

# INDIAN CONSTITUTION

PAPER-III

M.A. POLITICAL SCIENCE, I SEMESTER



Director, I/c

PROF.V. VENKATESWARLU

*MA.,M.P.S., M.S.W., M.Phil., Ph.D.*

CENTRE FOR DISTANCE EDUCATION

ACHARAYA NAGARJUNA UNIVERSITY

NAGARJUN NAGAR – 522 510

Ph:0863-2346222,2346208,

0863-2346259 (Study Material)

Website: [www.anucde.info](http://www.anucde.info)

e-mail:anucdedirector@gmail.com

# M.A. POLITICAL SCIENCE AND M.A. PUBLIC ADMINISTRATION

## SEMESTER – I

### 103PO21- PAPER III: INDIAN CONSTITUTION

(Common for both M.A. Political Science and M.A. Public Administration students with effect from the academic year 2002-03)

#### UNIT - I

- (a) Making of the Indian Constitution – Basic Foundations of Indian Constitution
- (b) Salient Features of Indian Constitution

#### UNIT - II

- (a) Fundamental Rights and Directive Principles of State Policy
- (b) Centre - State Relations

#### UNIT - III

- (a) Union Government – Parliament, President, Prime Minister and Cabinet
- (b) Supreme Court and Judicial Review

#### UNIT – IV

- (a) Provisions for the Welfare of Weaker Sections
- (b) Reviewing of the Constitution – Sarkaria Commission and Constitutional Review Commission

#### Reference Books:

- |                       |  |
|-----------------------|--|
| 1. Granville Austin   | - The Indian Constitution – Corner Stone of the Nation |
| 2. D.D. Basu          | - Introduction to the Constitution of India            |
| 3. Morris-Jones, W.H. | - The Government and Politics of India                 |
| 4. Kothari, R         | - Politics in India                                    |
| 5. V.D. Mahajan       | - Indian Constitution                                  |
| 6. J.C. Johari        | - Indian Constitution                                  |

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Head  
Department of  
Political Science and Public Administration  
Acharya Nagarjuna University  
GUNTUR

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**LESSON-1****MAKING OF THE INDIAN CONSTITUTION****1.0 Objectives:**

1. Students would be able to know about the making of the Indian constitution.
2. Students would be able to learn about the objectives and critiques of the Indian constitution.

**Structure:**

## 1.0 Objectives

## 1.1 Introduction

## 1.2 Formation of Constituent Assembly

## 1.3 Critiques

## 1.4 Conclusion

## 1.5 Model Questions

## 1.6 References

**1.1 Introduction:**

The constituent assembly framed the constitution and the demand for this was came for the first time in India in 1934. But again this demand put forward by the Indian National Congress, with resolution passed in Faizpur session on 28<sup>th</sup> December 1936. Jawaharlal Nehru, in 1938, demanded for the constituent assembly consequently: "The National Congress stands Independence and democratic state. It has proposed that the constitution of free India must be framed, by a constituent assembly elected on the basis of adult franchise". In November 1939, after the resignation of the Congress Ministries, they again demanded for the constituent assembly. But the British resisted this demand till the starting of World War II, after, that they understood the urgency to resolve this problem. In the year March 1942, Sir Stafford Crips, brought the proposal to the British government with a draft declaration and would be agreed by them, if both the major parties like Congress and Muslim League come with an understanding, such as,

1. The Indian constitution must be framed by an elected constituent assembly of the people of India;
2. The constitution must provide the status of dominion to India, equal partnership of the British Commonwealth Nations;
3. There must be one Indian Union consisting of all the Provinces and Indian States; but
4. Any state or province who do not want to accept the constitution would be free to have its own constitutional position, for with such provinces British government may enter with distinct constitutional provisions.

The two parties did not come to an understanding to agree the proposal, and Muslim League insisted that:

(A) The India must be divided on into two independent states on the communal lines, and some of the provinces embarked by Jinnah must form a separate Muslim State.

(B) In the place of one constituent assembly there must be two assemblies.

The constitution assembly, which was set up depending upon the recommendations of the Cabinet Mission Plan to frame the constitution of Republic of India. On 9<sup>th</sup> December, 1946, the constitutional assembly met to start the important mission to draft the constitution of independent India. Though the body of constitutional assembly was not sovereign body but it had to frame the constitution within the guidelines of the Mission plan. It had to observe the honour the commitments of the British who were about to leave with regard to the minorities and Indian states. The draft which they made had to be accepted by the British so that it can get the stamp of British.

The province or the state of India were allocated seats depending upon their representation in the assemblies, with this they have to select 292 members from these constituencies, with a maximum of 92 seats to a state. The seats were allocated among the main communities, depending upon their representation and there were 210, general constituencies, 78 for Muslims, 8 for Sikhs, and 3 seats were allocated to Chief Commissioner's provinces and 1 to British Baluchistan. Each community elected their own representatives, by single transferable vote. The constitution had to decide the way of election of representation of Indian States. On December 9<sup>th</sup> 1946, the constitution assembly was formed Muslim league did not took part in the discussions because of its separate demand.

## **1.2 Formation of Constituent Assembly:**

Dr. Rajendra Prasad was elected as the permanent president of the Constituent Assembly, it adopted the objectives resolution moved by Jawaharlal Nehru on 22<sup>nd</sup> January 1947, and it was, "The objective of the framers of the Constitution was declared to be the creation of a Sovereign Republic of India; unanimous approval was given to another resolution moved by Nehru recommending a redistribution of the provinces so as to make them "homogeneous units based on linguistic, cultural, administrative and economic considerations" as soon as possible the new Constitution had been enforced". This was adopted in the second plenary session. In the third plenary session from April 28<sup>th</sup> to May 2<sup>nd</sup>, it discussed about the Fundamental Rights, which was submitted by the Union Powers Committee and Advisory Committee. The committee firstly decided to give powers such as, defence, foreign affairs, communications, finance and assortment powers to the Union Cabinet, but later the second committee had divided the fundamental powers into two types, like justifiable and non-justifiable rights and also included that the fundamental rights must be equal for all the persons irrespective of religion, caste, race and sex. The constitution, no discrimination against the scheduled caste considered as the offence under the constitution. It also confirmed that "no title shall be conferred by the union and no citizen of the union shall accept any title from a foreign state".

It was decided after a proposal from Dr. Rajendra Prasad, that the constitution must be written both in Hindustani and English hence, the Assembly was adjourned sine die. Later, it met again and deliberated three important subjects like

### **1. Report of the Union Constitution Committee on the proposed constitution**

2. The report of model Constitution for the Province was reported and
3. Adoption of Indian national Flag.

On the midnight of 14<sup>th</sup> August a meeting was held by the Constituent Assembly for the transfer of the powers to India. The fourth meeting during the August 20-29, it recommended

1. The Federal and Provincial powers were accepted the report of second Union Powers Committee,
2. The report given by the Advisory Committee on Minorities, which inter alia, provided for the elimination of the former communal electorates and was substituted by the joint electorates and
3. The Constitution Assembly for its future working for constitution and law-making body.

This report suggested that, the constitution making and law making must be done on the separate days in separate sessions by the constitution assembly. It was also stated that, constituent assembly functioned as dominion legislature it must be presided over by the Speaker and Ministers, have the right to involve in the constitution making, they have the right to vote till they become the members. It was recommended that the members of the princely states will also involve in this process.

The constituent Assembly adopted a resolution on 29<sup>th</sup> August, be formed a drafting committee, to prepare the constitution by considering all the sessions given by the different committees. It was directed to observe certain matters of the 1935, Government Act of India. Dr. B R Ambedkar was the chairman of the committee, the drafting committee was submitted draft constitution on 21<sup>st</sup> February 1948, and it was discussed in the assembly and it was accepted on 26<sup>th</sup> November 1949, but it came into act from 26<sup>th</sup> January 1950. For making this task successful it took 165 days, and out of these days 114 days were for considering the draft Constitution and there were 11 meetings held to make this task. But there were some other articles to the constitution which such as, citizenship, elections, provisional parliament, temporary and transitional powers came into force on 26<sup>th</sup> January 1950.

### **1.3 Critiques:**

Since the inception of the constituent Assembly, an argument was there about its representativeness. The arguments as follows:

1. The assembly was not elected according to the adult franchise, hence, it cannot be considered as a democratic body.
2. The members of this body were indirectly elected by the members of the provincial legislative assemblies and they were elected by limited franchise.
3. Some of the members even suggested to postponement of deliberations about the constituent assembly because of the election process was not perfect, there was no adult representation in it.
4. There was a disagreement that, all the discussions about was dominated by the congress, the working committee of the congress firstly took the decisions about the important issues and then they had asked the drafting committee to give its proposals accordingly.

5. During the debates of the assembly, congress always dominated and they took the lead and they flourished to carry out their thoughts.
6. There was an argument that, there was no proper opposition to the congress in the constituent assembly so that they can condemn the ideas which were not good for the constitution, hence, the opinions were not sufficiently presented.
7. In the constituent assembly, most of them were from the lawyer turned politicians therefore, the constitution was mostly with the views of them and it happens to be tailored by lawyers.
8. It was also argued that, when the constitution was prepared the people were not been asked for their acceptance.

Whatever, argued by them was in fact a reality, the constituent assembly was not elected on the grounds of the adult franchise and it cannot be regarded as the true representative body. But at the same time, one had to accept that, congress had taken best possible efforts to bring this constitution with most efficient personalities which were present at that time. The election of the candidates to the assembly was done on the communal grounds, only Muslims and Sikhs were given such opportunity. The congress also gave preference to the candidates from the scheduled caste, Anglo-Indian community, Christians, Viceroy's executive council, former members of the legislatures from the provinces, industrial person, and medical professional etc.

It was the fact that, all the discussions were dominated by the congress and its members, and it was due to the fact that, the congress fought for the freedom of the country and it was the party which was accepted by most of the people. But it can be observed that it never guided its own personal interest in it, it did not put its own personal agendas in it, it had been always looked for which was the best for the country at that point of time. Commenting about this, Prof. Rao says that, "though made by the congress party, the Constitution does not contain even a single article that favoured the party at the expense of other parties". The critiques which were mentioned was not submitted for referendum, even though it was correct but it did not have any importance. In fact the first general election which were held in 1952, were itself regarded as the referendum to the constitution, and it can be noted that people had given it acceptance to it. The candidates who stated that they would scrap this constitution and frame the better one, all were defeated in that election. This instance was an indicator that the majority of the people had accepted the constitution.

#### **1.4 Conclusion:**

The constituent assembly framed the constitution and the demand for this was came for the first time in India in 1934. But again this demand came forward by the Indian National Congress, with resolution passed in Faizpur session on 28<sup>th</sup> December 1936. Jawaharlal Nehru, in 1938, demanded for the constituent assembly consequently. In the year March 1942, Sir Stafford Cripps, brought the proposal to the British government with a draft declaration and would be agreed by them if both the major parties like Congress and Muslim League come with an understanding. On 9<sup>th</sup> December, 1946, the constitutional assembly met to start the important mission to draft the constitution of independent India.

Dr. Rajendra Prasad was elected as the permanent president of the Constituent Assembly, it adopted the objectives resolution moved by Jawaharlal Nehru on 22<sup>nd</sup> January 1947. It was decided after a proposal from Dr. Rajendra Prasad, that the constitution must be written both

in Hindustani and English hence, the Assembly was adjourned sine die. Later, it met again and deliberated three important subjects. The constituent Assembly adopted a resolution on 29<sup>th</sup> August, be formed a drafting committee, Dr. B R Ambedkar was the chairman of the committee, the drafting committee was submitted draft constitution on 21<sup>st</sup> February 1948. and it was discussed in the assembly and it was accepted on 26<sup>th</sup> November 1949, but it came into act from 26<sup>th</sup> January 1950. Since the inception of the constituent Assembly, an argument was there about its representativeness.

### **1.5 Model Questions:**

1. Discuss about the making of the Indian constitution?
2. Write about the critique about the constituent assembly which drafted the constitution?

### **1.6 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD. Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
4. JC. Johari, The Constitution of India, A Politico-Legal Study, Sterling Publishers Private Ltd., New Delhi, 2005.
5. Dr. J.N. Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 2013.

**Dr. C. Vinod Kumar**  
**Lesson Writer**



**LESSON -2****BASIC FOUNDATION OF THE INDIAN CONSTITUTION****2.0 Objectives:**

1. Students would be able to understand the basic foundations for the Indian constitution.
2. Students would be able to know preamble and philosophy of the constitution.

**Structure:**

## 2.0 Objectives

## 2.1 Introduction

## 2.2 Gandhian Thoughts

## 2.3 American and other Countries Judicial Review

## 2.3.1.Sources from the Acts of the Government of India

## 2.3.2. Sources from the Parliamentary System of Britain

## 2.3.3. Sources and their Impact on the Constitution

## 2.3.4. Debates in the Constituent Assembly

## 2.3.5Preamble and the Philosophy of the Constitution

2.3.6 The Preamble as Amended by the 42<sup>nd</sup> Amendment

## 2.4 Promotion of International Peace

## 2.5 Conclusions

## 2.6 Model Questions

## 2.7 References

**2.1 Introduction:**

The Indian constitution was made by the constituent assembly, it submitted its draft constitution on 21<sup>st</sup> February 1948, and it was finally accepted on 26<sup>th</sup> November 1949, but it came into existence on 26<sup>th</sup> January 1950. The constitution of India is very virtuous document and it can be considered as the fundamental law of the country, hence, it will have an important position in the structure of the political system in the country. The makers of the constitution were the most intelligent and they made the constitution which suites to the nation. To prepare this constitution they have gone through all most all the constitutions in the world and most of the provisions were borrowed from other nations. The chairman of the drafting committee, Dr. Ambedkar, witnessed as, “One likes to ask whether there can be anything new in a constitution framed at this hour in the history of the world. More than hundred years have rolled by when the first written constitution was drafted. It has then been

followed by many other countries reducing their constitution to writings... Given these facts, all constitutions in their main provision must look similar. The only new things if there be any in a constitution framed so late in the day or the variations made to remove the faults to accommodate it to the needs of the country”.

## **2.2 Gandhian Thoughts:**

These principle which are based on the thoughts of Gandhi:

(a) State must take necessary steps to systematize village panchayats and provide them with powers so that they can perform as the units of self-government; (Art 40) (b) the state must deliver early childhood care, economic interest and education to the weaker sections (Art 45) (c) State must encourage the cottage industries of individual or in groups in rural areas; (Art 43) (d) State must deliver and promote the agriculture and animal husbandry, and prevent the slaughtering of cows and other mulching animals; (Art 48) (e) State must improve the public health and prohibit the intoxicating drugs and drinks; (Art 47).

## **2.3 American and other Countries Judicial Review:**

The concept of individual judiciary from the USA constitution, from Canada the Federal aspects, Directive Principles from Ireland, from South African Constitution, election of Raya Sabha members and amendments to the constitution and concurrent list in our Constitution, from the Australian Constitution. The most important Act of 1935, Government of India act, influenced the Indian Constitution most, and most significant feature of our constitution is that the makers of the Constitution has given preference to those principles which are found to be successful and they did not considered those which are founded faulty.

The basic foundations for the constitution are as follows:

### **2.3.1 Sources from the Acts of the Government of India:**

The Parliament of the British, made Acts in the years of 1909, 1919 and 1935. The most significant Act was the Act, which made in 1935, Government Act, The British Parliament also made the act for the independence of the India as well. The Act of 1935, has the significance in the preparation of the Indian constitution, it can be said that the constitution of India is the replica of the Government India Act 1935, according to the Prof. Jennings, “The consultation derives directly from the Government India Act 1935 from which in fact, many of its provisions are copied almost textually”. The constitution of India, in fact opted for the dispersal of powers, it recommended for the federal type of organization at the centre, self-rule to the states, bicameral system at centre and in some of the states, the discretionary and emergency powers to Governors and Governor Generals, these powers actually altered and to meet the requirements of the changing times.

### **2.3.2 Sources from the Parliamentary System of Britain:**

It was observed that the British parliamentary system, influenced by the makers of the constitution of India, it was evident that, the long relationship with Britain also had to considered and the makers were every much know about the existent law in the country and it would be the one reason to select the parliamentary system of government to India. In fact,

the Indian parliamentary system also works as similar to that of British system. It can be seen at the centre and the state the one who elected by the elected representatives would be responsible for the legislation. The President of India who is the head of the nation, but he is nominal head just like to that of British Queen or King. In real sense the head of the nation is the Prime Minister.

There are certain similarities between them, for instance, the Minister must be from either of the house if not he/she has to be elected within the six months' time. The makers of the constitution in India, not only hired the parliamentary system from Britain but also hired the convention in regard to the parliament system as well. There is similarity between the two members of the parliament the Indian members has the same sort of privileges like that of British members of Parliament. The important ideologies which are borrowed from them are Rule of Law, and about the patterns of the lower house over the upper house are mostly common like that of Britain.

### **2.3.3 Sources and their Impact on the Constitution:**

The process of constitution is the result of regular improvements, hence, when the makers of constitution preparing the constitution they looked for such improvements which are most suitable in the prevailing situations. That is the reason they did not evade to use such principles which are used in the countries like USA, German, Ireland, South Africa etc. in their constitution. It is to observe that they did not selected those principles which are proved to be faulty and defective nature. If we observe the fundamental rights of Indian constitution it is almost similar to that of United Sates Bill of Rights, in the case of judicial system, they took the concept of their independent judicial system. The functions of the Vice President of America, we adopted and incorporated in our constitution. The federal structure which we have in our constitution is nothing but it is from the Canadian Constitution. At the same time, we have borrowed the idea of Directive Principle from the Irish Republic, and other ideas such as the nomination of the President to Rajya Sabha like people from fields of science, culture, social service etc., are imprints of the Irish Constitution. The election to the members of Raya Sabha and the amendments to the constitution is from the South African Constitution, the concurrent list is from the Australian Constitution.

### **2.3.4 Debates in the Constituent Assembly:**

The debates which occurred in the assembly were of use for the makers of the constitution, they had discussed every component of the constitution very systematically and different ways and means for that particular aspect were debated. Those debates made them to get more information and made them to make constitution more effectively. Along with this the critiques which they received also made them to rectify their faults in that particular principle.

### **2.3.5 Preamble and the Philosophy of the Constitution:**

Every constitution contains the preamble, with its objectives, it is the opening statement during the speech or writings Dyer says about preamble as, "key to open the minds of the people, makers of the Act, and the mischief's which they intended to redress". The most important work which is done by the constituent assembly, they prepared the objectives and those principles which guides the constitution, there are eight objective in total.

1. The constituent assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up her future governance a Constitution;

2. Wherein the territories that now comprise the British India, the territories now form the Indian States and such other parts of India as are outside British India and the states as well as such other territories as are willing to constitute into the independent Sovereign India, shall be a Union of them of all; and
3. Wherein the said territories, whether with their present boundaries or with such others, as may be determined by the constituent assembly and there after according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested or assigned to the union, or as are inherent or implied in the union or resulting territories; and
4. Wherein all powers and author of the Sovereign Independent India, as its constituent parts and organs of government, are derived from the people; and
5. Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
6. Wherein adequate safeguard shall be provided for minorities, backward and tribal areas and depressed and other backward classes; and
7. Whereby shall be maintained the integrity of the territories of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured place in the world and makes its full and willing Contribution to the promotion of world peace and the welfare of the mankind.

Along with the objective resolution the philosophy of the Constitution which confined in the preamble to the Constitution as follows:

“WE, THE PEOPLE OF INDIA, having resolved to Constitute India into a SOVEREIGN 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 opportunity, and promote among them all;

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

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

### **2.3.6 The Preamble as Amended by the 42<sup>nd</sup> Amendment:**

On 18<sup>th</sup> December the 42<sup>nd</sup> Amendment came into force in the Preamble to the constitution:

- (a) For the words, ‘SOVERIEGN DEMOCRATIC REPUBLIC’, the words, ‘SOVEREIGN SOCIALIST SECULAR REPUBLIC’ shall be substituted ; and

- (b) For the words, “Unity of the Nation”, the words unity and integrity of the “Nation” shall be substituted. So the preamble as amended reads as follows:

“We the PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST DEMOCRATIC SECULAR 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 opportunity; and promote among them all; FRATERNITY assuming the dignity of the individual and unity and integrity of the Nation.

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

The amendment of 44<sup>th</sup> and other amendment did not change in the preamble and hence India continues to remain SOVERIGN SOCIALIST DEMOCRATIC SECULAR REPUBLIC.

### **Sovereignty:**

In the year 1947, the Independence Act stated India a Dominion with the Queen of England as the Head of the State. This is designed by the people of India by their representatives assembled in the sovereign Constituent Assembly to regulate the prospect of the country politically. Thus, the words “WE’ the people of India, Adopt, Enact and Give ourselves This Constitution” hence, it states the eventual sovereignty of the people.

### **Republican Democracy:**

Democratic republic means that sovereignty remains with the people they show their sovereignty through the parliament at the centre and by the legislature in the states and the representatives are elected on the grounds of the adult franchise, the executive is accountable to it. The fundamental rights are the most important rights in the democratic structure. India is regarded as Republic hence, there is no question of hereditary selection in the governmental process.

### **Political Justice:**

Political justice means that all the citizens must have the equal political right, right to vote, is the significant right of the political rights, though there are dissimilarities for this right the makers gave the opportunity that every citizen have the right to participate in the political system of the country. Hence, they recommended for the universal adult franchise without any qualification adopted. Every five years the representatives must be elected by the adult people, therefore constitution guarantees the political justice.

### **Economic Justice:**

In the preamble another important right given is the Economic Justice, for secure this right constitution provided the following principles in the Directive Principles of State Policy in Chapter IV to be followed by the state:

- (i) All the citizens have the right to an adequate means of livelihood;
- (ii) The ownership and control of the material resources of the community are to be so distributed as best to sub serve the common good;
- (iii) The operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment;

- (iv) There is to be equal pay for equal work;
- (v) The health and strength of the workers is not abused and citizens are not forced by economic necessity to enter avocations (Manual Workers) unsuited to their age and strength;
- (vi) Children are given opportunities to develop in a healthy manner and in condition of freedom and dignity, and childhood and youth are protected against exploitation and against material and moral deprivation.

**Social Justice:**

The constitution of India, guarantees the social justice as well. This means that, the democracy must be protracted to the social provinces, it must have the concept of equality, liberty, and fraternity. It also abolishes untouchability and assures the cultural safeguard to minorities.

**Liberty:**

In the system of democracy the liberty is one of the spirit, without this right the democracy cannot be thought of, this is preserved in the preamble, it assures liberty of thought, expression, faith, belief and worship. These rights are assured in the State by Part III of the constitution, subject of course to the implementation of Directive Principles for the common good and fundamental duties.

**Equality:**

In the preamble it assured the equality of opportunity and status. It safeguards the same in the constitution by the following provisions:

- (i) The state shall not deny to any person equality before the laws or the equal protection of the laws within the territory of India.
- (ii) The state shall not discriminate on the grounds of religion, race, sex, place of birth or any of them.
- (iii) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen on the grounds of the religion, sex, race, caste, descent, place of birth, residence or any of them, be ineligible, or discriminated against in respect of any employment or office under the state.
- (iv) Untouchability is abolished and its practice in any form is forbidden.

**Fraternity:**

This protects the integrity and unity of the nation, to safe guard this the constitution has provided definite fundamental duties to its citizens, they are:

- (i) 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;
- (ii) To uphold and protect the sovereignty, unity and integrity of India;
- (iii) To defend the country and render national service when called upon to do so.

**Dignity of Individual:**

The dignity of each individual cannot be observed unless the fraternity is realized, hence, the Preamble states that the State will protect the dignity of each individual, for this reason many of Directive Principles have been comprised in Part IV of the constitution, and they are:

- (i) The state shall direct its policy towards securing that the citizens, men and women, equally have the right to an adequate means to livelihood;
- (ii) The state shall make provision for securing just and humane conditions of work;
- (iii) The state shall endeavour to secure to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

### **Socialism:**

After, the 42<sup>nd</sup> constitutional amendment to the constitution the word socialist was inserted in the Preamble. Which means, nationalization of all means of making and the eradication of private property.

### **Secularism:**

With the 42<sup>nd</sup> amendment to the constitution the word secularism was inserted in the Preamble with the Act of 1976, the main ideas of this as follows:

- (i) The state does not establish, recognize or endow any religion;
- (ii) It extends full religious freedom to all citizens, the citizens are allowed to follow any religion they like, propagate their religion, change their religion, build and maintain places of worship and other institutions and give religious instructions to their children;
- (iii) The State treats all its citizens as equal before law irrespective of their religious faith, it does not discriminate any citizen in matters of public employment on the grounds of religion, the State does not take the responsibility for the religious or spiritual welfare of its citizens.

## **2.4 Promotion of International Peace:**

In the ideal of fraternity itself it is embodied in the preamble of the constitution, it is not only for the Indian territories but also has a broader meaning of universal peace and brotherhood. The article 51, of the Constitution states about it as:

- (i) Promote international peace and security;
- (ii) Maintain just and honourable relations between nations;
- (iii) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (iv) Encourage settlements of international disputes by arbitration.

## **2.5 Conclusions:**

The basic foundations for the constitution are, the government of India Acts, of 1909, 1919 and 1935, of all these the act of 1935 is regarded as the most important, they have also taken from the British Parliament system as well. They have also borrowed the principle from other nations like USA, Canada, Italy, German, Irish and South Africa. For making this constitution the discussions during the Constituent Assembly proved to be very helpful.

Every constitution has the Preamble, it is the introductory statement in the writings or speeches. There are 8 objectives in the Preamble of the constitution. By the amendment to the

42<sup>nd</sup> constitution they have inserted certain words in 1976 by an act and it came into force on 18<sup>th</sup> December 1976.

### **2.6 Model Questions:**

1. Discuss about the basic foundations for the making of Indian Constitution?
2. Write about the Philosophy, Preamble and main ideals of Preamble?

### **2.7 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD.Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
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5. Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 2013.

**Dr. C. Vinod Kumar**

**Lesson Writer**



### **LESSON -3**

## **SALIENT FEATURES OF THE INDIAN CONSTITUTION**

### **3.0 Objectives:**

1. Students would be able to understand the salient features of the Indian constitution.
2. Students would be able to know about the written constitution which is rigid and flexible.

### **Structure:**

3.0 Objectives

3.1 Introduction

3.2 Written Constitution

3.3 Rigid and Flexible

3.4 Borrowed from Dissimilar Sources

3.5 Comprehensive Administrative Requirements Included

3.6 Enclosure of Components of the Constitution

3.7 Sovereign Democratic Republic

3.8 Secular State

3.9 Socialist State

3.10 Fundamental Rights and Remedies from the Constitution

3.11 Fundamental Duties

3.12 Directive Principles of the State Policy

3.13 A Federal Polity

3.14 Parliamentary System of Government

3.15 Adult Franchise

3.16 Reservation for Backward Classes in Legislature and Services

3.17 Supreme Court and Judicial Review

3.18 Emergency Provision

3.19 Provision of Independent Agencies

3.20 Conclusion

3.21 Model Questions

### 3.22 References

#### **3.1 Introduction:**

The constituent assembly framed the constitution and the demand for this was came for the first time in India in 1934. But again this demand came forward by the Indian National Congress, with resolution passed in Faizpur session on 28<sup>th</sup> December 1936. It submitted its draft constitution on 21<sup>st</sup> February 1948, and it was finally accepted on 26<sup>th</sup> November 1949, but it came into existence on 26<sup>th</sup> January 1950. The constitution of India is very virtuous document and it can be considered as the fundamental law of the country, hence, it will have an important position in the structure of the political system in the country. The some of the important salient features of the constitution are as follows:

#### **3.2 Written Constitution:**

The Constitution of India consists of 395 Articles and 8 schedules in the starting, later they are extended to 12 schedules and the constitution is written. When the Constituent Assembly was formed in 1946 to prepare the Constitution of India, the Constituent Assembly was formed by the representatives from different provinces which were mainly on the communal grounds. They met in New Delhi, in December 1946, and they took almost three years to prepare this Constitution, which was mainly based on their discussions, it was accepted on 26<sup>th</sup> November 1949, but it came into force on 26<sup>th</sup> January 1950, and from then India became Republic.

