste, religion or gender or so and that the government or the State should work for the welfare of the people as a whole irrespective of their social status.

- ***Economic justice*** can be and ought to be ensured by rational policy making and it's proper implementation. Socio-economic justice has been ensured by provision such as Art. 38 and 39.

- ***Political justice*** is ensured by way of the right of adult franchise i.e. exercise of right to vote as soon as a citizen attains the age of 18 years.
- ***Social justice*** actually requires the abolition of all sorts of inequities which result from inequalities of wealth, opportunity, race, caste and religion. ***Art. 14 to Art.18 provides for equality of status and opportunity.***
- The concept of social justice thus enables the legislature to enact and the Courts to uphold such legislations-
  (a) to protect the interests of the weaker sections;
  (b) to remove economic inequalities;
  (c) to provide a decent standard of living to the people of the country.

"..liberty, of thought, expression, belief, faith and worship.."

The Constitution regards liberty of thought, expression, belief, faith and worship to be essential to the development of the individual and the nation, and therefore the Preamble itself promises to ensure the same to it's citizens. In simple words, there are no unreasonable restrictions on the citizens in what they think, how they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action. {***Art. 19(1), Art. 25, Art.26 makes provision of such liberty}***

"..fraternity, assuring the dignity of the individual and the unity and integrity of the Nation.."

"Fraternity" means the spirit of brotherhood. Simply put it's that all of us should behave as if we are members of the same family and no one should treat any other person as inferior owing to any factor.

India being a ***multilingual and multi-religious State***, the unity and integrity can be preserved only through a spirit of brotherhood that pervades the entire country, among all its citizens, irrespective of their differences. Indian Constitution provides for a single citizenship. All citizens have been given the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. ***[Art.19(1)(d) and Art.19(1)(e)]***

"..In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

This is a declaratory statement about the adopting, enacting the Constitution.

Art. 394 and some other Articles such as Art. 5, 6, 7, 8, 9, 60, 324, 366, 379, 380, 388, 391, 392 and 393 came into force on 26th Nov.,1949 (celebrated as ***Lawyer's day***)

The remaining provisions of this Constitution came into force later on 26th January,1950 which day is referred to as the day of commencement of this Constitution. (As also celebrated as the ***Republic Day***)

PREAMBLE WHETHER A PART OF CONSTITUTION OR NOT?? & WHETHER AMENDABLE OR NOT??

- ***In Re Berubari Case {AIR 1960 SC 845}***- The Supreme Court held that preamble is **not a part of the Constitution** as it does not create any substantive rights or obligations or powers. It cannot be a source of powers or restrictions on such powers. Further held that preamble is just an important tool for the interpretation of the Constitution.

- ***Keshwanand Bharti's case {AIR 1973 SC 1461}***- It was held that preamble of the Constitution cannot be compared to the preamble of any other statute. It was also held that the objectives stated in the Preamble reflect the basic structure of the Constitution. Thus, it must be considered a part of the Constitution. It was not a provision as held in the Berubari's case.

- ***S.R. Bommai v. UoI {AIR 1994 SC 1918}*****-** Supreme Court held that the preamble forms a part of the Constitution.

✓ *As far as the power of the Parliament to amend the Preamble is concerned, it can be concluded that the Preamble is a part of the Constitution and therefore it can be amended by the Parliament under Article 368 but the* ***'basic features'*** *in the Preamble cannot be amended.*

✓ *Till date, preamble has been amended only ones i.e. by the* ***Constitution (42nd Amendment) Act, 1976.*** *By this 42nd Amendment, four words were added in the preamble i.e. "**socialist**", "**secular**", "**and integrity**"*

NATURE OF VARIOUS CONSTITUTIONS IN THE WORLD

Nature of Constitution necessarily depends upon the types of Constitution

❑ ***Written or unwritten Constitution:*** Most of the countries over the world have a written Constitution. Best example of an unwritten Constitution is British Constitution (UK)

❑ ***Rigid or Flexible Constitution:***

➢ A Constitution is ***rigid*** if for the amendment or review of its provisions, a special provision is required to be followed. A rigid Constitution possesses the quality of stability. And the drawback of being a rigid Constitution is that such a Constitution cannot be tuned in accordance with the needs of the society as and when required. It places obstacles in the required social changes.

➢ A Constitution is **flexible** if its provisions can be amended or revised by the ordinary legislative process. Flexible Constitution, on the other hand, can be easily amended according to the needs of the society but the drawback is that such a Constitution lacks stability.

❑ ***Federal and Unitary Constitution:***

Typically, democratic Constitutions are classified into two categories-

➢ Constitution which provides for a federal system of government is called a Federal Constitution, while a Constitution which provides for a unitary form of government is called a Unitary Constitution. The federal Constitution establishes a federal system of government. It establishes a system of double government – Central government, and the State government.

➢ In a Unitary Constitution, all the powers of the government are given to the Centre and the local government enjoy the powers delegated to them by the Centre.

CHARACTERISTICS OF FEDERALISM

1. **System of double government**: India has two sets of government - the Central or Union government and the State government. The Central government works for the whole country and the State governments look after the States. The areas of activity of both the governments are different.
2. **Distribution of Powers**: The Constitution of India has divided powers between the Central government and the state governments. The Seventh Schedule of the Constitution contains three lists of subjects which show how division of power is made between the two sets of government. Both the governments have their separate powers and responsibilities.
3. **Written and rigid Constitution**: The Constitution of India is written. Every provision of the Constitution is clearly written down and has been discussed in detail. It is regarded as one of the longest constitutions of the world which has 395 Articles 22 Parts and 12 Schedules.
4. **Supremacy of the Constitution**: The Constitution is regarded as the supreme law of the land. No law can be made which will go against the authority of the Constitution. The Constitution is above all and all citizens and organizations within the territory of India must be loyal to the Constitution.

5. **Independent judiciary and Supremacy of judiciary**: The Supreme Court of India is the highest court of justice in India. It has been given the responsibility of interpreting the provisions of the Constitution. It is regarded as the guardian of the Constitution.
6. **Bi-cameral legislation**: In India, the legislature is bi-cameral. The Indian Parliament, i.e., the legislature has two houses - the Lok Sabha and the Rajya Sabha. The Rajya is the upper house of the Parliament representing the States while the Lok Sabha is the lower house representing the people in general.

All the above characteristics are present in the Indian Constitution. However, there are certain provisions that affect its federal character.

1. Appointment of the Governor of a State– Art.155 and Art.156 provide that the Governor, who is the Constitutional head of a State, is to be appointed by the President and stays only until the pleasure of the President. Further, that the Governor can send the laws made by the state for assent from the President, who can veto the law. It should be noted that Governor is only a ceremonial held and he works on the advice of council of ministers. In past 50 yrs, there has been only one case (**Re Kerala Education Bill**), where amendments to a state law were asked by the centre and that too after the opinion of the Supreme Court. Thus, it does not tarnish the federal character and states are quite free from outside control.

2. Power of the Parliament to make laws on subjects in the State list- Under Art. 249, centre is empowered to make laws on subjects in the State list. On the face of it, it looks a direct assault on the power of the states. However, this power is not unlimited. It is exercised only on the matters of national importance and that too if the Rajya Sabha agrees with 2/3rd majority. It should be noted that Rajya Sabha is nothing but the representative of the States. So an approval by Rajya Sabha means that States themselves are giving the power to the centre to make law on that subject.

3. Power to form new states and to change existing boundaries- Under Art. 3, centre can change the boundaries of existing states and can carve out new states. This should be seen in the perspective of the historical situation at the time of independence. At that time there were no independent states. There were only provinces that were formed by the British based on administrative convenience. At that time States were artificially created and a provision to alter the boundaries and to create new states was kept so that appropriate changes could be made as per requirement. It should be noted that British India did not have states similar to the States in the USA.

4. Emergency Provisions- Centre has the power to take complete control of the State in the following 3 situations:

(a) An act of foreign aggression or internal armed rebellion (Art. 352)
(b) Failure of constitutional machinery in a state (Art. 356)
(c) Financial Emergency (Art. 360)

In all the above cases, an elected State government can lose control of the State and a central rule can be established. In the first case, it is very clear that such a provision is not only justified but necessary to protect the existence of a state. A state cannot be left alone to defend itself from outside aggression. In the third case also, it is justified because a financial emergency could cause severe stress among the population, plunge the country into chaos and jeopardize the existence of the whole country. Such provisions exist even in USA. The second provision is most controversial. It gives the Centre the power to take over the control of a State. However, such an action can be taken only upon the advice of the governor and such an advice is not beyond the purview of the Supreme Court. Thus, it can be safely said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need.

- ***Merits of Federal Constitution***
  1. Federal Constitution better protects the Regional and Local interest.
  2. Subjects of local interest are entrusted to the regional govt. and that of the national importance are entrusted to the Central govt. Therefore, the local Legislatures gets an opportunity to make laws according to the local needs.
  3. A federal Constitution tends to develop decentralization.
  4. A federal Constitution is therefore more democratic in nature.

- ***Demerits of Federal Constitution***
  1. A Federal Constitution leads to the establishment of a weak government. The Central govt. has no direct control over the matters allotted to the regional governments.
  2. Such weaknesses are evident on the times of emergencies.
  3. Possibility of development of regionalism.
  4. Citizens may show a greater loyalty towards their region rather than the Union. This may be a serious threat to the national unity.
  5. A Federal Constitution, a conflict of authority and overlapping of jurisdiction may always arise and in such a govt., there is a possibility of confusion regarding the responsibility for work to be done and duplication of work.
  6. Duplication of work may always lead to more administrative expenses.
  7. A Federal Constitution is rigid in nature and therefore it cannot be amended according to the needs.
  8. Such double system of govt. is also a cause of the delayed execution and implementation of plans and projects.

Nature of Indian Constitution: A controversy has always been there as to the actual nature of the Indian Constitution that, whether the Indian Constitution is federal or unitary in nature. It is mandatory here to examine the basic features of Indian Constitution and critically analyze the same in order to conclude upon its nature.

- ✓ ***K.C. Wheare*** *has characterized Indian Constitution as* ***quasi-federal.***
- ✓ ***Jennings*** *opined that Indian Constitution should be described as* ***federation with a strong centralizing tendency.***
- ✓ ***Austin*** *suggested that Indian Constitution can be called federal,* ***" a Co-operative federalism"***

UNIT II
FUNDAMENTAL RIGHTS AND DUTIES AND ELECTION

- ⇨ **Fundamental rights and duties in Indian Constitutions**
- ⇨ **Election commission and election reforms**

FUNDAMENTAL RIGHTS

The fundamental rights were included under ***Part III of the Indian Constitution*** because they were considered essential for the development of the personality of every individual and to preserve human dignity. These Fundamental Rights guarantee to each citizen basic substantive and procedural protections from any arbitrary state actions, but some rights are enforceable against individuals. This Chapter of the Constitution of India is well described as the ***Magna Carta of India***.

As early as in 1214, the English people exacted an assurance from King John for respect of the then ancient liberties. The Magna Carta is the evidence of their success which is a written document. This is the first written document relating to fundamental rights. Thereafter from time to time, the King had to assent to many rights to his subjects.

In 1689, the Bill of rights was written consolidating all important rights and liberties of the English people. In France Declaration of Rights of Man and the Citizen (1789) declared the natural, inalienable and sacred rights of man. Following the spirit of the ***Magna Carta of the British*** and the ***Declaration of the Rights of Man and the Citizen of France***, the Americans incorporated the ***Bill of Rights*** in their Constitution. The Americans were the first to give Bill of Rights a Constitutional status. While drafting the Constitution of India, our Constitutional draftsmen took an inspiration and therefore incorporated under Part III what is called "***fundamental rights***"

Part III starts with Article 12 which defines **"State"** as used in different Articles in Part III for the purpose of enforcing fundamental rights. Unlike other legal rights, which are the creation of the State, the fundamental rights are claimed against the State.

The State is an abstract entity and it can, therefore only act through its agencies or instrumentalities, whether such agency or instrumentality be human or juristic.

By the express terms of Article 12, the expression "the State" includes:

- ***the Government of India;***
- ***Parliament of India;***
- ***the Government of each of the States***
- ***the Legislature of each of the States***
- ***all local authorities within the territory of India;***
- ***all local authorities under the control of the Government of India;***
- ***all other authorities within the territory of India; and***
- ***all other authorities under the control of the Government of India.***

***University of Madras v. Santa Bai* [AIR 1954 Madras 67]**

Madras High Court held that ***"other authorities"*** referred under Art.12 could only indicate authorities of a like nature i.e. ***ejusdem generis.*** If so construed or interpreted, it could only mean

authorities exercising governmental or sovereign functions. It cannot include persons, natural or juristic, such as a University unless it is 'maintained by the State'

In subsequent decisions, the Supreme Court has given a broad and liberal interpretation to the expression 'other authorities' under Article 12. With the changing role of the State from merely being a police State to a welfare State it was necessary to widen to scope of the expression "authorities" in Article 12 so as to include all those bodies which are, though not created by the Constitution or by a statute, are acting as agencies or instrumentalities of the Government.

In Ramana Dayaram Shetty v.The International Airport Authority of India

[AIR 1979 SC 1628]

The Supreme Court laid down five tests to be an "***other authority***"-

1. Entire share capital is owned or managed by State i.e. financial resources of the State is the chief funding source.
2. Enjoys monopoly status, whether it is State conferred or State protected.
3. If a department of Government is transferred to a corporation.
4. Functional character being governmental in essence i.e. if the functions of the corporation are of public importance and closely related to governmental functions.
5. Existence of deep and pervasive State control.

WHETHER JUDICIARY IS INCLUDED IN THE DEFINITION OF STATE?

The definition of State under Article 12 of the Constitution does not explicitly mention the Judiciary. Hence, a significant amount of controversy surrounds its status with respect to Part III of the Constitution.

In ***Naresh v. State of Maharashtra*** **[AIR 1967 SC 1]**, the Court held that the fundamental right is not infringed by the order of the Court and no writ can be issued to High Court.

Jurists like ***H.M.Seervai, V.N.Shukla*** consider judiciary to be State. Their view is supported by Articles 145 and 146 of the Constitution of India.

(a) The Supreme Court is empowered to make rules for regulating the practice and procedure of Courts.

(b) ***The Supreme Court is empowered to make appointments of its staff and servants; decide its service conditions.***

Such kind of administrative duties of the judiciary bring it within the purview of the definition of State.

ARTICLE 13: LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

Article 13 provides for the sound principle of judicial review i.e. the power of the judiciary to check the constitutionality of any law enacted by the legislature. Article 13 encompasses two basic doctrines namely ***Doctrine of eclipse*** ***and*** ***doctrine of severability***.

Doctrine of eclipse simply means that any past law (pre-constitutional law) which was there prior to the enforcement of Constitution, if it was valid since its inception but became invalid due to it's being in contravention to Part III i.e. Fundamental rights, will be void and hence struck down as unconstitutional from the date of enforcement of the Constitution. It is as if the Constitution brings an eclipse upon that

particular contravening law or provision thereof. If such inconsistency can be removed then said law becomes free from any infirmity and hence becomes enforceable.

On the other hand, doctrine of severability simply suggests that if some of the provisions of a Statute or a law offend against the constitutional provision and the said offending provision can be separated from the rest constitutional provisions of that law, only offending provisions shall be void and the Constitutional provisions shall continue to stand.

Various Fundamental Rights guaranteed under Part III of Constitution are as follows-

RIGHT TO EQUALITY (Article 14 – 18)
RIGHT TO FREEDOM (Article 19 – 22)
RIGHT AGAINST EXPLOITATION (Article 23 – 24)
RIGHT TO FREEDOM OF RELIGION (Article 25 – 28)
CULTURAL AND EDUCATIONAL RIGHT (Article 29 – 30)
RIGHT TO CONSTITUTION REMEDIES (Article 32)

The ***44th Amendment*** has ***abolished the right to property as a fundamental*** right as ***guaranteed by Art. 19(1)(f) and Art.31 of the Constitution***. Since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth, it was removed from the list of Fundamental Rights in 1978. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal or a Constitutional right as incorporated under ***Art. 300A***. It is not a Fundamental Right anymore.

RIGHT TO EQUALITY [ARTICLES 14 to 18]

Right to equality is a reflection of the high aspirations as enshrined in the Preamble of the Indian Constitution. The words ***"...JUSTICE, social, economic and political; EQUALITY of status and of opportunity..."*** in the Preamble of the Indian Constitution gives the very backing to this essential human right i.e. Right to equality.

Article 14 provides- "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The words "***shall not***" puts a mandatory duty upon the State not to discriminate on any ground. The words 'any person' denote that the guarantee of the equal protection of the laws is available to any person, which includes any company or association or body of individuals. The protection extends to both citizens and non-citizens and to natural persons as well as legal persons.

The phrase "***equality before the law***" occurs in almost all written Constitutions that guarantee fundamental rights. The first expression ***"Equality before the law" is of English origin*** while "***equal protection of law" owes its origin to the American Constitution.*** Both the phrases aim to establish what is called the "***equality to status and of opportunity***" as embodied in the Preamble of the Constitution.

Equality before the law is somewhat ***negative concept*** implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law. ***Equal protection of law*** is a more ***positive concept*** employing equality of treatment under equal circumstances.

*"**Equality before the law**"* means that ***among equals the law should be equal and should be equally administered, that like should be treated alike***.

The rule of equality is not an absolute rule and there are number of exceptions to it-

1) "Equality before the law" does not mean the "powers of the private citizens are the same as the powers of the public officials".

2) **Article 361 of the Indian Constitution affords immunity to the President of India and State Governors.**

3) Besides above, under international law, the ***foreign sovereigns and ambassadors*** are also exempted from the jurisdiction of the Indian courts and they enjoy full immunity from any judicial process. This is also available to enemy aliens for acts of war.

ART. 14 PERMITS REASONABLE CLASSIFICATION BUT IT PROHIBITS CLASS LEGISLATION

Classification to be reasonable must fulfil the following two conditions:-

- ⇨ ***Firstly, the classification must be founded on the intelligible differentia.***
- ⇨ ***Secondly, the differentia must have a rational relation to the object sought or to be achieved by the act.***

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- ✓ Article 15 provides for a particular application of the general principle embodied under Article 14. ***The guarantee under Article 15 is available to citizens only***.
- ✓ ***Article 15 (3)*** empowers the ***State to make special provisions for women and children***.
- ✓ ***Article 15 Clause (4)*** is another exception to clause (1) and (2) of Article 15. Article 15(4) has been inserted by the constitution (first amendment) Act, 1951.It was ***added by the Constitution (1st Amendment) Act, 1951***, as a result of the decision in ***State of Madras v. Champakam Dorairajan*** **[AIR 1951 SC 226]**. The provision made in clause (4) is only an enabling provision and does not impose any obligation on the State to take any special action under it. It merely confers discretion to act if necessary by way of making special provision for backward classes. The basic principle underlying this clause is that a preferential treatment can be given validly where socially and educationally backward classes need it.

Thus under Article 15 (4), two things are to be determined-

1. Who are socially and educationally backward classes?
2. What is the limit of reservation?

Constitution nowhere defines 'backward classes'. ***Article 340,*** however, empowers the President to appoint a Commission to investigate conditions of socially and educationally backward classes. On the basis of the report of the Commission the president may specify who are to be considered as 'Backward classes'.

In the historic ***Mandal Commission Case [Indira Sawhney v. Union of India,* AIR 2000 SC 498]**, held inter alia that the sub-classification of backward classes into backward into more backward and backward classes for the purpose of Article 16(4) can be done. But as result of sub-classification, the reservation cannot exceed more than 50 percent. Creamy layer must be excluded from the backward classes.

Article 15 clause (5)- In order to serve the educationally and socially backward classes, the State asked the private education institutions also to reserve seats for the backward classes.

Landmark cases on Clause (5)-

- ***T.M. Pai Foundation v. State of Karnataka* [AIR 2003 SC 355]**
- ***Islamic Academy v. State of Karnataka* [AIR 2003 SC 3724]**
- ***P. A. Inamdar v. State of Maharashtra* [AIR 2005 SC 3226]**

Article 16 provides for equality of opportunity in matters of public employment

Article 17 provides for abolition of untouchability

"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 in accordance with law.

In exercise of the powers conferred by Article 35, Parliament has enacted the Untouchability (Offences) Act, 1955. This Act was amended by the Untouchability (Offences) Amendment Act, 1976, in order to make the law more stringent to remove untouchability from the society. It has now been renamed as '***The Protection of Civil Rights Act, 1955***'. Under the amended Act, any discrimination on the ground of untouchability will be considered as an offence.

Article 18 provides for abolition of titles

Article 18 prohibits the State to confer titles on anybody whether a citizen or a non-citizen. Military and academic distinctions are, however, exempted from the prohibition. This is the reason why the conferment of titles of "Bharat Ratna", "Padma Vibhushan", "Padma Shri", etc. is not prohibited under Article 18 as they merely denote State recognition of good work or exceptional or distinguished services of the high integrity by citizens in any field.

RIGHT TO FREEDOM [ARTICLE 19-22]

Personal liberty is the most important of all fundamental rights. ***Articles 19 to 22*** deal with different aspects of this basic right. The rights guaranteed under Article 19 are available only to citizens and not to an alien or a foreigner. Citizens under Article 19 mean only natural persons and not legal or juristic persons, such as corporation or a company which cannot claim a right under Article 19 because they are not natural persons.