#### **3.3 Rigid and Flexible:**

The constitution of India is in fact rigid and flexible, which means that, it is rigid because most of its parts cannot be altered or mended by making an ordinary laws, and to amend they have to follow either of the three methods which are present in the Constitution. Only some of the facts can be amend by the use of ordinary law making process in the Parliament. Whereas some of the provision can be amended in the form of Bill and it has to be passed in both the Houses of Parliament by a majority of the total membership of the House and by the majority of not less than two-thirds of the members present and voting; then the bill is sent to the President for his approval. For example, the Bill of Telangana state formation, it passed in both the houses before the formation of Telangana as separate state. It is also true that there are some other provisions can be amended by the ratification of the legislature of the States by one-half, then it can be sent to the President for his approval.

#### **3.4 Borrowed from Dissimilar Sources:**

An important and distinguished aspect of the Indian Constitution is that it has borrowed the different principle from different constitutions of the country, they took the best available and those principles which proved to be successful in those countries. For instance, they took the system of Britain's parliament and put same sort of system in our Constitution. The concept of independent judiciary from the USA constitution, from Canada the Federal aspects, Directive Principles from Ireland, from South African Constitution, election of Raya Sabha members and amendments to the constitution and concurrent list in our Constitution is from the Australian Constitution. The most important Act of 1935, Government of India act has influenced the Indian Constitution most, and most significant feature of our constitution is that the makers of the Constitution has given preference to those principles which are found to be successful and they did not considered those which are founded faulty.

### **3.5 Comprehensive Administrative Requirements Included:**

The Constitution of India is very big document and it is due to the fact that the constitution drawn for the Government of India Act, 1935, which is very bulky in nature hence, our Constitution in reality, is the replica of the Act of 1935, Government India Act. It was observed by the framers of the Constitution of India, primarily Dr. Ambedkar that, with regard to the administration form, he found that there is no necessity to change it, but he observed the change is inevitable to the constitution. In it a detailed administrative provisions included in it. In the Constitution of India we can see that there is comprehensive provisions about the organs of Judiciary, the Services, the Public Service Commission, Election Commission and the separation of powers between the Centre and the States etc.

### **3.6 Enclosure of Components of the Constitution:**

In the federal States the Constitution is related to the federal government only and the other units of the federation will have to draw separate Constitution of their own. This sort of practice can be observed in the Constitutions of USSR, USA, Canada, and other states of federative forms. But in the case of Indian Constitution, the Constitution of India provided to both the Centre and the States of the Union of India.

### **3.7 Sovereign Democratic Republic:**

In the Constitution of India, it is declared that India is Sovereign Democratic Republic, the makers of the Constitution has given this position, in the Indian Independent Act of 1947, it was written as India a dominion of queen of England as the State Head and Governor General as the representative of the Queen to the State. While preparing the Constitution of India they realized it and they wanted to give full powers and dignity to the nation, hence, in the Preamble of the Constitution they declared India as, Sovereign Democratic Republic. It gives the meaning that India does not owe loyalty to any foreign powers but in fact it is autonomous in its all dealings with other foreign countries and have the similar status in the world community along with other autonomous countries. In the constitution of India it is written that India has the Democracy which means the sovereignty of India lies with the people of India and they are ruled by themselves by the elected representatives by themselves by the help of adult franchise and the constitution also give the citizens the fundamental rights as well.

In the democratic system we cannot see the presence of hereditary system even the President of India is elected and the monarchy system which is present before the Independence totally eradicated. Even though, India is Sovereign Republic but it remains with the Commonwealth of Nations with the British monarch as its head, but the status of Indian republic will not be compromised. The Commonwealth Nations are those Nations, free and Independent nations are associated, and British Monarch is just symbolic head of the association.

### **3.8 Secular State:**

India is a Secular State which means that, it do not consider, establish or endow any church or religious institution. This word secular was inserted in the Preamble of the Constitution to the 42<sup>nd</sup> amendment in 1976. It will not consider any of the teaching of the religion while discharging its duties. The laws of the nation are mainly based on the secular or worldly grounds and are for the welfare of the people. It will never promote any sort of religious or spiritual welfare of the people. The Constitution safeguards the freedom of the faith,

conscience and worship. It will never show the discrimination in the employment on the grounds of the religion.

### **3.9 Socialist State:**

The word Socialist was inserted in the Preamble of the Constitution to the 42<sup>nd</sup> amendment in 1976. Which means that India is a socialist country. After, the 42<sup>nd</sup> constitutional amendment to the constitution the word socialist was inserted in the Preamble. Which means nationalization of all means of making and the eradication of private property. The Former Prime Minister Mrs. Indira Gandhi stated it as, “We have always said that we have our own brand of socialism. We will nationalize the sectors where we feel the necessity. Just, nationalization is not our type of socialism”.

### **3.10 Fundamental Rights and Remedies from the Constitution:**

The fundamental rights were borrowed from the constitution of USA, hence, the constitution of India consists of a complete Bill of rights, which means, the right to equality, right to religion, right against exploitation, right to freedom and right of culture has been assured in the Constitution of India. These right can be in force in the courts of India, the constitution give the powers to the Supreme and High Courts to enforce the rights. There are rights of remedies, they are assured under the Article 32 of the Indian Constitution, and they are in the form of writs, such as, Habeas Corpus, Mandamus, Prohibition and Certiorari etc.

### **3.11 Fundamental Duties:**

These were provided by the chapter IV A on fundamental duties by 42<sup>nd</sup> constitutional amendment to the constitution. There are ten fundamental duties they are provided by the Article 51 A of the constitution to the citizens. These consists of, to respect and abide by the laws of the constitution, to uphold the sovereignty of the country, to give respect to the democratic organizations which are protected under the constitution, to reject the violence and communalism. It is important to note that they cannot be enforceable in the courts.

### **3.12 Directive Principles of the State Policy:**

The most important aspect of the Constitution is that, the chapter IV contains the Directive Principles of the State policy. They mainly speaks about the social and economic justice, which means sufficient means of livelihood to all, equal pay for equal work, safeguard of adult and child labour, distribution of wealth for the common good, free and obligatory primary education etc., are the frameworks for the principles of the State policy. These principles are not enforceable in the courts.

### **3.13 A Federal Polity:**

India declares itself as the Union of the States according to the Article 1 of the Indian Constitution, all these states have distinctive executive, judicial and legislature, the powers have been divided and the Union Government and State Governments will have powers which is written in the constitution.

### **3.14 Parliamentary System of Government:**

The Government of India is a Parliamentary system, and it is borrowed from the British Constitution. The executives to the Centre and the States are elected by the people on the grounds of the adult franchise. The President of India is elected on the basis of indirect

system though the President is considered as the Head of the State but in fact the Prime Minister is the head of the State, he is accountable in both the Houses, in the same way the state government also has the similar system like parliament.

### **3.15 Adult Franchise:**

When the constitution was making then the makers of the constitution had provided with the right to vote to every adult citizen irrespective of his education, property, the one who attains the age of 21 will get the right to vote but recently the age limit reduced and now after the completion of 18 years the person will get the right to vote.

### **3.16 Reservation for Backward Classes in Legislature and Services:**

The Indian constitution has provided reservations for the backward classes like Scheduled Caste and Scheduled Tribe in the Parliament lower house, by the 62<sup>nd</sup> amendment 1989, will continue till 2000. At the same time they are given reservations in the public services as well.

### **3.17 Supreme Court and Judicial Review:**

Supreme Court plays an important role in the democracy it has original and appellate jurisdictions, it is given the power to review and it can state any legislative enact as unconstitutional if it thinks it is against the constitution.

### **3.18 Emergency Provision:**

The constitution of India provided with urgent needs to meet by this provision, the emergency can be classified into three kinds, General emergency, Constitutional emergency and Financial emergency.

### **3.19 Provision of Independent Agencies:**

These provision which includes the agencies such as, Election Commission, Public Service Commission Controller and Audit General and Finance Commission, these are independent agencies.

### **3.20 Conclusion:**

The Constitution of India consists of 395 Articles and 8 schedules in the starting but later they extended to 12 schedules and the constitution is written. When the Constituent Assembly was formed in 1946 to prepare the Constitution of India, the Constituent Assembly was formed by the representatives from different provinces which were mainly on the communal grounds. The constitution of India is in fact rigid and flexible, which means that, it is rigid because most of its parts cannot be altered or mended by making an ordinary laws.

An important and distinguished aspect of the Indian Constitution is that it has borrowed the different principle from different constitutions of the country, they took the best available and those principles which proved to be successful in those countries. The Constitution of India is very big document and it is due to the fact that the constitution was drawn for the Government of India Act, 1935, which is very bulky in nature hence, our Constitution in reality it is the replica of the Act of 1935, Government India Act. There are provisions to the constitution which guarantees the rights of the citizens in India.

### **3.21 Model Questions:**

1. Describe about the salient features of the Indian Constitution?
2. Write about the following.  
A. Written Constitution B. Rigid and Flexible Constitution C. Sovereign Democratic Republic.

### **3.22 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD.Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
4. JC. Johari, The Constitution of India, A Politico-Legal Study, Sterling Publishers Private Ltd., New Delhi, 2005.
5. Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 2013.

**Dr. C. Vinod Kumar**  
**Lesson Writer**

**Lesson -4****FUNDAMENTAL RIGHTS OF THE INDIAN CONSTITUTION****4.0 Objectives:**

3. Students would be able to understand the Fundamental Rights of the Indian constitution.
4. Students would be able to know about the critique of the Fundamental Rights.

**Structure:**

## 4.0 Objectives

## 4.1 Introduction

## 4.2 Fundamental Rights

## 4.2.1. The Right to Equality

## 4.2.2. Right to Freedom

## 4.2.3. Right against Exploitation

## 4.2.4. Right to Freedom of Religion

## 4.2.5. Cultural and Educational Rights

## 4.2.6. Right to Constitutional Remedies

## 4.3 Critiques of the Fundamental Right

## 4.4 Limitations on Fundamental Rights

## 4.5 Conclusion

## 4.6 Model Questions

## 4.7 References

**4.1 Introduction:**

The philosophy of democracy is regarded as the rights of the individual and these fundamental rights provides every individual to lead a happy and better life in the society. The meaning of the Rights given by Laski as, “are those conditions of the social life without which no man can seek to himself at his best”. These rights are considered as the spirit of the constitution, these rights are assured by the Indian Government to its citizens, and these rights are actually borrowed from the Constitution of America. These fundamental rights in fact protects the liberty of individuals and Directive Principles of State Policy to assure the justice in the areas of politics, social and economic justice to all the citizens. Dr. Ambedkar suggested the Fundamental Rights in two lines. He said that the first, every citizen must be in a place to assertion these rights and secondly, they must be obligatory on every authority...upon every authority which consists of power to make laws or the power to have freedom of choice conferred in it.

## **4.2 Fundamental Rights:**

Fundamental Rights are incorporated in part III (Article 12 to 35) of our constitution. The Fundamental Rights have been branded in seven groups, a complete list of fundamental rights are provided in the Indian Constitution. These rights are as Follows:

1. Right to Equality (Articles 14-18)
2. Right to freedom (Articles 19-22)
3. Right against Exploitation (Articles 23-24)
4. Right to Freedom of Religion (Articles 25-28)
5. Cultural and Educational Right (Articles 29-30)
6. Right to Property (Article 31)
7. Right to Constitutional Remedies (Article 32)

### **4.2.1. The Right to Equality:**

This is the first Fundamental Right which is declared in the Indian Constitution, this is present in the Articles:

1. Article 14 says that, the State shall not deny to any person equality before law or equal protection of laws territory within.
2. Article 15 says that, any discrimination on the grounds of religion, race, sex, cast or place of birth; nor can any person on any of these grounds be held able or disable for access to shops, hotels, public restaurants and places of public entertainment or the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly by the State funds or dedicated to the use of general public.
3. Article 16 says that, the equality of opportunity in matters of public employment. It is additionally delivered that, in respect of public employment, the State can make no discrimination on the basis of race, sex, religion, descent, place of birth or residence.
4. Article 17 says that, the abolition of the untouchability and forbids its practice in any form.
5. Article 18 says that, the State shall confer no title on a person save that of military or academic distinction.

As it was mentioned the fundamental rights are non-absolute by virtue of having supplementary qualifying provisions. Article 15(3) and (4), says that there can be no discrimination between the persons on many grounds, and make provisions for the welfare of the women and the children, or for the advancement of socially and educationally backward classes of the society. At the same time, the Article 16 guides for the non-discrimination related to the employment and also guarantees the weaker section of the society in educational institutions. Similarly the Article 18, abolition of the titles save those military and academic distinctions and no citizen receive a title from any foreign State without the permission of the President.

The constitutional dispute arose in the Champakam Dorairajan case. The Supreme Court struck down the orders of the Madras Government wherein reservation of seats in medical



colleges was made in such a way that the backward classes could have a position of weight age at the time of seeking admission. The Court did not agree with the argument of the Government that it was done to the effect to Article 46 of the constitution controlled in the Part IV of the Directive Principles of State policy, hence the first Constitution amendment Act 1951 was made that has given powers the State to prepare special arrangements for the development of socially and educationally backward classes of the society. Clause 4 was inserted to Article 15, and it says “nothing in this article or in clause (2) of the Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled tribes”. By this judgment the law of protective discrimination in India.

It could be requested the meaning of the backward classes and there is no proper definition for this term in the constitution and it left to the state to give the proper meaning “Caste cannot be made the basis in this respect no matter it constitutes an important condition; nor poverty can be taken as the basis nor can the factor of inadequate representation in the public services be given recommendation for this purpose. In case if Court is not satisfied with the explanation of the State, it can strike down the explanation on the grounds that it contravenes the spirit of the Article 13 clause 2 of the Constitution. It is also required to have the provision for the reservation for the backward classes must not beyond the limit and the persons, who deserve from other sections are put to needless drawback. To check such reservations for example, as the court held, while the reservation of the seats in the medical colleges of the State of Kerala, for the Latin Christians, Muslims and Izhavas are well within the reasonable limits, it could not cover within its folds the case of the wards of the medical staff serving therein. Along with this the special provision which are created by the State must be governed by the term impartiality.

Another feature that violates the Principle of ‘ideal equality’ is the incorporation of the qualification relating to long residence or domicile in matters of the public employments. The States reorganization Act of 1956 vide section 16 was required consequences of the same, hence, clause 3 was added to it. It was done particularly for the benefit of the people of Telangana, of the new State of Andhra Pradesh they had some benefits which were given to them by the Nizam by firman in 1919, the Mulki rules the residential qualifications and it was the violation of the right to equality as enshrined in the original constitution. It was undertaken as a make-shift arrangement, since the Parliament enacted its public employment act of 1957 that was in force for five years. The mulki rule was extended again till 1974, and Supreme Court struck down the mulki rules. And later these rules were liquidated in phase manner.

#### **4.2.2. Right to Freedom:**

The liberty is regarded as the most important right the Articles 19 to 22 provides such rights in the Constitution which confirms the basic rights. These rights are widely known as the “seven Freedoms”, in fact there are seven freedoms in the Article 19(1), but with the 44<sup>th</sup> amendment to the constitution in 1978 Act, they omitted the right to property and six freedoms remaining. The second place has been given to this rights.

1. The most significant provision is Article 19 (1), that has been featured as the most important fundamental right and it guarantees six kinds of freedoms such as, Speech and expression, peaceful assembly without arms, forming associations, or unions, free movement, throughout territory of India, residence and settlement in any part of the territory of India; practice of any profession, occupation, trade or business.

2. Article 20 says about the, personal freedom that provides for protection in respect of conviction for certain offences. It prohibits the promulgation of ex post facto laws, or laws having retrospective effects. It says that, no person shall be convicted of any offence except for the violation of law in force at the time of the commission of the at charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under law in force at the time of the commission of the offences: that no person shall be prosecuted and punished for the same offence more than once and that no person accused of any offence shall be compelled to be a witness against himself.

3. Article 21 says that, no person shall be deprived of his life or personal liberty except according to the procedure established by law.

4. Article 22 says about, protection against arbitrary arrest and detention. The man in the custody must be informed, as soon as possible, about the grounds for such arrest. And person shall not be denied to engage or consult a legal practitioner of his choice for his defence. The person must be produced to the magistrate within the 24 hours of his arrest while he is in the police custody, excluding the time required for the journey from the place of his arrest to the court of the magistrate, and that no such person shall be kept in custody beyond the said period without the authority of the magistrate.

The leading case, the Supreme Court also ruled that Article 19 and 21, are not mutually excessive because the passport Authority cannot seize the passport of a person in an arbitrary way. The right to travel abroad falls under the Article 21, the expression personal liberty under Article 21 ought not to be read in a narrow and restricted sense, so as to exclude the attributes of personal liberty which are specifically dealt within article 19. “The attempt of the court should be to expand the reach and ambit of the Fundamental Right rather than attenuate their meaning and content by a process of judicial construction”. Justice Bhagwati observed: “It must be right and just and fair and not arbitrary, fanciful, or oppressive otherwise, it would be no procedure at all and the requirements of Article 21 would not be satisfied”.

Chief Justice Patanjali Sastri in the leading case of A.K Gopalan vs the State of Madras in 1951, correctly hinted at the reasons behind this arrangements in these words “this sinister-looking feature, so strangely put of place in democratic constitution, which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the fundamental premises of the preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might endanger the national welfare of the infant public”. It can be said that the arrangement of preventive detention “is a crisis provision, but it is not confined to a crisis”.

#### **4.2.3. Right against Exploitation:**

In the constitution of the Article 23 and 24 deals with the Right against the Exploitation.

1. Article 23 says about the, prohibition of traffic in human beings and forced labour like beggar.

2. Article 24 says about the, prohibition of the employment of children in hazardous jobs as in some factories or mines. Here again, we find a qualifying clause inserted to Article 23 which says that, nothing shall prevent the State from imposing compulsory service for a public purpose, and in imposing such a service, the State shall not make any discrimination on various grounds like those of religion, race, caste, class and the like. Traffic in human

being and other forms of forced labour includes of children below 14 years of age in hazardous jobs is prohibited.

#### **4.2.4. Right to Freedom of Religion:**

In the Constitution the Article 25 to 28, deals with secular states, it is considered as the state of impartiality and neutrality against all the religion because our State is Secular State.

1 Article 25 says, to confer any religion.

2. Article 26 says about, the freedom to every religious denomination or to any section thereof to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.

3. Article 27 says that no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

4. Article 28 says, it prohibits compulsory attendance at religious instructions imparted in an institution wholly or partly maintained by the State.

#### **4.2.5. Cultural and Educational Rights:**

The Articles 29 to 31, of the constitution gives that a minority have the right to preserve his own language, script, literature and culture. These rights consists of :

1. Article 29 says that, any section of the people of India having its own language, script or culture shall have a right to conserve the same. No citizen shall be denied admission to any educational institutions maintained by the State or receiving aid out of such State funds on the grounds of religion, race, cast, language or any of them.

2. Article 30 says that, all minorities, whether based on religion or language have the right to establish and administer educational institutions of their choice. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the grounds that it is under the management of minority, whether based on religion or language.

The important thing to be noted at this point is that the right to conserve a language, as the Supreme Court in the case of Jagdev Singh vs Pratap Singh in 1965 has ruled, “Includes the right to agitate for the protection of that language, including political agitation. It is an absolute right and cannot be subjected to a reasonable restriction like the rights enumerated in Article 19(1)”.

#### **4.2.6. Right to Constitutional Remedies:**

The right to constitutional remedies consists in the Article 32, which gives the fundamental rights; mere enumeration of rights even in the most elaborated and accurately –worded forms is not enough; what is needed, in addition to all this, is the provision for their enforcement by the courts. Hence, Articles 32 and 226 authorizes the Supreme Court and the High Courts respectively issue orders, directions and prerogatives writs for the enforcement of these rights. These writs are of five types.

A. The writ of 'Habeas Corpus' provides a remedy against wrongful detention of a person. The Court directs the detaining authority to present the detained person before it and justify the cause of his detention there.

B. The writ of 'Mandamus', is an order given by the Court to some inferior authority to perform an act which falls within its jurisdiction.

C. The writ of 'Prohibition', is issued by the Court to prevent an inferior authority from doing that falls outside of its jurisdiction.

D. The writ of 'Quo Warranto', is issued by the Court with view to restrain a person from acting in a public office to which he is not entitled.

E. The writ of 'Certiorari', is issued by the Court to some inferior authority to transfer the matter to it or to some other authority for its proper consideration.

### **4.3 Critiques of the Fundamental Right:**

In the Constitution of Indian the Fundamental Rights are criticized for the following reasons:

The rights which are provided by this Article are very significant but at the same time they proved to be insignificant as well. In this, the right which are regarded as the positive are right to work, right to education, medical and health care, and right to have own house would not be seen in the constitution. But in other socialist countries these rights are assured for their citizens. But the makers made some arrangement with the amendments by which are consisted in the Directive principles of the State Policy.

In the case of the right to equality also the powers are given entirely to the citizens, the constitution gives the states to make some provisions for the improvement of the socially and educationally backward citizens, and keeping this they have provided with reservations for them in legislation, educational institutions and employment. But in reality it is against the equality idea.

It is also observed that the right to freedom is limited, the critiques say that there are many restrictions to it, in the times of emergencies the constitution have the right to suspend or withdraw these rights. It was stated by Dr. Ambedkar that even in the US constitution no rights have been given absolutely to their citizens.

Even in the case of the Minorities where they have some special rights they also violates the rights of equality. The minorities have the right to start the educational institutions and they can seek the grant from the State, but in case of other religions it is not permitted. When situations of emergency President has the right to claim the emergency and in such conditions the fundamental rights would be suspended.

### **4.4 Limitations on Fundamental Rights:**

The fundamental rights cannot be given absolutely to its citizens as mentioned by the Dr. Ambedkar, it is also observed that there are some people who want to abuse this right. If we see where the rights are entrusted is England, but here also there are no absolute rights to citizens, there are limitation to the rule of law. In India, the central government has the powers to impose the limitations to the fundamental rights by restricting it in the name of security to the states. The amendment to the fundamental rights was before the supreme court of India in three different situations. In 1951, in the case of Shankari Prasad, the first

Constitutional Amendment Act's validity was challenged, the supreme court's constitutional bench stated that parliament can amend fundamental rights under the article 368, this article provides parliament amend fundamental rights.

The court by majority view, declared new article 31(c) as invalid because no law made in furtherance of two of the directive Principles of the constitutions could be declared void on the basis that it inconsistent with the fundamental rights to equality before law, freedom of speech and property. There is a balance between the powers of the parliament and the citizens' rights, the Supreme Court has given a ground for constancy and improvement. During the Janata government time all the rights and freedoms of the Indian people condensed under the barbaric measures were restored.

#### **4.5 Conclusion:**

The philosophy of democracy is regarded as the rights of the individual and these fundamental rights provides every individual to lead a happy and better life in the society. The Fundamental Rights have been branded in seven groups, a complete list of fundamental rights are provided in the Indian Constitution. 1. Right to Equality, present in the Article 14 to 18, 2. Right to Freedom, present in the Article 19 to 22, 3. Right against Exploitation, 23 and 24 of the article, 4. Right to Freedom of Religion, 25 to 28 of the article, 5. Cultural and Educational Right, 29 to 31 of the article, 6. Right to Property, 32, of the article.

In the constitution of Indian the Fundamental Rights are criticized, and they have not given proper reasons for it in the constitution. There are certain limitations to the fundamental rights, the fundamental rights cannot be given absolutely to its citizens as mentioned by the Dr. Ambedkar, and it is also observed that there are some people who want to abuse this right. If we see where the rights are entrusted is England but here also there are no absolute rights to citizens there are limitation to the rule of law.

#### **4.6 Model Questions:**

1. Describe about the Fundamental Rights in the Indian Constitution?
2. Write about the critiques and limitations to the Fundamental rights

#### **4.7 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD. Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**

## **LESSON -5**

# **DIRECTIVE PRINCIPLES OF THE STATE POLICY**

### **5.0 Objectives:**

5. Students would be able to understand the Directive Principles meaning and purpose.
6. Students would be able to know about the classification of the Directive principles and its importance.

### **Structure:**

5.0 Objectives

5.1 Introduction

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### **5.1 Introduction:**

The Directive principles of the State policy can be regarded as the one of the essence of the constitution, even Dr. Ambedkar stated about it as the innovative aspect of the Constitution, in his own words he stated it as, “Novel Feature” of the Constitution. These principles are in the way of guiding principle or recommendations to the state, they considered the main objectives and philosophies of the union and state governments when they were making the constitution.

## **5.2 Meaning and Purpose of the Directive Principle of State Policy:**

In the constitution of India, under the Article 37 talks about the Directive Principles of State and they are present in the Part IV of the Indian Constitution. Under this article it is bounded that the state has to observe these guidelines while they are making laws. These Directive Principles are reaffirmations of the principles mentioned in the Preamble of the Constitution. They are proposed to assist, as an organization to governments of the States and the Centre will act to encourage the fraternity and equality and will assure the justice and freedom to its citizens. L M Singhvi, stated about it as, "Directive Principles are the life giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice".

The Articles 36 to 51 of the Part IV of the Indian Constitution deals with the Directive Principles of the State Policy. They in fact gives the spiritual provision to the Fundamental Rights, this was actually carried out from the constitution of the Ireland.

## **5.3 Purpose:**

The important purpose of the Directive Principles of Sate Policy is to give guarantee to the social and economic justice and equality of opportunity and status to the people. In the Constitution of India the Article 38, talks about this as, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all institutions of the national life. The State shall in particular minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also among groups of people residing in different areas or engaged in different vocations".

If we study this principle we can understand that there is distinction between the Directive of Principles and the Fundamental Rights. The difference between Directive of Principle and Fundamental Rights are stated by Gledhill, "Fundamental Rights are injunctions to prohibit the government from doing certain things, and the Directive Principles are affirmative instructions to the government to do certain things". It can also be observed that the Fundamental rights have the legal approvals and these can be enforceable in the courts whereas the Directive Principles have the moral approvals and they cannot be compulsory by the courts.

## **5.4 Categorization of Directive Principles:**

The Directive Principles have been categorized by some of the writers such as, M P Sharma into three groups they are Socialistic, Gandhian and Liberal Intellectualistic.

### **5.4.1 Directive Principles for Welfare of State-Socialist Principles:**

1. According to the Article 38, it states that the main important function of the state shall protect the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice-social, economic and political- shall inform all the institutions of national life. With this end in view, it has been laid down.

2. The most significant part of this chapter is present in the Article 39, it states that, 'the State shall, in particular, direct its policy towards securing:

(a) All the citizens must have the equal means of the livelihood;

- (b) Distribution of wealth so as to sub serve the common good;
  - (c) Operation of the economic system not resulting in the concentration of wealth and means of production to the common detriment;
  - (d) Equal pay for the equal work for both men and women;
  - (e) Protection of adult and child labour;
  - (f) Opportunities to children to develop in a healthy manner and in conditions of freedom and dignity and the protection of childhood and youth against exploitation and against moral and material abandonment;
  - (g) Provision for work and education for all people, relief in the case of unemployment, old age, sickness and disablement and in other cases of underserved want;
3. Article 39 says that, directing policy towards steps to equitable distribution of material resources of the community and preventing concentration of wealth in fewer hands. Article 39 (A) provide work, education and assistance in case of unemployment, old age, sickness and disablement;
  4. Article 41 says that, right to work, right to public insurance and social security. And Article 41(i) obtaining all the workers sensible wages and decent standard of life, sensible leisure and cultural opportunity;
  5. Article 42 says that, right to human conditions of work and maternity relief.
  6. Article 43 says that, right to a living wage and decent standard of life, developing cottage industries (From Basu's classification-shaping the policy of the State). Article 43 (A), Workers right to participate in industrial management. Article 43 (j), encourage with special care for the educational and economic interest of backwards section of the peoples such as scheduled caste and scheduled tribe;
  7. Article 44 says that, securing uniform civil code throughout the country (From Basu's classification-shaping the policy of the State).
  8. Article 46 says that, protecting weaker and smaller sections from social injustice and protecting their socio-economic interests.
  9. Article 47 says that, prohibiting consumption of liquor and intoxicating goods except for medicinal purposes.
  10. Article 48 says that, preventing slaughter of cows and milch cattle.
  11. Article 49 says that, protecting and maintaining places of historic interest
  12. Article 50 says that, separating executives from judiciary.
  13. Article 51 says that, promoting international peace and amity.