FREEDOM	PROVISION REGARDING RESTRICTION	GROUND FOR RESTRICTIONS
FREEDOM OF SPEECH AND EXPRESSION Art. 19 (1)(a)	**ARTICLE 19 (2)**	***8 Grounds namely*-** **1)** Security of the State **2)** Friendly relations with Foreign States **3)** Public order **4)** Decency or Morality **5)** Contempt of Court

		6) Defamation **7)** Incitement of an offence **8)** Sovereignty and integrity of India
FREEDOM TO ASSEMBLE PEACEFULLY WITHOUT ARMS Art. 19 (1)(b)	**ARTICLE 19 (3)**	The assembly must be peaceful and must be unarmed, restrictions may be imposed in the interest of public order and the sovereignty and integrity of India
FREEDOM TO FORM ASSOCIATIONS OR UNIONS Art. 19 (1)(c)	**ARTICLE 19 (4)**	In the interest of public order, morality and sovereignty and integrity of India
FREEDOM TO MOVE FREELY THROUGHOUT THE TERRITORY OF INDIA Art. 19 (1)(d)	**ARTICLE 19 (5)**	In the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics; or for the protection of the interest of Scheduled Tribes
FREEDOM TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA Art. 19 (1)(e)	**ARTICLE 19 (5)**	In the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics; or for the protection of the interest of Scheduled Tribes
FREEDOM TO PRACTICE ANY PROFESSION OR TO CARRY ON ANY OCCUPATION,TRADE OR BUSINESS Art. 19 (1)(g)	**ARTICLE 19 (6)**	In the interest of the general public. Also, the professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

***Romesh Thapar v. State of Madras* [AIR 1950 SC 124]-** Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.
***Union of India v. Association for Democratic Reforms*-** Freedom of speech and expression includes right to impart and receive information which includes that voters have a right to know about their candidates and also freedom to hold opinions.

***Bijoe Emmaneul v. State of Kerala* [(1986)3 SCC 615]-** The Supreme Court held that no person can be compelled to sing National Anthem, "if he has genuine conscientious objections based on religious faith". Standing up respectfully while the National Anthem is being sung is good enough as freedom under Art. 19 (1) (a) also includes freedom of silence.
***Hamdard Dawakhana v. Union of India* [AIR 1960 SC 554]-** Commercial advertisement also forms a part of freedom of speech and expression. Commercial speech cannot be denied the protection of Article 19(1) (a) merely because the same are issued by businessmen.

***People's Union for Civil Liberties v. Union of India* [AIR 1997 SC 568]-** Telephone tapping is an invasion on right to privacy.

***Indian Express Newspapers v. Union of India* [(1985) 1 SCC 641]**
Freedom of press has three essential elements-

1. ***Freedom of access to all sources of information,***
2. ***Freedom of publication, and***
3. ***Freedom of circulation.***

***Sakal Papers Ltd. v. Union of India* [AIR 1962 SC 305]-** The Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages, size and the price in which a newspaper could be published challenged as unconstitutional being violative of freedom of press and not a reasonable restriction under the Article 19(2). It was held that the right under Article 19 cannot be curtailed with the object of placing restrictions on the business activity of a citizen.

***Bennett Coleman and Company v. Union of India* [AIR 1973 SC 106]-** The validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Supreme Court of India holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2).

ARTICLE 20: PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
[Protection against Ex post facto law]

This has two basic implications-
(a) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed the offence.
(b) No person can be subjected to a greater penalty than what might have been given to him under the law that was prevalent when he committed the offence.

2) No person shall be prosecuted and punished for the same offence more than once.
[Protection against Double jeopardy]
3) No person accused of any offence shall be compelled to be a witness against himself.
[Prohibition against self-incrimination]

Selvi v. State of Karnataka [AIR 2010 SC 1974]- Guidelines regarding Narco analysis, brain mapping etc. were given. Such tests were held to be unconstitutional as being violative of Art. 20 clause (3) and Art.21.

ARTICLE 21- *NO PERSON SHALL BE DEPRIVED OF HIS LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW*

*The words "**No person...**" simply indicates that this right is available to every individual, be it a citizen or a non- citizen.* ***The right guaranteed in Article 21 is available to 'citizens' as well as 'non-citizens'.***

Here, *"**..procedure established by law..**" means just, fair and a reasonable procedure.*

Right to life is not only about mere animal existence rather it means something more than just physical survival.

Bandhua Mukti Morcha v. UoI **[AIR 1984 SC 802]-** Right to live with human dignity free from exploitation.

Parmanand Katara v. Union of India **[AIR 1989 SC 2039]-** Right to medical aid falls under the ambit of right to life.

M.C. Mehta v. Union of India **[AIR 1988 SC 1115]-** SC held that a pollution free environment i.e. pure air, pure water, edible food do form an essential part of right to life.

Olga Tellis V. Bombay Municipal Corporation **[AIR 1986 SC 180]**- The right to livelihood is borne out of the right to life, as no person can live without the means of living, that is, the means of livelihood. It is the right of every citizen to earn his livelihood be it a street hawker or any other person.

Murali S. Deora v. Union of India **[AIR 2002 SC 40]-** Smoking in public places was banned as being violative of Article 21.

People's Union for Civil Liberties(PUCL) v. Union of India **[AIR 1997 SC 568]-** Popularly known as "***Phone Tapping case***"**.** Supreme Court held that telephone tapping is a serious invasion of an individual's right to privacy which is a part of the right to life and personal liberty and it should not be resorted by the State unless there is public emergency or interest of public safety requires.

Hussainara Khatoon v. State of Bihar **[AIR 1979 SC 1360]-** Right to speedy trial was recognised to be a part of Art. 21.

WHETHER RIGHT TO DIE COVERED UNDER RIGHT TO LIFE?

State of Maharashtra v. Maruti Sripati Dubal **[1987 Cr.L.J. 549]-** Bombay High Court held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down section 309, IPC which provides punishment for attempt to commit suicide by a person as unconstitutional.

Gian Kaur v. State of Punjab**-** It was held that "Right to Life" under Article 21 of the Constitution ***does not include "Right to die"*** or "Right to be killed" and there is no ground to hold that the section 309, IPC is constitutionally invalid.

EUTHANASIA

Aruna Ramchandra Shanbaug v. Union of India (2011)**-** In this case, guidelines regarding euthanasia were laid down and passive euthanasia of a person who is in a persistent and permanent vegetative state shall be allowed in exceptional cases if a medical board after conducting a due inquiry permits the same.

RIGHT TO EDUCATION (Article 21-A)

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Article 21-A added by the ***Constitution (86th Amendment) Act, 2002*** makes the education from 6 to 14 years old, a fundamental right, within the meaning of Part III of the Constitution.

Article 21-A may be read with the new substituted **Article 45** and new ***clause (k) inserted in Article 51-A*** by the Constitution (86th Amendment) Act, 2002.

RIGHT AGAINST EXPLOITATION [ARTICLE 23-24]

Article 23 prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. However, it permits the State to impose compulsory service for public purposes, including conscription and community service.

RIGHT TO FREEDOM OF RELIGION (ARTICLE 25-28)

The concept of secularism is implicit in the preamble of the Indian Constitution which declares to secure to all its citizens "liberty of thought, expression, belief, faith and worship."The word 'secularism' has been inserted by the *42nd Amendment Act, 1976*. In ***S.R. Bommai v. UoI (1994)***, the SC has held that "secularism is a basic feature of the Constitution."

The chief aspects of Indian Secularism are:-

1. No State Religion - Separation of State and Religion,
2. Peaceful co-existence of all religions,
3. Treatment of all religions equally by the State,
4. Equality of opportunity in the public field for all, irrespective of caste or creed or race or religion ensuring equal citizenship,
5. Freedom of religion both individual and corporate

The Right to Freedom of Religion, covered in ***Articles 25–28***, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally.

This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right to propagate, however, does not include the right to convert another individual, since it would amount to an infringement of the other's right to freedom of conscience.

Article 26 says that, subject to public order, morality and health, every religious denomination or any section of it shall have the following rights-

(a) to establish and maintain institutions for religious and charitable purpose,
(b) to manage its own affairs in matters of religion,
(c) to own and acquire movable and immovable property,
(d) to administer such property in accordance with law.

The right guaranteed by Article 25 is an individual right while the right guaranteed by Article 26 is the right of an 'organised body' like the religious denomination or any section thereof.

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

According to ***Article 28(1)***, no religious instruction shall be imparted in any educational institution wholly maintained out of State funds. But this clause shall not apply to an educational institution which is administered by the State but was not established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

CULTURAL AND EDUCATIONAL RIGHTS (Article 29-30)

The Cultural and Educational rights are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

RIGHT TO CONSTITUTIONAL REMEDIES (Article 32)

Under the writ jurisdiction, the Judiciary has the power to issue the prerogative writs. These are the extraordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are - ***Habeas corpus, Mandamus, Prohibition, Certiorari and Quo warranto***. Both, High Courts as well as the Supreme Court may issue the writs.

The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution. However, Article 32 is referred to as the "Constitutional Remedy" for enforcement of Fundamental Rights.

1) ***Writ of Habeas corpus***: It is the most valuable **writ for personal liberty**. Habeas Corpus means, "**Let us have the body**." It is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release.
2) ***The Writ of Mandamus***: Mandamus is a Latin word, which means "**We Command**". ***Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty***.
3) ***The Writ of Quo-Warranto***: The word Quo-Warranto literally means "***by what warrants***?" or "***by what authority***". It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The writ of quo warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody.
4) ***The Writ of Prohibition***: Writ of prohibition means to forbid or to stop and it is popularly known as ***'Stay Order'***. This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ, proceedings in the lower court etc. come to a stop.
5) ***The Writ of Certiorari***: Literally, Certiorari means ***to be certified***. The writ of certiorari is ***issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration.***

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP's)

Part IV of the Constitution of Indian contains Directive Principles of State Policy which extends from ***Articles 36 to 51*** (both inclusive). The concept of Directive Principles under Part IV of Indian Constitution have been inspired by the Directive Principles given in the ***Constitution of Ireland*** and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

There are two basic characteristics of DPSP's-

1) They are not enforceable in any law courts and therefore if a directive is not obeyed or implemented by the State, its obedience or implementation cannot be secured through judicial proceedings.
2) These are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 37 states Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation.

Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "sub-serve the common good".

Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities.

Article 40 provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.
Articles 41–43 mandate the State to endeavour to secure to all citizens the right to work, to secure a living wage, ensure social security, render maternity relief, and a decent standard of living. These provisions aim at establishing a socialist state as envisaged in the Preamble.

Article 43: State is under the responsibility of promoting cottage industries, the promotion of khadi, handlooms etc., in coordination with the state governments.

Article 43A mandates the State to work towards securing the participation of workers in the management of industries.
Article 44 encourages the State to secure a uniform civil code for all citizens.
Article 45 originally mandated the State to provide free and compulsory education to children between the ages of six and fourteen years, but after the ***86th Amendment in 2002***, this has been converted into a Fundamental Right and replaced by an obligation upon the State to secure early childhood care to all children below the age of six.

Article 46 makes it mandatory upon the State to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation.

Article 47 commits the State to raise the standard of living and improve public health, and prohibit the consumption of intoxicating drinks and drugs injurious to health.

Article 48 makes it mandatory upon the State to organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cattle.

Article 48A mandates the State to protect the environment and safeguard the forests and wildlife of the country.

Article 49 places an obligation upon the State to ensure the preservation of monuments and objects of national importance.

Article 50 requires the State to ensure the separation of judiciary from executive in public services, in order to ensure judicial independence, and federal legislation has been enacted to achieve this objective.

The State, according to ***Article 51***, must also strive for the promotion of international peace and security, and Parliament has been empowered under Article 253 to make laws giving effect to international treaties.

FUNDAMENTAL DUTIES

Rights and duties are like two sides of a coin, absolutely inseparable. Whenever and wherever we have any rights, we must have corresponding duties.

ORIGIN: The Fundamental Duties of citizens were ***added to the Constitution by the 42nd Amendment in 1976 by way of inserting* PART IV-A *upon the recommendations of the Swaran Singh Committee*** that was constituted by the government earlier that year.

All the fundamental duties were incorporated in one article only i.e. ***Article 51-A***.
Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. The idea for Fundamental Duties has been borrowed from erstwhile ***USSR***.

These duties are defined as the *moral obligations of all citizens* **to help promote a spirit of patriotism and to uphold the unity of India.**

The following are the Eleven Fundamental Duties of every citizen of India:

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) to uphold and protect the sovereignty, unity and integrity of India;
(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
(k) To provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

ELECTION COMMISSION AND ELECTION REFORMS

The Fathers of the Indian constitution were keen to have fair and free General Elections to the Parliament and state legislatures. Likewise Presidential and Vice Presidential elections were also to be beyond accusation of partiality or unfair practices of any type.

Hence a Central Election Machinery comprising impartial and nonpartisan individuals was thought the crying need of the hour after the attainment of Independence. Dr. M. V. Pylee rightly remarks, "The sine qua non for a true democracy is the holding of fair and free elections of the people's representatives to the legislative bodies." Hence Article 324 was inserted in the constitution which provided that the superintendence, direction and control of all elections in India will be vested in an independently constituted Election Commission.

The Election Commission is composed of Chief Election Commissioner and as many Election Commissioners as President of India may deem essential at a particular time. Presently there are three Election Commissioners including the Chief Election Commissioner (CEC). The latter is the Chairman of the commission. The election commissioners are appointed by the President of India.

No special qualifications have been laid down for the incumbents of these posts. During the earliest elections of 1951-52 two Regional Commissioners were appointed on temporary basis to assist the Chief Election Commissioner with Headquarters at Mumbai and Patna. In 1957 General Elections, three Deputy Election Commissioners were appointed temporarily for the purpose having their office at Delhi.

During second elections the Regional Commissioners were dropped. However, Article 324 makes a clear-cut provision for the appointment of Regional Commissioners. Their tenure is not fixed.

***Conditions of Service of the Election Commissioners and Regional Commissioners as per Article 324*:** The conditions of service and tenure of the office of the CEC and other members of Election Commissioners were laid down by the Act of Parliament with the assent of President of India in January, 1994.

***They are as under*:**

1. The tenure of office of CEC and other commissioners is 6 years. If CEC and other commissioners attain the age of 65 years before the expiry of 6 years, they are to vacate the office.
2. The Chief Election Commissioner cannot be removed from the office except in the manner and on like grounds as judges of the Supreme Court.
3. The conditions of service of the CEC cannot be varied to his advantage after his appointment in this capacity.
4. The Regional commissioners and other Election commissioners are not removable from the office except on the recommendations of the Chief Election Commissioner.
5. The President on the advice of the Governor of any State have to make available to the Election Commission or the Regional Commissioners, the necessary staff required for the discharge of the functions.
6. The CEC and other members of Election Commissioners are paid handsome salary of a judge of the Supreme Court which has been hiked to Rs. 90,000 p.m. On retirement, they draw pension payable to a judge of the Supreme Court. It is apt to be hiked keeping in view hike in the salaries of all incumbents if high and low offices after the acceptance and implementation of the recommendations of the report of 6th Pay Commission.

***An appraisal of the clauses of Article 324 makes it crystal clear that*:**

(i) Election Commission may be a multiple membered body as it is today. In the times of T.N. Seshan, it was a single membered body to begin with. Later, their number was raised to three despite CEC's

protests and annoyance. However, in the initial stages, he has been just ignoring the other two members.
(ii) The CEC is removable by the process of Impeachment as applicable to a judge of the Supreme Court. In other words 14 days notice is to be preceded a resolution to be passed by both the Houses of Parliament by absolute majority of each house and 2/3 majority of the members present and voting.
(iii) The Election Commissioners and Regional Commissioners cannot be removed except on the recommendations of the CEC.
(iv) The CEC can be appointed for limited period unlike judge of the Supreme Court who holds office till the age of 65 years.
(v) Constitution provides for the availability of adequate staff for the Election Commission.

Functions of the Election Commission:

1) The Election Commission is the Central body duly assigned the task of superintendence, direction and control of elections—Parliament, State Legislature, President and Vice President of India (Article 324).
2) To prepare electoral rolls for the elections and periodically revise them after decennial census and before every general elections to the Parliament and State Legislatures.
3) To notify the schedules of elections so that nomination papers are filed, adequately scrutinized and accepted or rejected before the holding of elections.
4) To request the Indian President or the Governor of a state for assigning the staff whenever necessary for the conduct of elections.
5) To appoint officers for looking into disputes concerning electoral arrangements.
6) To withhold the polls or cancel them in case of rigging on large scale or committing of other irregularities.
7) To settle matters concerning recognition to a political party, allotting a symbol for the ensuing elections, derecognizing a party or depriving it of a symbol.
8) To render advice to the President on a matter relating to the disqualification of a member of parliament or to the Governor about the disqualification of a member of the State Legislature.
9) To render advice to the Government regarding holding of elections in a state under President's rule or extend the duration of emergency after a period of one year.
10) It allots election symbols to the independent candidates.
11) It enjoys quasi-judicial powers. Article 103 of the constitution empowers the commission to advise the President regarding disqualifications of members of Parliament and Article 192 empowers it to give such advice to the Governor regarding disqualification of state legislators.

12) It laid down model code of conduct after all party consensus in December 1983 which is as under:
    (a) The parties or candidates are not to indulge in any activity which fans communal bitterness or causes caste tensions or erupts linguistic feuds,
    (b) The announcements of promises for financial assistance or provision for special amenities resulting in swing of voters to party concerned is debarred
    (c) The use of government vehicles, machinery and personnel to boost the prospects of a particular political party is not permitted,
    (d) The rival parties' flags are not to be removed and their meetings are not to be disrupted,
    (e) Effigies of leaders of other parties are not to be humiliated or burnt leading to incitement.

13) The EC his to see that elections are conducted in free and fair manner. To achieve this goal, the following steps are to be taken:
    (a) To depute central observers to sensitive constituencies;
    (b) To prescribe the code of conduct for the electoral campaigns;
    (c) To institute deterrent punishments for capturing of booths;

(d) To disallow people going within neighbourhood or precincts of a polling station with arms as it is be deemed as a cognizable offence entailing 2 years imprisonment and also fine.

14) The President of India is to seek the advice of the Election Commission if the question of disqualifying a member of parliament crops up. Invariably, the opinion of the Election Commission is accepted. At the state level, Governor is to seek the opinion of the Election Commission in such cases. It may not be out of place to point out that the decision concerning disqualification because of defection, is to be taken by the Speaker in case of lower House whereas Chairman in case of the upper House.

15) The Election Commission exercises control over all functionaries working under or in association with the E.C. The E.C. is to see that they do not misuse the power in course of their duty.

16) To determine the duration of potential broadcasts on radio and television before the commencement of elections and accord equal opportunities to the political parties in this respect.

17) To declare election results and constitute Election Tribunals for resolving election disputes.

18) To appeal to the electorates to elect proper representatives. The CEC oh the 47th Martyrdom day of Gandhiji appealed to the electorates of Maharashtra to give lead to the rest of the country by electing leaders of high integrity and good moral character.

19) To regulate hours of use of loudspeakers during electioneering campaigns

20) To see to the rigid following of ceiling on the election expenses.

21) To see to the avoidance of impersonation cases. In order to avoid such cases, introduction of identity cards for the voters was innovative idea of T.N. Seshan—a former CEC.

22) To request the government to revise expenditure ceiling on the elections. The Election Commission in July, 1997 made such a suggestion on the plea that value of rupee had declined considerably and the price index had gone up. On October 21,2003 the Cabinet decided to raise per constituency expenditure on ceiling from 15 to 25 lakhs in case of Lok Sabha election, and 10 lakhs in case of Assembly constituency of big states.

FLAWS IN COMPOSITION OF THE ELECTION COMMISSION

The functions, as stated in the foregoing account reveal that the Indian Election Commission is a potent instrument utilized effectively for the conduct of elections in the largest democracy of the world. However, some flaws in its composition and working are quite glaring. They are as follows:

1. The constitution is silent about the qualifications and the term of the Election Commission and CEC. It is apprehended that the President may on the advice of the Council of Ministers appoint CEC and the other commissioners on political considerations.
2. The constitution has not specified the number of Regional Commissioners to be appointed. It has not specified their qualifications, term and other conditions of service.
3. The Election Commission has not been vested with the right to recruit and regulate the conditions of service of the secretariat staff.
4. The 44th Amendment Act 1978 has landed the commission in the vortex of politics by authorizing the President to seek the opinion of the Election Commission regarding the possibility of holding elections in a state under the President's Rule after six months period.

Despite these flaws which are not of great consequence, the Commission has observed impartiality and exhibited utmost efficiency in the discharge of its onerous duties. The success of Election Commission to a great extent depends on the unreluctant cooperation of the opposition parties as well as the implicit faith of the party in power in its unbiased functioning. T.N. Seshan took a tough stand invariably during his tenure as CEC and earned the title of a hero in the vitiated political scenario.

Independence of Election Commission:

The Constitution ensures that the Election Commission shall act as an independent body. Hence efforts have been made to secure its independence as in the case of judges of the Supreme Court through the following conditions of service:

a. Their method of appointment and removal.
b. Their handsome salaries and allowances and their un-changeability to their disadvantage during their tenure.
c. Their security of tenure as they cannot be removed from the office except in the manner and on like grounds as a judge of the Supreme Court.
d. Ready availability of the staff necessary for the conduct of their significant functions.

Electoral System— Its Defects and Reforms:

Our's is a vast country inhabited by 1.21 billion people. Approximately 67 to 68 per cent of people can exercise right to vote. Anybody who is 18 years of age or more, can exercise right to franchise. Fourteen General Elections of Lok Sabha have taken place till now. In brief, we make a mention of pitfalls of our Electoral system as under:

(a) Display of Money Power:

Money power has a baneful influence on the elections in our country. In fact, it has vitiated our democratic system. The voters are purchased like saleable commodities and the highest bidder can carry the day. The critics point out that the expenditure incurred on the elections in a constituency is manifold, than the actual laid down as per rules.

Even the Election Commission in 1999 General Elections spent approximately 900 crores. This expenditure was not inclusive of the expenditure incurred by the contestants for parliamentary seats. Recently the CEC has laid emphasis on this Electoral Reform—A curb on Money Power in Election.

(b) Impact of Caste and Religion on Elections:

In our country, caste and religion have a decisive influence on the ultimate voting behaviour and election results. Certain castes and minority communities constitute potential vote banks. Even the fundamentalist parties which belong to a particular religion shed crocodile tears for voters whom they actually hate because of their embracing different religion.

Likewise castist support to the candidates attracts the attention of parties which preach no discrimination on the basis of caste. Even the tickets in various constituencies are allotted to the candidates who can muster sizable section of voters from a particular caste. Thus the Indian polity cannot be proud of an integral society.

The leaders elected on the religious and caste lines are apt to show favours to the adherents of their caste and religion and dis-favour other communities and castes when they attain power at the Centre or at state level.

(c) Misuse of Official Authority:

Appearances are deceptive in politics. It is generally contended that the ministers themselves or through their bureaucratic yes-men should not try to placate the voters at the time of elections. False promises are made at times. Some concrete steps like waving off loans, announcement of enhanced dearness allowances, laying foundation stones of schools, colleges or hospitals as a social welfare work are taken to appease the voters.

Proclamation of millions or billions worth new schemes or yognas is made on the eve of election to strengthen and later en-cash from the vote bank. Government vehicles even aero planes have been used for the purpose. Though the electoral laws consider all this wrong and illegal yet these laws are observed in breach. However, it will not be out of place to point out that parties are getting more and more vigilant.

In the recent elections, the aircrafts used by the Party in power and also the Leader of the opposition while going to the opposition dominated states were brought to the notice of the Election Commission and the parties concerned had, to foot the bills from party expenses and not get adjusted against the Government's exchequer. Still many such violations do not come to the notice of the Election Commission. Debasement of moral values is the main cause of such violations.

(d) Faulty Electoral Rolls:

Electoral Rolls are prepared and periodically revised through 'patwari' or school teachers. It has been seen and oft reported that these employees preparing rolls sometime deliberately ignore certain

section of voters by their names and not entering them in the electoral rolls at the instance of interested parties and sometimes at printing levels, the mischief is done. The voters discover it when they go to the polling station to cast their votes. They find names missing.

In 2002 Assembly elections in Gujarat, many voters hailing from riot torn Ahmadabad were just ignored. Their names were conspicuous by their absence from the voters list. It was highlighted at the time of elections. Even the media exposed it as a mischief on the part of interested party which did not like a particular section of community to exercise vote. The critics termed it a slur on the fair name of Indian democracy.

(e) Electoral Fatique:

On account of emergence of coalition era, stability of our governments both at the state and central level has gone to the winds. Hence there are too frequent elections. The voters developed a sort of electoral fatigue. They avoid going to the polling booths to avoid standing in line, awaiting their turn and sometimes exposed to criminals' intimidation and assault if they persist for voting according to their conscience.

In 11th Lok Sabha election in 1996, 57 per cent voters turned up to vote whereas in the 12th Lok Sabha elections held in 1998, 62 per cent voters cast their votes. In the 13th Lok Sabha elections held in 1999 about 59.79 per cent voters took part in voting. In the elections of 14th Lok Sabha held in April-May 2004, 57.86 per cent voters cast their votes. In XVth Lok Sabha, the percentage slightly improved. It was quoted as 58.6 per cent. Evidently a comparative study of the poll percentages of 1998, 1999 and 2004 reveals that the number of absentees from the polls has been gradually on increase. Such increasing disinterestedness in the General Elections can be attributed to either too frequent elections, or fast dwindling interest of the Indian voters in the elections the possible intimidation at the hands of hired hooligans and hardened criminals in certain constituencies where people of criminal background contest elections or electrol lapses leading to frustration of the voters.

(f) Criminalization of Politics:

Criminalization of Politics has become the watch ward of Indian democracy. This is also one of the reasons of poor turnout of voters at certain places. The criminals and musclemen are staunch supporters of some of the politicians. They let only those people reach polling stations who are to vote for their candidates.

Besides, booth capturing had become the order of the day. Even the polling officials in certain states are till date intimidated and harassed. A sizable number of employees put on election duty get it cancelled apprehending unlawful activities of the supporters of candidates. Hence the Election Commission suggested heavy insurances for the officials performing electoral duties. However, this is hardly a consolation.

Besides criminals are welcomed by certain political parties and given ticket for contesting elections and the lucky few who are elected get ministerial berths. The latest uproar in the previous and also the current years' Lok Sabha session over tainted ministers, supports our contention.

It is irony of our fate that the history sheeters, having proven criminal record, the smugglers and the violators of foreign exchange regulation are patronized by the parties who are keen to be victorious at the hustings come what may. This is a severe blow to our fast developing democracy.

(g) Impersonation of Voters:

Since the implementation of our constitution, impersonation of voters has been a main prank of main political parties which matter the most. Even the dead voters could cast votes and the handicapped and absentees from constituency could be impersonated with the connivance of their families the candidates' agents and some polling officers. Money could play vital part in such cases.

It is being reported that political parties have been joining hands in collecting information about such cases and getting these votes exercised with the connivance of the polling staff. The institution of Identity cards by CEC T.N. Seshan was an admirable step to curb this practice. However electoral machinery responsible for issuing of these cards requires toning up. Mistakes of names, age, wrong parentage or affixing of wrong photos on the card are annoying and at times misleading.

Even now, many people have failed to get their Identity Cards and bulk of them find their in name, in age and certain cases name of father wrongly mentioned on the Identity Cards. Correction requires numerous trips to the election office which most voters cannot afford.

(h) Too Many Candidates in the Fray for Elections:

It is said to be a glaring defect of the Electoral system in India. Non-serious candidates for cheap publicity or sometime with gainful motives contest the elections. It spoils the chances of a good candidate or an established party because their votes are divided and the fence-sitters are sometimes drawn to such candidates and their insignificant parties.

In 1996 Lok Sabha Elections, 13952 candidates contested elections. Whereas in 'February-March 1998 Lok Sabha Elections, the strength of candidates went up to 47501. However in 2004, 2009 elections the number of candidates contesting elections has been quite within limits, may be on account of alliances of major political parties.

The ever increasing number of the Independent candidates has given the system another setback. These Independent candidates also manage to get a good chunk of votes, thus damaging sometimes the prospects of potential candidates of a National Party. There is a necessity of a curb on such non-serious candidates. Sometimes, such candidates are deliberately fielded to act as spoilers and are adequately rewarded for such benign service.

(i) Election Rules Defective:

It has been discovered that electoral rules are full of shortcomings. Hence most of the unhealthy practices go unpunished in the courts. In fact, it is too difficult to prove them. For example the political parties are not allowed to canvass for votes on the basis of caste or religion but in the present political scenario, candidates are chosen by the political parties on the basis of caste and religion but it is next to impossible to give any concrete proof for the same.

Likewise the various political parties invariably provide vehicles to the voters from distant places of their residence to the concerned polling booth and back though it is contrary to the rules. The question arises how to prove it? Hence electoral rules should be made practicable otherwise they become a mockery as they are observed in breach.

(j) Decision on Election Petitions Unduly Delayed:

It has been seen that if an election petition is filed in the court of law, its decision is unduly delayed. By the time action of the petition is conceived, the tenure of the candidate elected through allegedly unfair practices, is completed. Hence the purpose of petition stands defeated.

(k) No Provision of Recall of Representatives:

It is opined that our electoral system does not provide for the recall of the representatives. Recall stands like Sword of Damoclese on the heads of the representatives. It has a deterring effect. The representatives will not go off the rails, if they are conscious of being recalled by the electorates on functioning wrongly dishonestly or below their expectations.

(l) Seats to the Political Parties Disproportionate to the Votes Procured:

Through the prevalent electoral system, a party may capture less number of seats than the proportion of votes won by it in the elections. To cite an instance in the 13th Lok Sabha elections the Congress captured 28.42 per cent votes but it could bag only 114 seats. On the other hand, the BJP which captured only 23 per cent votes won 182 seats.

Likewise the Congress party which won invariably the General Elections in the times of Pt. J.L. Nehru and Mrs. Indira Gandhi, except once with thumping majority, hardly secured 50 per cent majority. It did have only largest majority of votes. This caused at times lot of disappointment to a party getting more votes but comparatively less number of seats.

All these defects of our Electoral system induce our political pandits to clamour for electoral reforms so that our democratic edifice attains stability and the representatives, elected may render dedicated service to the nation.

ELECTORAL REFORMS

The need for Electoral Reforms has been hotly debated since the first General Elections. Meaningful seminars, workshops and conferences have striven to go deep into the electoral shortcomings and have also suggested concrete electoral reforms. The Election Commissions also after every general election has been making concrete suggestions for effecting improvement in the system. A committee comprised of representatives of all leading political parties under the chairmanship of Dinesh Goswami—a skillful parliamentarian (1990) also made an analytical study of electoral problems and made a number of recommendations. The report of the committee was accepted by the Parliament.

***T.N. Seshan's Role*:** Successive central governments have been making tall promises about electoral reforms. However, for a pretty long time, the matter has been hanging in the balance. Since the times of T.N. Seshan as CEC, the Electoral Reforms have been put forth more forcefully and some concrete steps are discernible to effect electoral reforms. He made effective use of Article 324 which entrusts the CEC meaningful powers of superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to Parliament, the State Legislatures and the offices of the President and Vice President of India.

***Unofficial Tarakunda Committee's (1975) Recommendation*:** An unofficial Tarkunda Committee also had submitted a well-thought of report on Electoral Reforms in 1975. It proposed the constitution of a multi-membered Election Commission and suggested appointment of the CEC and other members of EC by the President on the advice of the Prime Minister, the Leader of the opposition in the Lok Sabha and the Chief Justice of India.

The recommendations were duly recognized by Government of India to some extent. The Election Commission was made a multi-membered body.

(a) In order to check impersonation of cases T.N. Seshan during his tenure as CEC, suggested the introduction of Identity Cards for the voters bearing a photo of the voter and his address. Since issuing and preparing of Identity cards was a massive exercise, the coverage of all voters could not be possible. Moreover there were horrible mistakes in the cards—wrong age, wrong father's name and wrong address.

Hence voters were allowed to carry Ration Card, pass port or PAN as their identification on the polling booths. There is a dire necessity of gearing up the electoral machinery for the preparation and issue of these Identity Cards. In fact, till now voters remain deprived of these cards and no efforts have been effectively made to mitigate their grievance. The author himself remains deprived of it and has to carry ration card to cast his vote.

(b) In 1988, amendments in Representation of Peoples Act provided that each political party should get itself registered with the EC. However, each such party was required to declare its faith in the constitution, socialism, secularism and democracy besides sovereignty, unity and dignity of India.

(c) The Electoral Reforms Act 1996 introduced the under mentioned changes in the Electoral system to effect improvement in it:

i. Effective campaigning period was cut down from 20 to 14 days. This curtailed chances of accentuating of mutual skirmishes and vitiating of tranquil atmosphere of the constituency.
ii. Conviction for insult to the National Flag and the National Anthem will disqualify a person from contesting elections for 6 years.
iii. No election is to be countermanded on the death of a candidate. If the candidate concerned belonged to the recognized party, the election shall be postponed. In the mean while, the party in question will be allowed to nominate another candidate as his substitute.
iv. The by-election shall be held within a period of six months from the date the vacancy occurs.

v. The security deposit for Parliamentary Election was raised from Rs. 500 to Rs. 10,000 and in case of State Assembly from Rs. 250 to Rs. 5,000. This was done to discourage non-serious candidates.
vi. To maintain secrecy of voting, signatures or thumb impression of the voters will not be required.

***Suggestions by Intellectuals and mature Administrators*:** In workshops, seminars and conferences, discussions have taken place from time to time to effect substantial improvements in Electoral Reforms and some such recommendations are as under:
(i) Right to recall the M.Ps. and the M.L.As. before completion of tenure must be given to the voters. This will tone up the choice of representatives and serve as 'Sword of Damoclese' on the heads of elected representatives.
(ii) Proportional Representation method should replace the territorial representation method. That will enable each party to get seats proportionate to the votes captured by it.
(iii) The party funds should be auditable. Donations to the parties should be through Accounts Payees' cheques.
(iv) There should be ban on donations to the party from abroad.
(v) The party in power should resign before elections. The elections should be conducted under the regime of non-political caretaker Government as is the case in Bangladesh.
(vi) Defections should be banned totally. A defector should resign from the legislature.
(vii) An Advisory Council like Press Council of India should be constituted to see to the avoidance of misuse of Mass Media viz. Radio and Television.
(viii) Improved techniques of voting can go a long way in curtailing the number of invalid votes. Electronic machines should be used throughout the country. That will help avoiding booth capturing and snatching ballot boxes or casting votes after affixing stamps, in the ballot boxes as done in many states.
(ix) The EC should always be headed by unbiased and courageous chairman. T.N. Seshan and J.M. Lyngdoh—the predecessors of present chairman EC can go a long way in highlighting the infirmities and high handedness of the Government officials and the erring and arrogant politicians.

SOME RECENT DECISIONS FOR EFFECTING REFORMS

***Model Code of Conduct*:** It laid down a model code of conduct for the guidance of both the political parties and the candidates contesting elections. The Election Commission enforced them with effect from March 20, 1996. These codes were as under:
(a) Since the announcement of elections, the ministers and other concerned authorities should not announce financial grants in any form. They should not make promises for the same as well.
Hence in laying of foundation stone of projects of any kind, no promises for the renovation or reconstruction of roads, no announcement for the provision of drinking water facilities, no adhoc appointments in Government offices or public undertakings—as all these are the means to appease the voters by the party in power.
(b) The ruling party is to ensure that official position will not be exploited for launching the election campaign.
(c) Ministers, M.Ps. and M.L.As. of the ruling party should not combine official visits with electioneering work.
(d) The air crafts, vehicles and government personnel will not be used for the furtherance of the interests of the ruling party.
(e) The ruling party will neither monopolies the helipads for election purposes nor the public places for election meetings.
(f) Rest House, Government bungalows and available government accommodation should also not be the monopoly of the ruling party. The same facility may be extended to the other political parties in the election fray.

(g) Advertisement at the cost of public exchequer and the misuse of official mass media during the election, the partisan coverage of political views and cheap publicity of government's achievements is to be avoided.
(h) The ministers and the other concerned officials shall not advance payments out of discretionary quotas after the announcement of elections.
(i) No party or candidate is allowed to exploit sentiments of the voters, fanning the caste differences or spitting venom among the communities on religious or linguistic basis.
(j) Criticism of other parties is to be kept confined to their policies, plans and their implementation. No attacks on personal life of the candidates are permitted.
(k) The religious places viz. mosque, churches, temples shall not be used as forums for indulging in election canvassing.
(l) Corrupt practices and offences under the Electoral law are to be avoided. For example, intimidation of voters, impersonations or providing the voters, transport from home to polling stations and back are to be shunned.
(m) The local police is to be intimated the venue and the time of public meeting. The organizers are to seek police assistance for avoiding and meeting any type of disturbance.
(n) Carrying of effigies or burning them in the public and any such type of demonstration by party workers is to be forbidden and discouraged.
(o) The organisers have to take steps for smooth passage of processions causing hindrance to traffic.
(p) Parties and the candidates have to see that the precisionists do not carry articles which may be put to misuse.

Recent Miscellaneous Proposals by the Election Commission: *The Election Commission made a few more proposals as under:*

(i) Nomination Forms be changed. The candidate 'to declare annual income for tax purpose' be included. Besides, imprisonment for wrong information may also be clearly mentioned in the nomination form.
(ii) In the Ballot paper, besides the name of the candidates, the last column should be "none of the above". In other words a voter may be allowed to reject all candidates if he so chooses.
(iii) It suggests complete ban on government sponsored 'Ads' six months before elections.
(iv) An appellate authority may be appointed in each district against orders of electoral officers.
(v) The candidates against whom charges have been framed in a criminal case six months prior to election, should be disqualified.
(vi) Political parties must maintain accounts and get them audited by agencies specified by the EC.
(vii) In order to discourage non-serious candidates to contest elections, the security deposit may be increased from Rs. 10,000 to Rs. 20,000 in case of candidates for Lok Sabha and from Rs. 5,000 to Rs. 10,000 for candidates for the State Assembly.
(viii) The recent most warning to political parties by the Election Commission was "It would take action if parties tried to use religious sentiments for political purpose during the Ganesh Chaturthi festival in Maharashtra ahead of Assembly elections in the state."

UNIT III
OFFICE BEARERS AND SUPREME COURT

- ⇨ **Central Government- President, Parliament, Prime Minister**
- ⇨ **Supreme Court**

The Central Government in India is a combination of the President, the Parliament and the Prime Minister. The **Indian Parliament** is the supreme legislative body in India. Parliament is composed of:

- The President of India
- Lok Sabha (House of the People)
- Rajya Sabha (Council of States).

The president in his role as head of legislature has full powers to summon and prorogue either house of Parliament or to dissolve Lok Sabha. However, in keeping with the Westminster Model of governance, the president rarely exercises such powers without the advice of the prime minister.

India's government is bicameral; Rajya Sabha is the upper house and Lok Sabha is the lower house. The two houses meet in separate chambers in the Sansad Bhavan (located on the Sansad Marg or "Parliament Street") in New Delhi. Those elected or nominated (by the President) to either house of Parliament are referred to as members of parliament or MPs. The MPs of Lok Sabha are directly elected by the Indian public and the MPs of Rajya Sabha are elected by the members of the State Legislative Assemblies, in accordance with proportional representation.

The Union Executive broadly covers the President, Council of Ministers and the Prime Minister. Under the Indian Constitution, the President of India enjoys a unique position. President is the ***head of the Union Executive***. ***Article 52*** creates the position of the President. The **President of India** is the head of state of the Republic of India. He is considered to be above party politics and is **not a member of any political party**.

The President is the **first citizen of the country** and **formal head of the executive, legislature and judiciary of India.** He is also the **commander-in-chief of the Indian Armed Forces**. He represents sovereignty of the country. He is elected by the elected representatives of the people.

POSITION OF THE PRESIDENT UNDER INDIAN CONSTITUTION

Article 52 provides that there shall be a President of India and ***Article 53*** provides that the executive powers of the Union shall be vested in the President of India and shall be exercised either directly or through officers subordinate to him in accordance with the *Constitution*. Thus President of India is bound to act in accordance with the Constitution.

Also, ***Article 74*** of the Constitution provides that there shall be Council of Ministers with the Prime Minister at the head to aid and advice the President of India. Thus, a question arises what does aid and advise mean? Can President of India refuse or disallow or disregard the advice tendered or given by the Council of Ministers to the President? As ***Article 75 (3)*** provides, the Council of Ministers shall be collectively responsible to the House of the People. In Parliamentary form of Government, Council of Ministers is responsible to the Lok Sabha. Similarly, if President does not act in accordance with the Constitution then there is provision for his impeachment. Under Article 368, a provision has been made that if any Amendment Act has been passed in order to amend the Constitution, the President shall have to sign it. It is very clear from all the above provisions that President cannot go against the wishes of the Council of Ministers as headed by the Prime Minister. He is said to be a puppet in the hands of Prime Minister.

DUTIES OF THE PRESIDENT

The primary duty of the President is to preserve, protect and defend the Constitution and the law of India as made part of his oath (***Article 60***). He is liable for impeachment for violation of the Constitution (***Article 61)***.

The Constitution of India envisages a parliamentary Government in India. ***Part V*** of the Constitution of India deals with the office of the President of India. Although Article 53 of the Constitution says that the executive power of union shall be exercised by the President either directly or through officers sub-ordinate to him.

In practice the President has to abide by the decisions of the council of ministers with the Prime Ministers at the head. Our Constitution is a harmonious blend of the political systems of the U.S.A. and the U.K. The President merely represents the nation, he does not rule.

QUALIFICATIONS TO BE ELECTED A PRESIDENT

The candidate-

(a) Should be a citizen of India;
(b) Should be of not less than 35 years of age;
(c) Should be qualified for elections as a member of the House of people; and
(d) Should not hold any office of profit under the Government of India or any state Government or any local authority subject to the control of any of these Government;
(e) Must not be a member of the parliament.

ELECTION OF THE PRESIDENT

The founding fathers of the Constitution did not provide for the popular election of the President. ***Article 54*** of the Indian Constitution provides for the election of the President of India.

The President of India is elected by indirect election that is by an electoral college through secret ballot, in accordance with the system of proportional representation by means of the single transferable vote.

As far as practicable, there shall be uniformity of representation of the different states at the election, according to the population and the total number of elected members of the Legislative Assembly of each state, and party shall also be maintained between the State as a whole and the Union ***(Article 55)***.

Electoral College which elects President consists of-

- Elected members of both the Houses of Parliament (does not include nominated members)
- Electoral college which elects the President consists of elected MP's and elected MLA's at the state level
- MLA's of National Capital Territory of Delhi and the Union territory of Pondicherry are also included

SINGLE TRANSFERABLE VOTE

The election of the President is held through single transferable vote system of proportional representation. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she

wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President. For the purpose of securing such uniformity among the States 'inter se' as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner-

(a) Every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiple of one thousand; the remainder is not less than five hundred than the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions disregarded.

The election of the President shall be held in accordance with the ***system of proportional representation by means of the single transferable vote*** ***and the voting at such election shall be*** ***by the secret ballot.*** In this Article, the expression "population" means the population as ascertained at the preceding census of which the relevant figures have been published. **[Article 55]**

Conditions of President's office - ***Article 59*** of the Constitution lays down the conditions-

(a) The President cannot be a member of either of House of Parliament or State Legislature when holding the office of President.