### **Decisions of Courts- Directive Principles of State Policy:**

The decision of the Supreme Court in the Golaknath Case became a poignant source of confrontation between executive and judiciary. The most important is 25<sup>th</sup> constitution amendment act to property, it added clause (C) to Article 31 saying that, any law passed by



the legislature affecting rights to property could not be questionable in a court of law in case the legislature attached a certificate to it by adding that the legislative measure was enacted to give effect to the Directive Principles of state policy. In very clear terms, it implied the supremacy of Directive Principles over fundamental Rights. Hence it was seen that the 25<sup>th</sup> amendment bill “will change the entire concept of checks and balances on which the constitution is based”.

Hence, the issue of the primacy of the Directive Principles being non-justiciable over the Fundamental Rights being fully enforceable by the courts under Articles 32 and 226 became a serious subject of judicial debate in the *Keshavan and Bharati vs The State of Kerala* case or the *Fundamental Right* case of 1973. While speaking on behalf of the petitioner, N.A Palkhivala said: “When one comes to Article 31 (C) the necessity of deciding the limits of the amending powers become unmistakable. Thus Article 31 (C) violates seven essential freedoms of the constitution and makes the constitution suffer a loss of identity”. The Supreme Court in accordance with its line of judicial thought as laid down in the *Champakam Dorairajan Case* of 1951, declared clause (C) added to the Article 31 (vide 25<sup>th</sup> constitution amendment Act) as ultra vires of the constitution. It reiterated its stand in the *Minerva Mills* case of 1980. The present position, therefore, so far as the attitude of judiciary is concerned, remains the same in treating Directive Principles as subsidiary to the Fundamental Rights.

#### **5.4.2 Gandhian Principles:**

These principle which are based on the thoughts of Gandhi:

(a) State must take necessary steps to systematize village panchayats and provide them with powers so that they can perform as the units of self-government; (Art 40), (c) State must encourage the cottage industries of individual or in groups in rural areas; (Art 43) (d) State must deliver and promote the agriculture and animal husbandry, and prevent the slaughtering of cows and other mulching animals; (Art 48) (e) State must improve the public health and prohibit the intoxicating drugs and drinks; (Art 47). To take up steps to separate judiciary from executive; to protect and preserve and maintain places of national, cultural and historical importance; To secure for all citizens a uniform civil code throughout the country; To promote international peace and security, to maintain just and honourable relations among the nations; To foster respect for international law and treaty obligations, and to encourage settlements of international disputes by arbitration.

#### **5.4.3 Liberal Principles – Promotion of International Peace:**

(a) Article 44 directs the State to bring uniform civil code throughout the country. (b) Article 45 prescribes that the state shall provide free and compulsory education for all the children below 14 years of age. The Constitutional 86<sup>th</sup> Amendment Act 2002 stated “ The State shall endeavour to provide early childhood care and education for all children until they complete the age of six year”. (c) Article 50 stipulates that the State shall take measures to separate the judiciary from the executive. (d) The state commands upon to make efforts according to the Article 51 of the Constitution: (a) to protect the peace of international and its security (b) to organise the better relations with other nations (c) to nurture respect for the international law and treaty responsibilities; and (d) to inspire settlements of international disputes by arbitration and with other means of peace.

### **5.5 Directive Principles- Culture and Education:**

(a) The state shall attempt to provide early childhood care and education for all the children until they complete the age of 14 years (Art 45) (b) The state shall safeguard all the monuments or place or the object or historic interest and must not disfigure it. (Art 49).

The other important directive principles are, to separate the judiciary from the executive (Art 50); to obtain uniform civil code for the whole country (Art 44) and to maintain the agriculture and animal husbandry on the lines of scientific nature.

### **5.6 Changes to 42<sup>nd</sup> Amendment Act 1976:**

The new changes have been included in the Part IV of the Constitution by 42<sup>nd</sup> amendment, they have inserted new Directive Principles to highlight social welfare of the constitution so that economic justice can be obtained. These are the changes they made to the constitution:

(a) In the Article 39 of the clause of (f) has been inserted and it is: “That the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”.

(b) The Article 39(A) has included so that it orders the state to give “free legal aid” to all the poor and to take necessary steps to assure equal justice for all, which is present in the Preamble.

(c) The Article 43 has been inserted to assure the involvement of the workers in the management of undertakings, and other industrial establishments. (d) Article 48 (A), inserted to through the state to safeguard and develop the environment, forest and wild life.

### **5.7 Sanctions of Directive Principles:**

These principles are not enforceable by the courts, and if the government did not satisfy the objectives then no court shall have the right to ask the government, even though they are considered as the Fundamental in the governance of the country and it shall be the duty of the State to apply principles while making the law (Art 37). Article 355 of the constitution says, “It shall be the duty of the Union to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution”. The most significant sanction behind Directive Principles is Political, in the Constituent Assembly, Dr. Ambedkar observed, “if any Government ignores them, they will certainly have to answer for them before the electorate at the election time”.

### **5.8 Importance of Directive Principles:**

#### **A. Conscience of Constitution:**

The Directive Principles establish the “conscience” of the Constitution and it was stated by the Justice Hegde and Justice Mukherji. The significance of it was to give definite instructions to the State to apply and implement the social and economic aspects so that there won't be any problems with non-violent social revolutions. With the help of this Principles the requirements of the common people can be fulfilled and the society would improve.

**B. Socialism:**

In the present scenario all the states are very much preferred to have certain welfare schemes and socialism in the whole state. In the olden time the state preferred the police state but in the present situation the state is in favour of the welfare of its people. The state encourages to improve society by implementing schemes of economic, social and cultural aspects to the people. The Directive Principles protect the Constitution by providing the social political principles.

**C. Diminishing the Competitive Economy:**

The main objective of this principle is to diminish the consequences of competitive economy, by which it safeguards the interests of the poor. If the competition permitted freely in the society then the effect would be directly on the poor in the society. Therefore they promote the essence of the cooperation and common understanding in the society. By this the common person can lead a better life, irrespective of his sex, caste, creed birth etc.

**D. Socio-Economic Revolution by Non-Violent Means:**

The most significant objective which can be achieved by this Directive Principles, they promote non-violent socio-economic revolution in the society and in the country. In the present situations people are aware of the facts, and if this problem is not resolved then it would lead to revolution, hence, the exploitation of such things must be abolished. If the social justice is not provided in the state then it leads to the violent struggles in the society.

**E. Public Opinion:**

The significant nature of the Directive Principles is that it is the mirror image of the people's will and it in fact replicates by this principle. More over, every government of the State has to give importance to this Directive Principles, and they have to apply these Principles when they make the Law for the State. These principles are not enforced by the court still they are regarded as the most important one, because people will evaluate the performance of the political parties and their social implementations in the state by using these principles. In the true sense the sanctions behind the Directive Principles is the watchful public estimation.

**F. Declaration of Noble Principles:**

These are the principles which guide the state to provide the socio-economic aspects in the state, but these principles do not have legal force and remedies to it, but they are considered as the important principles in the making of social and economic order of the state. These principles guide the state to provide the socio-economic aspects and they intensify the preamble of the constitution.

**G. Directive Principles - Inspiration to the Courts:**

These principles in fact, the inspiration for the courts and judges. These principles cannot be enforced by the courts but they left the impact that they act as the ideals for the court people while they interpret the laws. They have the sanctity and constitutional force, they are definitely influence the outlook of the judges while interpreting laws of the state.

### 5.9 Conclusion:

The Directive principles of the State policy can be regarded as the one of the essence of the constitution, even Dr. Ambedkar stated about it as the innovative aspect of the Constitution, in his own words he stated it as, “Novel Feature” of the Constitution. L M Singhvi, stated about it as, “Directive Principles are the life giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice”.

The Articles 36 to 51 of the Part IV of the Indian Constitution deals with the Directive Principles of the State Policy. They in fact gives the spiritual provision to the Fundamental Rights, this was actually carried out from the constitution of the Ireland. The important purpose of the Directive Principles of State Policy is to give guarantee to the social and economic justice and equality of opportunity and status to the people. In the Constitution of Indian the Article 38 talks about this.

M P Sharma into three groups they are Socialistic, Gandhian and Liberal Intellectualistic. The most significant part of this chapter is present in the Article 39, it states that, ‘the State shall, in particular, direct its policy towards securing social economic aspects in the society.

### 5.10 Questions:

1. Discuss about the Directive Principles meaning and its Purpose?
2. Write about the Classification of Directive Principles?
3. Write about the importance of Directive Principles and how they uplift the common person in the social and economic aspects of the society?

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**Dr. C. Vinod Kumar**  
**Lesson Writer**

## LESSON -6

# CENTRE STATE RELATIONS

### 6.0 Objectives:

7. Students would be able to understand the relations between the Centre and State.
8. Students would be able to know about the legislative, administrative and financial relation

### Structure:

#### 6.0 Objectives

#### 6.1 Introduction

#### 6.2 Constitutional Distribution of Powers

##### 6.2.1 Legislative Relations

##### 6.2.2 The Government and State List

##### 6.2.3 Bills for the Consideration by President

##### 6.2.4 Control over the Ordinance making powers of the Governor

#### 6.3 Administrative Relations between Centre and State

##### 6.3.1 Direction to the States

##### 6.3.2 Delegation of Union Functions to the States

##### 6.3.3 All India Services

##### 6.3.4 Inter- State Committee

##### 6.3.5 Full Faith and Credit to Public Acts

##### 6.3.6 Inter-State Water Dispute

#### 6.4 Financial Relations

##### 6.4.1 Grant-in Aids

##### 6.4.2 Finance Commission

##### 6.4.3 Audit General of India

#### 6.5 Actual Operation of the Centre –State Relations

#### 6.6 North Eastern Council (NEC)

#### 6.7 Inter- State Council

#### 6.8 Control Boards

#### 6.9 Regional Electricity Boards

## 6.10 Recommendations of Sarkaria Commission on Centre-State Relations

### 6.10.1 Important Recommendations of the Commission

### 6.11 Conclusion

### 6.12 Model Questions

### 6.13 References

## **6.1 Introduction:**

The distribution of the powers an important aspect of the federalism, this constitution is rigid and flexible. The constitution can be modified or amended and if required deleted. The constitution is the fundamental law of the nation, and Jawaharlal Nehru stated about it as, "... The constitution cannot and should not be changed frequently. Obviously also, it can and must be changed when the situation requires it to be changed". The most important feature of the Constitution is living and improving; must be agreeable; must be rigid and flexible; and can be changeable.

## **6.2 Constitutional Distribution of Powers:**

The relation between Centre and the States have been explained in Parts XI, XII, XIII and XVIII of the constitution in elaborate, the Part of XI is divided into two chapters and Chapter I related to the Legislative Relations particularly the Articles 245 to 263 which explains about distribution of Legislative Powers. The Chapter II of the Articles 256 to 263 related to the Administrative Relation and is divided into three parts like, General, Disputes relating to Waters, and Coordination between States. The Part XII, explains about the Finance, Property, Contracts and suits particularly the Articles of 264 to 300 deals with the above.

### **6.2.1 Legislative Relations:**

The Constitution of India gives a federal type of government in the country and the powers are divided among the Centre and the State, the Article 245, gives the power to the centre to make the laws for the entire country or any portion of the country, the constitution provides three lists such as, Union list, State list and Concurrent list, these lists can be seen in the 7<sup>th</sup> Schedule of the Constitution. The Union list contains of 97 subject matters such as armed forces, defence, arms and ammunition, atomic energy, foreign affairs, diplomatic relation, United Nations treaties, citizenship, railways, shipping and navigation, telephones, airways, postal, telegraph, Reserve Bank, foreign trade, Supreme Court, Union Public service commission, extradition, wireless, broadcasting, foreign loans, inter-state trade and commerce, elections etc., the parliament have some supreme powers of legislation.

The State consisted of 61 subjects they are mainly based on the grounds of local interest and it foresees the possibility of differentiation with regard to different items. The State legislation items consists of; public order, police, administration of justice, prisons and reformatories, local governments, public health and sanitation, intoxicating liquors, libraries, and museums, agriculture, animal husbandry, horticulture, water supplies, irrigation, land rights, fisheries, trade and commerce, gas and gas works, salaries and allowances of state officers, state public service commission, roads and buildings, vehicle and taxes, etc., the state legislature has the powers to legislate.

The concurrent list contains of 47 subjects, in this case the subjects will be in both, the centre and the state list, the concurrent list contains of, power, civil procedures, criminal laws, economic and social planning, marriage and divorce, education, registration of births and deaths, newspapers, books printing, legal medical and other professions, factories, foodstuff, trade unions, agriculture land, labour welfare, etc. both the centre and state has the powers to make laws.

Article 251 states that, in case of contradiction among the laws made by the centre and state on any matter in the Union list and the law of Union will succeed. The Article 253 explains that, parliament has the powers to legislate for two or more states by consent can legislate on and addition of such legislation. Article 254, says that, parliament can legislate on any matter of concurrent list only parliament laws will be considered. The article 248, confirms residuary powers of legislation on the union parliament to make laws on the concurrent list.

### **6.2.2 The Government and State List:**

Sometimes the list of the centre can regulate the subjects of the state list, for instance, the parliament is given powers to assign any works to officials subordinate to governor under the Article 154(2)(b). The parliament has powers to establish or abandon the legislative councils under the Article 169(1), if the legislature passes the resolution. If the Rajya Sabha passes a resolution with two third majority any subject for the state list then parliament can legislate such subject according to the Article 249. In case of internal disturbances the President can impose the emergency, the parliament will have powers to make laws on the state matters. And these laws will be ineffective after six months. In case of emergency the President can authorize the parliament to exercise the powers of state legislature. Implementation of treaties international agreements, parliament has the authority to legislate the on any subject, and the law passed by the parliament cannot be invalid because it is related to the State matter. The parliament can make any other subject in the State list the legislature of two or more States can pass resolution to give powers to make laws.

By the above discussion we can understand that the Centre and state relations have importance, and centre has the supreme powers on the States and it is higher than states and sometimes states has to entirely depends upon the Centre for certain matters.

### **6.2.3 Bills for the Consideration by President:**

There are some bills which require the approval of the President after the legislation by the State Governments to enforce it. For instance under the article 31(3), law related to the property will not be valid unless it gets the approval of President, and President has the power to stay the law which he feels unreasonable. At the same time the Governor of the state has given powers under the article 200, to reserve any bill for the approval of the President, and President can reject such bill and send it back to the state government. And President is not assured to sign the same bill even though the state repasses resolution, and there no time limit explained for the approval of the bill.

### **6.2.4 Control over the Ordinance making powers of the Governor:**

The Governor has the power in the state to issue the ordinance, when the state legislation is not in session, this ordinance will be passed by him after the approval from the Council of Ministers, but in some situations he can issue ordinance only with the prior approval of the President. In such cases he observe that the ordinance deals with the laws to be introduced in the legislative by the approval of President, if the bill needs the opinion of the President so

that it has to pass only after, if the law is passed by the legislature and need the approval of President without which law is invalid, Governor look for such three conditions before referring it to the President.

### **6.3 Administrative Relations between Centre and State:**

The Centre have the executive powers not only on the legislation made by the parliament but has the powers to control the state as well.

#### **6.3.1 Direction to the States:**

Article 256, explains the respective obligation of the Centre and State Governments, “The executive powers of every state shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that state and the executive power of the Union shall extend to the giving such direction to the state as may appear to the Government of India to be necessary for that purpose”. If the State Government fails to enforce the laws of Parliament then it has the power under Article 246, it can issue direction to the State Government. The Article 257(1), says, “The executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose”. If the state government fails to carryout any direction of the Union Government it has the power under the Article 365, the President rule can be imposed.

#### **6.3.2 Delegation of Union Functions to the States:**

The president with the consensus of government can assign the state government officers any action with regard to the centre, and the states has to act as the parts of the union government. If the state incurred extra cost then the union government will pay such costs.

#### **6.3.3 All India Services:**

The services at central level such as Indian Administrative Services,(IAS) Indian Police Services(IPS) etc., the members to such services are been appointed by the President on the grounds of the competitive examination conducted by the Union Public Service Commission. The parliament has the power to make new all India Services if the Raya Sabha passes the resolution by two third majority.

#### **6.3.4 Inter- State Committee:**

The president has the powers to make Inter -State Council among the states to bring coordination under the Article 263, and it says “If at any time it appears to the President that the public interest would be served by the establishment of a council charged with the duty of, inquiring and advising upon the disputes between the States, investigating and discussing the subject with one or more States, making suggestion upon such subject for better coordination of the policy and action with respect to the subject president can establish such council and define the nature and the duties to be performed by it and its organizations”.

#### **6.3.5 Full Faith and Credit to Public Acts:**

The Parliament has the powers to make laws of public acts and the final orders judgments or passed by civil courts in any part of India are executable anywhere within India in accordance with law.



### **6.3.6 Inter-State Water Dispute:**

The parliament has the powers to make laws regarding the inter-state dispute over the river or river valley water by the constitution. The parliament has authority to exclude such disputes from the jurisdiction of the courts, including the Supreme Court. In the case of Telangana the centre has formed water boards to look after the disputes arise between the states of Andhra Pradesh and Telangana. During the emergency President has the powers to give orders to the State Governments. The Parliament can establish a commission on the inter-state commerce for the inter-state commerce and trade activities.

### **6.4 Financial Relations:**

It is to understand that the financial resources of the centre and State must be adequate so that they can discharge their respective accountabilities under the constitution. The financial commission allocates, adjusts and receives finance from certain sources. The constitution of India provided the scheme for the distribution of the revenue resources among the Centre and the State governments. It is divided in two parts 1. The allocations of revenue between the union and states and 2. The distribution of grant-in-aid. According to this there are different sources of revenue for the Union Government and State government.

There are certain taxes which are levied and collected by the Union government but assigned to the States at the same time the State government collects the tax on behalf of the union governments. Under the Article, 269, taxes are collected by Central government on behalf of the State government they are as follows: 1. Duties in respect of succession to property other than agricultural land, 2. Estate duty other than agriculture land, 3. Taxes on railway fares and freights, 4. Taxes other than stamp duties, advertisements and published therein, 5. Terminal taxes on goods or passengers by railways, sea and air, 6. Taxes from the sale or purchase of newspapers, 7. The taxes other than newspapers or inter-state trade or commerce.

Under the Article 268, of the constitution the state government collects and assign to Union government such as, stamp duties, excise on medicinal and toilets preparation (those shall be mentioned in the Union list) shall be levied by the Government of India but shall be collected, in the case where such duties are leviable within any Union Territory, by the Government of India, and in other cases, by the States within which such duties are respectively leviable.

There are certain taxes which are collected by the Union Government but it will be distributed those taxes to the State Governments under the Article 270 and 272. There are certain taxes such as custom and export duties, excise duties on tobacco and jute, estate duties, corporation taxes, duty on the land other than agriculture, railway, postal and telegraph etc.

There are certain taxes which are related only to the states they are, land revenue, stamp duty (except on documents included in the union list) taxes on goods and passengers, electricity, duties on liquor, opium, hemp, narcotic drugs etc. there are certain taxes which are collected by the Union Government but shared between them. They are taxes on income other than agriculture incomes, excise duties, other than those on medicinal and toilet preparations.

#### **6.4.1 Grant-in Aids:**

There are three types of grant-in-aids, under the Article 273, to the states of Assam, West Bengal, Bihar etc. on export duty on jute, Article 275, to the states in need of assistance, and by the Article 282, both state and union government can make grant for public purpose. The

constitution has given the authority to the central governments to give grant-in-aid to those states which need the assistance for the development, for example there are certain states like Uttarakhand and others they receive grant-in-aid from the Union Government. The Parliament will decide the amount to be given to such states. There are certain welfare schemes for Schedule Tribes is provided by the Union Government.

#### **6.4.2 Finance Commission:**

The Article 280 provides for the establishment of Financial Commission, every five years the President has the authority to appoint the Finance Commission, the commission actually suggests regarding the allocation of revenues to the centre and state governments, and grants-in-aid to other states and financial institutions. The President has to place all the recommendation of the commission along with explanatory memorandum to both the houses of parliaments.

#### **6.4.3 Audit General of India:**

The Comptroller and Audit General of India is accountable for the maintenance and audit of the Union and State Governments and is the official of the Central Government. He is appointed by the President. But his powers and duties are determined by the Parliament. The forms for the maintenance of accounts are arranged by Comptroller and Audit General (CAG) and no say in the matter by the States.

#### **6.5 Actual Operation of the Centre –State Relations:**

It will be better to have good relations between the Centre and the State Governments, every effort has been made to strengthen such relations where the centre is already stronger than the states. C. Rajagopalachari remark that, “The independence of the States is being forgotten and a unitary state is being established in India thoughtlessly”.

With the third amendment act made to alter in item 33 of the concurrent list in 1954, increased the authority of Union Government over the production, distribution and prices of many commodities. With the sixth amendment act inserted new item 9-A to the Union list in 1956, thereby reduced the powers of the state legislature with regard to imposition of sales-tax by states. With the seventh amendment act inserted section 350-A to the constitution in 1956, by giving special powers to Centre to give primary education to the linguistic minority groups in their own language.

Decisions of the Supreme Court has been increased by the decisions given by the Supreme Court along with the amendments made to the constitution. In fact Supreme Court did not increase the powers of the centre intentionally, it delivered judgments without any partiality.

#### **6.6 North Eastern Council (NEC):**

These zones are mainly established to carry out the programmes of centre, these councils deliberated the means of implementing the policy of the union such as, food, conservation, saving and water conservation. The region of north-eastern has unusual problem, it consisted of seven states such as, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The region has tactical significance because it has common boundaries with diverse nations such as, Burma, Bangladesh, China and Bhutan, and it is connect to India by small strip of land. It was set up under the NEC Act of 1971, this act passed in the parliament in December 1971. The Council contains the Governor, Chief Minister of the seven states, President can nominate Union Minister to this Council.

The Important function of this is to make balance of the socio-economic improvements in the region by the coordinated original planning. The council will develop the infrastructure in the region and increased economic improvement in the region. Starting of power, industrial, agricultural, flood control and communication projects. It must be noted that it is an advisory body and it has no powers to raise the financial resources.

### **6.7 Inter- State Council:**

Under the Article 263, by the recommendations made by the Sarkaria Commission the government of India established inter-state council in May 1990. It contains the Prime Minister as the Chairman, Chief Ministers of all States, Administrators of the Union territories without legislature and Prime Minister nominates six Union Cabinet Ministers as members, it is only a recommendatory body and its main functions are, investigating and discussing such subject of states of common interest, making recommendations for better coordination of policy and action, discussing such matter with the chairman.

### **6.8 Control Boards:**

This board looks after the problems of the water distribution and it was inserted as Article 262(1) in the constitution. it provides the parliament to “provide for adjudication of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any Inter-State river or river valley”. There are many rivers which originate in some place and run in India, there are rivers like Kaveri, flowing through number of states same case with Godavari and Krishna they also flow in different states like Maharashtra, Karnataka and now Telangana and finally into Andhra Pradesh. To solve the problem with the states it constituted a Corporation, the Damodar Valley Corporation for the states of Bihar and West Bengal. They have made control boards to solve this problem there are 14 boards at presently, the Kosi Control Board and Nagarjuna Control Board are examples for that. The control Board has a Governor, Chief Minister and central minister in this board. Their functions are approval of design of the project and to monitor and review progress, to mention contracts view the costs, to make arrangements to rehabilitate persons displaced in project works.

### **6.9 Regional Electricity Boards:**

The other important requirement in inter-state cooperation is the making of electricity grids, since Independence throughout the country, we had severe power crisis, to overcome this problem of electricity these Grids came into existence. The Government made a policy on electricity with certain aims of assuring proper supply at minimum cost, for this an autonomous body called as Energy Management Centre, was established in 1989 as a nodal agency. In order to supply the power the nation has been divided into five zones, like North, East, North-East West, and South zones. These boards are advisory in function; they review the progress of power development methods in the region; they plan and guarantee integrated operations of all power systems in the region; makes the maintenance programme; operation schedule will be prepared; determine the amount of surplus power for the exchange between the States; determine the tariff structure; etc.

### **6.10 Recommendations of Sarkaria Commission on Centre-State Relations:**

The constitution of India provided the two-tier government, one at the centre and other at the different States. There are problems between the relation of the Centre and States, working of such system there is a danger for the unity and integrity of the nation. It is very much need to

have consensus and cooperation among them. To sort out this problem in 1983 March, the then Prime Minister Indira Gandhi, announced the proposal to appoint the commission, R.S Sarkaria, a retired Judge of the Supreme Court will be the Chairman of the Commission. She said that, “the commission would review the existing arrangements between the Centre and States while keeping in view the social and economic developments that have taken place over the years. The review will take into account the importance of unity and integrity of the country for promoting the welfare of the people”. She also pronounced that Commission would test “the working of the existing arrangements between the Centre and the States and recommend such changes in the said arrangements as might be appropriate within the present constitutional framework”. The commission was established according to the Government of India, Ministry Of Home Affairs, notification No: IV/11017/1/83-CSR, dated 9<sup>th</sup> June 1983.

### **6.10.1 Important Recommendations of the Commission:**

The report of the commission was submitted and published in 1988, it has two parts, and the first part is about the report and the second part are the memorandums received from the different State governments and political parties. The report covered, inter- governmental relations upon the legislative and administration areas and also reported the requirement for establishing a Standing Inter-State Council under the Article 263, to give more assurance to Inter-State coordination. Which includes, Emergency provisions, Governor Role, Deployment of Union’s armed forces in the State to sort out the problem of public order, Reservation of the State Bills for the attention of President and All India Services.

The report also studied the relation between the inter-governmental relations such as, social-economic development, financial relations, economic and social planning, national economic and development council. The items such as, agriculture, issues related to industries, mines, and minerals, inter-state trade and commerce, river disputes, food and civil supplies, forests and mass media. It also studied the matters related to language, Union Territories, and general observation and conclusions.

#### **The Recommendations:**

With regard to Legislative relations, the residuary powers of legislation which related to taxation must be in the concurrent list, the remaining residuary fields must be put under the concurrent list and constitution has to be amended accordingly. A resume of the views of the State government and the comments of the inter-state council must go with the Bill while introduced in the Parliament.

With regard to Administrative relations, there are some arguments present regarding the Centre – State relations, they have very severe complaints about the Articles 256, 257 and 365. The 256, article says that, the executive powers of every state shall be so exercised as to ensure compliance with the laws made by Parliament.

While the Article 257, says that, the executive powers of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, shall extend to giving of such directions to a State as may appear to the Government of India to be necessary for the purpose.

And about the Article 365, states that, if a State fails to comply with or give effect to, any directions given by the Union Government, it shall be lawful for the President to hold that a situation has arisen in which the Government of State cannot be carried on in accordance with the provisions of the Constitution.

The commission also views the authority of Parliament foreseen in the Articles 246 and 254 is essential and there is no need to change them, the only suggestion given in this regard is that the residual matters other than taxation must be included in the concurrent list.

### **6.11 Conclusion:**

Jawaharlal Nehru stated about it as, "... The constitution cannot and should not be changed frequently. Obviously also, it can and must be changed when the situation requires it to be changed". The most important feature of the constitution is living and improving; must be agreeable; must be rigid and flexible; and can be changeable. The relation between Centre and the States have been explained in Parts XI, XII, XIII and XVIII of the constitution in elaborate, the Part of XI is divided into two chapters and Chapter I related to the legislative Relations particularly the Articles 245 to 263 which explains about distribution of legislative powers.

The Constitution of India gives a federal type of government in the country and the powers are divided among the Centre and the State, the Article 245, gives the power to the centre to make the laws for the entire country or any portion of the country. The centre have the executive powers not only on the legislation made by the parliament but has the powers to control the state as well. Article 256, explains the respective obligation of the centre and state governments. It is to understand that the financial resources of the centre and state must be adequate so that they can discharge their respective accountabilities under the constitution. The financial commission allocates, adjusts and receives finance from certain sources.

To sort out this problem of relations between Centre and States, in 1983 March, the then Prime Minister Indira Gandhi, announced the proposal to appoint the commission, R.S Sarkaria, a retired Judge of the Supreme Court will be the Chairman of the Commission, The report of the commission was submitted and published in 1988, it has two parts, and the first part is about the report and the second part are the memorandums received from the different State governments and political parties.

### **6.12 Model Questions:**

1. Discuss about the Constitutional distribution of powers between Centre and state?
2. Write about the legislative, Administrative and Financial relations between centre and state?
3. Write about the Sarkaria Commission and its main Recommendations briefly?

### **6.13 References:**

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2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**

## **LESSON -7**

# **PARLIAMENT**

### **7.0 Objectives:**

9. Students would be able to know about the Parliament and the two Houses.
10. Students would be able to learn about the Term, qualification and powers of the Parliament.

### **Structure:**

#### 7.0 Objectives

#### 7.1 Introduction

#### 7.2 Composition Term and Qualification of Members

##### 7.2.1 Rajya Sabha / Council of States

##### 7.2.2 Qualifications

##### 7.2.3 Term

##### 7.2.4 Chairman of the Rajya Sabha:

#### 7.3 Powers and Functions of the Rajya Sabha

##### 7.3.1 Legislative Powers

##### 7.3.2 Financial Powers

##### 7.3.3 Powers to remove President and other officers

##### 7.3.4 Control over the Executive

##### 7.3.5 Constituent Functions

##### 7.3.6 Electoral Powers

##### 7.3.7 Miscellaneous Functions

#### 7.4 Criticism

#### 7.5 Lok Sabha / Lower House

##### 7.5.1 Term and Qualification of Lok Sabha Members

##### 7.5.2 Speaker of the House

#### 7.6 Powers and Function of the Lok Sabha

##### 7.6.1 Legislative Powers

##### 7.6.2 Financial Powers

##### 7.6.3 Making and Control over Council of Ministers

7.6.4 Constituent Powers

7.6.5 Electoral Powers

7.6.6 Powers to remove President and other officers

7.7 Speaker of the House

7.8 Powers of the Speaker

7.9 Privileges of the Members

7.10 Committees of the Lok Sabha

7.11 Legislative Procedures

7.12 Passing of the Budget

7.13 General Debate on the Budget

7.14 Voting of Demands for Grants

7.15 Appropriation Bill

7.16 Finance Bill

7.17 Control on the Powers of the Indian Parliament

7.18 Decline of Indian Parliament

7.18.1 Legislative Power

7.18.2 Financial Powers

7.18.3 Constituent Powers

7.18.4 Administrative Powers

7.18.5 Reason of Decline of Parliament

7.18.6 Rigid Party Discipline

7.18.7 Weak Opposition

7.19 Conclusion

7.20 Model Questions

7.21 References

**7.1 Introduction:**

The Parliament of India contains the President, Prime Minister, Lok Sabha and the Rajya Sabha, the Lok Sabha and Rajya Sabha are otherwise known as the two Houses, Upper House and Lower House. The Upper House or Rajya Sabha is called as Council of States while, the Lower House is called as, House of the People or Lok Sabha. President is not from either of houses hence he will not attend the Parliament, but he addresses both the Houses. In fact the

Article 79 of Chapter 2 controlled in Part V in the Constitution titled “Union” provides the Union Legislature. The Indian Parliament is always compared with the British Parliament, but if we observe the reality is that there is total difference between them particularly about the scope of powers. The Parliament of British is sovereign legislature and Indian Parliament is not as strong as British, the powers of Indian Parliament are very restricted due to the checks by the Constitution and the Fundamental Rights assured to the People of India. The Acts passed by the British cannot be challenged in any court but it can be challenged in India.

## **7.2 Composition Term and Qualification of Members:**

### **7.2.1 Rajya Sabha / Council of States:**

The Parliament of India is bicameral while the Rajya Sabha is Upper House and the representatives from the different States forms this house, under the Article, 80, of the Constitution, the Council of States shall consists of not more than 250 members, of whom 12 shall be nominated by the President and the remaining 238 shall be from the representatives of the States and Union Territories. The persons who are appointed by President will be from different fields like persons from literature, science, arts, and social service. Whereas, the representatives of the States will be elected by elected members of the Legislative Assemblies of the States, according to the proportional representation. In case of the representatives from Union Territories, is by the law made by the Parliament. Under this the representatives shall be elected indirectly by the members of an electoral college for that territory, according to the proportional representative system of single transferable vote.

### **7.2.2 Qualifications:**

To be elected to the Upper House, person must be a citizen of India, must have 30 years of age, and must be a parliamentary elector in the concern State from where he pursues election. A person may be disqualified if, He must not hold any public office either in Centre or State or must not hold any Ministerial position; or must not be unsound mind; or undischarged unsolved insolvent; if disqualified by or under any law made by Parliament.

### **7.2.3 Term:**

The council of states is a permanent body and it cannot be dissolved, the term of each member will be for six years and one-third of its members will retire every second year. The Vice-President of the nation is the ex-officio Chairman of the Council of states. The members of the council will elect from them the Deputy Chairman.

### **7.2.4 Chairman of the Rajya Sabha:**

As per the Article 89 of the Indian Constitution, the Vice-President of India acts as the chairman of the Rajya Sabha. The chairman is not a member of the House. The members of the Parliament elect him for every five years not as the chairman of the Rajya Sabha but as the Vice-President of India. It implies that both the members of the Lok Sabha and the Rajya Sabha cast their vote in the Vice-Presidential elections. The Vice-President receives his salary in the capacity of the chairman of the of the Rajya Sabha. At present he is paid Rs. 1,40,000/- towards monthly salary. Besides, he is entitled to other allowances, office, boarding and travelling facilities. His salaries and allowances are charged on the Consolidated Fund of India.



### **7.3 Powers and Functions of the Rajya Sabha:**

The Rajya Sabha has powers such as, Legislative, Financial, Electoral, powers to remove the President and other officers Etc.

#### **7.3.1 Legislative Powers:**

The power of the Upper House is as equal as the Lower House while in such cases of ordinary legislation, Bill can be originate in any of the House. A bill cannot be said to passed unless both the houses have agreed to it, either by amendment or without of it. In the case of deadlocks both the Houses will have a joint session by the President. Any Bill may be passed or rejected in either of the houses or may be rejected in both the Houses and hence, needs amendments to the bill. If more than six months passed from the date of receipt without passing of the bill then President will call for the joint session of the Houses and in that session if the bill is passed with majority by the members from both Houses present at the time of voting then it deemed to have been passed by the both Houses.

#### **7.3.2 Financial Powers:**

With regard to the financial aspect, the Upper House does not have any powers, the bill of Finance is not supposed to enter in this house, only the finance bill which is passed in the Lok Sabha will be sent for the suggestion of the Upper House. The Upper House must return such bill within 14 days of time with their recommendation, in case if it is not returned within the stipulated time frame of 14 days then it deemed as the bill has been passed in both the Houses. If the Upper House returns the Bill for amendments to the Lower House then the Lower House considers it and there after it is deemed to have been the bill is passed in both the Houses.

#### **7.3.3 Powers to remove President and other officers:**

If the President of India violates the Constitution, in such cases, the Constitution has the provision to remove the President from the Office by impeachment, the charge can be made by the either of the house. If the Council of States makes the charge against him then the Lower House will examine it vice versa. While the agency which examines and passes the resolution by majority of two-thirds of the total number of members of the House that the charge has been sustained, the President is removed.

The Council of States can remove the Vice-President from the office by a resolution passed by a majority of all the members present in the council and accepted by the Lower House or the House of the people.

Further Judge of a Supreme Court or High Court can be removed from the office by an order of the President after he addresses in both houses and supported by majority of the house not less than two-thirds of members of the house and voting has been presented to the President, and the same way the Auditor-General of India would be removed.

#### **7.3.4 Control over the Executive:**

The Article 75 of the Constitution says that, Council of Ministers shall be collectively responsible to House of the People, some of the Ministers will be chosen from the Upper

House the Council has the control over the Union Executive by pursuing information by the way of questions and supplementary and by the way of moving adjournments, but it cannot toss out the Council of Ministers.

### **7.3.5 Constituent Functions:**

The Upper House as well, has the similar sort of powers like Lower House to amend the Constitution, under the article 368, amendment can be introduced in the any of the Houses once this is introduced it has to be passed by a majority of two third of the total members of that house in voting. The constitution did not deliberated any procedure for settling variances if the disparity on the issue of amendment.

### **7.3.6 Electoral Powers:**

The members of the house has the power to participate in the election of the President and the Vice President, they are the members of the Electoral College.

### **7.3.7 Miscellaneous Functions:**

The Upper House would pronounce by a resolution which has the support of two thirds majority that it is very much required in the interest of the country must make laws related to any sort which included in the State list specified in the particular resolution. They can also by passing resolution can say to Parliament to create one or more All India Services to the Union and States are organise the recruitment and other such activities.

## **7.4 Criticism:**

It is evident that the House of the States is not as strong as the Lower House in making decisions. It is due to the fact that it is unable to have control over the executive. Another reason is that the Council does not have powers on the Financial matters, but at the same time it does not match its powers in this regard but otherwise it is equivalent to lower house in other matters. A part from this it has certain powers which the Lower House does not have, it can declare that in the interest of the nation parliament must to make laws on the subject included in the State list and can recommend making of new All India services.

## **7.5 Lok Sabha / Lower House:**

The Article 81, provided the composition of the Lok Sabha, the maximum number consist of 552 members and out of which 20 members are elected by the specified process of Parliament for the representation of the Union Territories and not more than 2 members from Anglo-Indian community. Out of these members 530 are directly elected to the Parliament by the people. According to the Article 81(2), States that the number of representatives from each state by the way of ratio between that the number of the population of the State is, so far as practicable, the same for all the States.

### **7.5.1 Term and Qualification of Lok Sabha Members:**

#### **Qualification:**

To be elected to the Lower House, person must be a citizen of India, must have 25 years of age, and must be a parliamentary elector in the concern State from where he pursues election. He must have such other qualifications as prescribed by the Parliament Article 84. A person may be disqualified if, He must not hold any public office either in Centre or State or must

not hold any Ministerial position; or must not be unsound mind; or undischarged unsolved insolvent; if disqualified by or under any law made by Parliament.

By the Representation of People's Act laid down some other qualification; A person must not have been found guilty by a Court or an Election Tribunal of certain election offences or by the way of corrupt practices in the election; he must not have been convicted by the court of offence and sentenced to imprisonment for a period not less than two years; he must not have failed to lodge account for his election within the time; He must not have dismissed from the Government service on the charges of corruption or not loyal to the State government; he must not hold any office of profit or any corporation in which Government has financial interest; He must not have any interest in the contracts of the Governments, any execution of such works.

### **Term of the House:**

The Lower House will last for a period of five years from the date of its existence in the House, but it can be dissolved by the President where it undergoes the no confidence motion and motion passed or in case of emergency till the revoke of emergency.

### **7.5.2 Speaker of the House:**

Article 93 to 97, of Indian constitution, deal with the office of the Speaker of the Lok Sabha. The Speaker of the House is the presiding officer of the house, the House will elect the Speaker among the members of the Lok Sabha, the Speaker always elected from the majority party of the house. The Speaker will be in the office till the life of the House or till he resigns from the office. Speaker will be in the office even the House is dissolved, till the first meeting of the newly elected House. The framers of the Constitution wanted that the Speaker of Lok Sabha must be non-partisan person like that of Speaker of the British House of the Commons, but in reality the Speaker of Lok Sabha is not as impartial as the Speaker of House of the Commons, because here the Speaker is the member of the Party. Though the Speaker does not take active role in the discussions but it is understood that he/she has the reservations for the party. At present, Speaker receives a monthly salary of Rs.1,40,000/-. Besides, he is provided with rent free residential, medical, travelling and communication facilities. His salaries and allowances are charged on the Consolidated Funds of India.

The Speaker may be removed if the Speaker loses his post or if he loses the membership in the house or by resignation submitted to the post. The Speaker may be removed from the office by the passing of resolution of the house with majority of the all then members of the House. In such case, 14 days prior notice has to be served before the resolution, when such resolution in process Speaker cannot preside but he has the right to speak.

### **Deputy Speaker:**

As per article 93 of our Constitution, there will be a Deputy Speaker in the Lok Sabha along with the speaker. This office is created for conducting the meetings of the Lok Sabha in the absence of the Speaker. The Deputy Speaker, like the speaker, is elected by the members of the Lok Sabha from among themselves. Deputy Speaker, the Speaker, may be removed from his office. The Deputy Speaker, while acting as the presiding officer, enjoys all the powers and privileges of the speaker. Another point to be noted is that if the Deputy Speaker is a member of one of the parliamentary committees, he will act as the chairman of that committee. He is authorized to participate in the meetings of various committees connected to the Lok Sabha. He has freedom to participate in the meetings of the Lok Sabha like other

members on all other occasions. He can express his views on bills, cast his vote on bills and continue his relations with the party.

## **7.6 Powers and Function of the Lok Sabha:**

### **7.6.1 Legislative Powers:**

The powers of the Lok Sabha is supreme, it has the same powers like the Upper House but the supreme powers lies with it is Financial Matters, it has the final go in respect of such bill. No bill can become law unless it is passed in both the Houses of the Parliament. The President can presides only on the occasions of the disagreement between the Houses and issue can be settled by the members by voting who are present. A joint session can be addressed by the President only if the six months elapsed from the date of receipt of the bill in the House and bill is not passed by the House.

### **7.6.2 Financial Powers:**

With regard to the matters of the Finance, the power of the Lok Sabha is final and supreme, a bill related to the money has to be introduced in the Lok Sabha and the bill passed by the Lok Sabha will be sent to the Rajya Sabha for its recommendations. The State Council must have to send back the Bill within 14 days of time with their suggestions, the Lower House agree or may agree some of it or it can totally reject their recommendation. If the Upper House in case did not send in prescribed time then it is deemed that the Bill is passed in both the Houses of the Parliament.

### **7.6.3 Making and Control over Council of Ministers:**

It is evident that the House of the People can make the Council of Ministers, the leader of the largest party and who is appointed by the President is known as the Prime Minister. The Ministers may be from either of the houses. The Minister's Council is accountable to the Lok Sabha, it can remain in the office till it has the confidence of the house. The representatives of the Lok Sabha have the control of administration by the way of questions, Supplementaries, adjournments motions and censure motions. It can remove the Ministers by passing a vote of No-confidence motion.

### **7.6.4 Constituent Powers:**

The Lower House as well, has the similar sort of powers like Upper House to amend the Constitution, under the article 368, amendment can be introduced in the any of the Houses once this is introduced it has to be passed by a majority of two third of the total members of that house in voting.

### **7.6.5 Electoral Powers:**

The members of the House has the power to participate in the election of the President and the Vice President, they are the members of the Electoral College.

### **7.6.6 Powers to remove President and other officers:**

The President can be removed if the President of India violates the Constitution in such cases the Constitution has the provision to remove the President from the Office by impeachment, the charge can be made by the either of the house. If the Council of States makes the charge against him then the Lower House will examine it vice versa. While the agency which

examines and passes the resolution by majority of two-thirds of the total number of members of the House that the charge has been sustained, the President is removed.

The Vice-President, can be removed from the office by the Upper House, by a resolution passed by a majority of all the members present in the council and accepted by the Lower House or the House of the people.

Further, the Lower House has the similar powers like Upper House, Judge of a Supreme Court or High Court would be removed from the office by an order of the President after he addresses in both houses and supported by majority of the House not less than two-thirds of members of the house and voting has been presented to the President, and the same way the Auditor-General of India would be removed.

The Lower House has some other powers like, it can along with Upper House can recommend the President to impose the emergency in the country.

Both the Houses with two thirds majority then members can create new states by passing the bill in both the Houses. Parliament may by law confer on the Supreme Court power to issue directions, orders, writs including writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari. Parliament can confer more powers to Supreme Court by making law, it can also encompass the jurisdiction of the High Court as well.

### **7.8 Powers of the Speaker:**

The powers of the Speaker are mainly like that of the Speaker of the House of the Commons because it is borrowed from their Constitution. About the powers been mentioned in detail by the “Rules of Procedure and Conduct of Business in Parliament” 1950.

1. The Speaker allots, the time for the discussions after in consultation with Prime Minister, and it will be mentioned in the President address.
2. Speaker decides the order of the business in consultations with the leader of the house. He decides the question to be admitted and he can disallow them if feels are not related to the rule. He maintains the decorum of the house, if finds misbehaviour of the member, Speaker warns and then the member will be forcibly removed from the house with the help of Marshall. He puts the questions for voting, he does not have vote but in case votes are equal then gets the right to vote. He decides the time limit to the speeches on the motion.
3. The Speaker can order the publication of the Bill in the Gazette, while doing so, no need of a motion to introduce the bill. The Speaker has the power to appoint the Chairman for various Committees from the members.
4. The consent of the Speaker is needed for a motion to adjourn the debate on the bill. Without the consent of the Speaker no resolution can be admitted. The limit of the time in the case of budget can be decided by the Speaker and take all the required steps to accomplish the financial business in time.
5. The communications between the President and the Parliament done through the Speaker. The Speaker identifies the members to the floor and decides the order of the speech. The members can address the Speaker but not with other members.
6. The Speaker has the power to decide the all point of order and the decision is final and cannot be contested. The Speaker has the power to put the questions to vote of the House and

announce the result. The Speaker has the power to adjourn the House in case of disorder or lack of quorum. The Speaker will decide the nature of the Bill, the Bill is financial or not, and such certificate is very much required before the bill can be referred to the Upper House or the President.

7. When Speaker rises, other must sit down and must not leave the House during the address of the Speaker. The Speaker has the power to preside over both the Houses, called to solve the differences among them. The Speaker safeguards the rights of the members of Lok Sabha against all the encroachments by the executive.

Speaker protects the special powers and immunities of the member of Lok Sabha. Speaker can exclude the strangers from its galleries, Speaker publishes debates and proceedings, Speaker can regulate internal affairs, and Speaker has the powers to punish the members and outsiders for breach of its privileges or for contempt of the house. The privileges are the certain rights belongs to the each House collectively and some others which belonging to members individually.

### **7.9 Privileges of the Members:**

The privileges enjoyed by the members of the Parliament individually are as follows: Freedom from the arrest, exemption from attendance as jurors and witness, and Freedom of Speech.

The member of the Parliament cannot be arrested while the meeting of House or its Committee of which a member and during a time of 40 days before and after such meetings. Member enjoys the immunity in civil cases and cannot claim it in criminal cases or by the law of preventive and detention.

The member cannot be asked to summon or cannot give witness while the session is in progress. The Member of Parliament has more powers than the common man, the member is not liable to any court of law in respect what he says on the floor. The Article 19(2) is not applicable to the member.

### **7.10 Committees of the Lok Sabha:**

Indian Parliament has different committees it is not conceivable to all the members to understand the details and technicalities present in the legislative measures, hence the work of Parliament is mostly done by the Committees. There are three committees they are,

1. Those which are mostly apprehensive with organization of powers of the House, 2. Support the House in their legislative functions; and 3. Committees which deals with financial matters and scrutinize the activities of the Government.

In the first category, we can see the committees such as, Business Advisory Committee, The Rules Committee, The Committee on the Privileges and the Committee on Absence of the Member. In the second category, Select Committee, Joint Select Committee, Committee on the Private Member's Bills and Resolutions, Committee on the Subordinate Legislation.

The function of the Rules Committee is that, to consider matters of procedure and conduct of business in the House and suggest required changes in them, the role of Business Committee is, to guarantee smooth working related to with the working of the committee, on its advice Speaker organizes the Business of the House. The main function of the Committee on privileges is to safeguard the privileges, if it violates it refers it to the committee. The

function of the Select Committee on Bills, it has the powers to examine the witness, collect information and take expert advice. The role of General Purpose Committee is, it considers proposals and advises the Speaker in matters related to organization and development of the House. The Committee on Private Members Bills and Resolutions is, examines the bills of the Private members. The function of the Committee on Sub-ordinate Legislation is, has the power to frame rules and regulations, and are known as Sub-ordinate Legislation or Delegated Legislation. The role of Public Accounts Committee is to examine the reports of the controller and Audit General of India and checks the accounts of the Government related to financial transactions. The function of the Committee and the Government Assurances is to scrutinize the Assurances, Promises, undertakings etc. given by Ministers from on the floor and to report on the extent to which they have been implemented etc. The function of the Committee on Petitions is, to examine petitions submitted to the house by individuals or organizations which are to be address their grievances.

### **7.11 Legislative Procedures:**

There are two types of Bills, will be introduced as the Ordinary Bills and Money Bills. The Ordinary Bills may be divided further into two classes, they are Government Bills and Private Members Bills. All the Bills except Money Bills and Financial Bills may be introduce in either of the house but Money Bill can be originate in the Lok Sabha only.

In the first instance the Bill will be prepared by the concerned ministry and it works out all the implications such as political, financial and administrative aspects. The Attorney General of India and Ministry of Law will be consulted to check the legalities and constitutional problems. After that ministry prepares memorandum for the Cabinet then the Cabinet may approve or may refer to standing Committee. After the approval of the Cabinet the sponsoring ministry sends it to the Draftsmen with all related papers, after the preparation of the Draft ministry examines it and then the Bill is ready for the introduction in the house.

The concerned minister give a notice of motion to introduce the Bill, on the day of appointed for the introduction of the Bill the Speaker or the Chairman calls the minister who moves the motion for leave to introduce the Bill. No debates takes place at this stage, if the bill is opposed by any member then the minister and the opponent are given a chance to explain their views. If the opposition on constitutional grounds, speaker may permit a full debate in which the Attorney General would involve. The speaker puts to the house questions, it wants the Bill to be considered for passage, if the majority members supports it then the bill is deemed to have been moved, otherwise it is lost. If the first reading of the Bill is over then it is published in the Gazette of India.

The second reading of the Bill is divided into two phases, the mover of the Bill may make one of the three motions such as, 1. Bill be referred to a Select Committee, 2. Circulated for eliciting public opinion; and 3. Be taken for consideration by the House immediately. Generally first two cases they choose, if Bill is moved under immediate consideration any other member of the House may move an amendment proposing one of the two other options. If the motion of circulation of the Bill is carried then the Bill is published in the State Gazette, and opinions of the public are invited. The opinions received from the public are circulated, then the stage for the second reading comes the Bill moves the motion it referred to Select or Joint Committees, the motion have the debate and no amendments are accepted at this stage.

The next stage is Committee stage, if the House chooses to the Committee then the member from the house will be nominated by the Speaker as Chairman and it will study in depth

about the measures and provisions. They examine the Bill clause wise and they recommend for amendments and if they have the differences then the report is made by the majority of the members.

Next stage is the Report Stage when Committee examines it thoroughly, then the Chairman of the Committee present the Report to the House. House goes clause wise about the Bill and it is free to move amendments, when the clauses have been discussed the Bill have said to Crossed the report stage and listed for the Third reading.

On the third reading the Bill is presented in the House at this stage no considerable alterations are made, lastly the Bill is put to vote and if it passed by the majority of the members present and voting, it is declared by the Speaker. Then the Bill will be send to the other house to pass if it is passed by the other House as well then it is sent to the President for the approval. When the Bill is passed in both the Houses it reaches the President for the approval President either can approve or withholds the approval. If rejects the bill it will be sent back to the House for reconsideration, House reconsiders it accordingly then sends it to the President for approval, President cannot withhold there from.

### **7.12 Passing of the Budget:**

Budget is the annual financial statement of the Government, it is provided in the Article 112 that the President shall in respect of every financial year cause to be laid before both Houses of Parliament. The Budget is prepared by the Ministry of Finance and Finance Minister will read the budget in the Lok Sabha. The Budget is the Income and Expenditure statements of the year.

### **7.13 General Debate on the Budget:**

The Minister of Finance presents the Budget in the Lok Sabha with a speech in which gives the financial position of the country frameworks of economic and fiscal policy of the government, the debate give the chance to every member to evaluate the entire administration and their grievances.

### **7.14 Voting of Demands for Grants:**

Completion of the general discussions on the budget is finished, the Upper House has no role in it, the voting of grants is, and demands for expenditure made by the Government is the elite business of the Lower House. Each Ministry demand their grants which are accessible distinctly and voted. Every demand will be in the form of motion, and a time limit of one month will be given.

### **7.15 Appropriation Bill:**

Later the grants have been allotted by the Lower House, a Bill will be put in the House for appropriation out of the Consolidated Funds of India of all money, it need to fulfil the needs submitted by the Lok Sabha and the expenditure on the Consolidated Funds of India, the amount must not be beyond the amount stated in their statement before the Parliament. This Bill will be presented in the Lok Sabha and routine procedure happens but there will not be any amendments to such Bill.



**7.16 Finance Bill:**

After the Bill of Appropriation is passed the disposal of the expenditure and it makes the completion of the Budget, they also levies taxes and a separate bill of Finance Bill is made and introduced in the Lok Sabha which has the proposals of the revenue, the Finance Bill goes through the similar procedure as the Money Bill.

**7.17 Control on the Powers of the Indian Parliament:**

There are limitations on the power of the Parliament, the constitution is written and it has the definite restrictions on its powers. It has clearly mentioned in the Constitution about the powers of Parliament along with other organizations and their authority. It does not have full authority in making of the law like Britain, and it cannot amend all the provisions of the Constitution. Only some of them can be amended.

It is due to the fact that, the Federal structure of the Constitution have some restrictions to it, the Federal type of polity is another reason. The powers have been divided among the Union and State Governments both will get those authority from the Constitution. There are three list subjects such as, Union List, State List and Concurrent list, the powers have been divided, Parliament has the right to legislate on the subjects of Union list whereas the States are empowered to make laws on the State List, but at any situation Parliament can legislate State List. Parliament cannot amend the Constitution so to alter its primary feature it was stated by the Supreme Court. It cannot amend the Constitution unless it has the support of half of the States.

The Fundamental Rights are also one of the restriction on the authority of the Parliament, in the article 13(1) stated that, all the all the laws will be applicable as soon as the Constitution emerges, they are not consistent of the Provisions of Part III, deals with the Fundamental Rights. In case all the provisions of 42<sup>nd</sup> Constitution Amendment Act permitted to stand then all the powers would have been with the Parliament and it would have taken all the Fundamental Rights of citizens.

The other reason for the limitation of powers is judicial review, it is under the watch of the judiciary, Supreme Court and the Supreme Court has authority to reject the any legislative enactment as unconstitutional. Therefore it is wrong notion that Parliament is sovereign body.