(b) The President cannot hold any other office of profit.

(c) Parliament by law will determine the salary of President.

Term of office: The President's term of office is for ***five years*** from the date on which he enters upon his office; but he is eligible for re-election.

The President office may terminate within the term of five years in either of two ways-

(a) By resignation in writing under his hand addressed to the vice-President of India,

(b) By removal for violation of the constitution, by the process of impeachment (Art. 56).

VACANCY IN THE OFFICE OF PRESIDENT

A vacancy in the office of the President may be caused in way of the following ways-

(i) On the expiry of his term of five years,

(ii) By his death,

(iii) By his resignation. The President may, by writing under his hand addressed to the Vice-President, resign from his office,

(iv) On his removal by impeachment,

The President may, for violation of the Constitution, be removed from the office by impeachment in the manner provided in Art. 61

(v) Otherwise, e.g., on the setting aside of his election as President.

TIME FOR HOLDING PRESIDENTIAL ELECTIONS

(a) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the current term.

(b) An election to fill a vacancy in the office of President occurring by the reasons of death, resignation or removal, or otherwise, should be held within 6 months from the date of occurrence of vacancy.

PRIVILEGES AND IMMUNITIES

(a) The President cannot be asked to be present in any court of law during his tenure.
(b) A prior notice of two months' time is to be served before instituting a civil case against him.
(c) The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
(d) The President is not answerable to any court of law for the exercise of his functions.

REMOVAL OF PRESIDENT (IMPEACHMENT PROCESS)

The President can only be removed from office through a process called ***impeachment***. The Constitution lays down a detailed procedure for the impeachment of the President. An impeachment is a quasi-judicial procedure in parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated.

PROCEDURE FOR IMPEACHMENT

The resolution to impeach the President can be moved in either House of Parliament. ***Such a resolution can be moved only after a notice has been given by at least one-fourth of the total number of members of the House.*** Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-third of the total membership of that House before it goes to the other House for investigation.

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The charges levelled against the President are investigated by the second House. President has the right to be heard or defended when the charges against him are being investigated. The President may defend himself in person or through his counsel.

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If the charges are accepted by a two-third majority of the total membership of the second House, the impeachment succeeds. The President thus stands removed from the office from the date on which the resolution is passed.

But the charge cannot be preferred by a House unless-

(a) a resolution containing the proposal is moved after a 14 days notice in writing signed by not less than 1/4 of the total number of members of the House; and

(b) the resolution is then passed by a majority of not less than 2/3 of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. If as a result of the investigation, a resolution is passed by not less than 2/3 of the total membership of the House before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed ***(Article 61)***.

Since the Constitution provides the mode and ground for removing the President, he cannot be removed otherwise than by impeachment, in accordance with the terms of Art 56 and 61.

ALLOWANCES AND EMOLUMENTS

The President shall be entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law that behalf is so made, such emoluments, allowances and privileges as are specified in the second schedule of the Constitution.

The President receives a salary of ***Rs. 1,50,000/- per month*** and an annual pension on the expiration of his term or on resignation provided he is not re-elected to the office. The emoluments and allowances of the President shall not be diminished during his term of office.

POWERS OF THE PRESIDENT

The President of India is the head of a parliamentary state, entrusted with all the executive authorities including the supreme command of the forces. He exercises his power with the aid and advice of the Council of Ministers.

The Prime Minister is the real head of the Government. However, a vast number of powers have been earmarked for the President by the Constitution. Powers of President can be summarized under following categories:-

1. EXECUTIVE POWERS

(a) ***Article 53*** of the Constitution declares the President to be the chief of the state. Sub-clause (i) states, "The executive powers of the union shall be vested in the President and shall be exercised by him either directly or through offices sub-ordinate to him in accordance with his constitution. The Constitution vests the supreme executive authority of the Union in the President.

(b) Under **Article 77**, all the executive actions of the government are taken under the name of the President.

(c) He holds the **supreme command of India's defence forces** and has the power of declaring war or concluding peace.

(d) Under **Article 78**, the President has the right to seek any information from the Centre and the State.

(e) The President appoints, as Prime Minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

(f) Under **Article 310**, every officer of the government occupies his/her position during the pleasure of the President.

(g) It is the President of India by whom Houses of Parliament are summoned and he may convene joint sitting of the two Houses in case of deadlock.

(h) The President **nominates 12 members for the Rajya Sabha** with extra-ordinary accomplishments from amongst persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service and **two members for the Lok Sabha from the Anglo-Indian Community.**

(i) The President is responsible for making a **wide variety of appointments**. These include:

- Governors of States
- The Chief Justice, other judges of the Supreme Court and High Courts of India
- The Chief Minister of National capital territory of Delhi (Article 239 AA 5 of the constitution)
- The Attorney General
- The Comptroller and Auditor General
- The Chief Election Commissioner and other Election Commissioners
- The Chairman and other Members of the Union Public Service Commission
- Vice Chancellor of central university and academic staff of central university through his nominee
- Ambassadors and High Commissioners to other countries

(j) Besides he has the power to **appoint an Inter-State Commission, Finance Commission, Election Commission, etc**. He has the power to be kept informed of all the officers of the Union. It is the duty of the Prime Minister to communicate to the President all decisions of the council of ministers relating to the administration of Union Affairs.

2. LEGISLATIVE POWERS

According to the Constitution, the President is an integral part of the Parliament. He has many powers in relation to the Parliament-

(a) The President **inaugurates the Parliament by addressing it after the general elections** and also at the beginning of the first session each year. Presidential address on these occasions is generally meant to outline the new policies of the government.**[Article 87]**

(b) He **summons, prorogues the Parliament**.

(c) He **can dissolve the House of people.**

(d) He **can address either Houses of Parliament or both the Houses jointly** (i.e. a joint session of both the houses of the Parliament).

(e) He **can send message to either House of Parliament whether with respect to a Bill pending** in Parliament or otherwise.[Article 86(2)]

(f) The President **decides questions as to disqualification of members.[Art. 103]**

(g) He can **cause certain reports and statements to be laid before the Parliament** such as the report of the Comptroller and Auditor General, or the Report of the Finance Commission.

(h) He **recommends the introduction of certain bills** in the Parliament such as the re-organisation of states or alteration of boundaries; a money-bill involving expenditure.

(i) **No bill can become a law unless and until assented to by the President. [Article 114]** All bills passed by the Parliament can become laws only after receiving the assent of the President.

After a bill is presented to him, the President shall declare either that he assents to the Bill, or that he withholds his assent from it. As a third option, he can return a bill to the Parliament, if it is not a money bill or a Constitutional amendment bill, for reconsideration.

When, after reconsideration, the bill is passed and presented to the President, with or without amendments, the President cannot withhold his assent from it. The President can also withhold his assent to a bill when it is initially presented to him (rather than return it to the Parliament) thereby exercising a pocket veto.

(j) The President **may withhold his assent or return the Bill to the House, for reconsideration, if it is not a money bill.**

(k) Certain types of bills passed by the state Legislature are to be reserved for Presidents' assent. Certain bills require his prior sanction before they are introduced in the state Legislature.

(l) The most important legislative power of the President is his **power to promulgate *Ordinances* under *Article 123***. According to this, the President is empowered to promulgate ordinances, except when both the Houses of Parliament are in session, if he is satisfied that circumstances exit compelling him to take immediate action.

A Presidential Ordinance has the same force and effect as an Act of Parliament. However, every such ordinance should be laid before both Houses of Parliament within six weeks from the re-assembly of Parliament. Failure to comply with this condition, or Parliamentary disapproval within the six weeks' period, will make the Ordinance invalid. The President may also withdraw the Ordinance at any time he likes.

3. FINANCIAL POWERS

In respect of finance, the President enjoys the following powers:

(a) **No money bill can be introduced in the House of people without the previous sanction of President.** All money bills originate in House of the people (Lok Sabha) **(Article 109)**.

(b) The president shall cause to be laid before Parliament, the **Annual Budget and supplementary Budget for its approval (Article 112)**.

(c) He causes to be laid before the Parliament the Annual Finance Statement called the **Budget before the beginning of every financial year**.

(d) **Withdrawal from the Contingency Fund of India is done after the permission of the President.** The Contingency Fund of India is at the disposal of the President. He can make advances from the contingency fund of India to meet unforeseen expenses, pending approval by the Parliament.

(e) The **President appoints the Finance Commission** from time to time to make recommendation regarding the distribution of taxes between the Union and the states.

(f) He **determines the shares of Income Tax receipts between the Union and the States.**

4. JUDICIAL POWERS (PARDONING POWER)

The President has the power to grant pardons and reprives, and suspend, remit or commute sentences of persons convicted by court martial, and in all cases in which sentences of death have been passed. As mentioned in ***Article 72*** of Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- ✓ Punishment is for offence against Union Law
- ✓ Punishment is by a Military Court
- ✓ Sentence is that of death

To pardon means to forgive a person of his offence. It is an act of grace and cannot be claimed or demanded as a matter of right. It is purely an executive act. The decisions involving pardoning and other

rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

The Presidents power does not affect the similar powers of the Governor and military officers with respect to Court-Martial. It is noteworthy that the Presidents' judicial power does not include the power to grant amnesty. This power is left to the Parliament.

(b) **Advisory Jurisdiction under Article 143** also comes under judicial powers of the President.

(c) The President enjoys certain ***privileges*** in respect to criminal or civil proceedings against him. No criminal proceedings can be started against him during his term of office. Civil proceedings can be initiated only after he has been served with a two months written notice.

5. MILITARY POWERS

The Supreme Command of the Defence Forces is vested in the President of India, but the Constitution expressly lay down that the exercise of this power shall be regulated by law.

This means that though the President may have the power to take action as to declaration of war or peace or the employment of the Defence Forces, it is competent for Parliament to regulate or control the exercise of such powers.

6. DIPLOMATIC POWERS

Like the head of other States, the President of India represents India in international affairs and has the power to appoint Indian representatives to other countries and receives diplomatic representatives of other states.

7. EMERGENCY POWERS

In addition to the power enumerated above the President of India enjoys vast emergency powers. ***Article 352 to 360*** deals with the emergency provisions. The Constitution visualizes three kinds of emergencies:-

(a) Emergency arising out of a threat to the security of India or any part of it by war, external aggression or internal disturbances,

(b) Emergency arising out of the failure of the constitutional machinery in any one of the states.

(c) Emergency caused by a threat to the financial stability of India.

It is the President who determines whether the emergency exists or not. His judgement in this case cannot be questioned. If the President issues a declaration of national emergency caused by war or threat of war he may:-

- **Suspend the autonomy of states and empower the Parliament to make laws on all matters including matters in the state list.**
- **Extend the executive power of the union so as to give directions to any state regarding the manner in which the executive power of the union is to be exercised;**
- **Suspend the fundamental rights including the right to constitutional remedies.**
- **The President can modify the provisions relating to distribution of revenues between the centre and the states in order to secure adequate revenue for the Government of India to meet situation created by emergency.**

The above is the assessment of various powers of the President of India. Looking to these powers one may say that President is no less than a dictator and especially so when an emergency has been declared.

However, whatever may be the Constitutional provisions regarding the powers of the President and however vast these powers may be, yet it may be said that the President of India being the head of a

parliamentary Government cannot but exercise his powers on the advice of the Council of Ministers which includes the elected representatives of the people.

Article 74 clearly provides that "there shall be a Council of Ministers to aid and advice the President in the exercise of these functions. Article 74 is a mandatory provision.
The Constitution does not visualize the rule of the President at the centre. The powers of the President are the powers of the Council of Ministers which is responsible to the Parliament. The President must act according to their advice because disregard of their advice would kill the essence of the parliamentary Government which requires that the head of the state should exercise his powers on the advice of the cabinet responsible to the parliament.

PARLIAMENT

A **parliament** is a legislature. More specifically, "parliament" may refer only to a democratic government's legislature. The term is derived from the French *parlement*, the action of *parler* ("to speak"): a *parlement* is a discussion. In around 1300 the term came to mean a meeting at which such a discussion took place. It acquired its modern meaning, in the mid-14th century, as it came to be used for the body of people (in an institutional sense) who would meet to discuss matters of state. Generally, a parliament has three functions: representation, legislation and parliamentary control (i.e., hearings, inquiries).

The Union Parliament of India consists of ***the President*** and ***the two Houses known as the House of people and the Council of states***. The House of people is the Lower chamber where as the council of states is the upper chamber of the house of parliament.

The Rajya Sabha is composed many of representatives of the states elected by the State Assemblies. The Lok Sabha is composed of directly elected representatives on the basis of adult franchise and territorial constituencies. ***The President is an integral part of the parliament.***

Under the Constitution of India, ***the legislature of the Union is called Parliament*** is the pivot on which the political system of the country revolves.

THE HOUSE OF PEOPLE (LOK SABHA)

The House of people is known as the '***Lower House***' of Parliament or the '***Lok Sabha***'
Its members are elected directly by the people.

Composition of Lok Sabha

530 MEMBERS CHOSEN BY DIRECT ELECTION FROM TERRITORIAL CONSTITUENCIES IN THE STATES + **NOT MORE THAN 20 MEMBERS TO REPRESENT UNION TERRITORIES** + **TWO MEMBERS OF THE ANGLO-INDIAN, COMMUNITY MAYBE NOMINATED BY THE PRESIDENT** → **552 MEMBERS**

Under the Constitution, ***not more than 530 members*** are to be chosen by direct election from territorial constituencies in the states, and ***not more than 20 members to represent the union Territories.***

In addition, ***two members of the Anglo-Indian, community maybe nominated by the President***, if he is of the opinion that the community is not adequately represented in the Lok Sabha. Thus the maximum strength of the House envisaged in the constitution is thus ***552.***
The total elected strength of the Lok Sabha is distributed among the states in such a way that the ratio between the number of seats and the population of any state is as far as possible the same for all states. At present the Lok Sabha consists of 545 members.
Direct Election*:** The election to the Lok Sabha is ***conducted on the basis of adult franchise where every man or woman who has completed the age of 18 years is eligible to vote. The Constitution provides for secret ballot. According to the present system, a candidate who secures the largest number of votes is declared elected.

Duration of the Lok Sabha:

Lok Sabha has been provided with a ***fixed term*** as in the case of the popularly elected House of Representatives in the United States of America and the House of commons in the United Kingdom. The term of the Lok Sabha in India is ***five years from the date appointed for its first meeting.***

The expiration of the period of five years operates as its dissolution. The Lok Sabha may be dissolved before the expiration of its full term under certain circumstances, when a proclamation of Emergency is in force, the term of Lok Sabha can be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case a period of six months after the proclamation has ceased to operate.

Qualifications for membership:

According to ***Article 84*** of the Constitution, following are the qualifications for the membership of Lok Sabha. A candidate must be-

(a) a citizen of India;
(b) have attained the age of twenty five years and
(c) must possess such other qualifications as may be prescribed by the parliament. A person holding an office of profit is disqualified from becoming a member of the House.

Sessions:

The Lok Sabha shall meet ***at least twice a year*** and ***the interval between two consecutive sessions shall be less than six months***. The time and place of meeting will be decided by the President who will summon the House to meet. He has also the power to prorogue the House.

The Lok Sabha can also be summoned in a special session for disapproving the proclamation under Article 352, if a notice in writing signed by not less than one-tenth of the members of the Lok Sabha is given to the speaker. When such a notice is given the President must summon the session within 14 days.

THE COUNCIL OF STATES (RAJYA SABHA)

The Rajya Sabha is the '***Upper House***' of Parliament and is sometimes called the '***House of Elders***'.

Composition of Rajya Sabha (Article 80):

TWELVE MEMBERS TO BE NOMINATED BY THE PRESIDENT HAYING SPECIAL KNOWLEDGE OR PRACTICAL EXPERIENCE IN RESPECT OF LITERATURE, SCIENCE, ART AND SOCIAL SERVICE + **NOT MORE THAN TWO HUNDRED AND THIRTY-EIGHT REPRESENTATIVES OF THE STATES AND OF THE UNION TERRITORIES.** → **250 MEMBERS**

The ***present strength of the Rajya Sabha is 245*** of these, ***233 are elected by the various State Legislative Assemblies, thus making the Rajya Sabha predominantly an indirectly elected body.***

Indirect Election:

Whereas the Lok Sabha is directly elected on the basis of adult suffrage for five years, the Rajya Sabha is ***indirectly elected on a proportional representation basis by the state Legislatures.*** For the purpose of this election to each State is allotted a certain number of seats in the Rajya Sabha.

The main basis of such allotment is the strength of the population in each State. The members of each State Legislative Assembly from the electorate for the purpose of electing the requisite number of members allotted to each state thus ensuring the principle of State representation in the 'upper chamber' of parliament.

Another principle that is given recognition in the composition of the Rajya Sabha is representation of talent, experience and service. The method of proportional representation helps better representation of minorities.

Term of Upper House i.e. Rajya Sabha:

The Rajya Sabha enjoys a continuity of life. ***Under the Constitution, the Rajya Sabha cannot be dissolved.*** The term of the members of the Rajya Sabha is six years and in this respect it resembles the senate of the United States whose members are also chosen for six years.

In fact, the Rajya Sabha is a permanent body like the American Senate, ***one third of the members of the Rajya Sabha retire after every two years.***

Chairman and Deputy-Chairman of the Rajya Sabha-

The Vice-President of India is ex-officio chairman of the Rajya Sabha. He is elected by an electoral college consisting of the members of both the Lok Sabha and the Rajya Sabha.

While the office of the chairman is vacant, or during any period when the Vice- President acts as the President of India or discharges the functions of the President, the duties of the chairman of the Rajya Sabha are performed in the Deputy Chairman.

The Rajya Sabha also has a panel of members called Vice-Chairman' nominated by the chairman for the purpose of presiding over the Rajya Sabha in the absence of both the Chairman and Deputy Chairman.

POWERS OF THE PARLIAMENT

LEGISLATIVE POWERS

The Parliament is mainly a law-making organ. It can make laws on all the matters specified in the Union list and Concurrent list of the Seventh Schedule.

The State list is beyond the jurisdiction of the Union Parliament; but under certain circumstances it can also make laws on the subjects enumerated under this list. When the President has declared an emergency, the Parliament gets power to make law on the State list in normal times.

The Parliament can make laws on the State lists if:

(a) The Council of States has declared by a resolution supported by not less than two-third of its members present and voting that it is necessary and expedient in the national interests that the Parliament should make laws with respect to any particular matter specified in the State list.
(b) Two or more States request the Parliament to make a law on a particular subject for them;
(c) Such a law is necessary for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or such other body.

EXECUTIVE POWERS

Under a Parliamentary Government, there being no strict separation of powers, the legislative organ controls the executive organ. The Parliament exercises control over the executive through numerous measures. It can move adjournment motions and can thereby bring to light the omissions and commissions of the administration.

It can put questions to the executive to elicit any information regarding administration. It can appoint investigation committees to go into any aspect of administration. In extreme cases, the Parliament can get rid of by passing a motion of no-confidence against it.

FINANCIAL POWERS

The Parliament controls the union purse. No taxes can be levied and no expenditure can be made by the Government without its approval. It determines the financial policy of the country.

CONSTITUENT POWERS

The Parliament has the power to amend the Constitution. It is worthy of note that while certain provisions of the Constitution may be amended without the consent of the States, none of the provisions can be amended without the approval of the Parliament.

There are some provisions of the Constitution which the Parliament can amend by a simple majority while certain others it can amend by a two-third majority. There are only a few matters which require the consent of the units.

DELIBERATIVE POWERS

The Parliament is also a debating assembly. It is the place where national questions are debated upon and policies are formulated. It is here that the actions of Government are reviewed and criticised. The discussion in the Parliament attracts the attention of the entire country and compels the Government to its intentions and policies.

MISCELLANEOUS POWERS

The Parliament constitutes a part of the electoral college to elect the President of India. It alone elects the Vice-President. It has the power to impeach the President.

It can recommend to the President the removal of other high officers of the State including the judges of the Supreme Court. Finally, the proclamation of Emergency by the President is subject to the approval of the parliament.

DISQUALIFICATIONS FOR THE MEMBERSHIP OF PARLIAMENT

(a) No person shall be member of both the Houses of the Parliament.
(b) No person shall be member of the Parliament and a State Assembly. The disqualification for the membership of Parliament is different thing from the disqualification for the membership. A person shall be disqualified for being chosen as a member of either House of Parliament—
(c) If he holds an office of profit under the Govt. of India or the Government of any State.
(d) If he is of unsound mind and stands so declared by a competent court.
(e) If he is an undischarged insolvent.
(f) If he is not a citizen of India.
(g) If he acquires citizenship of any other State.
(h) he shows allegiance to any other State.
(i) If he is disqualified under any law made by the Parliament.

If any question arises as to disqualification of a member, the decision of President shall be final.

COUNCIL OF MINISTERS

Article 74 of the Constitution of India provides that there would be a Council of Ministers with the ***Prime Minister as its head to aid and advise the President of the Indian Union in discharging his duties.***

The Prime Minister is appointed by the President who also appoints other ministers on the advice of the Prime Minister.

The Council of Ministers is collectively responsible to the Lok Sabha. It is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to administration of the affairs of the Union and proposals for legislation and information relating to them.

The Council of Ministers comprises of ministers who are in three categories-

- ***CABINET MEMBERS-*** Each member of the cabinet handles an independent charge of a department.

- ***MINISTERS OF STATE***- They are also the ministers of the cabinet rank and help in discharging the duties of cabinet ministers.

- ***DEPUTY MINISTERS***- They are the ministers of the lower rank and work under the state ministers.

THE PRIME MINISTER

The Constitution of India provides that there shall be a Council of Ministers to assist the President in discharging his duties. ***The Prime Minister of India heads the Council of Ministers.***
He is the leader of the party that enjoys a majority in the Lok Sabha. While the President of India is the head of the State, the Prime Minister is the head of the Government.
APPOINTMENT- The leader of the majority party in the Lok Sabha is appointed as the Prime Minister by the President. The President is the Constitutional head of the Union executive and the Prime Minister is the real head.
FUNCTIONS-

(a) He selects other ministers, who are appointed by the President on the advice of the Prime Minister.
(b) He presides over cabinet meetings.
(c) He is the link between the President and the Cabinet It is the Prime Minister who keeps the President informed of the decisions of the Council of Ministers.
(d) He guides the ministers and coordinates the policies of various departments and ministries.
(e) He is the leader of the Lok Sabha in Parliament.
(f) He is the Chairman of the Planning Commission.
(g) He is the Chief confidential advisor to the President.

Term of the office-The term does ***not exceed five years***. He may also be removed from his office when his party loses majority in Lok Sabha.

Resignation- If the government is defeated in the Lok Sabha, the Cabinet and the Prime Minister both have to resign as they are responsible to the Lok Sabha.

MONEY BILL

Article 110 of the Constitution ***defines Money Bill***. It provides that-

(1) For the purpose of this chapter, a Bill shall be deemed to be money bill if it contains only provisions dealing with all or any of the following matters, namely:-

- ⇨ the imposition, abolition, remission, alteration or regulation of any tax;
- ⇨ the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- ⇨ the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- ⇨ the appropriation of moneys out of the Consolidated Fund of India;
- ⇨ the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

- ⇨ the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- ⇨ any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Procedure in respect of Money Bill-

A Money Bill shall not be introduced in the Council of States except on the recommendation of the President.

After a Money Bill has been passed by the house of the People it shall be transmitted to the Council of States for its recommendation and the Council of States shall within a period of fourteen days from the date of its receipt return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States. If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People

If the House of the People does not accept any of the recommendation, of the Council of States, the Money Bill shall be deemed to have been passed by both the Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

If a Money Bill is passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People. ***[Art. 109]***

DIFFERENCE BETWEEN ORDINARY BILL AND MONEY BILL

ORDINARY BILL	MONEY BILL
Articles 107 & 108 deal with Ordinary Bills.	Articles 109 and 110 deal with Money Bills
An Ordinary Bill can be introduced any of the Houses of Parliament.	A Money Bill can only be introduced in the Lok Sabha.
An ordinary Bill can be introduced only with the recommendation of b President.	The Money Bill can be introduced without the recommendations of the President.
A dead-lock may occur.	No deadlock occurs
A Joint session of Houses may be 'lied to resolve the dead-look.	Joint session of the Houses is not necessary.

When a Bill is passed in one House and it is sent to the other House for passing, the other House may keep that Bill for six months with it.	A Money Bill is always passed by Lok Sabha. Thereafter it is sent to Rajya Sabha for recommendations. It can keep only for 14 days.
The House has to oblige the recommendations of the other House.	Lok Sabha may consider or may not consider the recommendations of the Rajya Sabha pertaining to Money Bills.
Certificate from the Speaker's not necessary.	The Speaker has to give a certificate for the Money Bill.

THE UNION JUDICIARY
THE SUPREME COURT

In a democratic set-up like India, judiciary is the supreme authority in the sense that it is the guardian of the Constitution and the rights of the citizens. Also, it has been vested with the duty to strike a balance between the central government and the governments of the federating units, other pillars of the democracy. Therefore, existence of an independent and impartial judiciary is an essential pre-requisite of a federal form of government. It acts as the custodian of democracy and the guardian of the rights and liberties of the people.

Unlike other federal systems, we do not have separate hierarchies of federal and state courts. For the entire Republic of India, there is one unified judicial system- one hierarchy of courts- with the Supreme Court as the highest or the apex court. Then there are High Courts at the state level and subordinate courts below them.

The Supreme Court of India consists of the Chief Justice and 30 other judges, appointed by the president. The Parliament has the power to prescribe the number of judges and no formal amendment of the constitution is required for this purpose.

Article 124 provides for the ***establishment and constitution of Supreme Court***-
(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 30 Judges.
(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and ***shall hold office until he attains the age of sixty five years***:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—
(a) a Judge may, by writing under his hand addressed to the President, resign his office;
(b) a Judge may be removed from his office in the manner provided in clause (4).

QUALIFICATIONS AND SALARY

For appointment as a judge of the Supreme Court a person must be-

(a) Must be a citizen of India, and
(b) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
(c) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
(d) is, in the opinion of the President, a distinguished jurist.

Thus, a non-practicing or an academic lawyer may also be appointed as a judge of the Supreme Court if he is, in the opinion of the President, a distinguished jurist.

Provision has also been made for the appointment of a judge of a High Court as ad hoc judge of the Supreme Court and retired judges of the Supreme Court or of High Court to sit and act as judge of the Supreme Court. The Constitution debars a retired judge of Supreme Court from practicing in any court of law or before any other authority in India. The salary of the judges is charged upon the Consolidated Fund of India.

REMOVAL OF JUDGES

The judges of the Supreme Court can be removed from office by the President only after an address by each house of Parliament supported by more than two thirds majority of members present and voting has been presented to the President in the same session for removal of the judges on the ground of proved misbehaviour or incapacity.

Oath **-** Every person appointed as a judge of the Supreme Court before he enters upon his office, takes an oath before the President or some person appointed in that behalf by him in the form prescribed in the Constitution. The Constitution prohibits a person who has hold office as a judge of the Supreme Court from practicing law before any court in the territory of India (Art 124 (6) and (7)).

The Constitution prohibits a person who has held office as a Judge of the Supreme Court from practicing or acting as a judge in any court or before any authority within the territory of India. But under ***Article 128***, the ***Chief Justice may appoint the retired judges to act as ad hoc judges in the Supreme Court.***

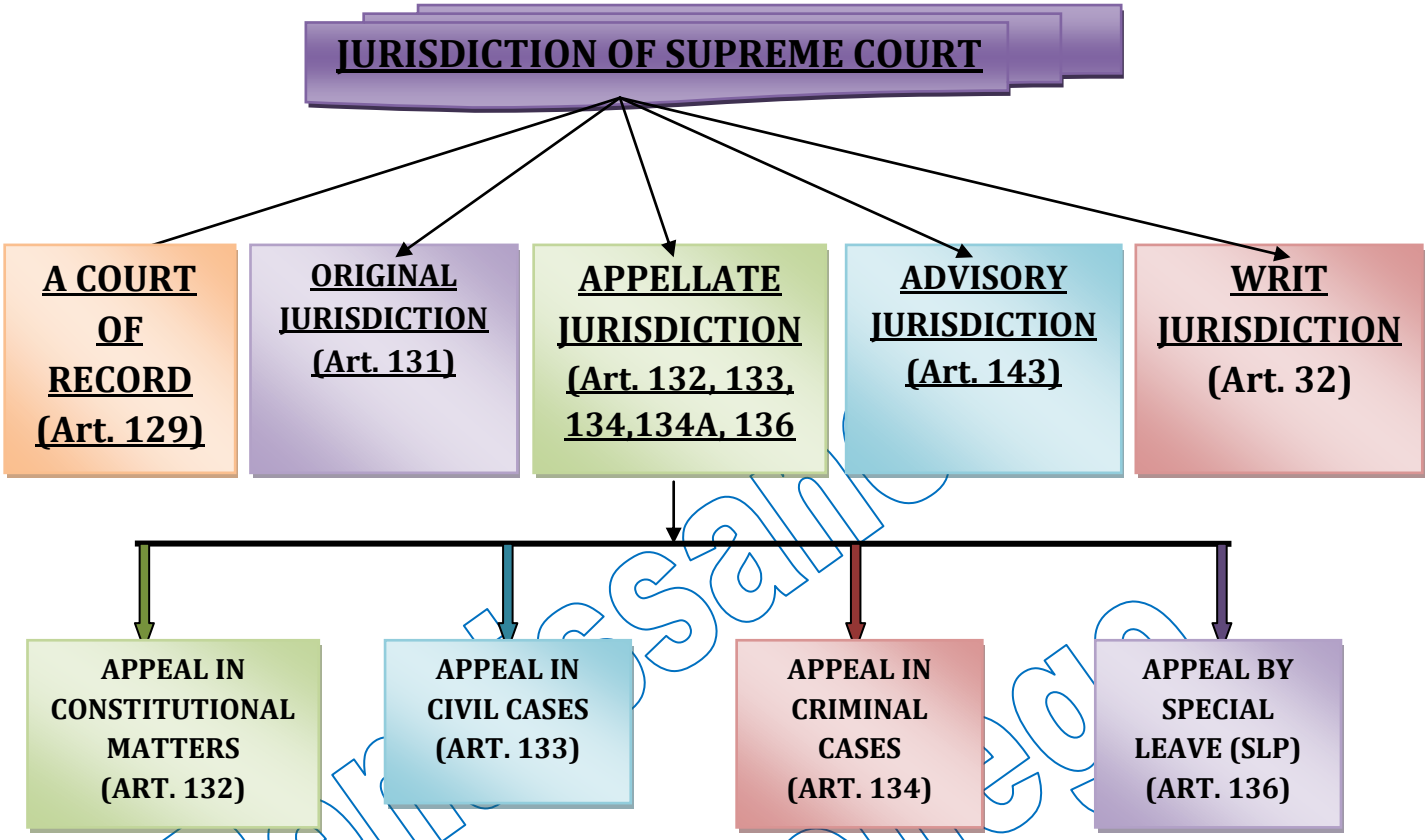
Appointment of ad hoc judges and his qualification-

Article 127 of the Constitution prescribes for the appointment and qualifications of the ad hoc Judges.

It reads as under-

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

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



ORIGINAL JURISDICTION (ARTICLE 131)

This refers to the cases that directly originate in the Supreme Court.
It has original exclusive jurisdiction in any dispute between-

(a) the Government of India and one or more States; or
(b) the Government of India and any State or States on one side and one or more other States on the other; or
(c) two or more States.

Such a dispute should, however, involve some question of law or fact on which the existence or extent of a legal right depends. The treaties concluded between the Centre and the princely states are excluded from the Court's original jurisdiction

The President may, however, refer the above mentioned disputes to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Article 32 empowers the Supreme Court to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of fundamental rights. It is to be noted that this jurisdiction is not exclusive. It is concurrent. High Courts of States have also been granted similar powers.
Art 139 also empowers the Supreme Court with exactly similar powers. It says-

"Parliament, by law, may confer on the Supreme Court, power to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them.

Under the scheme of the Constitution, ***Article 131*** confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India.

APPELLATE JURISDICTION (ARTICLES 132 TO 136)

This refers to the power of reviewing and revising the orders of lower courts and tribunals. This jurisdiction extends to both the civil and the criminal appeals from the High Courts under certification from these courts or, in its absence, permitted by the Supreme Court itself. Normally, these appeals are in cases involving substantial question of law of general importance or interpretation of the Constitution or death penalty awarded by a High Court.

The Appellate jurisdiction of the Supreme Court extends to three branches :

(A) Civil,
(B) Criminal, and
(C) Constitutional.

CIVIL APPELLATE JURISDICTION (ART. 133)

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—
(a) that the case involves a substantial question of law of general importance; and
(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.
(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

CRIMINAL APPELLATE JURISDICTION(SEC. 134)

According to Article 134 an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the following two ways-
(1) with a certificate of the High Court, or
(2) without a certificate of the High Court.

(1) With a certificate of the High Court— Under clause (e) an appeal lies to the Supreme Court if the High Court certifies under Article 134-A (Added by 44th Amendment, 1978) that it is a fit case for appeal to the Supreme Court. [Art 134(c)]

Under the new Art. 134-A the High Court can grant a certificate for appeal to the Supreme Court tinder An. 132 either on its own motion or on 'oral' application of the aggrieved party immediately after passing the judgment, decree, or final order. Prior to this, the High Court does so only on the application of the aggrieved party. Under new Article (134-A); it can now grant a certificate on its own motion if it deems fit.

(2) Without a certificate of the High Court— An appeal lies to the Supreme Court without the certificate of the High Court if the High Court —

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

(b) has withdrawn for trial before itself, any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death. But if the High Court has reversed the order of conviction and has ordered the acquittal of an accused, no appeal would lie to the Supreme Court.

POWER OF PRESIDENT TO CONSULT SUPREME COURT (ADVISORY JURISDICTION)(Art. 143)

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

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

The use of the word '***may***' in Art.143(1) indicates that the Supreme Court is not bound to answer a reference made to it by the President.

SUPREME COURT AS A COURT OF RECORD (ART. 129)

The Supreme Court shall be a Court of record and shall have all powers of such a Court, including the power to punish for contempt of itself. As a Court of record it has the power to punish those who are adjudged as guilty of contempt of court.

APPEAL BY SPECIAL LEAVE (SEC. 136)

This power has been conferred upon the Supreme Court by Article 136. It may, in its discretion, grant special leave to appeal from any judgments, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

WRIT JURISDICTION (ART. 32)

The Supreme Court is the guardian of the individual liberties and fundamental rights. It has the power to declare a law passed by any legislature null and void if it encroaches upon the fundamental rights guaranteed to the people by the Constitution. For the enforcement of fundamental rights, it can issue writs in the nature of ***Habeas Corpus, Mandamus, Certiorari, Prohibition and Qua-Warranto.***

Besides the above mentioned powers, the Supreme Court has the ***power of judicial review under Art.13***. It implies the power to review and determine validity of a law or an order. It refers to "the power of a court to inquire whether a law, executive order or other official action conflicts with the written Constitution, and if the court concludes that it does, to declare it unconstitutional and void".

However, the Indian Constitution does not in so many words assign the power of judicial review to the court. There are several specific provisions in the Constitution, which guarantee judicial review of legislation such as Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372.

Apart from these Articles, the power of judicial review is derived from the position of Supreme Court as the guardian of the Constitution.

The court can challenge the constitutional validity of a law on the following grounds:

- **(a)** the subject matter of the legislation is not within competence of the legislature which has passed it;
- **(b)** It is repugnant to the provisions of the Constitution; or
- **(c)** It infringes one of the fundamental rights.

The power of judicial review, in general, flows from the powers of the courts to interpret the Constitution. As such it has the final say in the interpretation of the Constitution and by such interpretation; the Supreme Court has extended its power of judicial review to almost all the provisions of the Constitution.

The limitations on the power of judicial review of the Supreme Court:

Under Article 137, the Supreme Court has expressly been given the power to review its judgment. However, this is subject to any law passed by the Parliament. This power is exercisable under rules made by the Court under Article 145, on grounds mentioned in Order 47, Rule 1 of C. P. C., a review will lie in the Supreme Court on-

(1) Discovery of new and important matter or evidence;
(2) Mistake or error apparent on the face of the record; and
(3) Any other sufficient reason.

Article 141 of the Constitution provides that the judgment of the Supreme Court will be binding on all Courts in India.

MAINTENANCE OF INDEPENDENCE OF JUDICIARY

Only an impartial and independent judiciary can protect the rights of the individual and provide equal justice without force and fear. It is very necessary that the Supreme -Court should be allowed to function without fear and political pressure. There must be security of tenure of the judges, no alteration in the salaries during the term of their office etc. to enable a judge to administer justice freely.

The Constitution has made the following provisions to ensure the independence of judiciary—

(a) ***Security of Tenure***—The Judges of the Supreme Court have security of tenure. They cannot be removed from their office except by an order of the President and that also on the ground of proved misbehaviour or incapacity supported by a resolution adopted by a majority of total membership of each House and also by a majority of not less than 2/3 of the members of the House present and voting. Parliament may, however, regulate the procedure for presentation of the address and for investigation and proof of misbehaviour or incapacity of a Judge. But Parliament cannot misuse this power because the special procedure for their removal must be followed.

(b) ***Salaries etc. are fixed***—The salaries of the Judges of the Supreme Court and High Court are fixed by the Constitution and charged on the Consolidated Fund of India. They are not subject to vote of legislature. During the term of their office, their salaries and allowances cannot be altered to their disadvantage except in grave financial emergency.

(c) ***Jurisdiction of Supreme Court not to be curtailed***—In respect of its jurisdiction, Parliament may change pecuniary limit for appeals to the Supreme Court, confer supplementary power to enable it to work more effectively, confer power to issue directions, orders or writs including all the prerogative writs for any purpose other than those mentioned in Art. 132. In this respect, the Parliament can extend but cannot curtail die jurisdiction of Supreme Court.

(d) **No discussion in Legislature**—Neither in Parliament nor in a State Legislature a discussion can take place with respect to the conduct of a Judge of the Supreme Court in discharge of his duties.

(e) **Appointment of Judges**—The Constitution does not leave the appointment of the Judges of the Supreme Court to the unguided discretion of the Executive. The Executive is required to consult Judges of the Supreme Court and High Courts in the appointment of the Judges of the Supreme Court.

Thus the position of the Supreme Court is very strong and its independence is adequately guaranteed.

UNIT IV
STATE GOVERNMENT AND HIGH COURT

- ⇨ **State Government- Governor, State legislature**
- ⇨ **Chief Minister Council of Ministers, High Court**

Government at the State is the same as that for the Union, that is, a Parliamentary system. The head of the states is called the ***Governor***, who is the constitutional head of the state as the President is for the whole of India.

The Governor is usually a distinguished elder states man, who can discharge his rather perfunctory duties with dignity and who is on a position to exercise what Gandhi called an "all pervading moral influence".

The Governor of a state has a dual role to play-

(a) as the constitutional head of the state and
(b) as the agent or representative of the centre.

As per Art. 157, no person shall be eligible for appointment as Governor unless-

- ✓ he is a citizen of India and
- ✓ has completed the age of 35 years

- ➢ The Governor of a State shall be appointed by the President by warrant under his hand and seal ***[Art.155]***.
- ➢ Subject to the pleasure of the President, he shall hold office for a ***term of 5 years*** and on the expiry of such period continues to hold it until his successor enters upon his office.
- ➢ The appointment may terminate either upon dismissal by the President or on resignation addressed to President by the Governor. ***[Art.156]***.
- ➢ The Governor shall not be a member of either House of Parliament or of the Legislature of any State and if any such member is appointed as Governor, his seat as such member shall be deemed to have been vacated on the date on which he enters upon his office as Governor.
- ➢ He shall not hold any other office of profit.
- ➢ He shall be entitled without payment of any rent to the use of his official residence and shall also be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law, and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule of the Constitution.
- ➢ The emoluments and allowances of the Governor shall not be diminished during his term of office. ***[Art.158]***

THE POWERS OF THE GOVERNOR OF A STATE

- It is the duty of the Governor that the Government should function according to Constitution.

- He may recommend to the President for President's rule in the State and, according to ***Art. 356***, "If the president, on receipt of a report from the Governor or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, he may issue a proclamation. By that proclamation the President may assume to himself all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State".

- The Governor is to report to the President that a situation has arisen in which the Government of the State cannot be carried out in accordance with the provisions of the Constitution. Such a

report may sometimes be against a Ministry in power, for example, if it attempts to misuse its power to subvert the Constitution. It is clear that in such casa, the report cannot be made according to ministerial advice. Moreover no such advice will be available where a ministry has resigned and another alternative ministry cannot be formed. Thus, in making report to the President under Art. 356, the Governor exercises his discretion.

- The Ministers of the State hold office during the pleasure of the Governor. The fact that each holds his office at the Governor's pleasure indicates that his office is at all times at the Chief Minister's disposal, for in these matters the Governor, like the King in England, acts on the advice of the Chief-Minister. Moreover for the effective realisation of the rule of Collective Responsibility of the Council of Ministers it is necessary that no person should be nominated to the cabinet except on the advice of the Chief Minister. Secondly no person should be retained as a member of the cabinet if the Chief-Minister says that he should be dismissed.

- The Governor in terms of ***Article 156*** of the Constitution holds office during the pleasure of the President.

Dissolution of the Legislative Assembly (Art. 174)

The Governor summons, prorogues and dissolves the Legislative Assembly. In normal circumstances the Legislative Assembly is not dissolved by the Governor, till the expiry of its normal tenure of five years. But where ministry has lost the majority and no alternate stable ministry is possible, he may dissolve the House.

The Governor is not bound to accept the advice of the defeated Ministry to dissolve the house. In this case he can act according to his discretion. He may or may not dissolve the House. Thus it is clear that the Governor can dissolve the Legislative Assembly in his discretion. Therefore the Governor has constitutional power in dismissing a Council of Ministers on his subjective satisfaction that the Government has lost its majority in the Legislative Assembly and he can very well invite any person to form the Government.

According to ***Article 164***, the ministers shall hold office during the pleasure of the Governor. This does not mean that the Governor can dismiss his ministers at any time at his sweet will. The expression '**during the pleasure**' under a Parliamentary form of Government means the confidence of the majority in the Legislature. He is to exercise his pleasure in accordance with the advice of the Council of Ministers. This follows from the provision in Article 164(2) which makes the Council of Ministers collectively responsible to the Legislative Assembly of the State. This means that till a ministry enjoys the confidence of the majority in the Lower House, the Governor should not dismiss it.

THE POSITION OF THE GOVERNOR IN RELATION TO HIS COUNCIL OF MINISTERS

In general, the relation between the Governor and his ministers is the same as that between the President and his ministers, with this important difference that ,while the Constitution does not empower the President to exercise any functions 'in his discretion' it authorises the Governor to exercise some functions 'in his discretion'. [Article 163(1)].