**7.18 Decline of Indian Parliament:****7.18.1 Legislative Power:**

There are four kinds of authorities are given to Parliament they are legislative, financial, administrative and constitutional powers. It is understandable that the Parliament will make laws on all the subjects related to Union and Concurrent list, but in reality the whole process will be under the control of the Prime Minister, and most of the Bill will be introduced by the Council of Ministers. A private member Bill will not be accepted except it has the backing of Government. If the Parliament has to pass the Bill then Government would not support it, on most of the situations Government overlooks the Parliament's law making authority by enacting legislation by ordinances.

**7.18.2 Financial Powers:**

It has the supreme authority, no tax can be increased and no expenditure can be incurred without the Parliament's advices. But the fact is that the entire show is run by the Cabinet,

Parliament does its duties in an obligatory way. It has to submit the demands for grants through Consolidated Funds of India. Parliament cannot demand any grants except on the recommendation of the President.

### **7.18.3 Constituent Powers:**

The other significant authority of it is to amend the Constitution, in this case also the initiation lies with the Government the amendments which are introduced by the Government only would be passed. And the Bills introduced by the private member will be rejected.

### **7.18.4 Administrative Powers:**

The Article 75 states that, the Council of Ministers are collective, accountable to the Lok Sabha, which means that as long as the Ministers remains in the office and Parliament becomes unsuccessful because Prime Minister has the Power to dissolve the parliament at any given time. In the year 1970, the then Prime Minister Indira Gandhi advised the President to dissolve the Parliament and same case happened with Morarji Desai, he too advised the President in 1979.

### **7.18.5 Reason of Decline of Parliament:**

There are several reasons for this decline, firstly there is one party dominance throughout the years except for a brief period like in 1969-70 because of split in congress then in 1977-79, Janata rule, but in 1980 again congress emerged victorious. In 1990 the era of coalition governments till 2014. But from 1999- 2004 BJP led Government ruled, and then from 2004-2014 again Congress led Government was in power. It is evident that the one party dominated the show in the politics of India.

### **7.18.6 Rigid Party Discipline:**

Only the congress party was able to maintain the control over the parliamentary wing and the Act 52<sup>nd</sup> amendment act of 1985, further strengthen its control over the party. Whereas, other parties had no control over the party, most of the parties which were contested along with congress are now vanished. The other important factor for the discipline was that the party members in the parliament would be under the control of the Prime Minister this was another advantage to the congress party to have such control over them.

### **7.18.7 Weak Opposition:**

The most important factor for this was due to the weak opposition in the Parliament, the attempt to make a strong opposition were unsuccessful till date. The other significant reason for the decline was due to the delegated Legislation. It is fact that Parliament has no time to look after all its duties and the experienced administrators tackles the problems.

### **7.19 Conclusion:**

The Parliament of India contains the President, Lok Sabha and the Rajya Sabha, the Lok Sabha and Rajya Sabha are otherwise known as the two Houses, Upper House and Lower House. The Upper House or Rajya Sabha is called as Council of States while the Lower House is called as, House of the People or Lok Sabha.

The Article 81, provided the composition of the Lok Sabha, the maximum number consist of 552 members and out of which 20 members are elected by the specified process of Parliament for the representation of the Union Territories and not more than 2 members from

Anglo-Indian community. Out of these members 530 are directly elected to the Parliament by the people. Legislative Powers, Lok Sabha is supreme, it has the same powers like the Upper house but the supreme powers lies with it is Financial Matters, it has the final go in respect of such bill. There are committees to deal the problem of inter-sate relation. Speaker is the presiding officer of the Lok Sabha, he is the member of ruling party he has number of duties to perform. Bills will be introduced in the house and get processed. The powers of Parliament are restricted do to many reasons. It cannot make any decision but works under the governance of the Prime Minister.

#### **7.20 Model Questions:**

1. Write about the Structure of the Parliament and powers?
2. Write about the Lok Sabha and Rajya Sabha and their duties?
3. Write about the election of Speaker of the Lower House and duties?

#### **7.21 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD. Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
4. JC. Johari, The Constitution of India, A Politico-Legal Study, Sterling Publishers Private Ltd., New Delhi, 2005.
5. Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 20

**Dr. C. Vinod Kumar**

**Lesson Writer**

## LESSON -8

# PRESIDENT OF INDIA

### 8.0 Objectives:

11. Students would be able to know about the Term, Qualification and election of the President.
12. Students would be able to learn about the powers of the President.

### Structure:

8.0 Objectives

8.1 Introduction

8.2 Qualification to be a President of India

8.3 Term in the Office

8.4 Election of the President

8.5 President's Oath

8.6 The Powers of the President

8.7 Executive Powers

8.8 Legislative Powers

8.9 Ordinance Making Authority

8.10 Financial Powers

8.11 Judicial Powers

8.12 Military Powers

8.13 Diplomatic Powers

8.14 Emergency Powers

8.15 Nature of the President

8.16 Provisions of the Constitution

8.17 President Secretariat

8.18 The President and the Prime Minister

8.19 Conclusion

8.20 Model Questions

8.21 References

### 8.1 Introduction:

The power in a democratic way lies with the people, the administration is the executive organization for the implementation of the government policies and programmes which are accepted by the Parliament. The Constitution of India under the Article 52, says that, there shall be a President of India, and President is the head of the country and according to the article 53, all the executive powers are with the President only. The expression of “executive power” is not defined in the Constitution. All the others are, they directly or indirectly subordinate the President. All the executive activities are done under the President's name.

### **8.2 Qualification to be a President of India:**

The qualifications to be the President of India, the article 58, says about the qualifications a person must have to become the President:

1. Must be a citizen of India;
2. Must have completed 35 years of age;
3. Must be qualified as a member of the House of People which means (must be registered as a voter in any Parliamentary constituency);
4. Must not hold any office of profit under Government of India, or under any State Government or under local authority which are directly or indirectly related to the Government's control;

The Article 58, further says that, person shall not be deemed to hold any office or profit; and hence qualified for being a candidate for President Ship. They are the President, Vice-President, and Governor of the State, the Minister of Union or the State.

There are certain conditions according to the article 59, President cannot be a member of the Parliament or Legislature of any State, if hold, then elected President shall be deemed to have vacated seat in that office on the date on which he enters upon his office as President. The President shall not hold any other office of profit.

### **8.3 Term in the Office:**

Generally President will be in the office for five years, unless President is removed by the Parliament by impeachment for violating the Constitution of India. The President gets a salary of RS 5,00,000 P.M and allowances. Salary and allowances cannot be reduced during the term of office.

### **8.4 Election of the President:**

The Article 54 says that, President shall be elected by an electoral college, hence, the election of the President is not direct which means people of India will not take part in the election. The Electoral College contains of 1. The elected members of the Lok Sabha and Rajya Sabha; and 2. The elected members of the Legislative Assemblies of the States. The amendment act, 70<sup>th</sup> amendment of 1992, inserted in the Article 54, which provides the word “state” includes the national Capital territory of Delhi, Union Territory of Pondicherry, the MLAs from these areas are included to the Electoral College. The Article 62, says that, mandatory time limit and the election cannot be postponed beyond the expiration of the President's tenure.

Every legislature of the State will have as much votes as, there are of 1000 in the quotient attained by dividing the number of population of the State by the total number of elected members of the Assembly, this is known as the “Weightage” determined by the population of

each state. The states with more population such as Uttar Pradesh, Bihar etc., will have larger number of votes than the states where the population is comparatively lesser. There should be equality among the States and the Union, which means the Member of Parliament will have same number of votes as the total of the votes of the elected representatives to the State Assemblies. The election will have the system of proportional representation i.e., single transferable vote. The person who gets absolute majority will be declare elected as the President of India.

The election of the President is not direct hence, it is indirect by which the Electoral College will elect the President of India. It is significant to note that the nominated members to both Houses of Parliament and the States will not have the right to vote in the election process of the President. The process of the election of the President is mainly grounded on the proportional representation which means a single transferable vote system. In this election they follow the secret ballot only. To get consistency in the representation of the States and for the equality between the Centre and the States they follow an exclusive process to bring the estimation of the number of votes to be cast by each member. To achieve this the total population of every State will be divided by the number of legislatures of the State. The Quotient or figure attained is then divided by 1000. This gives the number of votes to be cast by each elected member of Assembly of the particular State. In case the reminder surpasses 500, then the number of votes are increased by one. The formula used for this as follows:

Number of Votes a MLA to be cast = Total Population of the State

$$\frac{\text{Total Population of the State}}{\text{Total MLAs of the State Assembly}} \div 1000$$

By the help of such method the number of votes to be cast by each MLA of the State could be determined.

To determine the number of votes to be cast by each Member of Parliament is, divide the total number of State votes by the total number of Parliament seats, the formula used for his as follows:

Total number of votes allocated to MLAs of the all States

$$\frac{\text{Total number of votes allocated to MLAs of the all States}}{\text{Total number of the MPs in both the Houses.}}$$

### **In case of Disagreements:**

In case of disagreement about the election of the President, then according to the Article 71, the doubts and any sort of disagreements can be inquired into and decided by the Supreme Court whose decision will be the final in such cases.

### **8.5 President's Oath:**

The Article 60 says about the oath of the President, before taking up the assignment the President has to take the oath and this will be performed by the Chief Justice of India, in the absence of Chief Justice any senior Judge of the Supreme Court will perform.

### **8.6 The Powers of the President:**

The President of India will be in the office for the period of five years, he will have the identity of the nation, President enjoys number of privileges and immunities and not amenable to the jurisdiction of any law court in the country, cannot be arrested or imprisoned. No one can ask the authority of the President. The President will have distinct powers such as, executive, legislative, financial, military, judicial and emergency powers.

### **8.7 Executive Powers:**

The Constitution has provided the executive powers to the President under the Article 77, and exercises by the help of Council of Ministers. All the activities of the government will be done under the name of the President of India. At the same time President has the powers to appoint any one to the office and can remove from the office. The President appoints the Prime Minister and on the advice the other Council of Ministers, Governors, Chief Justice, Election Commissioners, Judges to the Supreme Court and High Court, Chairman and Members of the union Public Service Commission (UPSC), etc. President has the authority to nominate 12 members to the Rajya Sabha as well, can also appoint inter-state council and ask for the advice in case of any dispute between the states. President will appoint the ambassadors to different countries and at the same time will receive ambassadors from other countries, can declare war and can negotiate peace talks with the countries, has the power and authority over the state governments, has the authority to know about the developments in the country and affairs of the Governments. The Union territories will administer in the name of the President, has the authority to ask the Union Council of Ministers about any decision they took.

### **8.8 Legislative Powers:**

The President of India is the constituent part of the Union Parliament, President has the authority to summon and prorogue the both Houses of Parliament and can dissolve them as well. But the Article 85(1), forces limitation on this authority the President has the power to summon the parliament within six months from the last sitting, if at all any disagreement among the members of the two houses, then President can call a joint session according to Article 108, in the joint session he gives the speech about the performance of the government, the speech would be similar to that of the King in England, many send the message to both the Houses according to the Article 86. Each Bill which passes in the both Houses will be sent to the President for the approval according to the Article 111, may give assent or withhold the Bill may send it back to the House from where it came for reconsideration, but it does not apply to the money Bill. All the Bills before its introduction it has to get the assent of the President, the Bill for the formation of new States, the approval is very much necessary.

### **8.9 Ordinance Making Authority:**

The President of India has the authority to make ordinance according to the Article 123, of the Constitution, it is the most important legislative powers of the President, any time when the both Houses are in session then if feels it is necessary to take action in the interest of the nation the President can issue ordinance according to the circumstances of that point of time. The issued ordinance will have similar force like that of Parliament Act. Even Court cannot enquire into the reasons for it.

**8.10 Financial Powers:**

The President of India has some of the financial powers as well, the annual budget of the country which is presented by the Finance Minister in the Parliament will be on behalf of the President, without the approval of the President no money Bill like proposal for rising the taxation, demands for grants cannot be introduced in the Parliament. President has the authority over the Contingency fund of India. President has the authority to appoint the Financial Commission to make suggestions on the financial matters between Centre and the States.

**8.11 Judicial Powers:**

The Judges of Supreme Court and the High Court are appointed by the President of India, the President has to be consulted before making rule and procedures for the Supreme Court. The President has the authority of pardoning.

Under the Article 72, of the Constitution to grant pardon, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence such as, by Court Martial; an offence against any law relating to the matter to which executive power of the Union extends; or in all cases in which death sentence has been awarded.

**8.12 Military Powers:**

The President is the Supreme Commander of the Armed Forces, has the authority to declare the wars, conclude treaties or make peace on behalf of the nation. These powers by the President is “regulated by law”, but the authority of the military by the President can be regulated by the Parliament, without the emission of the Parliament he cannot declare war nor he can have peace treaties.

**8.13 Diplomatic Powers:**

The head of the State has the powers to receive the ambassadors from different countries and other diplomatic persons, can send such persons to other nations on be his half. All the treaties and negotiations and international agreements done on the name of the President.

**8.14 Emergency Powers:**

The emergency powers of the Indian President are provided by the Part XVIII, Articles 352 to 360, of the Constitution has given such powers. He enjoys such powers once he declares the state of emergency, the emergency be three types, 1. Due to the wars and external aggression or internal disturbances 2. Emergency due to the failure of constitutional machinery in the state; 3. Financial emergency.

If the President feels that the security of India is under attack by the foreign forces or war or above mentioned circumstances he can declare the emergency. In such conditions the President becomes very authoritative means he take over the administration of the nation and he rule the nation, when he declares the emergency the President converts the federal Constitution into unity, can append the fundamental Right of citizens of the entire nation or part thereof at the time of emergency. The President cannot act whatever like, has to work according to the authority of the Parliament and acts by the advice of the Cabinet. Every claim of the emergency should be put before the Parliament and President cannot be in force more than two months unless otherwise, or at a maximum of six months can be in force.



### **8.15 Nature of the President:**

The status of the President is almost similar to that of the British monarch, President is considered as the nominal head of the nation, but in reality the Prime Minister is the head of the government, hence the President has to exercise powers under the restriction of the constitution.

The President has to do executive duties under the Article 53, the Article 73 states that, "other Ministers shall be appointed on the advice of the Prime Minister". With this it can be observed that in reality the President has no option to select the Council of Ministers, hence, cannot appoint any one of the President's choice.

The Article 74, clearly says that, the President shall in doing functions, act according to the advice of his Council of Ministers and the leader of the House Prime Minister. The position of the President after 44<sup>th</sup> amendment Act, has no authority excluding in some of minimal cases to act discretion.

### **8.16 Provisions of the Constitution:**

Until the 42<sup>nd</sup> amendment act in 1976, there was suspense over the written provisions of the Constitution, it was about the powers of the President, fixed Under the Articles 53(1), 74(1), 75(2), and 75 (3). According to the Article 53(1), says that, "executive power of the Union is vested in the President and shall be exercised by him in accordance with the Constitution". The Article 74(1) says that, "There shall be a Council of Ministers with the Prime Minister at its head to aid and advice the President". Which means that, the President has to act according to the advice of the Council of Ministers. The Article 75(2) says that, "The Ministers shall hold office during the pleasure of the President". And the same Article in the clause says that "The Council of Ministers shall be collectively responsible to the people". And the same Article give the President authority to dismiss the Council of Ministers.

Though there are restricted powers to the President, the status of President cannot be considered as nobody, the Article 74(1), gives authority to ask the Council of Ministers to reconsider the advice given to him, the Article 78, makes it clear that President has important authority such as, one of the important duty of the Prime Minister to convey all the decision of his Government regarding the administration has to inform President. Prime Minister has to give information about the legislation to the President. Though the President has to act on the advice of the Council of Ministers does not mean that President has to accept every advice, has the power to ask them to reconsider.

### **8.17 President Secretariat:**

The President has own secretariat for the works, the Secretary to the President will head of the Secretariat. The Secretary can be regarded as the connecting link between the President and the Council of Ministries- Department of the Government of India (GOI). A Military Secretary will also be working with the President, is accountable to all ceremonials, management of the President's estate and arrangements for the tours of the President, catering, household and hospitality.

### **8.18 The President and the Prime Minister:**

The Constitution says the relation between them, as the President appoints Prime Minister formally, under the Article 78, enjoys as Prime Minister, has to communicate all the administrative matters of the Government to the President. If not President can call for such

information. The relationship between them can be understood in 1987, the President Jai Singh and Rajiv Gandhi, he did not inform the President about the Bofors gun deal, according to the Article 74 and 78, he has to furnish the details of his government to the President. It can be observed that the Prime Minister is the connecting link between the Council of Ministers and the President.

### **8.19 Conclusion:**

The Constitution of India under the Article 52, says that there shall be a President of India, and President is the head of the country and according to the article 53, all the executive powers are with the President only. To become the President: Must be a citizen of India; Must have completed 35 years of age; Must be qualified for election which means must be registered as a voter in the constituency from where contesting; Must not hold any office of profit under Government of India, or under any State Government or under local authority which are directly or indirectly related to the Government's control.

Generally President will be in the office for five years, unless President is removed by the Parliament by impeachment for violating the Constitution of India. The election of the President is not direct hence, it is indirect by which the Electoral College will elect the President of India. It is significant to note that the nominated members to both Houses of Parliament and the States will not have the right to vote in the election process of the President. The process of the election of the President is mainly grounded on the proportional representation which means a single transferable vote system.

The President of India will have powers like Executive, Judicial, which includes the grant of pardon, financial, legislative, emergency, military, and other such powers which are mentioned in the Constitution.

### **8.20 Model Questions:**

1. Write about the qualification, term and the election process of the President?
2. Discuss about the Powers of the Indian President?

### **8.21 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. D.D. Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**

**Lesson -9****PRIME MINISTER OF INDIA****9.0 Objectives:**

13. Students would be able to know about the Term, Qualification and election of the Prime Minister.
14. Students would be able to learn about the powers of the Prime Minister.

**Structure:**

9.0 Objectives

9.1 Introduction

9.2 Election of the Prime Minister

9.3 Tenure

9.4 Powers of the Prime Minister

9.4.1 Power to form the Government

9.4.2 Coordinator of the Administration

9.4.3 Link between Cabinet and Parliament

9.4.4 Patronage Powers

9.4.5 Prime Minister and Council of Ministers

9.4.6 Prime Minister and Parliament

9.4.7 Prime Minister as the Leader of the Lok Sabha

9.4.8 Prime Minister and the Party

9.4.9 Prime Minister and the People

9.5 Prime Minister's Secretariat

9.6 The Position of the Prime Minister

9.7 Conclusion

9.8 Model Questions

**9.1 Introduction:**

The Prime Minister is the important figure in the government, he actually administers the administration of the country. The Article 74(1), of the constitution provides that, "there shall be a Council of Ministers with the Prime Minister at the head to aid the President in the exercise of his functions". The status of the Prime Minister has been strengthened further under the 42<sup>nd</sup> amendment, by making it obligatory for the President to act by the advice of the Council of Ministers with Prime minister as the head, and occupies the significant position in the constitution and Parliament. The makers of the Constitution intentionally chosen the

British model of Parliamentary democracy and Prime Minister as the real executive. The Prime Minister of India is almost equal to the President of the USA is in the form of Presidential system. It is evident that the Prime Minister is front of power and final arbiter of policy and final repository of real powers in the Parliamentary Government.

### **9.2 Election of the Prime Minister:**

The appointment of the Prime Minister is constitutionally occurs and it is just like a formality, and President has no discretion in this regard and he shall invite the leader of the majority party in the Lok Sabha to form the Government. Hence, President appoints the Prime Minister, in such cases if there is no clear majority in the Parliament, the President might have some sort of priority in appointing the Prime Minister and even in such situations as well he has to call the person who has the maximum support of the members in the Parliament. In case the Prime Minister dies while in the office then president may immediately appoint a caretaker Prime Minister on the grounds of the seniority of the cabinet Ministers as the Radha Kirishnan appointed Gulzarilal Nanda in 1964, and in 1966, or he may appoint any person from the majority in Lok Sabha like in 1984, Zail Singh appointed Rajiv Gandhi.

### **9.3 Tenure:**

The tenure of the Prime Minister to be in the office is five years after the completion of this period again Parliament goes for fresh elections. The Prime Minister lives in the office during the 'pleasure' of the President, it look as if President can dismiss the Prime Minister whenever he feels like and that type of serious step can be taken only in very rare cases, as soon as he dismisses the Prime Minister he has to appoint a new Prime Minister. The Prime Minister receives Rs.1, 60,000 as monthly salary including all allowances.

### **9.4 Powers of the Prime Minister:**

There are several powers to the Prime Minister and as the head of the Union Government the Prime Minister does number of important functions which has been written in the Constitution of India.

#### **9.4.1 Power to form the Government:**

As soon as the appointment of the Prime Minister, the next important duty is to form the Government, the Prime Minister has the authority to pick his own Council of Ministry accordingly, Prime Minister selects persons from the Lok Sabah and can choose members from the Rajya Sabah as well. These powers are due to the fact that the Prime Minister is the leader of the party in majority in the Lok Sabha. After choosing the list, Prime Minister will submit it to the President for the approval, it looks like that the final powers to appoint the Ministers lies with President, but in reality, President will have very meagre powers in this regard. Eventually President has to approve the list submitted by the Prime Minister and he has the power to include or remove from the list anyone's name, the responsibility of the Prime Minister is to form the Government and must have the different interest, communities and real involvement and that is the reason in the Indian Government Muslim and Sikh will have representation. The Ministers will be in the office by the pleasure of the Prime Minister.

After forming the ministry, Prime Minister has to allocate the business to the Ministers that is portfolios to them and is the responsibility of the Prime Minister and has the powers to shift any one from one department to the other department. The Prime Minister being the chairman of the cabinet, summon the meetings and preside during such meetings, when any of the

Ministers resigns then the post falls vacant but in cases when the Prime Minister dies in the office then Ministry will be dissolved. In technically speaking the Prime Minister is the connecting link between the President and the Cabinet, but the Ministers can have access to the President individually concerning their departments. Any significant changes in the cabinet or any policy matters for such things must go through the Prime Minister. The Prime Minister in fact has overall responsibility of all the policies of the Government hence, Prime Minister has the powers to supervise all the departments. If any Minister refuse to resign when asked by the Prime Minister, if he refuses to resign, can get him dismissed by the President. All these powers are vested to the Prime Minister by the Constitutions and these were borrowed for the British Parliamentary system.

#### **9.4.2 Coordinator of the Administration:**

Prime Minister can be considered as the head of the government and the administration, and accountable for the formulation and implementation of the policies of the government, in doing so it is the responsibility of the Prime Minister to supervise all the departments of the different ministries and coordinate the works with them. In fact it is not possible for the Prime Minister to check all the departments for this reason, the different committees of the cabinet looks after such duties, while doing such works by the committees they will consult the Prime Minister. If at all any differences arises among the ministers then Prime Minister solves or iron out the differences.

#### **9.4.3 Link between Cabinet and Parliament:**

The Prime Minister is regarded as the connecting link between the cabinet and the Parliament, and is the main person to deliver his views and speech in the government, all the important announcements about the government and its policies will be addressed by the Prime Minister, and also safeguards the members or ministers of his party during the discussions in the Parliament.

#### **9.4.4 Patronage Powers:**

The Prime Minister of India has very wide-ranging powers of patronage, all the significant appointments which are made by the President are actually by the recommendation of the Prime Minister, the powers which are vested in the President in reality Prime Minister enjoys.

#### **9.4.5 Prime Minister and Council of Ministers:**

The Council of Ministers is in fact reduced to the position of the advisory body, and in fact they do not have such powers, and the entire show is run by the Prime Minister itself by the help of the Council of Ministers. The cabinet as solitary element is losing its power and status as the final policy making will be with the formation of the smaller bodies such as 'emergency cabinet', inner cabinet' and 'super cabinet'. The first Prime Minister was very charismatic freedom fighter and mass leader with highly intellectual and very educated person with his intellectual ability, character and moral values, and in fact he ruled on his own intellectual ability. Whereas his daughter India Gandhi was considered as arrogant, commanding, strict and authoritarian in her behaviour. While Rajiv Gandhi, was regarded as aristocratic to the core and well-versed in politics, government, economics and administration. The other Prime Minister P V Narasimha Rao was totally different from them, he was considered as the learned person, scholarly, a polished politician and he was free from the dynasticism and authoritarianism.

#### **9.4.6 Prime Minister and Parliament:**

Prime Minister is the leader of the majority party in the Lok Sabha, and was called by the President to form the Government, which means that the Prime Minister gets the highest position only after the attainment of the support of the majority members from the same party and agreement has been made that the Prime Minister must be from the Lok Sabha, but Indira Gandhi for a brief period from 1966-67 as the Prime Minister, she was from the Rajya Sabha and similar case of Prime Minister Dr. Manmohan Singh from 2004-2009, was totally different, he was from the Rajya Sabha for longer period of 10 years. It is also evident that the authority and the efficiency of the Prime Minister depends upon the support in the form of majority to the Prime Minister, and dominates the House, as the Leader of the House in discussion with the Speaker, fixes the meeting dates and the agenda of the meeting. Prime Minister can ask the President to summon or prorogue the Lok Sabha, can advise the President to dissolve the House. There are certain examples like in 1979, when Charan Singh asked to dissolve the then President Sanjiva Reddy, did accordingly.

#### **9.4.7 Prime Minister as the Leader of the Lok Sabha:**

The Prime Minister regarded as the Leader of the Lok Sabha, and he must be from the Lok Sabha, but there are certain instances where from other House, like In 1966, Indira Gandhi was from the Rajya Sabha, the second occasion when P V Narasimha Rao, in 1991, became the Prime Minister he was not the member of the either House but later he was elected to the House. The Prime Minister as the head of the government and the leader of the Lok Sabha will have big accountabilities with regard to assure the good performance of the government with his Ministers and for this purpose Deshmukh Team suggested a separate department of parliamentary Affairs, under the Minister of the State, must be made and placed under the overall charge of the Prime Minister. The changed position has been well described by the Administrative Reforms Commission Study Team on the Machinery of the government of India (Deshmukh Study Team) "In recent years Parliament has emerged as a powerful institution influencing both the government and the people...this calls for a more careful planning of government business in Parliament, a closer and more careful planning of government business in Parliament, a closer and more careful, thorough scrutiny of non-official business, a better appreciation and anticipation of the issues likely to be raised in Parliament and consequently, a greater degree of preparedness on the part of government to face situations in Parliament".

#### **9.4.8 Prime Minister and the Party:**

The Parliamentary government is definitely a government of certain party, the party which wins the majority seats in the election actually forms the government, and asked by the President to form the government. Hence, the Prime Minister owes his office to the party support and the support of such party decides the tenure of his office and finally the government. An incident happened in 1969, when the Congress Working Committee expelled Indira Gandhi from the primary membership of the party and directed the Congress parliamentary party to overthrow the Prime Minister but it did not happen. In fact the Prime Minister is morally and politically restricted to the policies of the party. As the leader of the Parliamentary party Prime Minister will presides over the meetings, was responsible for the party in the Lok Sabha, takes active role in the discussions. It is necessary to have good relations between them is required for the working of Parliamentary democracy.

#### **9.4.9 Prime Minister and the People:**

Though the Prime Minister is the leader of the majority party, and at the same time now a days, is the leader of masses as well because the people will vote as an individual rather than the party. The Prime Minister during the elections goes to the people on the party policies and people expects them to fulfil all the promises made during the elections. The proclamation of the emergency in 1975, further strengthen the status of the Prime Minister and elevated to the position as the undisputed leader of the government, the party and the people.

#### **9.5 Prime Minister's Secretariat:**

The office of the Prime Minister is known as the Secretariat it came into the presence on 15<sup>th</sup> August 1947, till 1977, it was known as the Prime Minister's Office, and the secretariat was made to look after the duties of which were performed by the secretary to the Governor-General, it is an extra constitutional organization which has not said about it in the constitution. It possess the position of the department of Government of India under the Allocation of the Business Rules 1961. It connects the Prime Minister and Ministers, President, Governors, Chief Minister and Foreign delegates. And on the other hand it relates with party matters, personal correspondence, grievances for the public etc. it merely functions for the office of the Chairman of the Planning Commission. The main function of this is to help the Prime Minister in the routine duties as the head of the government, liaison with ministries, President etc.

#### **9.6 The Position of the Prime Minister:**

According to the Constitution of India, Prime Minister has vested with extensive powers and the key person in the cabinet and the most influential person as well. The Prime Minister of England also has such type of powers in the government of Britain and said as the 'primus inter pares' (first amongst equals) 'the steersman of the ship of the state' the 'moon among the lesser stars' and the 'sun around which all other planets resolve'. The epithets mentioned above are also applicable to the Indian Prime Minister. Whereas the Indian Prime Minister has advantage over the British, because the Indian Prime Minister office works along with the Constitution provided and not like that of conventions in the case of British Prime Minister. After the 42<sup>nd</sup> amendment the powers of the Prime Minister in India have become more powerful. The position of the Prime Minister also depends upon the individual charisma as well, the Prime Minister such as Jawaharlal Nehru, Indira Gandhi and Rajiv Gandhi were charismatic leaders of their party hence they had their influence and in implementing the policies of the government.

#### **9.7 Conclusion:**

The Prime Minister is the important figure in the government, he actually administers the administration of the country. The Article 74(1), of the constitution provides that, "there shall be a Council of Ministers with the Prime Minister at the head to aid the President in the exercise of his functions". The appointment of the Prime Minister is a constitutionally occurs and it is just like a formality, and President has no discretion in this regard and he shall invite the leader of the majority party in the Lok Sabha to from the Government. Hence President appoints the Prime Minister. The tenure of the Prime Minister to be in the office is five years after the completion of this period gain Parliament goes for fresh elections. The Prime Minister lives in the office during the 'pleasure' of the President, it look as if President can dismiss the Prime Minister whenever he feels like and that type of serious step can be take

only in very rare cases, as soon as he dismisses the Prime Minister he has to appoint a new Prime Minister.

There are several powers to the Prime Minister and as the head of the Union Government the Prime Minister Does number of important functions which has been written in the Constitution of India. As soon as the appointment of the Prime Minister the next important duty is to form the Government, the Prime Minister has the authority to pick his own Council of Ministry accordingly Prime Minister selects persons from the Lok Sabah and can choose from the Rajya Sabah members as well.

### **9.8 Model Questions:**

1. Discuss about the qualification, tenure and the appointment of the Prime Minister?
2. Write about the different powers of the Prime Minister and how is connected to the Parliament and the party?

### **9.9 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**



## LESSON -10

# PRIME MINISTER AND CABINET

### 10.0 Objectives:

1. Students would be able to know about the background, formation and the classification of Council of Ministers.
2. Students would be able to learn about the size of Cabinet, functions Council of Ministers.

### Structure

#### 10.0 Objectives

#### 10.1 Introduction

#### 10.2 Council of Ministers and the Cabinet

#### 10.3 Historical Background and Present Classification

#### 10.4 Composition and Formation of the Council of Minister

##### 10.4.1 Ministers

##### 10.4.2 Deputy Prime Minister

#### 10.5 Size of the Cabinet

#### 10.6 Functions of the Cabinet

##### 10.6.1 Executive Powers

##### 10.6.2 Legislative Powers

##### 10.6.3 Financial Powers

##### 10.6.4 Control over the Appointments

##### 10.6.5 Foreign Relations

##### 10.6.6 Relationship with President

##### 10.6.7 Relations of Council of Ministers and Parliament

##### 10.6.8 Extraordinary Functions

#### 10.7 Relationship between Prime Minister and Cabinet

##### 10.7.1. The Principle of Collective Responsibility

#### 10.8 Conclusions

#### 10.9 Model Questions

#### 10.10 References

### **10.1 Introduction:**

The Article 74(1) states that “there shall be a Council of Ministers with the Prime Minister as its head and to aid and advise the President in the exercise of his functions”. But after the 42<sup>nd</sup> amendment in 1976, the Article 74 (1) reads as “there shall be a Council of Ministers with the Prime Minister as its head and to aid and advise the President in the exercise of his functions act in accordance with such advice”. This Article says that the Prime Minister shall be appointed by the President and Ministers shall be appointed by the President on the advice of the Prime Minister.

### **10.2 Council of Ministers and the Cabinet:**

It is very much needed to understand and confusion about the Cabinet and the Council of Ministers. “The Cabinet is one of the typical anomalies of the British Politics”. It came in to existence because of the historical situations and conventions and it is considered as an extra constitutional organization. The Constitution of India, as well did not said about this organization but mentions only as the “Council of Ministers”. Whereas the Cabinet, as an organization, is hence, the outcome of the succeeding the British Cabinet model. The Cabinet has been rightly pronounced as “The steering wheel within the Council of Ministers”. Every Minister may not be the member of the cabinet, and when he is offer the position of the minster, then it will be clearly said that minister is a cabinet rank or not and if the minister is of the cabinet rank then only those minister can attend the Cabinet meetings otherwise cannot attend such meetings but they can attend or other persons can be invited to such meetings as special guests for that occasion.

The Cabinet is considered as the highest organisation in performing the administration of the country in a democratic manner. Council of Minister’s prepares the policies of the government and supervises all the administration. Cabinet is accountable for all final decisions, direction coordination and govern the administration.

### **10.3 Historical Background and Present Classification:**

The Council of Minister, is made of three tire institution which means that there are three levels of ministers such as, Cabinet Ministers, Minister of State with independent charge and Ministers of State and Deputy Ministers. It is very important to note that since 1967 there is no Parliamentary Secretary has been appointed and the council’s head as the Prime Minister and in sometimes Deputy Prime Minister heads. The first cabinet functioning government which formed in India in the year 1946 latter on 15<sup>th</sup> August 1947, Jawaharlal Nehru took over as the Prime Minister then advised the President to make a new government comprising of Prime Minister, Deputy Prime Minister and twelve Ministers. Within a span another Minister was inducted without any portfolio, latter three Ministers of State in 1948 and two deputy Ministers were inducted into the Council of Ministers in 1949. The chief whip of the party will be of the State Minister’s rank and it was decided during that time. Since then the changes in the organisation had been started and N. Gopalaswami Ayyangar was also inducted into the Ministry without any portfolio, the purpose behind leaving him without any portfolio was that to examine the structure of the government and to give important recommendations to the government, on 16<sup>th</sup> November, 1949, he submitted the report on Recommendations of the Machinery of Government.

During his study he observed and stated in his report that, there were 14 Minsters of cabinet rank, 4 Minister of State rank and 2 were the Deputy Ministers in the Council of Minister and there were 20 Ministers altogether. He observed that the position of deputy Ministers were

not considered as Ministers and even the relation and the functioning between them and the State Ministers was very confusing. He stated about four suggestions to be made 1. With related to respective roles and accountabilities of the three tier ministry to be recalled; 2. The powers and function of such ministers to be authorized and delivered for in Rules of Business; 3. He suggested the term of 'Deputy Minister to Parliamentary Secretary'; and 4. He thought that the description of the 'Minister of State' is not appropriate but he stated, to be kept as it is. He did not suggest that it was required to review the duties and the accountabilities of the cabinet ministers because they were not only the heads of such ministries but they were responsible to the entire nation. He also suggested that there must be one or two Ministers without portfolios so that they can examine the performance and he also recommended that Ministers of State and the Deputy Ministers must be the part of the Council of Minister but not to the rank of Cabinet. He suggested that the Deputy Ministers must be like that of Parliamentary Secretaries and they must not be given any administrative role to them, but they must be trained in the administrative functions of the government when they get required experience then they can be promoted as ministers of the State.

#### **10.4 Composition and Formation of the Council of Minister:**

The composition of the Council of Ministers mainly comprises of Prime Minister and the other Ministers and may be required and will be decided by the Prime Minister. The appointment of the Prime Minister is done by the President and then on the advice of the Prime Minister, appoints the Council of Minister, at the same time we must not consider that President can appoint anyone to this position, President will not have much choice in this regard. President has the option to call the person from the majority party in the Lok Sabha and ask to form the government. If there is no clear majority then President have little options, but the choice of selecting the Council of Minister lies with the Prime Minister only. The Constitution of India says according to the Article 75 (i) that, "The Prime Minister shall be appointed by the President of India". Hence, it is considered as the first step in the making of the Council of Ministers.

In the case of the death of the Prime Minister, for example in 1964, after the demise of the Nehru, to fill the gap there was an emergency meeting by the Krishnamachari, G.L Nanda and L.B Shastri, and they advised the President to appoint G N Nanda as the Prime Minister and President agreed to their advice, when he was appointed by the President he did not appointed as an acting Prime Minister to lead care taking government but he was appointed as the full-fledged Prime Minister. During that time there was internal fight between L.B Shastri and Morarji Desai for the Prime Minister ship, then President of Congress party Kamraj did not want election for this, instead he chose for consensus vote and it favoured the L B Shastri to be the Prime Minister. And the same thing repeated in the year 1966 after the death of L B Shastri, then again the same formula of consensus brought which was not accepted by Morarji Desai and he suggested for the election for the position, the party high command recommended Indira Gandhi to be the Prime Minister and in that election Morarji Desai lost to Indira Gandhi by 169 to 355 votes, and President asked her to form the Government and the most important point to note was that, chief Ministers played an significant role in bringing Indira Gandhi to the Position of Prime Minister in that elections.

There was same sort of incidence happened in 1979-80 declared by Sanjiva Reddy, a minority party leader Charan Singh as the Prime Minister, in the year 1984, when Indira Gandhi's death, President Zail Singh invited Rajiv Gandhi to form the Government. In the year 1989, when Rajiv Gandhi refused to form the Government then the President called V P Singh to form the Government which was a minority party supported by BJP and Communist

parties. After the 11 months another experiment occurred, when the newly formed BJP by the Chandra Shekhar which was supported by the Congress from outside. In the year 1991, when the demise of Rajiv Gandhi, the President called the majority party senior leader P V Narasimha Rao, even though he was not the member of either of the House. In the year 1996, when there was a hung Parliament BJP was the single largest party and the President S D Sharma called A B Vajpayee to form the government on May 15<sup>th</sup> 1996, and to prove majority in the House on 31<sup>st</sup> May he sworn in as the Prime Minister and within 13 days, on 28<sup>th</sup> May 1996, the government fell as it could not prove the majority in the House. After this 13 parties united to form the government, this was a unique kind of experiment and Deva Gowda, became the Prime Minister, then in 1997, I K Gujaral became the Prime Minister and in the 12<sup>th</sup> Lok Sabha elections A B Vajpayee again became the Prime Minister.

#### **10.4.1 Ministers:**

Article 74(i) says to provide the Council of Minister and Prime Minister as its head, the Article 75 says about the appointment, qualifications and condition of services for the Ministers:

- A. All the Ministers on the advice by Prime Minister, will be appointed by the President.
- B. All the Minister will enjoy the office by the pleasure of the President
- C. All the Ministers called as Council of Minister and they are accountable to the Lok Sabha.
- D. Unless they take oath and secrecy by the President they cannot perform as the ministers of the Union.
- E. Any Minister, is not the member of the either House for six consecutive months then ceases to be a minister.
- F. The salary and allowances are decided by the Parliament from time to time.

#### **10.4.2 Deputy Prime Minister:**

During the time of the Jawaharlal Nehru, the position of Deputy Prime Minister came into existence, Patel became the first Deputy Prime Minister, in 1967, Indira Gandhi appointed Morarji Desai as the Deputy Prime Minister as a outcome of political negotiation. In 1977, Morarji Desai appointed Charan Singh as his Deputy, Charan Singh when he became Prime Minister he appointed Jagjeevan Ram as the Deputy Prime Minister, the Janata Dal government appointed Devi Lal as the Deputy Prime Minister and in 2004 as well A B Vajpayee appointed L K Advani as the Deputy Prime Minister.

The Study Team on the Machinery of Government and The Administrative Reforms Commission's Report mentioned about the appointment of the deputy Prime Minister as it give the assurance to active functioning of the governmental machinery, the main reason to have this position to give organizational support to the Prime Minister. Deputy would be given all the extra works of the Prime Minister so that the work load would be lighten for the Prime Minister. The ARC recommended that, "the office of the Deputy Prime Minister should be duly recognized in the Transection of Business Rules".

#### **10.5 Size of the Cabinet:**

This is the most important factor in the formation of the Council of Ministers in Britain and in India as well about the size of the Ministry. In the year 1918, the Haldane Committee

(Machinery of Government Committee) suggested the work of the government could be divided into 10 main divisions, and the cabinet must be made of 10 Cabinet Ministers at the most 12 ministers, this target was not appreciated by the British. In India it was agreed universally to have cabinet to small size, the first principle, the size must be fixed as the percentage of the strength of the Parliament. The second principle, suggest the actual requirements of administration. On the consideration of the size of the India it was suggested to have 15-20 members. A comparative study of the size of the Council of Ministers from 1952 to 2014, varies, 36 members in 1971, and 60 in 1973, and 1976, the number of Cabinet Ministers was around 13-16, in 1992, the total membership was 62, out of which there were 15 ministers of cabinet rank.

The 91<sup>st</sup> Amendment Act, 2003, added two new clauses (1A) and (1B) of Article 75 of the Constitution the new clause suggests that, the total number of Ministers which includes the Prime Minister, in the Council of Ministers shall not exceed 15 percent of the total number of members of the Lok Sabha.

### **10.6 Functions of the Cabinet:**

The cabinet of India is mostly similar to that of British cabinet with regard to some of the functions, but there are certain functions which can be performed by Indian cabinet only.

#### **10.6.1 Executive Powers:**

The executive powers which are given by the Constitution to the President who actually performs on the advice of the Council of Ministers, in fact these executive powers of the Union Government is actually done through the Council of Ministers. The Cabinet issues the directives to the State Governments as well. They formulate the policies of the Union Government and they implement in a proper manner in the Country, the policies such as national, international level, as soon as they make the policy they will perform through their respective ministries and Ministers will be in charge of one or more than one departments. The matters which are regarded as routine are decided by the Minister itself but the policy matters are to be decided by the Council of Ministers, the council will involve in coordinating with other ministries as well.

#### **10.6.2 Legislative Powers:**

When we talk about the legislations, we understand that it will be formulated by the Parliament, but in reality it will be done by the Cabinet and it formulates all the legislative matters and directs the Parliament. All the important bills are introduced and monitored by the ministers in the Parliament, because the Council of Ministers have the support of the majority of the members in the Lok Sabha, hence, they won't face any problem in making such legislations. No private member can introduce a bill in the Parliament, it can be done only by the support of the ministry. Therefore it is evident that the Cabinet makes the legislation with the advice and approval of the Parliament.

#### **10.6.3 Financial Powers:**

The cabinet in fact has more powers in the financial matters and no claim for grant could be made except by the Government. It prepares the annual budget and introduce in the Parliament, they also decides about the expenditure and allocations even the taxes to be levied. According to the Constitution no money bill can be introduced unless it is approved by the President, which means the ministers only has the authority to introduce money bills in the House.

**10.6.4 Control over the Appointments:**

All the important appointment which are to be taken by the President under the Constitution such as, Attorney General, Union Public Service, Chief election Commissioners Etc., appointments are done by the President on the recommendations of the Council of Ministers.

**10.6.5 Foreign Relations:**

The Council of Ministers decides all the foreign policy of India and also suggests what kind of policy and relation India must have with other nations.

**10.6.6 Relationship with President:**

The executives at the Union Government are the Council of Ministers, according to the constitution all the executive authority has been given to the President, who can do it either directly or through the subordinate officers and the Council of Ministers. The 42<sup>nd</sup> amendment has given the authority to the Council of Ministers to advise the President, the former President V.V Giri, stated about it as, "Our Constitution in 1976 makes an explicit provision compelling the President to act in accordance with the advice of the Ministers who continue in the office during the President's pleasure. If this provision continues to exist even, now, and the people want it that way, it will be in the fitness of the things to go in for a presidential form of Government, as otherwise this office becomes a drain on the public exchequer". During the Janata Government time by the amendment in the Constitution granted the President the right to refer back matter to the Council of Ministers for one time, but the advice by the President is reconsidered by them then President has to approve it. Hence the actual executive power lies with the Council of Ministers and President has to act upon it. The President cannot dismiss a ministry which has the support of the majority members, the President cannot remove any one unless he was advised by the Prime Minister to do so.

**10.6.7 Relations of Council of Ministers and Parliament:**

The relations between the Parliament and Council of Ministers friendly and very close, the Constitution says that to become Minister one must belong to any of the House, if he is not the member of the House at that time then need to seek the election form either of the house within six months fails to do so then loses the ministry. All the members of the Council of Ministers are collectively responsible to the Parliament according to the Constitution. Parliament can regulate the Council of Ministers in various manners such as, Parliament can pass no-confidence motion against one or the entire ministry to resign; it cannot accept the Bill introduced by the ministry, which can take as the Vote of No-Confidence in the ministry; it can pass or reject the bills introduced by the opposition to which the Council of Ministers differ; in case of the no-confidence motion passes the ministry need not resign, it advises the President to dissolve the Parliament for fresh elections. The Parliament can bring the weakness and shortcomings of government by the way of questions, supplementary questions, adjournment motions etc.

**10.6.8 Extraordinary Functions:**

In the extraordinary time the Cabinet exercises the functions like 'sui generis', hence, the President has the authority under Article 352 to makes laws by an ordinance while the recess of the Parliament, but in fact these ordinances are made by the Cabinet and advices President to propagate them. Likewise, Part XVIII of the Constitution given the powers to Cabinet to

advise President to proclaim the emergency in such conditions when it is required. Whatever activities performed by the President during the emergency in reality it is done by the cabinet.

### **10.7 Relationship between Prime Minister and Cabinet**

While the Cabinet is theoretically a collective decision-making body, the Prime Minister's dominance often leads to a "Prime Ministerial government" rather than a "Cabinet government."

- Classical Model: Prime Minister as first among equals.
- Contemporary Reality: Centralization of authority in the PM due to media visibility, party leadership, and control over appointments.

Factors Enhancing PM Dominance:

- Majority control in legislature.
- Strong party discipline.
- National security and foreign policy centralization.
- Public perception of PM as the nation's chief spokesperson.

However, in coalition governments, the PM's authority may be diluted by the need to accommodate coalition partners.

#### **10.7.1. The Principle of Collective Responsibility**

This constitutional convention ensures that:

- The Cabinet acts as a single entity.
- A defeat of the government in a parliamentary vote is considered a loss of confidence, compelling resignation or dissolution.
- Individual ministers must resign if they dissent fundamentally from Cabinet decisions.

This principle enforces executive accountability to parliament and, ultimately, to the electorate.

### **10.8 Conclusions:**

The Article 74(1) states that "there shall be a Council of Ministers with the Prime Minister as its head and to aid and advise the President in the exercise of his functions". But after the 42<sup>nd</sup> amendment in 1976, the Article 74 (1) reads as "there shall be a Council of Ministers with the Prime Minister as its head and to aid and advise the President in the exercise of his functions act in accordance with such advice". It is very much needed to understand and confusion about the Cabinet and the Council of Ministers. "The Cabinet is one of the typical anomalies of the British Politics".

The Council of Minister is made of three tier institution which means that there are three levels of ministers such as, Cabinet Ministers, Minister of State with independent charge and Ministers of State and Deputy Ministers. The composition of the Council of Ministers mainly comprises of Prime Minister and the other Ministers and may be required and will be decided

by the Prime Minister. The appointment of the Prime Minister is done by the President and then on the advice of the Prime Minister appoints the Council of Minister. The 91<sup>st</sup> Amendment Act, 2003, added two new clauses (1A) and (1B) of Article 75 of the Constitution the new clause suggests that, the total number of Ministers which includes the Prime Minister, in the Council of Ministers shall not exceed 15 percent of the total number of members of the Lok Sabah.

The cabinet of India is mostly similar to that of British cabinet with regard to some of the functions, but there are certain functions which can be performed by Indian cabinet only. They have executive, financial, legislative, coordinating and extraordinary powers to the cabinet.

### **10.9 Model Questions:**

1. Discuss about the formation of the Union Cabinet and the background of the Cabinet?
2. Write about the Powers and Functions of the Council of Ministers?

### **10.10 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**



**LESSON -11****SUPREME COURT AND JUDICIAL REVIEW****11.0 Objectives:**

1. Students would be able to learn about the Supreme Court and the appointments of Judges and Chief Justice.
2. Students would be able to understand about the powers and judicial reviews.

**Structure:**

## 11.0 Objectives

## 11.1 Introduction

## 11.2 Composition of the Supreme Court

## 11.3 Appointment of the Chief Justice

## 11.4 Qualification to be a Judge

## 11.5 Tenure of the Judges

## 11.6 Removal of the Judge

## 11.7 Establishment

## 11.8 Immunities and Contempt Proceedings

## 11.9 Powers of the Supreme Court

## 11.9.1 Original Jurisdiction

## 11.9.2 Appellate Jurisdiction in Civil Criminal Matters

## 11.9.3 Court of Record

## 11.9.4 Power to Review its own Judgement or Order

## 11.9.5 Guardian of Constitution

## 11.10 Judicial Reviews of Supreme Court

## 11.11 Conclusion

## 11.12 Model Questions

## 11.13 References

**11.1 Introduction:**

The most important part of the federal Constitution is the division of powers of the government among the Centre and the State Governments. It is definite that all in the country followed the laws made by the Parliament, but some challenged a law due to they regard it unjust, inappropriate and strict; others violates it because of the mind-set they have and

affinity to act like the way of criminal. The Constitution of India provides to act like a guardian of the Constitution, and this Court is the highest authority in the country and only one court of such kind in the country.

### **11.2 Composition of the Supreme Court:**

When the Supreme Court in 1950, came into existence according to the Constitution, then it had 8 judges. The Supreme Court is comprised of Chief Justice and the Judges the number of Judges can be increased or can be decreased by making an Act in the Parliament. The number of Judges were increased to 17 in 1977, excluding the Chief Justice. The number of the judges has been increased to 25 in the year 1986, excluding the Chief Justice, and the number of Judges increased to 30 in the year 2009, excluding the Chief Justices. Hence, the number of total judges in the Supreme Court presently are 34 which includes the Chief Justice. The Supreme Court is in New Delhi.

### **11.3 Appointment of the Chief Justice:**

The Chief Justice is appointed by the President of India in discussions with the Judges of the Supreme Court and the High Court in the different States of the country, and the judges are appointed by the President in consultations with the Chief Justice of India. An ex-Judge of the Supreme Court may also be asked to act as a Judge of the Supreme Court by the Chief Justice, there is also a provision that the 'Acting' Chief Justice can be appointed.

### **11.4 Qualification to be a Judge:**

To become the Judge of the Supreme Court a person must have these qualifications:

1. Must be a Citizen of India;
2. Must have been a judge of High Court or two or more such courts in succession for a period of five years at least;
3. Must have been the advocate of High Court or two other such court at least for 10 years;
4. Must be, in the opinion of the President of India, an eminent jurist;

Every Judge while holding the office, has to take an oath.

### **11.5 Tenure of the Judges:**

There is no minimum age recommended for the appointment of the Supreme Court Judge, according to the Article 124, any Judge of the Supreme Court can hold office until attains the age of 65 and after attainment of such age he retires and gets the pension as fixed by the law. There are limitations on the practice while in the office, the article 124 (7), says, "No person who has held office of a judge of the Supreme Court shall plead or act in any Court or before any authority within the territory of India". But he can be asked by the Government to perform such kind of work.

### **11.6 Removal of the Judge:**

The Supreme Court Judge cannot be removed from the office, but can be removed only on such grounds to be proved misbehaviour or incapacity. The President can give orders to remove the judges when the two Houses of the Parliament passes resolution by two-thirds majority present and voting by the charges of misbehaviour or incapacity against a Judge

have to be proved, it is required that the resolution must have been passed in the same session.

The Constitution actually safeguards the security of service and emoluments, the salary of the Chief Justice 2,80,00,000/- and the Judges 2,50, 000/- per month. Besides, they are entitled to such allowances shall be charged from the Consolidated Fund of the India. The salaries of the judges cannot be changed to their disadvantage after their appointment.

### **11.7 Establishment:**

The Constitution of India has provided the Supreme Court to have its own establishment and to have a total control over it. All the appointment such as, officers and servants are made by the Chief Justice, the conditions and other things will be decided by the Supreme Court only. The salaries, maintenance and other financial requirements are met by the Consolidated Fund of India. The Article 129, says that, Supreme Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself. It means that all the record of the court must be kept and can be called as evidence when required.

### **11.8 Immunities and Contempt Proceedings:**

There is full independence to the judges of the Supreme Court, no one can discuss regarding the conduct, decision of the Judge in the Parliament and no bad motives can be ascribed to the Judge nor the decision of the Judge can be criticized in both the Houses. Whereas the Supreme Court has power to start contempt proceedings against any person who tries to influence the judges.

### **11.9 Powers of the Supreme Court:**

The Supreme Court has more powers than any other federal court, the Constitution has provided both original, appellate and advisory jurisdiction to this Court.

#### **11.9.1 Original Jurisdiction:**

The Supreme Court has original jurisdiction in any dispute between

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

The disputes among the above mentioned parties, law or facts which are brought to the Supreme Court, out of any treaty, agreement, covenant, engagement and such other things entered into. The views of the High Courts has to be decided by the Supreme Court.

#### **11.9.2 Appellate Jurisdiction in Civil Criminal Matters:**

The Article 133 says about it, the appeal can be made to the Supreme Court from any judgment, decree or final order given by the High Court, it can hear the appeals from the decisions of High Court on both civil and criminal matters. The jurisdiction for appellate has two features 1. Jurisdiction to hear appeal in civil and criminal matters or proceedings which involve the interpretations of the constitution and 2. Jurisdiction to hear the appeals in other civil and criminal matters.

The Article 134 says that, an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal case of High Court in the territory of India. In the civil matters an appeal lies to Supreme Court against the judgment of High Court, and if such Court certifies that the case is fit for appeal to the Supreme Court. It can give special leave to appeal against any judgment, decree, sentence or order, made by any tribunal or court in India. It is important note to that Supreme Court has no right to grant leave to appeal against judgment of military court or tribunal.

Whereas in Criminal cases, an appeal can be made against the judgment of High Court, to the Supreme Court if:

1. The High Court has in appeal reserved an order of acquittal of an accused person on sentence to death; or
2. The High Court has withdrawn for trial before itself any case from any court sub ordinate to its authority and has in such trial convicted the accused person and sentenced to death; or
3. The High Court certifies that the case is fit for appeal to the Supreme Court.

### **Appeal by Special Leave:**

According to the Article 136, the constitution provides Supreme Court for regular appeals of the High Court decisions.

### **Writ Jurisdiction:**

According to the Article 32, gives powers to Supreme Court to issue directions or orders or writs such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari of the Fundamental Rights.

### **Advisory Jurisdiction:**

The article 143 says that “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 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 the court for consideration and the court may, after such hearings as it thinks fit, report to the president its opinion thereon”. The President asked the Supreme Court for its opinion on many occasions.

### **11.9.3 Court of Record:**

The Supreme Court can be considered as the court of records, and have all the powers which includes the power to punish for contempt of itself. Court of record means that, the acts and judicial proceedings are recorded everlasting retention and cannot be challenged when present before any court for evidence.

### **11.9.4 Power to Review its own Judgement or Order:**

According to the Article 137, the Supreme Court has powers to review its own judgement or orders, it can be done under these conditions such as, identification of new facts; mistake or evident on the face of the records; and any other sufficient reasons.

### **11.9.5 Guardian of Constitution:**

Supreme Court is the guardian of constitution the final authority to interpret the constitution given to Supreme Court, it is the accountability of the Supreme Court to supervise that both the Centre and State Governments works under the provisions made by the Constitution. For this reason it has the authority to review the laws passed by the Legislature and orders issued by the Executive, has the power to claim it as unconstitutional if they are contradict to any provision of the Constitution.