In the exercise of his discretionary pourers the Governor is not required to act on the advice of Chief Minister or even to seek his advice. The Constitution does not define as to what are the discretionary powers of the Governor. This raises an important question whether the Governor like the President is merely a constitutional head or whether he has some real powers. This suspicion is however unfounded in view of the Parliamentary system of Government adopted in the Constitution. When a Cabinet, collectively responsible to the Legislature, is to give advice to the Governor in the discharge of his functions, occasions are almost non-existent from him to act contrary to the advice of the Cabinet.

In the time of crisis, the Governor can effectively and constitutionally utilize the provision and act in his discretion particularly in cases where there might be a conflict between the Governor and his Council on any issue. In view of the responsibility of the Governor to the President, one of the act that "the Governor's decision as to whether he should act in his discretion in any particular matter is final", it would be possible for the Governor to act without the advice of his Cabinet even though they are not specifically mentioned in the Constitution as discretionary functions.

Thus the Governor may exercise, in exceptional circumstances his own discretionary powers in—

(i) The appointment of the Chief Minister ;
(ii) the dismissal of Ministry ;
(iii) the dissolution, prorogation and suspension of the Legislative Assembly; and
(iv) advising the President for the proclamation of emergency.

POSITION OF THE GOVERNOR IN RELATION TO THE PRESIDENT

The powers of the Governor are analogous to those of the President with certain significant differences. The President is elected to his office, while the Governors are appointed by the President and hold office during his pleasure and may be dismissed from office by him whereas the President may be removed from office only through impeachment.

The President addresses his resignation to the Vice-President. The term of office is the same for the President as for a Governor. The oath of office is more or less alike, but not identical.

The Powers of the Governor can be discussed under the following four heads-

EXECUTIVE POWERS

- The executive power of the State is vested in the Governor to be exercised by him either directly or through the officer's sub-ordinate to him **[Art. 154].**
- All executive actions of a State shall be expressed to be taken in his name **[Art.164]**
- The executive power of a State shall extend to matters in respect to which the Legislature of the State has power to make laws.
- In any matter with respect to which both the Legislature of a State and Parliament have power to make laws & if it is a matter mentioned in the Concurrent List, the executive power of the State shall be subject to and limited by the executive power conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. **[Art. 162]**
- The Government appoints the Chief Minister and other Ministers on his advice, and the Council of Ministers hold office during his pleasure but the Council of Ministers is collectively responsible to the State Legislature or to the Lower House of such Legislature where the Legislature consists of two Chambers. This makes the Governor constitutional head like the President and determines the character of' State Government of Executive as a Parliamentary Government of Executive.

LEGISLATIVE POWERS

The most important Legislative power or the Governor is his ***ordinance making power***, This Ordinance making power is similar to that of the President. Under ***Article 123***, whenever the Legislature is not in session and if the Government is satisfied that circumstances exist which require him to take immediate action, he may legislate by Ordinance, however the Governor cannot issue an Ordinance without previous instruction from the President in case in which–

(a) Bill would have required his previous sanction, or
(b) required to be reserved under the Constitution for the assent of the President.

FINANCIAL POWERS

A money bill cannot be introduced in the Legislative Assembly of the State without the recommendation of the Governor. No demand of grants can be made except on the recommendation of the Governor. The Governor is required to cause to be laid before the House or Houses of the Legislature the annual financial statement, known as Budget.

JUDICIAL POWERS

The Governor of a State is empowered to grant pardon, reprieve, respite, or remission, of punishment or to suspend, remit or commute the sentence in respect of any offence against any law relating to a matter to which the executive power of the State extends. **[Art. 161]**.

The power of granting pardon under Article 161 is very wide and does not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said power could be exercised. But the said power being a constitutional power is subject to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution, if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without the application of mind or the order in question is a malafide one or the Governor has passed the order on some extraneous consideration.

Governors do not have diplomatic, military and emergency powers which the President has. The Governor of Assam has certain discretionary powers in tribal affairs in which he is not required to act according to the advice of his Ministers.

The President also has certain discretionary powers. The executive powers of the Governor is subject to and limited in some respects by the executive power of the President to whom the Governor is required to report situation requiring the proclamation of emergency.

The President and the Governors have all got the power to veto legislation by withholding their assent to it.

COUNCIL OF MINISTERS

According to ***Article 163(1)*** there shall be a Council of Ministers with the Chief Minister at the head to 'aid and advise' the Governor. The Council of Ministers in the State is constituted and functions in the same way as the Union Cabinet.

The Chief Minister is appointed by the Governor. As a matter of a well established convention it is the leader of the Legislative Assembly who should be appointed as the Chief Minister. Thus in normal circumstances the choice of the Governor is limited to the leader of the majority party.

But there may be circumstances where the Governor would have to exercise his discretion in selecting the Chief Minister. The other ministers are appointed by the Governor on the advice of the Chief Minister. In the appointment of other ministers the Chief Minister has the final say because it is the Chief Minister who has to run the Government. This is, indeed, necessary in order to ensure the successful operation of the rule of collective responsibility.

The Governor may appoint a person as a Chief Minister or a Minister who is not a member of either House of the State Legislature. But he must be elected to the House of State Legislature within the period of six months. If he does not become member of the Legislature within the six months of his appointment as Chief Minister or Minister he will cease to be Chief Minister or Minister. Before a Minister enters upon his office, the Governor is to administer to him the prescribed oath of office and secrecy.

A person convicted of criminal offence and sentenced to more than two years of imprisonment cannot be appointed as Chief Minister.'

According to ***Article 164(1)***, the ministers shall hold office during the 'pleasure' of the Governor. But this pleasure is to be exercisable by the, Governor on the advice of the Chief Minister. This follows from ***Clause (2) of Article 164*** which says that the ***Council of Ministers shall be collectively responsible to the Legislative Assembly of the State***.

Till the ministry enjoys the confidence of the Lower House of a State, the Governor is bound to accept the advice of the Chief Minister. Indeed, it would be strange that a ministry responsible for its acts and policies to the legislature can be dismissed by the Governor. This means that a minister holds office during the pleasure of the Chief Minister. The Governor is bound to dismiss a Minister as and when advised by the Chief Minister. It is only then that the smooth functioning of the principle of collective responsibility can be maintained.

Article 167(a) says that ***it is the duty of Chief Minister of State to communicate all decisions of the Council of Ministers relating to the administration of the State and proposals for legislation***. If the Governor asks him to furnish such information it is the duty of the Chief Minister to do so. The Chief Minister, if required by the Governor, will also submit for consideration of the cabinet any matter on which a decision has been taken by a Minister which has not been considered by the cabinet.

Article 167(c) further strengthens the rule of collective responsibility and gives power to the Chief Minister to review the decision taken by any minister individually. When a decision is taken by any minister without reference to the cabinet, Governor may require it to be considered by the cabinet.

The Governor cannot override a decision of Minister. If the cabinet stands behind him the minister remains and the Governor is bound to accept his decision. If, however, the cabinet does not uphold his decision he will have to quit the ministry. If he insists to remain he will be dismissed by the Governor on the advice of the Chief Minister. It is a safeguard which ensures the working of the principle of collective responsibility and the power of the Chief Minister and not a power which interferes with the Government.

STATE LEGISLATURE

The Legislative Assembly

1) For every State there shall be a Legislative Assembly which shall consist of the Governor; and
- (a) in the State of Andhra Pradesh, Maharashtra, Karnataka, Bihar, Madhya Pradesh, Tamil Nadu and Uttar Pradesh, two Houses,
- (b) in other States, one House.

2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly. **[Art. 168]**

The Legislative Assembly shall consist of members elected by the major people of the State. The territorial constituencies shall be so arranged that there shall be not more than one representative for every 75000 of the population. The total number of members in the assembly shall be not more than 500 & not less than 60 according to the population of the State. There shall be a proportionately equal representation in respect of each territorial constituency within any particular State. The figures published at the last census shall be the basis for allotting the number of members for any territorial constituency. The number and ratio of members shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine. The duration of the Legislative Assembly is for a period of 5 years the expiry of which operates as a dissolution of the Assembly. The Governor may dissolve it earlier.

Legislative Council-

In certain states, legislative council also exists. Generally states which are big in size and population possess legislative council along with legislative assembly; the legislative council is upper chamber in the state. It may control, guide or supervise functions of legislative assembly. Generally, persons of wide experience are nominated to such councils so that those intelligent persons who could not get them elected may become members of this council.

Composition of the Legislative Councils-

1) The total number of members of the Legislative Council of a State having such a Council ***shall not exceed one-third of the total number of members in the Legislative Assembly of that State***:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

3) ***Of the total number of Members of the Legislative Council of a State-***

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify.

(b) as nearly as may be, one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
(d) as nearly as may be. one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
(e) the remainder shall be nominated by the Governor, in accordance with the provisions of clause (5) ;

4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in Accordance with the system of proportional representation by means of the single transferable vote.
5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely—Literature, science, art, co-operative movement and social service. **[Art. 171]**

DURATION AND RELATIONS BETWEEN TWO HOUSES OF THE STATE LEGISLATURE

Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

The Legislative Council of a State shall not be subject to dissolution. As nearly as possible one-third of the members thereof shall retire as soon as limy be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Qualifications for membership [Art. 173]

A person shall not be qualified to be chosen to fill a seat in the Legislature of State unless he:

1) is a citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission on an oath or affirmation according to the form set out for the purpose in the Third Schedule;
2) is in the case of seat in the Legislative Assembly, not less than twenty-five years of age and, is in the case of seat in the Legislative Council, not less than thirty years of age; and
3) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Disqualifications for membership [Art. 191]

1) A person shall not be disqualified for being chosen as, and for being, a member of the Legislative Council of a State—
   (a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule, as is declared by Parliament by law to disqualify its holder ;
   (b) if Ile is of unsound mind and stands so declared by a competent court;
   (c) if he is an undischarged insolvent ;
   (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement or allegiance or adherence to a foreign State;

(e) if he is disqualified by or under any law made by Parliament. The necessary qualifications and disqualifications are prescribed by Parliament in the Representation of the Peoples Act, 1951.

2) For the purposes of this Article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the first Schedule by reason only that he is a Minister either for the Union or for such State.

Decision on questions as to disqualifications of members-

The Constitution (44th Amendment) Act, 1978 substituted the old Article 192 as it was prior to 42nd Amendment Act. 1976. According to the new Article 192(1) if any question arises as to whether a member of House of the Legislature or a State has become subject to any of the disqualifications mentioned in clause (I) of Article 191, the question shall be referred for the decision of Governor and his decision shall be final. (2) Before giving any decision on any such question the Governor shall consult the Election Commission and the Election Commission may, for this purpose, made such enquiry as if thinks fit.

STATE JUDICIARY

The High Courts of India: Composition, Appointment of Judges

Article 214 provides that every State has a High Court operating within its territorial jurisdiction. But the Parliament has the power to establish a common High Court for two or more States ***(Article 231)***.

In India, neither the State executive nor the State Legislature has any power to control the High Courts or two after its Constitution or organisation. It is only Parliament which can do it. In case of Union Territories the Parliament may by law extend the jurisdiction of a High Court to or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory.

Thus Delhi, a Union Territory, has a separate High Court of its own while the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep and Mumbai High Court over Dadra and Nagar Haveli, the Kolkata High Court over Andaman and Nicobar Islands, the Punjab High court over Chandigarh.

Composition of High Courts:

i. Every High Court shall consists of a Chief Justice and such other judges as the President of India may from time to time appoint.
ii. Besides, the President has the power to appoint
   (a) Additional Judges for a temporary period not exceeding two years, for the clearance of areas of work in a High Court;
   (b) an acting judge, when a permanent judge of a High Court (other than Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

But neither an additional nor an acting Judge can hold office beyond the age of 62 years age of retirement raised from 60 to 62.

Appointment and Conditions of Office of a Judge of a High Court:

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult the Chief Justice of India, the Governor of the State (and also the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice).

Tenure: A Judge of the High Court shall hold office until the age of 62 years. Every Judge, permanent, additional or acting, may vacate his office earlier in any of the following ways-

(i) by resignation in writing addressed to the President;
(ii) by being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President;
(iii) by removal by the President on an address of both Houses of Parliament (supported by the vote of 2/3 of the members present) on the ground of proved misbehaviour or incapacity,. The mode of removal of a Judge of the High Court shall thus be the same as that of a judge of the Supreme Court.

Salary and Allowances of the Judges:

It is provided that the judges of the High Court shall draw such salaries and allowances, as the Parliament may by law fix from time to time. In addition they will also be entitled to receive other prescribed allowances.

By providing the expenditure salaries and allowances the judges shall be charged on the consolidated fund of State. These cannot be reduced except in financial emergency. Nor can the allowances and rights be varied by Parliament to the disadvantage of a judge during his/her term of office.

INDEPENDENCE OF JUDGES ENSURED

As in the case of the Judges of the Supreme Court, the Constitution seeks to maintain the independence of the Judges of the High Court's by a number of provisions:-

(i) By laying down that a Judge of the High Court shall not be removed, except in the manner provided for the removal of a Judge of the Supreme Court (Article 218);
(ii) by providing that the expenditure in respect of the salaries and allowances of the Judges shall be charged on the Consolidated Fund of the State [Article 202 (3)(d)];
(iii) by specifying in the Constitution the salaries payable to the Judges and providing that the allowances of a Judge or his rights in respect of absence or pension shall not be varied by Parliament to his disadvantage after his appointment (Article 221) except under a Proclamation of Financial Emergency [Article 360 (4)(b)].
(iv) by laying down that after retirement a permanent Judge of High Court shall not plead or act in a Court or before any authority in India, except the Supreme Court and a High Court other than the -High Court in which he had held his office (Article 220).

Control of the Union over High Court:

The control of the Union over a High Court in India is exercised in the following matters:

(i) Appointment, (Article 217), transfer from one High Court to another (Article 222) and removal [Article 217(1)] and determination of dispute as to age of Judges of High Courts [Article 217 (3)];
(ii) the Constitution and organisation of High Courts and the power to establish a common High Court for two or more States (Article 231); and
(iii) to extend the jurisdiction of a High Court to, or to exclude it jurisdiction from, a Union Territory, are all exclusive powers of the Union Parliament (Article 231).

Jurisdiction of High Courts:

The constitution does not attempt detailed definitions or classification of the different types of jurisdiction of the High Courts. It was presumed that the High Court's which were functioning with well-defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the States. The Constitution, accordingly, provided that the High Courts would retain their existing jurisdiction and any future law that was to be made by the Legislatures.

Besides, the original and appellate jurisdiction, the Constitution vested in the High Court's four additional powers:

i. The power to issue writs or orders for the enforcement of Fundamental Rights or for any other purpose;
ii. the power of superintendence over subordinate courts;
iii. the power to transfer cases to themselves pending in the subordinate courts involving interpretation of the Constitution; and
iv. the power to appoint officers.

(a) Original and Appellate Jurisdiction:

The High Courts are primarily courts of appeal. Only in matters of admiralty, probate, matrimonial, contempt of Court, enforcement of Fundamental Rights and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their own file, they have original jurisdiction. The High Courts of Bombay, Calcutta and Madras exercise original civil jurisdiction when the amount involved exceeds specified limit. In criminal cases it extends to case committed to them by Presidency Magistrates.

On the appeal side they entertain appeals in civil and criminal cases from their subordinate courts as well as from their original side. For historical reasons and as a result of the specific provisions in the Government of India Act, 1935, no High Court has any original jurisdiction in any matter concerning revenue. In 1950 Constitution removed this restriction.

(b) Power of Superintendence and Transfer:

Every High Court has a power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals [Art. 227]. This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the State, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not.

Further, this power of superintendence would include a revisional jurisdiction to intervene in case of gross injustice or non-exercise of abuse of jurisdiction, even though no appeal or revision against the orders of such tribunal was otherwise available.

However, this jurisdiction of High Court has been taken away in respect of Administrative Tribunals set up under Article 323A, by the administrative Tribunals Act. 1985. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it may transfer the case of itself.

After the case has come to the file of the High Court, it may dispose of the whole case itself, or may determine the constitutional questions involved and return the case to the court from which it has been withdrawn together with a copy of its judgement on such question and direct it to dispose of the case in conformity with such judgement.

The Constitution, thus, denies to subordinate courts the right to interpret the Constitution so that there may be the maximum possible uniformity as regards constitutional decisions. It is accordingly, the duty of the subordinate courts to refer to the High Court a case which involves a substantial question of law as to the interpretation of the Constitution and the case cannot be disposed of without the determination of such question. The High Court may also transfer the case to itself upon the application of the party in the case.

(c) Writ Jurisdiction:

Article 226 of the Constitution empowers every High Court, throughout the territories in relation to its which exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose.

The Constitution by Forty-second amendment omitted the provision “for any other purpose”, but the Forty-fourth amendment has restored it. The peculiarity of this jurisdiction is that being conferred by the Constitution, it cannot be taken away or abridged by anything short of an amendment of the Constitution itself.

Although the Supreme Court and the High Courts have concurrent jurisdiction in the enforcement of Fundamental Rights, the Constitution does not confer to the High Court’s the special responsibility of protecting Fundamental Rights as the Supreme Court is vested with such a power. Under Article 32 the Supreme Court is made the guarantor and protector, of Fundamental Rights whereas in the case of High court the power to enforce Fundamental Rights is part of their general jurisdiction.

The jurisdiction to issue writs under these Articles is larger in the case of High Court in as much as while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can issue them not only in such cases but also where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases, according to well-established principles.

(d) Court of Record:

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court and that it has the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of its power of punishing contempt of itself.

OFFICERS AND SERVANTS AND THE EXPENSES OF HIGH COURTS

Article 229 of the Constitution says:

(a) Appointments of officers and servants of a High Court are made by the Chief Justice of the High Court.

(b) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of Officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justice of the High Court.

(c) The administrative expenses of the High Court including all salaries, allowances, etc. are charged upon the Consolidated Fund of the State.

CHIEF MINISTER

According to the Indian Constitution, the elected head of the council of ministers in a state is the Chief Minister (CM). Although, the Governor is the official 'head of the state', yet it is the Chief Minister who is vested with the 'de facto' executive powers.
Chief Minister is the real head of a state, unlike the Governor, who is the ceremonial head. Since India has adopted the Westminster Model of constitutional democracy, it is the CM who oversees the day-to-day functioning of the state government.
According to the Indian Constitution, in the everyday administration, the CM is assisted by the council of ministers, which consists of cabinet ministers, deputy ministers and others. The CM is appointed by and sworn in by the Governor.

Power and Authority of Chief Minister

The powers and functions enjoyed by the Chief Minister are similar to those of the Prime Minister of India, within a restricted jurisdiction of a state. Some of these are mentioned below:

- The CM holds the executive powers of state government. He/she has the power to form his council of ministers, choosing members of his party for particular ministries within the working of the state. The core council of ministers is called the Cabinet, members of which are decided by the Chief Minister. The various departments are allotted to various ministers by the CM. Ministers are removed from their portfolios if the CM does not like his/her performance.
- The CM is the link between the Governor and the council of ministers. He is required to communicate to the Governor the workings of the various wings of the government. Similarly, the advice and suggestions of the Governor are communicated to the council of ministers by the CM.
- The CM has a pivotal role in the financial matters of a state, including the budget, basic infrastructural and developmental priorities of the state, financial planning and economic growth of the state and others.
- The Chief Minister is the chief spokesperson of the government of a state. With the help of media, the CM communicates all policies and decisions to the people of the state. The CM holds regular or periodic press conferences wherein he/she makes the citizens of a state aware of the functioning of the government.

All major decisions in the state are taken by the CM with the support of the council of ministers. Since the CM is the 'executive' head of the state, the technological, infrastructural and socio-economic development rests solely within his/her duty and jurisdiction. The state government is financially aided by the Centre, in terms of resources and materials.

Term of Office and Retirement Age: The tenure of CM is for five years, when the state legislative assembly is dissolved and fresh elections are held in the Vidhan Sabha (Legislative Assembly). However, the tenure of the Chief Minister can be terminated by the governor before the period of five years, when the majority party/alliance loses the confidence vote in the state legislative assembly. The Chief Minister can also resign from his or her post before the completion of the term. There is no age for the retirement of the Chief Minister. Although, the minimum age for becoming the Chief Minister is 25 years, there is no upper age limit till when he or she can serve the post of a Chief Minister.

UNIT V
MISCELLANEOUS

- **Centre-State relations.**
- **Political parties-National and Regional.**
- **Factors affecting Indian politics-Caste, Religion, Language, Region & Poverty**
- **Judicial Reforms**

POSITION OF THE STATES IN INDIAN UNION

In India, before the formation of the federation, the States were not 'sovereign' entities. As such, there was no need for safeguards to protect 'States'. On account of the exigencies of the situation, the Indian federation has acquired characteristics which are quite different from the American model.

(i) The residuary powers under the Indian Constitution are assigned to the Union and not to the States. However, it may be noted that the Canadian Constitution does the same mode of distributing the powers cannot be considered as eroding the federal nature of the Constitution.

(ii) Though there is a division of powers between the Union and the States, the Indian Constitution provides the Union with power to exercise control over the legislation as well as the administration of the States. Legislation by a State can be disallowed by the President, when reserved by the Governor for his consideration.

The Governor is appointed by the President of the Union and holds office "during his pleasure". Again these ideas are found in the Canadian Constitution though not in the Constitution of the U.S.A.

(iii) The Constitution of India lays down the Constitution of the Union as well as the States, and no State, except Jammu and Kashmir, has a right to determine its own (State) Constitution.

(iv) When considering the amendment of the Constitution we find that except in a few specific matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the Constitution. The bulk of the Constitution can be amended by a Bill in the Union Parliament being passed by a special majority.

(v) In the case of the Indian Constitution, while the Union is indestructible, the States are not. It is possible for the Union Parliament to reorganise the States or to alter their boundaries by a simple majority in the ordinary process of legislation.