Supreme Court has the power to make and examine the disputes regarding the elections of President or Vice President of India and the decision of the Supreme Court is final in this matter. If the Supreme Court declares the chairman or the members of UPSC, of guilty of misbehaviour then President can remove them.

### **11.10 Judicial Reviews of Supreme Court:**

The strength and dignity can be best controlled from its authority of Judicial Reviews of the Supreme Court, the authority of the Supreme Court is that it can review the laws passed by the Legislature and orders issued by the Executive, has the power to claim it as unconstitutional if they are contradict to any provision of the Constitution. The Constitution of India has given the powers to Parliament and the States to formulate the legislations according to the limitations, if Supreme Court observes that they have crossed the limitations then it can interfere in it and has the authority to declare it as unconstitutional.

The Judicial Review does two important functions such as, 1. Legitimising the action of the government; and 2. To safeguard the Constitution from any undue encroachment of the government. The Fundamental Rights, which includes the rights to the constitutional remedies, spread the field of Judicial Reviews to the Fundamental Rights as well, the Article 12 and 13, save the rights from attack by either the executive or the legislature through laws already in force or the laws formulated from now. The legislations of executive such as, ordinances, orders, regulations etc., will not be permitted to encroach on these rights. Chief Justice Kania witnessed in the case, V. K Gopalan vs The State of Madras in 1950, by which the “The inclusion of Article 13 (1) (2) in the constitution appears to be a matter of abundant caution. Even in their absence, if any of the Fundamental Rights was infringed by any legislative enactment, the Court has always the power to declare the enactment to the extent it transgresses the limits, invalid. The law declared as ultra vires of the Constitution by the Supreme Court is binding on all the courts within the territorial limits of India and the subordinate courts cannot apply the void law”. The Article 21, says that, “No person shall deprived of his life and personal liberty except according to the procedure established by the law”. The absence of the phrase ‘due process of law’, limits the power of the Indian courts, the judiciary of India has no freedom to bring their own conception of justice and equality to the judicial interpretations like that of Supreme Court of USA.

The liberal attitude of the courts in India, is seen and they limit their own liberty of actions, it has been held by the courts that they are guaranteed to prompt words of the constitution and not the essence of the Constitution. At the same time courts are not prepared to restrict their power on the grounds of the Constituent Assembly debates. The Parliament overpowered the limitations obligatory on the power regarding the amendment and curtailed of Fundamental Rights by the 24<sup>th</sup> Amendment, the rights of the Supreme Court are limited by this act and to declare a law affecting Fundamental Rights under the Articles 14, 19, and 31 as void, and the law is passed to effect the Directive Principles under the Article 39 (a) or (c). These amendments had lot of disagreements and were challenged in the Court, the Fundamental

Rights Case of 1973 or Keshavanand Bharati case. Finally the Court accepted that law passed to give Directive Principles under article 39 (b) or (c) could not be challenged so far they did not affect the basic structure of the Constitution. Indian Constitutions safeguards judicial review of legislation such as Articles 13, 32, 131, to 136, 143, 226, 251, 254 and 372.

### **11.11 Conclusion:**

The most important part of the federal Constitution is the division of powers of the government among the Centre and the State Governments. When the Supreme Court in 1950, came into existence according to the Constitution, then it had 8 judges. The Supreme Court is comprised of Chief Justice and the Judges the number of Judges can be increased or can be decreased by making an Act in the Parliament. The number of the judges has been increased to 25 in the year 1986, excluding the Chief Justice, and the number of Judges increased to 30 in the year 2009, excluding the Chief Justices. Hence, the number of total judges in the Supreme Court presently are 31 which includes the Chief Justice.

The Chief Justice is appointed by the President of India in discussions with the Judges of the Supreme Court and the High Court in the different States of the country, and the judges are appointed by the President in consultations with the Chief Justice of India. There are some specified qualifications to become the Judge of the Supreme Court, and the tenure, no minimum age recommended for the appointment of the Supreme Court Judge, allowing to the Article 124, any Judge of the Supreme Court can hold office until attains the age of 65 and after attainment of such age he retires and gets the pension as fixed by the law.

The Supreme Court Judge cannot be removed from the office, but can be removed only on such grounds to be proved misbehaviour or incapacity. The President can give orders to remove the judges when the two Houses of the Parliament passes resolution by two-thirds majority present and voting by the charges of misbehaviour or incapacity against a Judge have to be proved. The Supreme Court has many powers it performs according the constitution of India.

### **11.12 Model Questions:**

1. Discuss about the Supreme Court and the qualifications for the appointments of Judges?
2. Write about the powers of the Supreme Court in India?

### **11.13 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD.Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
4. JC. Johari, The Constitution of India, A Politico-Legal Study, Sterling Publishers Private Ltd., New Delhi, 2005.
5. Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 2013.

**Dr. C. Vinod Kumar**  
**Lesson Writer**

**LESSON -12****PROVISIONS FOR THE WEAKER SECTIONS****12.0 Objectives:**

1. Students would be able to know about the concept of the welfare.
2. Students would be able to understand about the administrative set up and the different schemes for the weaker sections.

**Structure:**

12.0 Objectives

12.1 Introduction

12.2 Administrative Arrangements

12.3 Schedule Caste and Scheduled Tribe Welfare

12.4 Welfare of Other Backward Class

12.5 Women Welfare

12.5.1. Legislative Measures

12.5.2. The Central Social Welfare Board

12.5.3. Other Important Programmes

12.6 Conclusion

12.7 Model Questions

12.8 References

**12.1 Introduction:**

There is total differentiation between the Law and Order of the State and the Welfare of the State, and in the recent times most of the governments are giving priority to the welfare of their citizens. If we observe the Indian history from the ancient times it was noticed that all the rulers were very much fond of welfare of their citizens, they had provided all such amenities of welfare to them, such as planting the trees on the road sides, building of roads, making temporary stay homes or shelters to the travellers even they had the arrangements for the posts etc., in those days the main attention was with the mechanism of defence and to bring peace in the country without such wars.

It was in the year 1929, when the 'Great Depression' occurred in United States of America, was considered as the main reason for new thoughts, it made the people to rethink about the

new ideas so that a change can be seen in the society. This led new thinking in United States of America, a new thought of 'liberalism' in Britain and such thought of 'socialism' in Russia were the most significant developments in the world and later developed into the new ideas for the welfare of the community. After the Second World War the countries which favoured the wars and being capitalists altered their ideas and brought a new look to it by adopting and creating a State consists of welfares for their citizens. In fact the communist ideology brought such ideas in them, though the Communist Party has seen its decline in the 1990s in Russia and other East Europe countries, still the concept of liberalism democracy and other ideologies are still vibrant and alive. The concept of social welfare which consists of social security to the community and welfare of the community.

When the Constituent Assembly met to make the Constitution of India, the ruling party Congress had such thoughts to implement programmes which benefits the community, they decided to have policies like liberal, democratic and welfare of the society in India. The consequences of such thoughts resulted in paving the way to assure equality and justice to every citizen, was laid in the Constitution which came into force on 26<sup>th</sup> January 1950. The constitution consists of chapter, the Fundamental Right and entire chapter of Directive Principles and with the latest amendments socialism was included to the preamble and the Directive Principles were justiciable and compulsory. The Article 38 talks about this, "that State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life". In other words we can understand that the Constitution of India is mainly grounded on the principles of social justice and the social equality of the community. The Article 46, is one of the most important in the constitution of India, because it talks about the welfare, it says that, State has to give a special care for education and the economic interest of the weaker section of the people in the country and with special attention for Scheduled Castes, and Scheduled Tribes. Along with this, it also says about the rights of minorities of religious and linguistics are mentioned very clearly to safeguard their interests. It also talks about the welfare of the women and child development, and handicapped and disable.

With the guidelines which are provided in the Constitution for the welfare, under the Social Security, Employee's State Insurance Scheme, Family Pension, Legislations on Labour, Safety of the Workers etc., are included, while under Social Welfare, the schemes for the upliftment of the depressed and disable sections such as, Scheduled Castes, Scheduled tribes, Backward classes, Minorities, Physically and other such challenged, Pensioners, Prisoners and other such schemes for Rehabilitation and Prohibition.

## **12.2 Administrative Arrangements:**

Though, several ministries take care of the welfare of the weaker sections, they took some changes with regard to the administration so that these welfare schemes would reach the needy section of the people, for that reason it was on 25<sup>th</sup> September 1985, it combined subjects such as, Welfare of the Scheduled Caste and Scheduled Tribe and Socially and Economically Backward classes and Other Backward Classes (OBC), they have included the linguistic and religious minorities which were under the Home Ministry; to tackle the needs of welfare of disabled and physically challenged, to rehabilitate those who are drug addicts, juvenile maladjustments, welfare for the aged; and the administrative matters of Wakf, which was under then Ministry of Law, but on 26<sup>th</sup> April, 1990, it was shifted to the department of Welfare, and now this Ministries, reorganised into the Department of Welfare and Department of Women and Child Development. The Welfare Ministry is the nodal agency for



all the activities, planning the policies, implementing and coordinating such programmes effectively so that it can be reached those weaker sections of the society.

These Departments can be seen at Centre and State levels they have their own interests and purposes, and it can be observed that the setups for the purpose of administrations will be different in States, these States plan according to their requirements. In the States of Andhra Pradesh, Bihar, Madhya Pradesh and Odisha they have separate departments to take care of the Tribal Welfare, Minorities, and Backward Classes. But in other States, they have committees of the members of the Legislatures on the guidelines of the Central Parliamentary Committee. In the States of Tamilnadu and West Bengal they have Tribal Advisory Committees, for the welfare of the Scheduled castes. It is the main responsibility of the Union Government to formulate such welfare policies in the country and coordinate such schemes through the State Governments.

### **12.3 Schedule Caste and Scheduled Tribe Welfare:**

The new Constitution came into force on 26<sup>th</sup> January 1950, and later the Preamble resolved to constitute India into a Sovereign Socialist Secular Democratic Republic, which gives the assurances to its citizens on Justice, Equality, and Fraternity. The Constitution of Part III, on Fundamental Rights assuring all its citizens of the Right to Equality and the Right to Exploitation, under the Part IV, Directive Principles of the State Policy also provides such rights, under the Article 46, included some other provisions for the upliftment of the weaker sections of the Society. The Hindu Society which created 'untouchables', are educationally backward and economically as well, M.S Srinivas a sociologist called them as 'intermediate class'. To the constitution by adding clause (4) to Article 16 which gives for equality of opportunity in public employment. The Article 46 demands the safeguards and promises promotional, educational and economic interest of "the weaker sections of the people", along with reservations in public services and these classes need to have the reservations in technical education which are provided by most of the State Governments.

The article 46 of the Constitution talks about the welfare of Scheduled Caste and Scheduled Tribes and other weaker sections such as backward Classes and Minorities. The main responsibility of the Governments in providing education, and economic development of these weaker sections of the society, the Union and State Government are very much dedicated and firm in implementing such schemes for the sake of the weaker section of the people, for this they have kept their political agendas aside. Even after the starting of such measure for them still their condition is not up to the mark the Scheduled Caste and Tribe have been undergone number of atrocities and to overcome such atrocities Union Government has enacted SC, ST prevention Act 1989, it came into force on 30<sup>th</sup> January 1990.

The Parliamentary Committees have been started to guarantee such activities by the Union Government in 1966, 71 and 73 Amendment Act to study the programme implementation for SC and STs in the country. By amending 65<sup>th</sup> amendment Act 1990, under the Article 338, inserted National Commission for SC and STs. This Commission is comprises of a Chairman, Vice-Chairman and Five other members all of them are appointed by the President. The Commission has given individual powers to control itself. It submits the report to the President about the effectiveness of welfare programmes in the States, depending upon their report the Union Government enquires the reasons from the States. The Commission was given the powers and it acts like Civil Court the important functions of the Commission are as follows:

1. It examines, regulate and coordinates all the matters regarding guarantees given by the law and to appraise the working of guarantees.
2. It assures the rights of the SC and STs and also look into the complaints about their deprivation.
3. It implements and guides on the planning methods of the socio-economic developments of SC and STs and assess their development
4. It reports to the President annually about the working of these assurances to them and it also suggests changes in it.
5. It also works for, with regard to the welfare and other developmental programmes for them
6. It works as a consultant, the Central and State Governments consults the Commission on all important policy matters for the benefit of SC and STs, along with government the other NGOs involve in such activities and Government provided financial support to them.

The Union Government has taken some other steps under the Article 350 and 352 of the Constitution, reserved the seats for Lok Sabha and State Legislatures for a period of 10 years initially, and it extended by 62<sup>nd</sup> amendment for another ten years. There are no reservation seats in the Rajya Sabha. The Article 335, gives that the claim of Scheduled Caste and Scheduled Tribes must be taken into regard to maintain the efficiency of the administration. State Governments also formulated rules to give them powers by item 41 of the State List of the 7<sup>th</sup> Schedule for reservation of the posts for them and took further measures to bring them into the main stream and to increase the representation in the State Services.

#### **12.4 Welfare of Other Backward Class:**

In the Indian community the society has been divided on the grounds of the caste it can be observed in the Hindu Society, it is divided in number of castes in a hierarchy of descending order. It is very unnatural that large number of people which are the resultant of such caste division falls under the lower caste and performs menial jobs and other such works. And these classes are always under the deprivation and considered as the 'untouchables' because of the work they do in the society. Because of such caste division and untouchables of the Hindu Society, gave birth to new religions like Jainism, Buddhism and Sikhism. Even in the Hindu Society one can see there are sects such as, Brahmo Samaj and Arya Samaj. In the recent years Gandhi and Ambedkar fought for this cause. The domination of caste can be very clearly seen in the southern parts of India, and there were many such movements to control such atrocities.

In the year 1920, there was a movement against it, which was led by the E.V Ramaswamy Naicker, in the Madras presidency which consists of present states of Tamilnadu, Andhra Pradesh, Karnataka and Kerala. The result of this movement, Justice Party came into existence in Madras, and it started a movement against the upper class oppression and the won the battle by entry into Hindu Temples and reserving high position in government as well. This movement was against the Brahmins, Hindi and Sanskrit, and this party in the coming years became Dravid Kazagam, then Dravid Munnetra and finally as All-India Dravid Munnetra Kazagam Party. The Congress party which fought for the freedom of the country under the leadership of Mahatma Gandhi, was against such caste domination and untouchability, and it was fortunate that the Constitution was made under the guidelines of Congress.

## **12.5 Women Welfare:**

There are welfare schemes for the benefit of the women and children as well, before it was under the Ministry of Social and Women's Welfare and this ministry has become Department of Women and Child Development and it is shifted to the Welfare Ministry, this new Department came into existence on 26<sup>th</sup> April 1990. In this Department there is a separate Bureau known as The Women's Development Bureau, it has the main functions to perform, it look after the welfare and developmental programmes of women in the country and it makes the policies, plans and programmes which are necessary for their upliftment at present juncture. It has also looks after enacting, implanting and the needed legislations pertaining to women the important contributions of this Bureau are here under:

### **12.5.1. Legislative Measures:**

The most important achievements, there are number of law amended and at the same time enacted for their sake. It was due to its efforts, in 1956, Immoral Traffic Prevention Act, the original Suppression of Women and Girls Act, 1956 was amended in 1978 and later 1986; 1961 act on Dowry Prohibition, was amended in 1984; 1986 Act, of Indecent Representation of Women (Prohibition) the commission of sati Prevention Act, 1987; and it also worked for many such amendments and criminal laws, offence of rape, domestic violence etc. which are made punishable under the Indian Penal Code.

### **12.5.2. The Central Social Welfare Board:**

It comes under the Companies Act of 1956, it has developed many programmes for the welfare of women, children and physically challenged persons. This board gets the financial assistance from The Department of Women and Child Development and NGOs, works under the this welfare board which look after welfare services with regard to women, it provides financial assistance to those NGO who works under it. It has number of activities such as inspection, assessment and statistics along with field counseling. It also under takes construction of complexes, quarters for staff, strengthening State Social Welfare Advisory Boards, the implementation of socio economic programme with aim to provide women particularly economically backward, the destitute, widows and deserted and needy, it also provide women with opportunities for work and wages. It also concentrates those areas where income generating possible and inculcate habit among the women about this.

### **12.5.3. Other Important Programmes:**

The other most important programmes for the upliftment of women are starting of Women's Development Corporation, Employment and Income Generating Production Units, Short Stay Homes, Hostels for working women, Rehabilitation and Training Centres. The most important achievement of this board is the National Commission for Women, under the Act 1990 to provide representation of women in all areas and to check discrimination against women, redressal of grievances. The most important function of this Commission is to study and monitor all matters pertaining to constitution and legal guaranties given for women, it also takes grievances and takes notice on suomotu, and takes actions against deprivation of women's rights. The welfare policy was started for SC and ST's from the beginning in 1950's, but in the case of backward sections the new policy for the upliftment educationally and economically started in 1993 only, government has established several financial organisations to give financial assistance to the backward communities. Out of these policies for them the policy to provide special educational opportunities is working due to fact that

their political and cultural identities has an impact in the process of democracy. It is necessary to tackle their day today problems with the help of local administration.

### **12.6 Conclusion:**

There is total differentiation between the Law and Order of the State and the Welfare of the State, and in the recent times most of the governments are giving priority to the welfare of their citizens. It was the year in 1929, when the 'Great Depression' occurred in United States of America was considered as the main reason for new thoughts it made the people to rethink about the new ideas so that a change can be seen in the society. After the Second World War the countries which favoured the wars and being capitalists altered their ideas and brought a new look to it by adopting and creating a State consists of welfares for their citizens. In fact the communist ideology brought such ideas in them, though the Communist Party has seen its decline in the 1990s in Russia and other East Europe countries, still the concept of liberalism democracy and other ideologies are still vibrant and alive.

On 25<sup>th</sup> September 1985, it combined subjects such as, Welfare of the Scheduled Caste and Scheduled Tribe and Socially and Economically Backward classes and Other Backward Classes (OBC) they have included the linguistic and religious minorities which were under the Home Ministry; to tackle the needs of welfare of disabled and physically challenged. The article 46 of the Constitution talks about the welfare of Scheduled Caste and Scheduled Tribes and other weaker sections such as backward Classes and Minorities. The main responsibility of the Governments in providing education, and economic development of these weaker sections of the society.

The Union Government has made amendments for their benefit and commissions for SC and STs, other Backward Classes along with the separate Ministry for women and child development, National Commission for Women to look after the needy women for the development.

### **12.7 Model Questions:**

1. Discuss about the concept and history of the welfare in the country?
2. Write about the different set ups for the upliftment of SC and STs ?
3. Write about the different set ups for the welfare of Backward Classes and women and child by the Union and State Governments?

### **12.8 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
3. DD. Basu, Introduction to the constitution of India, Prentice –Hall India, New Delhi, 1998.
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5. Dr.J.N.Pandey, The Constitutional Law of India, Central Law Agency, Allahabad, 2013.

**Dr. C. Vinod Kumar**  
**Lesson Writer**

## LESSON -13

# REVIEWING THE CONSTITUTION- SARKARIA COMMISSION

### 13.0 Objectives:

1. Students would be able to know about the reasons for the appointment of Commission, term of references.
2. Students would be able to understand about the Commission's main subject, issues and recommendations.

### Structure:

#### 13.0 Objectives

#### 13.1 Introduction

#### 13.2 Appointment of the Commission

#### 13.3 Commission's Terms of Reference

#### 13.4 The Report of the Commission and Main Contents

#### 13.5 Centre- State Relations and Important Concerns

#### 13.6 The Important Recommendations of the Commission

##### 13.6.1 Legislative Relations

##### 13.6.2 Administrative Relations

##### 13.6.3 The Governor's Role

##### 13.6.4 Reservation of Bills by Governors for Consideration of President

##### 13.6.5 Promulgation of Ordinance

##### 13.6.6 Emergency Provision

##### 13.6.7 Deployment of Union Armed Forces in the State

##### 13.6.8 All-India Services

##### 13.6.9 Inter-Governmental Council (Article 263)

##### 13.6.10 Financial Relations

### 13.7 Conclusion

### 13.8 Model Questions

### 13.9 References

#### **13.1 Introduction:**

The Constitution of India predicts two tier government, which means one Federal Government and the Governments at all State levels. The State Governments have some limitations and Union Governments supervises them in most of the cases, they need to have cooperation among them. The Union Government may be regarded as the supreme in authority and it controls most of the activities of States, hence, for certain reasons have to depend on the Central Governments for assistance, for these reasons there are some sort of struggles and problems in the relations of the Center and State relations. If such strains and problems continues for long time between them, then there would be a danger for the integrity and the unity of the Nation.

#### **13.2 Appointment of the Commission:**

It is evident that such problems must be sorted out as early as possible so that there will be an agreement and cooperation required for the smooth running of the Governments at the Centre and the States. To sort out these problems, in March 1983, the then Prime Minister of India Indira Gandhi, declared in the Parliament about the proposal to appoint the Commission to study and suggest recommendations in this regard. The Commission was headed by the retired Supreme Court Judge, R.S Sarkaria. Indira Gandhi stated about the Commission in the Parliament as, “The Commission will review the existing arrangements between the Centre and the State while keeping in view the social and economic developments that have taken place over the years. The review will take into account the importance of unity and integrity of the country for promoting the welfare of the people”. She also said that, “The Commission would examine the working of the existing arrangements between the Centre and the State and recommend such changes in the said arrangements as might be appropriate within the present constitutional frame”. The Government of India on 9<sup>th</sup> June 1983, established this Commission under the Ministry of Home Affairs notification No. IV/11017/1/83-CSR, dated June 9, 1983. Ministry appointed two others, B. Shivaraman on 7<sup>th</sup> July, and Dr. Sen on 27<sup>th</sup> July 1983, as the members of this Commission.

#### **13.3 Commission's Terms of Reference:**

The Commission's terms of reference in the notification as pronounced were:

“The Commission will examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate.

In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the Independence and ensure the unity and

integrity of the country which is of paramount importance for promoting the welfare of the people”.

### **13.4 The Report of the Commission and Main Contents:**

In the year 1988, the Commission gave its report and it was published, it mainly consisted of two parts, 1. The main report and 2. The State Governments and other political parties, send memoranda to the Commission. The Commission has examine the main issues such as, direct attitude on Centre –State relations particularly, on legislative and administrative aspects and also the requirement for starting a standing Council on Centre- State relations under the Article 283 of the Constitution, to assure their relations, and also talked about such related issues like, the role of Governor, Emergency Provisions, Deployment of Union’s Armed Forces in the State to regulate the Law and order situation, Reservation of State Bills for attention of the President and it also mentioned about the all India Services. The Commission also examined the relations of the Centre and State pertaining to the Socio- Economic Development activities which includes, Economic and Social Planning, Financial Relations, National Economic and Development Council and assorted matters such as, Agriculture and industry related matters, Inter-State trade and commerce, Inter-State river disputes, mines and minerals, food and civil supplies, forests, and mass media etc. were very closely examined and suggested recommendations by the Commission so as to rectify such problems and by giving priority to the welfare of the country.

### **13.5 Centre- State Relations and Important Concerns:**

The important issues regard to the centre and state relations are as follows:

1. The Commission when it reviewed the different States and political parties which submitted memoranda, it observed that, there are different views and most of them of the opinion that the framing of the constitution is good and it must not be disturbed or changed, but at the same time some of them of the opinion that, it has to be changed and it needs radical changes so that it fulfil their own views of the federal structure.
2. Most of them opined that Central Government has taken the control over all aspects or centralised all its programmes and the State Governments are, diminished to simple administrative organisations of the centre.
3. Most of them opined that, Centre has taking most of the amount of the concurrent list, giving very less to the states. They stated that Legislation is more often than not, assumed with no or insufficient discussion with the states.
4. The idea behind the institution of Governor as a connecting link between Centre and State Governments. It is viewed that the Governor has been used to destabilise the state governments, particularly of those parties which are different the party in the power at the Centre, imposition of President’s Rule, prevention of many state bills which are reserve for President’s consideration.
5. It is opined that, the states resources have not developed at the same rate when compared to the responsibilities of the state, they have also argued that more resources to be pooled in so that state governments can share, if required by amending Constitution.
6. Another important concerned, the occurrence of planned development which has concentrated all authority with Centre, the Planning Commission is also part of Central

government. They recommended that restructuring of Planning Commission is needed and to restrict the interference of Centre in this regard.

7. The system of controls, licenses and permits has flourished to sub-serve the needs of a planned regime. This led great extension of power and authority to the Central Government when compared to the State Governments and local bodies, this type of system is pleaded and need to be revised.

8. It is also stated that, Organisations or Forums which are predicted in the constitution for sorting out problems arising in the working of Centre State relations, (e.g., Permanent Inter-State Council as contemplated in Article 263) have not been created at all. When dispute between Centre and State Government arises, the Centre must not be both the disputant and judge but case must be examined by independent evaluator before taking such decision.

The relations between them must be worked out in such a manner of cooperative federalism and consensus in all the areas of common interest.

### **13.6 The Important Recommendations of the Commission:**

The Commission has suggested some important recommendations to sort out the problems between them, keeping welfare of the Nation. The main recommendations are as follows:

#### **13.6.1 Legislative Relations:**

The recommendations about the relations with regard to legislative relations are:

A. The residuary authority of the legislation concerning taxation must be in the Concurrent List and it should be remain there, and the residuary matters apart from the taxation must be kept in the Concurrent List and for this reason the constitution may be suitably amended.

B. In the large interest of the Nation, the Centre has to subjugate only that ground of concurrent subject on which uniformity of policy and action is needed, and by so it has to leave the remaining and details for State action within the broad framework of the policy laid down by the law of the Centre. Whenever Centre proposes for the legislation in such times it has to consult with States individually and also in groups, with the Inter-Governmental Council. A resume of views of the State Governments and the comments of the Council must accompany the Bill when it is introduced in the Parliament.

C. Whenever the State passes a resolution in the State Assembly for the formation or the abolition of Legislative Council in the State is received, the President shall cause the resolution to be placed, within a reasonable time, before Parliament together with the comments of the Central Government. Parliament thereafter can accept or reject the demand enclosed in the resolution. If the resolution is passed in the Parliament then central Government shall introduce required legislation for its implementation.

#### **13.6.2 Administrative Relations:**

There are serious complaints to the Articles 256, 257 and 365 with regard to the relations of the Centre and State, the Article 256, says that, the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and the Article 257 says that, the executive powers of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and in both cases the executive power of the Union shall extend to the giving of such directions to a State as may appear to the



Government of India to be necessary for the purpose. The Article 365, says that, if a State fails to comply with or give effect to, any directions given by the Union Government, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The commission embraces that the Articles of 256, 257, and 365 are healthy provisions, intended to protect the management between the Union and States for the effective implementation of Union laws and the Policies of the country specified therein. At the same time it mentions that direction under Articles 256, 257 and the request of approvals under the Article 365, highest caution must be exercised and all prospects explored for resolving opinions of conflict by all other existing means.

### **13.6.3 The Governor's Role:**

When the Commission examined the role of the Governor it has recommended some suggestions pertaining to the role of Governor.