The 'consent' of the State Legislature concerned is not required; the President has only to 'ascertain' the views of the Legislatures of the affected States. The ease with which the federal organisation may be reshaped by an ordinary legislation by the Union Parliament has been demonstrated by the enactment of the States Reorganisation Act, 1956. A large number of new States have, since, been formed.

(iv) Under the Indian Constitution, there is no equality of representation of the States in the Council of States. Hence, the federal safeguard against the interests of the lesser States being overridden by the interests of the larger or more populated States is absent under our Constitution. Its federal nature is further affected by having a nominated element of twelve members against 238 representatives of the States and Union Territories.

DISTRIBUTION OF POWERS: LEGISLATIVE, ADMINISTRATIVE AND FINANCIAL

Our Constitution is one of the very few that has gone into details regarding the relationship between the Union and the States. A total of 56 Articles from ***Article 245 to 300*** in Part XI and XII are devoted to the State-Centre relations. ***Part XI (Articles 245-263) contains the legislative and administrative relations and Part XII (Articles 246-300) the financial relations.***

By going into great details of the relations, the Constitution framers hope to minimize the conflicts between the centre and the states. By and large, the confrontations between the two have been minimal.

LEGISLATIVE RELATIONS (ARTICLES 245-255)

From point of view of the territory over which the legislation can have effect, the jurisdiction of a State Legislature is limited to the territory of that State. But in the case of Parliament, it has power to legislate for the whole or any part of the territory of India i.e.

States, Union Territories or any other areas included for the time being in the territory of India. Parliament has the power of 'extraterritorial legislation' which means that laws made by the Union Parliament will govern not only persons and property within the territory of India, but also Indian subjects resident and their property situated anywhere in the world. Only some provisions for scheduled areas, to some extent, limit the territorial jurisdiction of Parliament.

Legislative Methods of the Union to Control over States:

(a) Previous sanction to introduce legislation in the State Legislature (Article 304).
(b) Assent to specified legislation which must be reserved for consideration [Article 31 A (1)].
(c) Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].
(d) Veto power in respect of other State Bills reserved by the Governor (Article 200).

***The Three Lists*:**

As for the subjects of legislation the Constitution has adopted, as if directly from the Government of India Act, 1935, a three-fold distribution of legislative powers between the Union and the States, a procedure which is not very common with federal constitutions elsewhere.

The Constitutions of the United States and Australia provided a single enumeration of powers—power of the Federal Legislature— and placed the residuary powers in the hands of the States. Canada provides for a double enumeration, dividing the legislative powers between the Federal and State legislatures. The Indian Constitution introduces a scheme of three-fold enumeration, namely, Federal, State and Concurrent.

- ⇨ List I includes all those subjects which are in the exclusive jurisdiction of Parliament.
- ⇨ List II consist of all the subjects which are under exclusive jurisdiction of the State Legislature, and
- ⇨ List III which is called the Concurrent List, consists of subjects on which both Parliament and the State legislatures can pass laws.

(i) Union List:

List I, or the Union List, includes 99 items, including residuary powers, most of them related to matters which are exclusively within the jurisdiction of the Union. Subjects of national importance requiring uniform legislation for the country as a whole are inducted in the Union List. The more important examples are defence, armed forces, arms and ammunition, atomic energy, foreign affairs, coinage, banking and insurance. Most of them are matters in which the State legislatures have no jurisdiction at all.

But, there are also items dealing with inter-state matters like inter-state trade and commerce regulation and development of inter-state rivers and river valleys, and inter-state migration, which have been placed under the jurisdiction of the Union Parliament.

Certain items in the Union List are of such a nature that they enable Parliament to assume a role in certain spheres in regard to subjects which are normally intended to be within the jurisdiction of the States; one such example is that of industries. While assigned primarily to the State List; industries, the control of which by the Union is declared by a law of Parliament, to be expedient in the public interest' are to be dealt with by parliamentary legislation alone. Parliament, by a mere declaration, can take over as many industries as it thinks fit.

It is under this provision that most of the big industries, like iron, steel and coal, have been taken over by Parliament under its jurisdiction. Similarly, while museums, public health, agriculture etc. come under State subject, certain institutions like the National Library and National Museum at New Delhi and the Victoria Memorial in Calcutta have been placed under the jurisdiction of Parliament on the basis of a plea that they are financed by the Government of India wholly or in part and declared by a law of Parliament to be institutions of national importance.

The university is a State subject but a number of universities have been declared as Central Universities and placed under the exclusive jurisdiction of Parliament. Elections and Audit, even at the State level, were considered matters of national importance. The Extensive nature of the Union List thus places enormous powers of legislation even over affairs exclusively under the control of the States in the hands of Parliament.

(ii) State List:

List II or the State List, comprises 61 items or entries over which the State Legislature has exclusive power of legislation. The subject of local importance, where variations in law in response to local situations may be necessary, has been included in the State List. Some subjects of vital importance in the list are State taxes and duties, police, administration of justice, local self-government, public health, agriculture, forests, fisheries, industries and minerals.

But, in spite of the exclusive legislative jurisdiction over these items having been given to the States, the Constitution, through certain reservations made in the Union List has given power to Parliament to take some of these items under its control. Subject to these restrictions, one might say, the States have full jurisdiction over items included in the State list.

(iii) Concurrent List:

The inclusion of List III or the Concurrent List, in the Constitution gives a particular significance to the distribution of legislative power in the Indian federal scheme. The Concurrent List consists of 52 items, such as criminal law and procedure, civil procedure, marriage, contracts, port trusts, welfare of labour, economic and social planning. These subjects are obviously such as may at some time require legislations by Parliament and at other by a State Legislature. The provision of a Concurrent List has two distinct advantages.

In certain matters in which Parliament may not find it necessary or expedient to make laws, a Sate can take the initiative, and if other States follow and the matter assumes national importance, Parliament can intervene and bring about a uniform piece of legislation to cover the entire Union Territory. Similarly, if a State finds it necessary to amplify a law enacted by Parliament on an item included in the Concurrent List in order to make it of a greater use of its own people, it can do so by making supplementary laws.

The items included in the Concurrent List can be broadly divided into two groups-those dealing with general laws and legal procedure, like criminal law, criminal procedure, marriage, divorce, property law, contracts etc, and those dealing with social welfare such as trade unions, social security, vocational and technical training of labour, legal, medical and other professions etc.; while the items coming under the first group are of primary importance to the Union Government, they have been left, by convention, to Parliament. In matters of social welfare, it is open to the State legislatures either to take the initiative in making laws or to enact laws which are supplementary to the Parliamentary laws.

***Predominance of Union Law*:** In case of over-lapping of a matter between the three Lists, predominance has been given to the Union Legislature, as under the Government of India Act, 1935. Thus, the power of the State Legislature to legislate with respect to matters enumerated in the State List has been made subject to the power of the Union Parliament to legislate in respect of matters enumerated in the Union and Concurrent Lists, and the entries in the State List have to be interpreted accordingly.

In the Concurrent sphere, in case of repugnancy between a Union and a State law relating to the same subject, the former prevails. If however, the State law was reserved for the assent of the President and has received such assent, the State law may prevail notwithstanding such repugnance. But it would still be competent for Parliament to override such State law by subsequent legislation.

***Residuary Powers*:** The Constitution vests the residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the three Lists in the Union Legislature (Art. 248). It has been

left to the courts to determine finally as to whether a particular matter falls under the residuary power or not. It may be noted, however, that since the three lists attempt an exhaustive enumeration of all possible subjects of legislation, and courts generally have interpreted the sphere of the powers to be enumerated in a liberal way, the scope for the application of the residuary powers has remained considerably restricted.

Expansion of the Legislative Powers of the Union under Different Circumstances-

(a) In the National Interest:
Parliament shall have the power to make laws with respect to any matter included in the State List for a temporary period, if the Council of States declares by a resolution of 2/ 3 of its members present and voting, that it is necessary in the national interest.
(b) Under the Proclamation of National or Financial Emergency: In this circumstance, Parliament shall have similar power to legislate with respect to State Subjects.

(c) By Agreement between States: If the Legislatures of two or more States resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the State List relating to those States, Parliament shall have such power. It shall also be open to any other State to adopt such Union legislation in relation to itself by a resolution passed on behalf of the State legislature. In short, this is an extension of the jurisdiction of the Union Parliament by consent of the Legislatures.

(d) To implement treaties: Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or international agreements and conventions.

(e) Under a Proclamation of Failure of Constitutional Machinery in the States: When such a Proclamation is made by the President, the President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

ADMINISTRATIVE RELATIONS (ARTICLES 256-263)

The distribution of executive powers between the Union and the States follows, in general, the pattern of distribution of the legislative powers. The executive power of a State is treated as coextensive with its legislative powers, which means that the executive power of a State extends only to its territory and with respect to those subjects over which it has legislative competence.
Looking at from the point of view of the Union Government, we can say that the Indian Constitution provides exclusive executive power to the Union over matters with respect to which Parliament has exclusive powers to make laws, (under List I of Schedule VII) and over the exercise of powers conferred upon it, under Article 73, by any treaty or agreement at the international level. On the other hand, the States have exclusive executive powers over matters included in List II.
In matters included in the Concurrent List (List III) the executive function ordinarily remains with the States, but in case the provisions of the Constitution or any law of Parliament confer such functions expressly upon the Union, the Union Government is empowered to go beyond giving directions to the State executive to execute a Central law relating to a Concurrent subject and take up the direct administration of Union law relating to any Concurrent subject.

In the result, the executive power relating to Concurrent subjects remains with the States, except in two cases-
(a) Where a law of Parliament relating to such subject vests some executive functions specifically in the Union, e.g., the Land Acquisition Act, 1894; the Industrial Disputes Act, 1947 [Provision to Art. 73(1)].

So far as these functions specified in such Union Law are concerned, it is the Union and not the States which shall have the executive power while the rest of the executive power relating to the subjects shall remain with the States,

(b) where the provisions of the Constitution itself vest some executive functions upon the Union.

Thus, (i) the executive power to implement any treaty or international agreement belongs exclusively to the Union; (ii) the Union has the power to give directions to the State Governments as regards the exercise of their executive power in certain matters.

The Constitution has devised techniques of control over the States by the Union to ensure that the State governments do not interfere with the legislative and executive of the Union. Some of these administrative avenues of control are as under:

***In Normal Times*:**

(i) The power to appoint and dismiss the Governor (Article 155-156)

(ii) The power to appoint other dignitaries in the State such as judges of the High Court, members of the State Public Service Commission (Article 217, 317).

There are some other specified agencies for Union Control

(i) Directions to the State Government:

The Constitution prescribes a Coercive Sanction for the enforcement of the directions issued under any of the foregoing powers, namely the power of the President to make a Proclamation under Article 356.

(ii) Delegation of Union Functions:

While Legislating on a Union Subject, Parliament may delegate powers to the State Governments and their officers in so far as the Statute is applicable in the respective States [Article 258 (2)].

(iii) All-India Services:

Besides the person serving under the Union and the States, there are certain services which are 'common to the Union and the States'. There are called 'All-India Services' of which the Indian Administrative service and the Indian Police Service are the existing examples [Article 312 (2)].

The Indian Constitution has provision for the Organisation of certain all-India services, recruited and controlled by the Union Government as far as their general administration is concerned. The British Government had instituted the Indian Civil Services (ICS) in order to establish a kind of direct control over the provincial administration.

The idea was adopted by the Constituent Assembly and, under Article 312; power has been given to the Council of States, by a resolution supported by not less than a two-thirds majority of the members present and voting, to constitute all- India service common to the Union and the States.

It was further provided that the Indian Administrative Service (IAS) and the Indian Police Service (IPS), which had been constituted before the Constitution came into force, would be deemed to have been constituted under this Article. The Union Government is able to penetrate quite deep into the administrative affairs of the States through these all India services. The IAS and the IPS are not the only all-India services. Serial new services, governed by the same conditions, have been added, like the Indian Engineering Service, the Indian Economic Service, the Indian Statistical Service, the Indian Agriculture Service and the Indian Education Service.

(iv) Grant-in-Aid:

The Parliament is given such powers to make such grants as it may deem necessary to give financial assistance to any State which is in need of such assistance (Article 275). Besides this, the Constitution provides for specific grants on the following two matters:

(i) (a) For schemes of development;
(b) For welfare of scheduled tribes;
(c) For raising the level of administration of scheduled areas.

(ii) To the State of Assam, for the development of the tribal areas in that State [Article 275 (1)]

(v) Inter-state Council:

Article 263 says that the President is empowered to establish an inter-State Council. The Constitution assigned three fold duties to this body.

(a) To investigate and discuss subjects of common interest between the Union and the States or between two or more States;
(b) Research in such matters as agriculture, forestry, public health etc., and
(c) To make recommendations for co-ordination of policy and action relating to such subjects.

The Sarkaria Commission has recommended the Constitution of a permanent inter-State Council. Such a council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April 1990.

(vi) Inter-State Commerce Council:

For the purpose of enforcing the provisions of the Constitution, relating to the freedom of trade, commerce and intercourse throughout the territory of India (Article 301-305), Parliament is empowered to constitute as authority similar to the Inter-State Commerce Commission in the U.S.A. and to confer on such authority such powers and duties as it may deem fit (Article 307).

(vii) Extra-Constitutional Bodies:

Apart from the above Constitutional agencies for Union Control, there are some advisory bodies and conferences which held at the Union level which further the co-ordination of State policy and eliminate differences as between the States.

(viii) Planning Commission:

This extra-Constitutional and non-statutory body was set up by a resolution (1950) of the Union Cabinet and its main objective was to formulate an integrated Five Year Plan for economic and social development and to act as an advisory body to the Union Government.

(ix) National Development Council (NDC):

This council was formed in 1952 as an adjunct to the Planning Commission to associate the States in the formulation of the Plans. The main functions of this council are:

(a) To strengthen and mobilize the efforts and resources of the nation in support of the plans;
(b) To promote common economic policies in all vital spheres; and
(c) To ensure the balanced and rapid development of all parts of the country.

(x) National Integration Council (NIC):

Another non-constitutional body was created in 1986 to deal with the welfare measures for the minorities on an all India basis. Some of the burning issues before it were communal harmony, increased violence by secessionists, the problems in respect of Punjab, Kashmir, and Ram Janambhoomi-Babri Masjid.

During Emergency:

In 'Emergencies' the government under the Indian Constitution will work as if it were a unitary government.

***Some of the important Provisions during 'Emergency' are as under*:**

(i) During a Proclamation of Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter [Article 353(a)]. (So as to bring the State Government under the complete control of the Union without suspending it).

(ii) Upon a Proclamation of failure of Constitutional machinery in a State, the President shall be entitled to assume to himself all or any of the executive powers of the State [Article 356(1)].

***During a Proclamation of Financial Emergency*:**

(a) To observe canons of financial propriety, as may be specified in the directions [Article 360(3)].
(b) To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts [Article 360(4)(b)].
(c) To require all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State [Article 360(4)].

FINANCIAL RELATIONS RELATED TO THE DISTRIBUTION OF REVENUE (ARTICLE 264-281)

Financial Relations: All feasible sources of taxation have been listed and allocated either to the Centre or to the States. These are as follows:

(a) There are certain items of revenue in the State List which are levied, collected and appropriated by the States. For example, naval revenue etc.;
(b) There are certain-items of revenue in the Union List which are levied, collected and appropriated by the Union, e.g. Customs duties etc.;
(c) There are certain duties levied by the Union but collected and appropriated by the States. For example, stamp duties etc.;
(d) There are certain taxes levied and collected by the Union but assigned to the States e.g. succession and estate duties, taxes on railway fares and freights, etc;
(e) There are certain taxes levied and collected by the Union and distributed between the Union and the States, e.g. excise duties etc.

Finance Commission: Arts. 270, 273, 275 and 280 provide for the Constitution of a Finance Commission (at stated intervals) to recommend to the President certain measures relating to the distribution of financial resources between the Union and the States, for instance, percentage of the net proceeds of income- tax which should be assigned by the Union to the States and the manner in which the share to be assigned shall be distributed among to the States [Art. 280]. The Constitution of the Finance Commission is laid down in Art. 280, which has to be read with the Finance Commission (Miscellaneous Provisions) Act of 1951, which has supplemented the provisions of the Constitution. Briefly speaking, the Commission has to be reconstituted by the President, every five years.

The Chairman must be a person having 'experience in public affairs', and the other four members must be appointed from amongst the following-

(a) A High Court Judge or one qualified to be appointed as such;
(b) a person having special knowledge of the finances and accounts of the Government;
(c) a person having wide experience in financial matters, and administration;
(d) a person having special knowledge of economics,
(e) a person familiar with treasures needed to augment the consolidated fund of a State to supplement the resources of the Panchayat, in the State.

***It shall be the duty of the Commission to make recommendations to the President as to*:**

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
(b) the principles which should govern the grants-in-aid of revenues of the States out of the Consolidated Fund of India;
(c) any other matter referred to the Commission by the President in the interests of sound finance.

The First Finance Commission was constituted in 1951, with Sri Neogy as the Chairman and it submitted its report in 1953.

Some Details of Distribution:

i. Taxes which are exclusively central, and the revenues which are wholly appropriated for the use of the Central Government form one group. These include export duties, corporation tax, taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies,
ii. Income tax constituting a separate category in as much as while it is the Centre which levies, fixes rates and collects the tax, it has to share the proceeds with the States as prescribed by the President on the basis of the recommendations made by the Finance Commission.

iii. Union duties of excise other than duties which have been given to States, which may be shared if Parliament has so decided. The Constitution has left it to the discretion of Parliament to decide by law whether any of the union duties of excise should be shared with the States, how these are to be shared, and how the shares are to be distributed to the States,

iv. Taxes which are to be levied and collected by the Centre, but to be distributed entirely (except for those proceeds which are attributable to the Union territories) to the States in accordance with such principles of distribution as may be laid down by Parliament by law. These taxes consist of succession and estate duties; terminal taxes on passengers and goods carried by rail, sea or air taxes on railway fares and freights; taxes on the sale or purchase of newspapers; sale or purchase taxes on inter-State trade,

v. Taxes levied by the Centre but collected by the States and appropriated by them for their own use. They are stamp duties and excise duties on medicinal and toilet preparations containing alcohol; in connection with these two taxes, the Centre only levies the tax, and fixes the rate of duty to be paid on the alcohol contained in the medical and toilet preparations, but each State collects the tax and appropriates it for its own purpose.

vi.

GRANTS AND LOANS

Besides the devolution of revenues the Union meets the financial needs of the State in two other ways:

- ⇨ by making grants-in-aid of State revenues and other grants, and
- ⇨ by giving loans.

According to the Constitution, both the Union and the States are empowered to make grants.
But by virtue of the sums at its disposal, the Union's power is greater. The Union can make grants for purposes outside its legislative jurisdiction, and it is under this provision that many of the large capital grants for national development schemes are made.
Grant-in-aid may be made to a State to defray its budgetary deficits, or it may make grant-in-aid on the basis of budgetary need, and to aid States whose revenues, even after devolution fall short of their expenditures.
Efforts are generally made to keep these grants-in-aid to a minimum by making devolution adequate. Other grants are generally unconditional, but in certain cases, as in Assam, grants have been made for the development of backward areas and tribes.
Besides grants-in-aid, States also sometimes depend heavily on the Union for loans. The Union government has unlimited power to borrow either within India or outside, and may exercise this power subject only to such limits as might be fixed by Parliament from time to time.
In the case of the States, however, their borrowing power is subject to a number of Constitutional limitations. A State cannot borrow outside India. The State executive has the power to borrow within the territory of India, subject to many conditions.

Borrowing Powers:

The Union has unlimited power of borrowing, upon the security of the revenues of India either within India or outside. The Union Executive can exercise the power; subject only to such limits as may be fixed by Parliament from time to time.

***The borrowing power of a State is, however, subject to a number of Constitutional limitations*:**

(i) It cannot borrow outside India,
(ii) The State Executive shall have the power to borrow, within the territory of India upon the security of the revenues of the State, subject to the following conditions:

(a) limitation as may be imposed by the State Legislature;
(b) if the Union has guaranteed an outstanding loan of the State, no fresh loan can be raised by the State without consent of the Union Government;
(c) The Government of India may itself offer a loan to a State, under a law made by Parliament; so long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the State without the consent of-the Government.

Grievance of States in General against the Centre:

1) The States regard as inadequate the resources placed at their disposal and demand transfer of more financial resources. The tight control exercised by the Centre over the financial institutions of India restricts the action of States. The States have, consequently, to look to the Centre for funds in case of unforeseen calamities or to carry out various schemes. They do not see eye to eye with the Centre on the issue of overdraft facilities and debt and repayment liabilities of State governments.
2) The Centre has the prerogative to decide finally the location of various industries and projects. Undue delays in clearance of projects have adversely affected the interests of the States.
3) The States resent the Centre's encroachment into their sphere, evidence in the transfer of subjects from the State List to the Concurrent List. It may be noted that even the Congress-ruled States have objected to this. Nor do the States like the persistence of the Centre in the matter of getting sales tax abolished.
4) The States disapprove of the Centre's practice of unilaterally increasing the wages and salaries of its staff, as this creates problems for the State governments vis-a-vis their own staff. The administered prices are controlled by the Centre, and arbitrary and drastic increase in the prices upset State budgets.
5) Resentment is also caused because of conflicting interests in location of new and important projects and industries.

Grievances of 'Opposition-Ruled' States against the Centre:

Besides the general grievances stated above, there are some specially felt by the States ruled by parties different from that of ruling at the Centre.

1) They are critical of the role of the Governors; the manner of their appointment, transfers and dismissals. They feel that party considerations outweigh constitutional conventions in the matter Of Governors' appointment. They see the Governor as the Centre's agent.
2) They resent the frequent (and sometimes arbitrary) imposition of President's Rule and dismissal of State governments. This is seen as unwarranted and unconstitutional action on the Centre's part.
3) The State governments resent deployment of paramilitary forces such as CRPF, RPF, Central Industrial Security Force, etc. in the States without requisition from the States.
4) The States allege that the Centre shows little respect for the views expressed by State Chief Ministers or Ministers at conferences convened by the Centre. The Centre is alleged to expect unquestioned submission by the State governments like the appointment of Commission of inquiry by the Centre against the governments and ministries, invariably, of those States ruled by parties other than that at the Centre.

Centre's Grievances against States:

The Centre, for its part, feels displeased at the attitude of the States over various issues. Its aim is to achieve equitable development of the country. It feels perturbed at the objections of the more advanced States over its special concessions and measures to develop the backward areas. The Centre also alleges that State governments tend to divert funds allocated for a particular scheme to other purpose. The Centre also resents the States' claiming credit for the successful implementation of Centrally-sponsored projects.

REFORMING CENTRE-STATE RELATIONS

Some of the major recommendations made by different committees and teams are as under:

1. The Setalvad Study Team:

The Setalvad Study Team had recommended the Constitution of an inter- State Council composed of the Prime Minister and other central ministers holding key portfolios, Chief Ministers and others, invited or

co-opted. It suggested measures to rationalize the relationship between the Finance Commission and the Planning Commission. Besides, it recommended that the office of Governor be filled by a person having ability, objectivity and independence and the incumbent must regard himself as a creation of the Constitution and not as an errand boy of the Central Government

2. The Administrative Reforms Commission:

The Administrative Reforms Commission noticed that the Central Government had even moved into the fields earmarked for the States under the Constitution and asked it to withdraw from such areas. It recommended the setting up of an inter-State Council but made a novel suggestion about its composition. Instead of giving seats in this body to all the Chief Ministers, it wanted to have five representatives one each from the five zonal councils.

Much more importantly, the ARC highlighted the need for formulation of guidelines for governors in the exercise of their discretionary powers. This would ensure uniformity of action and eliminate all suspicions of partnership or arbitrariness.

The question whether a Chief Minister enjoys majority support or not should be tested on the floor of the Legislature and for this he should summon the Assembly whenever a doubt arises.

It also opined that when a ministry suffers a defeat in the Legislative Assembly on major policy issues and the outgoing chief minister advises the governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the governor should normally accept the advice.

3. Rajamannar Committee Report:

The DMK government of Tamil Nadu appointed a Commission with a direction to suggest changes in the existing level of Union-State relations. Their terms of reference were to examine the entire question regarding the relationship that should exist between the Centre and the States in a federal set-up and to suggest amendments to the Constitution so as to "secure utmost autonomy to the States."

The Committee headed by P.V. Rajamannar, a retired Chief Justice of Madras High Court, presented its report on May 27, 1971. Some of the important recommendations of the Committee were:

(i) The Committee recommended the transfer of several subjects from the Union and Concurrent Lists to the State List. It recommended that the 'residuary power of legislation and taxation' should be vested in the State Legislatures.

(ii) An Inter-State Council comprising Chief Ministers of all the States or their nominees with the Prime Minister as its Chairman should be set up immediately.

(iii) The Committee recommended the abolition of the existing Planning Commission and that its place must be taken by a statutory body, consisting of scientific, technical, agricultural and economic experts, to advise the States which should have their own Planning Boards.

(iv) The Committee advocated deletion of those articles of the Constitution empowering the Centre to issue directives to the States and to take over the administration in a State. The Committee was also opposed to the emergency powers of the Central Government and recommended the deletion of Articles 356, 357 and 360.

(v) The Committee recommended that every State should have equal representation in the Rajya Sabha, irrespective of population.

(vi) The Governor should be appointed by the President in consultation with the State Cabinet or some other high power body that might be set up for the purpose and once a person had held this office, he should not be appointed to any other office under the Government.

(vii) On recruitment to the services, the Committee recommended that Article 312 should be so amended as to omit the provision of the creation of any new All-India cadre in future.

(viii) The High Courts of States should be the highest courts for all matters falling within the jurisdiction of States.

(ix) The Committee said that 'territorial integrity' of a State should not be interfered with in any manner except with the consent of the State concerned.

(x) It recommended that the States should also get a share of the tax revenues from corporation tax, customs and export duties and tax on the capital value of assets and also excise duties.

4. Sarkaria Commission Report: In view of the various problems which impeded the growth of healthy relations between the Centre and the States, the Central Government set up a Commission in June 1983, under the Chairmanship of Justice R.S. Sarkaria mainly to suggest reforms for an equitable distribution of powers between the Union and the States. The Commission submitted its report in 1988.

Major Recommendations in Sarkaria Commission Report were-

(i) Though the general recommendations tilt towards the Centre– advocating the unity and integrity of the nation, the Commission suggested that Article 258 (e.g. the Centre's right to confer authority to the States in certain matters) should be used liberally.
(ii) Minimal use of Article 356 should be made and all the possibilities of formation of an alternative government must be explored before imposing President's Rule in the State. The State Assembly should not be dissolved unless the proclamation is approved by the Parliament.
(iii) It favoured the formation of an Inter-Government Council consisting of the Prime Minister and the Chief Ministers of States to decide collectively on various issues that cause friction between the Centre and the States.
(iv) It rejected the demand for the abolition of the office of Governor as well as his selection from a panel of names given by the State Governments. However, it suggested that active politicians should not be appointed Governors. When the State and the Centre are ruled by different political parties, the Governor should not belong to the ruling party at the Centre. Moreover, the retiring Governors should be debarred from accepting any office of profit.
(v) It did not favour disbanding of All India Services in the interest of the country's integrity. Instead, it favoured addition of new All India Services.
(vi) The three-language formula should be implemented in its true spirit in all the States in the interest of unity and integrity of the country.
(vii) It made a strong plea for Inter-State Councils.
(viii) The Judges of the High Courts should not be transferred without their consent.
(ix) It did not favour any drastic changes in the basic scheme of division of taxes, but favoured the sharing of corporation tax and 'every of consignment tax.
(x) It found the present division of functions between the Finance Commission and the Planning Commission as reasonable and favoured the continuance of the existing arrangement.

POLITICAL PARTIES-NATIONAL AND REGIONAL

India is a multi-party democracy. Political parties constitute an integral part of the Indian political system which is marked by the functioning of a variety of political parties. In this unit we shall read about the different aspects of political parties in India including the concept of political parties, functions of political parties, types of political parties and the role and importance of opposition political parties in India.

CONCEPT OF POLITICAL PARTIES

Political parties are such organizations which intermediate between citizens of a nation and the state. They are organized groups, whose members share common policy preferences and programmes. And it is through their common policy preferences and programmes that political parties aim at acquiring and holding on to government power. In a democratic form of government like that of India, political parties achieve their aim by contesting and winning elections.
The following are some of the characteristics of political parties which will help you understand the concept of political parties better-

- Political parties are organizations which have formal membership.
- The members of a political party share same political ideology.

- Political parties aim to achieve power, form government and exercise political power through constitutional means.

FUNCTIONS OF POLITICAL PARTIES

Being an integral part of democracy political parties perform a variety of functions. The list of functions performed by political parties is an exhaustive one; however, the functions of political parties can be broadly classified as:

(i) Electoral functions
(ii) Non-electoral functions

ELECTORAL FUNCTIONS

- One of the primary functions of political parties is to form government by winning political office through elections.
- In our country which is a representative democracy, it is political parties which represent millions of voters. Therefore, one of the important electoral functions of political parties is to nominate candidates. The voters elect their representatives from the list of nominated candidates from various political parties.
- Political parties also prepare a list of their policy programmes and promise to implement the listed programmes if they can come to power. This is known as the party manifesto.
- Campaigning and canvassing for election candidates is another electoral function of political parties.

NON-ELECTORAL FUNCTIONS

- One of the non-electoral functions of political parties is interest articulation and aggregation. This means political parties perform the function of educating, instructing and making the citizens politically conscious as well as active. Aggregation means to bring together interests of different sections and groups from across the nation and to provide a platform where the interests of the various groups can be combined or aggregated to form broad political programmes and policies.
- When voted to power political parties/party form the government, and perform all the functions which are necessary to run a nation
- Political parties provide the much needed connection between the people and the government. They in fact bridge the gap between citizens and the government
- Apart from capturing power which is one of the important functions of political parties, another important function of political parties is to play the important function of the opposition if they fail to acquire power. These parties keep an eye on the activities of the party in power so that it does not become all powerful.

ROLE AND IMPORTANCE OF OPPOSITION PARTIES

The political parties which do not come to power are described as the opposition parties. Opposition parties are an indispensable part of a democracy. They provide the checks and balances to the ruling parties by criticizing it on its lapses and mistakes. Opposition party or parties are expected not only to criticize the policies of the government, but to provide constructive criticism which can help the government to rule the nation efficiently. Keeping in mind the importance of opposition, many parliamentary democracies give official reorganization to opposition parties. For instance in Britain opposition party is officially recognized. Similarly, in India too the leader of the opposition enjoys same salary and privileges as that of a Cabinet Minister.

The role performed by the opposition can be outlined in the following way-

- By criticizing governmental policies and policy makers, it makes government responsible and accountable for every action it takes. Along with criticizing the governmental programme through

questions and debates in the Parliament, the opposition provides alternative solutions and strategies to the government.

- It controls the ruling government through parliamentary debates, privileges and rules of procedure.
- It keeps the public abreast of every step taken by the government. It helps in the formation of vibrant public opinion. Thus, we see that not only the party or parties which form the government are important but the opposition too plays an important role in the functioning and success of parliamentary democracy. However, at the same time it must be mentioned that the opposition parties sometimes oppose the government just for the sake of criticizing it and stall the proceedings of the cabinet resulting in noisy scenes in the Parliament. Accordingly, the opposition must always act responsibly and engage in constructive criticism of the government.

REGIONAL PARTY

Till 1967, there was only one party ruling the nation that was 'Congress'; but post 1967 a lot of other political parties came to the forefront along with power and started to play an imperative and persuasive role and also started participating in government decision making process. With the regional parties coming to the forefront the development of the state's responsibility has gone to the regional parties as opposed to the central government taking care in the initial stages.

Regional parties are playing a major role in the Indian Politics and their influence is not just limited to particular religion or state but their decisions and thought process are important in the government planning processes and decisions. The occurrence of increasing number of regional parties has signified the various segmental personalities and interests. It has resulted into a huge gamut of culture and sub culture, caste and sub castes, philological and sub philological combinations and amalgamations on India's political background.

A common allegory about regional parties is that their upsurge has wrinkled the importance of national parties, but in reality the after the early 1990's the competition in the election pattern has stabilised. When the central government is concocting policies it has to consider the regional parties point of views as well. Even though regional parties have executed with authority at the state level, jointly they get only 5 to 10% of the national vote in parliamentary elections. One of the biggest advantages of regional parties being formed is that personal attention is being given to the states and regions by their political parties for the purpose of growth and development. If there would have been just one national party taking care of the entire nation, it becomes difficult for each and every state to progress and prosper. The problems of the people of various states are dealt by their regional party. Another advantage of regional parties is that is it easy for the native people to approach a local political party leader rather than approaching higher officials in the national party.

Regional politics though play an important role in the Indian Politics. They are also equally involved and responsible to form the policies for not only the nation but also the state. The regional parties should genuinely concentrate on improving the prospects and living conditions of the local people and try to give them better facilities for their basic living. Although there is instability in terms of deciding on who should be the acting central government but the fact is that with the advent of regional parties the importance of each state has been formed and maintained.

FACTORS AFFECTING INDIAN POLITICS

In Indian society refers to a social group where membership is decided by birth. Members of such local group are endogamous, i.e. they tend to enter into marital relationships among themselves. They often have related political preferences, similar to the racial preferences for the Democratic and Republican parties in USA.

For political/government purposes, the castes among the Hindus are broadly divided into

- Forward Caste
- Other Backward Class (OBC) (about 41% of population)
- Scheduled Caste (about 20% of population)
- Scheduled Tribe (about 9% of population)

The Indian Muslims (13.4%), and Christians (2.3%) often function as a caste since they too marry among themselves. Official lists are compiled by states recognising the OBC, Scheduled Castes and the Scheduled tribes. The dividing lines can be ambiguous, several castes have demanded a lower rank so that they can avail of the privileges offered. The term "Upper caste" often includes Forward castes and the OBCs, when news reports refer to the Scheduled castes in relation to the two upper groups.

It was institutionalised into government organisations by British colonisers. The removal of the boundaries between "civil society" and "political society" meant that caste now played a huge role in the political arena and also influenced other government-run institutions such as police and the judicial system. Though caste seemed to dictate one's access to such institutions, the location of that caste also played a pivotal role. If a lower caste were concentrated enough in one area, it could then translate that pocket of concentration of its caste members into political power and then challenge the hegemony of locally dominant upper caste.

Gender also plays a significant role in the power dynamic of caste in politics. Women's representation within the political system seems to also be tied to their caste. Lower, more conservative castes have less female participation in politics than upper, more socially liberal, castes. This has caused a disproportionately large number of upper-caste women to occupy political office when compared to their lower caste counterparts. The hierarchy of caste and its role in politics and access to power and resources has created a society of patron-client relationships along caste lines. This staunchly rigid structure was most prevalent during the Congress-dominating period. This eventually led to the practice of vote banking, where voters back only candidates that are in their caste, or officials from which they expect to receive some kind of benefits.

Historically it has been very hard to change the structure of **caste politics in India**. More recently however, there has been a flux in caste politics, mainly caused by economic liberalisation in India. This upsurge in lower-caste empowerment was accompanied in some regions by a spike in the level of corruption. This was partly due to lower caste perceiving development programs and rule of law as tools used by the upper caste to subjugate lower castes. More contemporary India, however, has seen the influence of caste start to decline. This is partly due to the spread of education to all castes which has had a democratising effect on the political system. However, this "equalising" of the playing field has not been without controversy. The Mandal Commission and its quotas system has been a particularly sensitive issue. It has been argued several times that the role of castes in Indian elections have mostly been overplayed.

CASTE AND POLITICAL POWER

The caste system has traditionally had significant influence over people's access to power. The privileged upper caste groups benefit more by gaining substantially more economic and political power, while the lower caste groups have limited access to those powers. The caste system distributes to different castes different economic strength. The upper caste groups can then manipulate the economic and political system to transfer economic strength into political power.

Access to power

In rural North India, upper and middle-ranking castes dominate the ownership of land. They were able to transfer this control over wealth into political dominance over the Panchayat decision. The Panchayat is a local government unit that is in-charge of resources disbursement. The upper caste groups monopolised leadership positions in the Panchayat, thus gaining more opportunities to government contracts, employment and funding.

Caste, ascribed at birth, is also influenced by where one is born. Political lines in India have often been drawn along caste lines; however, this is only part of the story. Caste is often specific to a particular area. These caste pockets create a locally dominant caste. Because of the political structure in India, local dominance can translate into regional dominance. This concentration of caste population has meant that smaller, less influential castes have the opportunity stake there claims in the political power arena. However, if a non-dominant cast is not concentrated in a particular area, then they are not likely to get any representation without teaming up with another caste to increase their influence. This means, "localised concentration facilitates a space for contesting the domination of State-level dominant caste".

Clientelism

Politics in India highly depended on patron-client ties along the caste lines. The caste that one belongs to serves as a strong determinant of his or her voting pattern. In India, different political parties represent the interests of different caste groups. Loyal groups of voters usually back a certain candidate or party during elections with the expectation of receiving benefits once their candidate is in office. This practice, called "vote bank", is prolific throughout most regions of the country. Many political parties in India have openly indulged in caste-based votebank politics. The Congress party used votebank to maintain power; the competing parties constructed votebanks to challenge the Congress dominance of politics.

CASTE POLITICS IN FLUX

By the early 1990s there began a shift in caste politics. The continuation of a one party system, which was the Congress party, composed mostly of upper-caste leadership, came to an end. This was partly due to economic liberalisation in India which reduced the control the state had on the economy and thus the lower castes, and partly due to an upsurge in caste based parties that made the politics of lower caste empowerent a central part of there political agenda. It should be pointed out that these new political parties emerged not on a national level but on a village and regional level, and were most dominant in North India.

These parties view development programs and rule of law as institutions used by upper caste to control and subjugate lower castes. As a result, these new political parties sought to weaken these institutions and in turn weaken the upper caste domination in the political arena in India. Since 'rule of law' was seen as controlled by upper-caste, these new parties adopted a strategy that had to operate outside of this rule in order to gain political influence and lower-caste empowerment.

Political competition**-** Corruption thus translated into power and a means to enter the political arena, once only open to upper caste members. Corruption in India became a way to level the playing field. This struggle for empowerment that was forced to operate outside of the rule of law produced caste-based mafia networks. These mafia-networks began to chip away at upper caste control over state institutions.

However, unlike their predecessor, these caste mafias groups were not concerned with 'development', but mainly viewed elections and democracy as a way of gaining control of the state, which would enable them to level social inequalities. This new state envisioned a government of "Social Justice" through caste empowerment. Within the context of "social justice" corruption pontificated by the caste mafias became tolerated, and in some cases, as in the town of Bihar, even celebrated.

Caste-based mobilisation

Recent evidence suggests that the influence of caste has been declining. Rather than a long-established, unchanging institution, caste is subject to political influence. Changes in political leadership throughout the history of India have led to changes in the structure of the caste system. India's colonial past has shaped caste into a flexible institution, generating a new system that has crucial influences on political mobilisation.[17] In some regions of India, strategic reconstructions of the caste system have taken place.

For instance, the Bahujan Samaj Party in the state of Punjab was first initiated by urban political entrepreneurs who belonged to the former lower caste groups.[15] The pliable caste system in the post-independence era acts as a tool for identifying marginal groups and political mobilisation . Various political leaderships can alter and influence the caste system to give different groups of people unequal rights in accessing public services and political competition.

PLAYING THE RELIGION CARD

Many Indian historians date religion's role in Indian politics back to the colonial period and the 1909 British policy of establishing separate electorates based on religion. However, in the 1980s, several events worked to bring religion to the forefront of electoral politics: rising Sikh fundamentalism followed by anti-Sikh riots after the 1984 assassination of Prime Minister Indira Gandhi; Prime Minister Rajiv Gandhi's decision to support legislation that overturned a 1985 **Supreme Court judgment** to grant alimony to a Muslim woman, seen by many as capitulation to Muslim orthodoxy in an election year; and the rise of the BJP and its call to destroy the Babri mosque in Ayodhya. The dispute in Kashmir and several bloody Hindu-Muslim flare-ups in the last two decades have further divided people along religious lines. "Religion is part and parcel of Indian political life," says **Sumit Ganguly**, a professor of political science at Indiana University.

DEMOCRATIC POLITICS AND ECONOMIC REFORM

The Indian electorate has turned the standard law of political participation on its head, say experts. In India, the lower castes vote more than the upper castes, and the poor vote as much or more often than the rich. Similarly, the illiterate cast ballots more often than the educated, and rural voters more than urban populations.

VOTERS SEEK ACCOUNTABILITY

High levels of corruption and poor governance have led to immense civil society mobilization seeking greater accountability from political candidates and reform of the electoral process. In 2004 general elections, candidates were required to disclose their assets and criminal records for the first time under new rules pushed for by ordinary citizens. Ahead of the 2009 elections, a **nationwide campaign**, led by more than a thousand NGOs and citizen groups working on electoral reforms, sought more transparency. Primary among their demands were barring candidates with criminal charges, the voters' right to reject all the candidates through a "none of the above" option on the ballot paper, and greater transparency and regulation of funding of political parties.

JUDICIAL REFORMS

Judicial reform is the complete or partial political reform of a country's judiciary. Judicial reform is often done as a part of wider reform of the country's political system or a legal reform.

India needs several judicial reforms that goes without saying. To enlist what reforms India needs we need to 1st enlist the problems plaguing the Indian judicial system. There are 3 major problems plaguing the judiciary. The background of these problems and the necessary reform may be discussed as follows:

1. **JUDICIAL BACKLOG AND ACCESSABILITY TO JUSTICE FOR A COMMON MAN**

   Judicial Backlog means the huge number of cases that are pending in the courts which are just lingering along and not reaching their logical conclusion.Most of these cases are trivial matters such as property disputes, theft, slap incident,etc. There are many reasons for this menace. Some of them are:

   (a) **Lack of Judicial infrstructure (lack of district courts, lack of staff, etc.)**

(b) **Archaic laws and Sections in the Cr.P.C. and I.P.C.**
(c) **Accessibility to justice for a common man**

2. JUDICIAL CORRUPTION, APPOINTMENTS AND ACCOUNTABILITY

3. JUDICIAL OVERREACH

The judiciary often over reaches its authority and goes into matters which are not under its jurisdiction.

"Judicial Reforms" is a theme, which is so much of talked about but too little has been done. Indian judicial system has a long history right from the pre-British days. In the 18th century a uniform pattern of judiciary emerged and during the British regime High Courts were established in presidency towns. Thereafter, in 1937, the Federal Court was established to hear the appeals from the High Courts. Because of complexities of personal laws of Muslims and Hindus and various customs & practices, there were initial difficulties in administration of justice. After independence, the government focused on to have a systematic judicial system throughout the country and many new subordinate courts were established in various parts of the country. Today there is a network of over 14 thousand courts all over India and these courts are dealing with 4 crores of cases. Out of 14 thousand judges, the working strength would be about 12,500 judges and nearly 4 thousand cases are being handled per-Judge. This is too high as compared to the average load per-Judge in other countries.