- A. It is opined by the Commission that, the Governor must not be a politician and from the ruling party as well, such person must not be appointed in the State where the different party rules or combination of other parties.
- B. It is opined that, the Chief Minister of the State must be consulted before appointing a person as the governor of such State, the procedure of the consultation must be prescribed in the Constitution itself by amending Article 155.
- C. The commission of the view that the Prime Minister must consult with the Vice-President and the Speaker of the Lok Sabha before the appointment of the Governor.
- D. The tenure of the Governor in the office must not be disturbed before the elapse, it can be only on exceptional grounds and some other compelling reasons.
- E. As a matter of convention, the Governor must not, on demitting his office, be eligible for any other appointment or office of profit under the Union or State Government except for a second term as Governor or election as Vice-President or President.
- F. The Commission recommended that, while selecting the Chief Minister of the State the Governor must be guided by following standards:
  - I. The party or combination of parties which has the majority support in the Legislative Assembly must be called upon to form the Government.
  - II. The function of the Governor is to see that a Government is formed and not try to form a Government which will pursue policies which he approves.
- G. If the Chief Minister, who has to seek the Vote- of- Confidence in such cases he has to prove his majority within 30 days of taking over, and this practice must be faithfully adhere to with sanctity of a rule of law.
- H. The Governor must not try in determining the issue of majority support, on his own, outside the Assembly. The judicious course for him would be to cause the rival claims to be tested on the floor of the House.
- I. It is recommended by the Commission that the Governor cannot dismiss his Council of Ministers when they enjoy the majority support of the members in the Assembly, at the same time he is assured to dismiss if they lose the majority in the House but not to resign.

The powers given to the Governor by the Article 163, which are discretionary powers must not be touched.

#### **13.6.4 Reservation of Bills by Governors for Consideration of President:**

A. The Governor has authority to reserve the Bills for the consideration of the President, this power is given to governor by the Article 200 of the constitution. The Commission recommended that, Governor must not conflicting to the advice of the Council of Ministers simply because of his personal reason like, he did not want such policy to be included in the Bill, whenever the State Government sends the State Bill under Article 200, Bill must be reserved only under some extraordinary situations.

B. When the Bill is reserved for the consideration of the President, his approval must not ordinarily be suspended on the basis of that the Union Government also intending a complete law in future on the similar subject. If the Bill is reserved for the President it must be evidently incline to destabilise the constitutional system of the State, the Central Government may advice the President to withhold approval to such Bill.

#### **13.6.5 Promulgation of Ordinance:**

A. The Commission recommended the State Government to avoid the practice of pronouncing about the ordinance repeatedly, instead it can make an Act in the legislation. The option of repeated promulgation may be taken on the grounds of some of the realities and other requirements for immediate action, and it will be from the State Council of Ministers.

#### **13.6.6 Emergency Provision:**

The most important observation by the Commission is the Article 365, in the relations of the Centre- State, is creating mistrust between them, because Union Government is misusing this Article to topple the State Governments which are ruled by other political parties. The Article 365, says that, if President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot carried on in accordance with the provisions of the Constitution, the president may by Proclamation assume to himself all or any of the functions of the Government of the State or any of the powers vested in or exercisable by the Governor. On this issue the recommendations of the Commission are as follows:

A. The Commission recommended that, the Article 365, must be used only under such situations when all the sources which are available fails to stop or resolve breakdown of the constitutional machinery in the State then only it must be used.

B. But in the case of political breakdown of the party then the Governor must look into all the potentials like the majority support in the House, and if it is not possible to that Government to be installed and fresh elections can be held without any delay, then in such conditions Governor can ask the Council of Ministers to continue as caretaker Government. In such cases, can dissolve the Assembly leaving the resolution of the constitutional crisis to the electorate.

C. The President or the Governor must not dissolve the Assembly before the declaration issued under the Article 365(1) has been placed before the Parliament for its contemplation. It is observed that, the Article 365 must be amended accordingly, it also suggested that, it must not be only if through a suitable amendment that the material evidences and grounds on which Article 365(1) is invoked must be made an essential part of the Proclamation under

that article. It will be make remedy of the judicial review on the basis of maladies a little more meaningful.

#### **13.6.7 Deployment of Union Armed Forces in the State:**

The Commission opined that, there is no need to change any Union laws with regard to the relationship among the Union Armed Forces and the State Civil authorities. But the Union Government can deploy their forces only on the request from the State authorities, it very much required to consult State Government before deploying them.

#### **13.6.8 All-India Services:**

Commission considered the All-India Services as a necessity even today because it is the premier organisation for maintaining the unity and integrity of the country. Any move to break up the All-India services or to allow any State to choose out of the scheme should be considered as reversing and harmful to the larger interest of the country. They opined that, the All-India Services should be strengthened and greater stress placed on the role expected to be played by them.

#### **13.6.9 Inter-Governmental Council (Article 263):**

The President has empowered to establish inter-Government Council under the Article 263, and to define the nature and functions to be performed by the organisation and the method. Such forum has not been established.

The Commission suggested that a permanent Inter-State Council, called the Inter- State Council (IGC), must be started under the Article 263 and the council must be with the following functions which are given in Article 263:

“Investigating and discussing subjects in which all of the States, or the Union and one or more of the States, have common interest, or making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to the subject”.

The Commission further suggested that the Zonal Councils which were contained under the State reorganisation Act, 1956 should constituted afresh under Article 263.

#### **13.6.10 Financial Relations:**

The Commission has examined much detailed study on the relations of the Centre- State relations pertaining to the present financial relations among them and they have made many suggestions in this regard.

The income generating out of the taxation from the agriculture is an important issue, both the Union and State Governments are not ready for alter in the provisions of the constitution. It stated that, the question of raising resources from this source by forging political consensus and the modalities of levying that tax and collection of proceeds etc., would needed in depth and complete consideration in the National Economic and Development Council.

Another important recommendation of the Commission is by the amendment of constitution proceeds, Corporation Tax, must be made permissibly sharable with the States if and as Parliament by law so provides. So that the revenue of the States would have greater constancy and certainty in future.

The Commission has made number of suggestions for the development of the working of the Finance Commission, The Planning Commission and the National Development Council. It also suggested that the division of responsibilities between Finance Commission and Planning Commission good and may be continued. The Commission stressed the need of decentralization of the planning process. It observed that “Since there is a general tendency towards greater centralization of power there is a special need in a country like India for a conscious and purposive effort to counter it all the time. There is considerable truth in the saying that undue centralization leads to blood pressure at the Centre anaemia at the periphery. The inevitable result is morbidity and inefficiency. Indeed, centralization does not solve but aggravates the problem of the people”.

The Commission observed that there is no need to be drastic changes in the constitution, though there was a request for the change in the constitution. On this observation Commission observed that, “the working of the Constitution in the last 37 years, has demonstrated that its fundamental scheme and provisions have withstood reasonably well the inevitable stress and strains of the movement of a heterogeneous society towards its development goals. The Constitution has been amended a number of times to adjust to its working to the changes in the environment.

“In our view, it is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution”. “But there is certainly scope for improvement and reform in a number of aspects. The actual working of the Constitution leaves much to be desired”.

### **13.7 Conclusion:**

The Constitution of India predicts two tier government, which means one Federal Government and the Governments at all State levels. The State Governments have some limitations and union Governments supervises them in most of the cases, they need to have cooperation among them. To sort out these problems, in March 1983, the then Prime Minister of India, Indira Gandhi, declared in the Parliament about the proposal to appoint the Commission to study and suggest recommendations in this regard. The Commission was headed by the retired Supreme Court Judge, R.S Sarkaria.

In the year 1988, the Commission gave its report and it was published, it mainly consisted of two parts, 1. The main report and 2. The State Governments and other political parties, send memoranda to the Commission. The Commission has examine the main issues such as, direct attitude on Centre –State relations particularly on legislative and administrative aspects and also the requirement for starting a standing Council on Centre- State relations under the Article 283 of the Constitution, to assure their relations, and also talked about such related issues like, the role of Governor, Emergency Provisions, Deployment of Union’s Armed Forces in the State to regulate the Law and order situation, Reservation of State Bills for attention of the President and it also mentioned about the all India Services.

### **13.8 Model Questions:**

1. Discuss about the importance of Sarkaria Commission its appointment and terms of references?
2. Write about the main contents, main issues in the Centre-State Relations?
3. Discuss about the main recommendations made in the relations of Centre- State Relations?

**13.9 References:**

1. A.P. Avasthi, Indian Political System, Lakshmi Narain Agarwal, Agra, 2005.
2. J.C. Johari, Indian Government and Politics, Vishal Publications, Delhi, 1989.
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**Dr. C. Vinod Kumar**  
**Lesson Writer**

## LESSON -14

# CONSTITUTIONAL REVIEW COMMISSION

### 14.0 Objectives:

1. Students would be able to know about the reasons for the appointment of Constitutional Review Commission, term of references.
2. Students would be able to understand about the Commission's issues and recommendations.

### Structure:

#### 14.0 Objectives

#### 14.1 Introduction

#### 14.2 Formation of the Commission

#### 14.3 Appointment of the Commission

#### 14.4 Terms of Reference of the Commission

#### 14.5 Composition of the Review Commission

##### 14.5.1 Chairman of the Review Commission

##### 14.5.2 Members of the Review Commission

#### 14.6 Areas Identified for Review

#### 14.7 Submission of the Report

#### 14.7.0 Recommendations of the Commission

##### 14.7.1 Recommendations on Fundamental Rights

##### 14.7.2 Directive and State Principles

##### 14.7.3 Recommendations on Fundamental Duties

##### 14.7.4 Recommendations on Electoral Process

##### 14.7.5 Recommendations on Political Parties

##### 14.7.6 Recommendations on Parliament and State Legislations

##### 14.7.7 Recommendations on Executive and Public Administration

## 14.7.8 Recommendations on Judiciary

## 14.7.9 Recommendations on Centre- State Relations

## 14.7.10 Recommendations on Decentralisation and Devolution

## 14.7.11 Recommendations on Socio Economic change and Development

## 14.8 Conclusion

## 14.9 Model Questions

## 14.10 References

**14.1 Introduction:**

Since the enforcement of the Indian Constitution on 26<sup>th</sup> January, 1950, the amendments were made to the original text eighty times and occurred in bit and piece manner. Whereas, the amendments to the 42<sup>nd</sup> and 44<sup>th</sup> have been considered as the most complete ones. In 1971, there was a talk about producing a comprehensive refit of the Constitution fumed during general elections for the battle of power. They put efforts to bring socio-economic change rather than bringing required changes in the Constitution and the socio-economic changes applied the brakes to do so.

The Constitution of India predicts two tier government, which means one Federal Government and the Governments at all State levels. The State Governments have some limitations and Union Governments supervises them in most of the cases, they need to have cooperation among them. The Union Government may be regarded as the supreme in authority and it controls most of the activities of States. The first ever Commission on review of Constitution, though on the relations of Centre-State relations, the Government of India on June 9<sup>th</sup> 1983, a Commission appointed by the then Prime Minister Indira Gandhi, under the Chairmanship of R.S Sarkaria, a retired Supreme Court Judge and the Commission submitted report in 1988.

The most important Commission to study the entire structure of the Constitution and to recommend its views about the Constitution, another review Commission was established to review the Constitution of India in the light of the developments since independence, the NDA government went ahead and constituted the National Commission to Review the Working of the Constitution (NCRWC or the Review Commission hereafter), and the Commission was constituted under the Chairmanship of Justice M.N. Venkatachaliah, a retired Chief Justice of the Supreme Court of India and a former Chairman of the National Human Rights Commission.

**14.2 Formation of the Commission:**

In the years 1970s and 1980s there were discussions about the Presidential type of Government in India, the influential personalities from the political arena, people from the academic area, and the media had very strongly campaigned for the making an executive authority, which will be autonomous of daily parliament control, which means that a type of structure, mostly similar to the United States Presidential form, and estimated that this would

be the solution for all the problems of the governance in India. From the mid-1980s to 1990s the discussions about the comprehensive review about the Constitution was subsided, but it again reappeared overall as an elections subject for diverse reasons.

After 1995, no party has been emerged with simple majority to form the Government in the Lok Sabha Elections, this actually gave rise to successive efforts by dissimilar groups of political parties to form a stable Government. From 1995 to 1998 the people of India has witnessed governments which could not stay for five years tenure, the games which resulted in general elections and fall of the Deve Gowda and I K Gujaral Governments in very short span. The other reason is the lack of enthusiasm of the major political parties to ally with the right wing, nationalist, Bharatiya Janata Party (BJP) try to repair the damage and formed the Governments, but unfortunately they could not run the Government for the full term of five years for such reasons and the result was the dissolution of the Lok Sabha and fresh elections called for.

In the year 1998, the BJP led Government formed in that general elections, and it fell because of the intrinsic illogicality of coalition politics and the game played by the opposition parties. But in the later general election in 1999, the BJP led National Democratic Alliance (NDA) with an understanding with 24 such political parties formed the coalition government in the Centre. In that election BJP did not contested with its manifesto but it give out a National Agenda which discussed with its allies which had minimum common points in it. Which includes the arguing of article 370. In the manifesto of NDA did not mentioned about the Commission to review the Constitution of India to examine the consequences which arose since the Independence.

But the NDA government on 26<sup>th</sup> October, 1999, comprised the issue of the review of the Constitution in the joint session which was addressed by the President R. K Narayan. This gave a clear picture that, NDA wanted to find out the a factual solution to end the problems due to the coalition politics, and making such amendments to clear the long problem and also to know the performance and whether it still has the importance or it need to be amended accordingly, of the 50 year old Constitution of India. The address mentioned that, “A Commission comprising noted constitutional experts and public figures shall be appointed to study a half-century’s experience of the Constitution and make suitable recommendations to meet the challenges of the next century. Government will also examine replacing the present system of no-confidence motion by a system of “Constructive Vote of Confidence” and a fixed term to the Lok Sabha and the Vidhan Sabhas (Legislative Assemblies in the States), in order to prevent political instability both at the Centre and in the States”. In spite of the public manifestation of uncertainties by the President of India after words, the NDA led government gone to start the National Commission to Review the Working of the Constitution (NCRWC), it is otherwise called as Review Commission.

The NDA Government justified the setting up of the Commission within the 24 hours issuing the official notification on 22<sup>nd</sup> February 2000. It also gave the reason for it by saying, there were interruptions present among the actual successes of the country and the inventive objectives of the Constitution even after the fifty years of Independence and it was required to bond the breach. On the event of annual Presidential address during the budget session on 23<sup>rd</sup> 2000, the president’s address reads, “The Constitution which India adopted fifty years ago has served us well. It has been a reliable guarantor of the Parliamentary democracy, secularism and fundamental rights which all of us cherish. It has also inspired the spread of the democratic consciousness in our society, empowering dalits, advasis, backward classes and women and making our system governance more participatory and progressive. While



keeping the basic structure and salient features of the Constitution inviolate, it has, however become necessary to examine the experiences of the past fifty years to better achieve the ideals enshrined in the Constitution. The government has therefore, set up a broad-based Constitution Review Commission. The recommendations of this Commission will be presented before Parliament, which is the supreme decision making body in Indian democracy". A very hot discussion about the review Commission, during the budget session was took place in the Parliament. It is most significant to note that the NDA Government did not move the resolution about the setting up of a Constitutional Review Commission in the Parliament, but it delivered the executive order for setting up National Commission to Review the Working of the Constitution (NCRWC).

#### **14.3 Appointment of the Commission:**

By the executive resolution in the Parliament, the National Commission to Review the Working of the Constitution (NCRWC), was set up on 22<sup>nd</sup> February 2000, by the Department of Legal Affairs, Ministry of Law, Justice and Company affairs. The resolution mentions that, the government agreed to set up the Review Commission to fulfil its pledge contained in the President's address to the joint session of the Parliament after the constitution of the 13<sup>th</sup> Lok Sabha in October 1999.

#### **14.4 Terms of Reference of the Commission:**

The Department of Legal Affairs, Ministry of Law, Justice and Company Affairs issued the resolution, and it consists of the terms and references to the Commission like:

"The Commission shall examine in the light of the experience of the past fifty years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy and to recommend changes if any, that are required in the provisions of the constitution without interfering with its basic structure or features".

The Review Commission stated that there was a requirement to maintain and strengthen the Constitutional provisions for so that it can lead to the upliftment of the living conditions of the poor and deprived and assured them with sufficient means of livelihood.

It also understood that the Constitutional Rights of the Scheduled Caste, Scheduled Tribes and other Backward Classes and the Minorities should be efficiently safeguarded and upgraded.

The Commission also mentioned that, it will examine the working of the present provisions in the Constitution, laws applicable, and practice and consider how better these goals may be attainable.

The government resolution states that the Review Commission will complete its work and make its recommendations to the government within a period of one year by March 2001.

#### **14.5 Composition of the Review Commission:**

The Commission comprised of a Chairman, and ten members, apart from a Secretary and an administrative and research staff.

**14.5.1 Chairman of the Review Commission:**

Justice M.N Venkatachaliah, appointed as The Chairman of the Review Commission, he was a retired Chief Justice of Supreme Court, and former Chairman of the National Human Rights Commission.

**14.5.2 Members of the Review Commission:**

1. Justice B.P. Jeevan Reddy, Former Judge of the Supreme Court and currently the Chairman of the Law Commission of India.
2. Dr. Subhash C. Kashyap, Former Secretary General of the Lok Sabha and the author of several books on constitutional and electoral reforms. He was appointed as the Secretary of the Review Commission.
3. Justice R.S. Sarkaria, Former judge of the Supreme Court and the Chairman of the Sarkaria Commission on Union-State Relations.
4. Justice K. Punnayya, Former High Court Judge.
5. Dr. Abid Hussain, Retired Diplomat and a Former Ambassador to the United States of America, UN special rapporteur on the freedom of expression.
6. P.A. Sangma, Former Speaker of the Lok Sabha and a Former Chief Minister of Meghalaya, member of the thirteenth Lok Sabha from the Nationalist Congress Party.
7. Soli J. Sorabjee, Attorney-General of India.
8. K. Parasaran, Former Attorney General of India.
9. C.R. Irani, Managing Director and Editor in chief of the newspaper, The Statesman.
10. Ms' Sumitra G. Kulkarni, Former Member of Parliament.

The Commission has submitted its report on 11<sup>th</sup> March 2002 to the Prime Minister of India.

**14.6 Areas Identified for Review:**

The following areas have been identified by the Review Commission for reviewing the performance of the Constitution.

**Panel No.1:**

This panel will study on the Strengthening of the Parliamentary Democracy; such as working of the Legislature, Executive and Judiciary; their accountability. It mainly focuses on the Strengthening of the Parliamentary Democracy and their accountability.

**Panel No.2:**

This panel examines on the Electoral Reforms; Standards in political life.

**Panel No.3:**

This panel mainly studies on Pace of Socio-economic change and development under the Constitution

**Panel No.4:**

This panel examines on the Promoting literacy; generating employment; ensuring social security; alleviation of poverty.

**Panel No. 5:**

This panel studies on the Union-State Relations and mainly focuses on the working of the Article 356, appointment of the Governors and their removal.

**Panel No.6:**

This panel mainly examines on the Decentralisation and Devolution; Empowerment and Strengthening of Panchayati Raj Institutions in the country.

**Panel No.7:**

This panel examines the Enlargement of Fundamental Rights and with focus on the enlargement of Fundamental Rights in Part III of the Constitution by giving freedom of Media, Right to compulsory elementary education, Right to privacy and right to information.

**Panel No.8:**

This panel will study on the, Effectuation of Fundamental Duties.

**Panel No.9:**

This panel will examine, Effectuation of Directive Principles and Achievement of the Preamble Objectives of the Constitution. It focuses on effective enforcement of Directive Principles of State Policy in Part IV of the Constitution to attain the objects of Preamble and good governance.

**Panel No.10:**

This panel will study the, Legal control of fiscal and monetary policies; Public Audit mechanisms; standards in public life.

It focuses on the size of the government expenditure, effectiveness of public audit and mechanism.

**14.7 Submission of the Report:**

The Review Commission submitted its report on 11<sup>th</sup> March 2002 to the Prime Minister of India A.B Vajpayee, and it suggested 249 recommendations to the government. Some of the important recommendations mentioned here under:

**14.1.1 Recommendations of the Commission:**

The Committee Recommendations as follows.

**14.7.1 Recommendations on Fundamental Rights:**

The Commission recommended for seven amendments in 21A, 21B, 21C, 24A, 30A 30B and 30D, of the fundamental rights and it recommended:

- i. By amending the Article 21A, citizens must be given right to leave the country and to return back.

- ii. By amending the Article 21B, every individual must be provided with respect for his private and family life, residence and his correspondence.
- iii. By amending the Article 21C, every State must compulsorily bring the legislation to assure the right to the rural employment by at least 80 days.
- iv. By amending the Article 24A, every child must be provided with right to have sufficient nutrition, stopping negligence, dacoit and harm.
- v. By amending the Article 30A, must provide right, access to the courts and tribunals and speedy justice.
- vi. By amending the Article 30B, right to equal justice and free legal aid.
- vii. By amending the Article 30D, right to safe drinking water, pollution control, rights for continuous development schemes.

#### **14.7.2 Directive and State Principles:**

- i. The Commission recommended amendment with regard to the Heading of the Part IV of the Constitution and must read as “DIRECTIVE PRINCIPLES OF STATE POLICY AND ACTION”.
- ii. The Commission also recommended to set up an independent National Education Commission every five years, report to the Parliament on growth of the Constitutional directives regarding compulsory education and on other characteristics applicable to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.
- iii. The following article must be inserted after the article 47, namely:-  
47A. “Control of the population:- The State shall attempt to secure control of population by means of education and implementation of small family norms”.
- iv. The Commission recommended that, there should be a body of high rank, to review the implementation of the Directive Principles and Social, economic and Cultural Rights particularly, the right to work, right to food, clothing and shelter, right to health, right to education up to and beyond 14<sup>th</sup> year and right to culture. The body must estimate and recommend sufficient resources to the States.

#### **14.7.3 Recommendations on Fundamental Duties:**

- i. The Union and State Governments must create awareness among the citizens about the Fundamental Duties.
- ii. Commission recommended the right to religion, freedom should be resolutely protected and rights of minorities and fellow citizens respected.
- iii. The Commission recommended that, reforms in the entire education process there is a need to free education from the government or political control.
- iv. The Commission recommended the duty to vote in the elections, citizens must be participated actively in the democratic process of governance and to pay taxes must be included in article 51A.
- v. In the Article 51A, must be incorporated as fundamental duties of the constitution like, to substitute the spirit of family values and accountable parenthood with regard to the education, physical and moral well-being of the children. It is the duty of the industrial organisations to provide education to the children of their employees.

**14.7.4 Recommendations on Electoral Process:**

- i. Some of the reforms are required in the electoral process, it is necessary to provide a correct method of electoral roll and provide with voter ID and multi-purpose citizenship card at all panchayat levels to the citizens.
- ii. The power has to be given to the Election commission to take action against those who captures booths, depending upon the reports by returning officers and in coordination with State election Commissions.
- iii. The election Commission should debarred those candidates who are contesting in elections if they are convicted with murder, rape, smuggling, dacoity etc., permanently.
- iv. Election rolls must be updated regularly and posted on the website, before the elections these roll must be printed and pasted at the post offices in every constituency including the panchayats. Facility must be available at post offices for modifications of electorates.
- v. If a person charged with an offence punishable with imprisonment for a maximum period of five years or more must be disqualified from contesting elections.
- vi. All the candidates during the elections should declare all the assets and liabilities of self and relatives. The person who holds political position should declare assets every year along with his relatives.
- v. The candidates must not give permission to contest elections simultaneously for the same from more than one constituency, and campaign period must be reduced significantly.
- vi. The Government should bare all the expenses of the election process. The size of the Council of Ministers must not be too excessive. To reduce the number of Independent candidates the deposit amount must be increased to double and must not support them from contesting elections.
- vii. If any independent candidate loses elections continuously for three times for the same office then must be debarred from elections permanently.
- viii. The one who loses elections, to get the deposit amount the votes polled must be increased from 16.67% to 25% as a condition for the deposit for not being forfeited.
- ix. It is necessary for every candidate to clear all the dues of the government before their candidature accepted. This with regarding to payments of taxes and bills and unauthorized occupation of accommodation and other government facilities.

**14.7.5 Recommendations on Political Parties:**

A complete law regulating the registration and functioning of political parties or alliances of parties in India [may be named as the political Parties (Registration and Regulation) Act] the proposed law must:

- a. All political party or alliance must provide, in its memoranda of association, rules and regulations for its door steps and must be open to all citizens irrespective of any distinction of caste, community and the like.
- b. It must swear allegiance to the provisions of the constitution and to the sovereignty and integrity of the nation. Regular elections for every three years at its different levels of the party must be occurred.

- c. Reservations and representation of at least 30% at the organisation levels, State assemblies and Parliaments must be given to women, if they fail to do so then party must lose its recognition.
  - d. All the parties must maintain accounts of receipts of funds and expenditure in a proper manner and the accounts must be audited and this should be open to all the public to verify and to study.
  - e. It must be made compulsory to all political parties, all their candidates to declare their assets and liabilities at the time of the filling their nomination.
  - f. No political party must give ticket to such candidate if he proved to be convicted of any offence by any court.
  - g. The party must be national party to get common symbol.
- ii. When no single party or alliance parties does not get clear majority in the Lok Sabha, then the Rules of Procedure and Conduct of Business in the Lok Sabha may provide for the election of the leader of the house in the similar manner of the election of the Speaker. The similar procedure may be followed for the election of Chief Minister in the State.
- iii. To bring the No-Confidence motion in the house there must be at least 20% of the total number of the members must give the notice and it to have a proposal for the alternative Leader to be voted simultaneously.
- iv. A complete legislation providing for regulation of contributions to the political parties and towards election expenses must be enacted by consolidating such laws.

#### **14.7.6 Recommendations on Parliament and State Legislations:**

- i. Before making any amendments at the initial stages parliament must be given priority.
- ii. There is a need to establish new committees such as the Constitution Committee, the Committee on National Economy and Committee on Legislations and the present committees on Estimates, Public undertaking and Subordinate legislation may not be continued.
- iii. The Petition Committee of parliament would-be supplement to the proposed Lok Pal organization. It must be used for the investigation and redressal of the people against the administration.
- iv. The major reports of all the Parliamentary Committees ought to be discussed by the both houses of Parliament, when there is a disagreement between the Parliamentary Committee and government.
- v. The Parliament may consider enacting appropriate legislation to control and regulate the treaty-power of the Union Government whenever suitable and needed by consulting the State Governments and Legislatures under the article 253 “for giving to international agreements”.
- vi. Mass media must be encouraged to telecast the happenings in the Parliament to the benefit of the common people.
- vii. Every year the State legislature must assemble and transact the business for not less than a minimum number of days. The House with less than 70 Legislatures must meet at least for 50 days and other Houses, for at least 90 days. But in the case of Rajya Sabha, must be for 100 days and the Lok Sabha for 120 days.
- viii. The Audit Board must be constituted for better discharge of functions like public audit, the Board should work independently.

ix. An independent agency must investigate the functions of the Comptroller and Audit General.

#### **14.7.7 Recommendations on Executive and Public Administration:**

- i. District must be considered as the primary units for the planning and development.
- ii. Active determinations must be made to establish an array of cooperative relationship between the State and associations, NGOs and other voluntary organisations to introduce a strenuous effort to restore the progressive social change.
- iii. A social audit must be introduced to bring responsibility and accountability among the executives.
- iv. Right to information act must be safeguarded and needs to be given real substance.
- v. The prevention of Corruption Act 1988, must be amended to confiscation of the property of the government official who is found to be have the property of disproportionate.
- vi. The Constitution must provide for the appointment of Lok Pal and Prime Minister must be kept out of the preview.

#### **14.7.8 Recommendations on Judiciary:**

- i. A National Judiciary Commission must be established, it consists of one President and four members. The Chief Justice of India must act as the President and two Supreme Court senior Judges, Union Minister for Law and Justice and one prominent person nominated by the President as the members.
- ii. At National and State levels judiciary councils must be established.
- iii. After the completion of the inquiries, the judgments must be delivered within 90 days from the conclusion of the case by the Supreme Court and the high Courts.
- iv. The number of forensic institution with modern technologies like DNA finger printing must be enhanced.
- v. The retirement age of the Supreme Court Judge must be increased to 68 years and the High Court Judge must be increased to 65 years.

#### **14.7.9 Recommendations on Centre- State Relations:**

- i. "Management of Disasters and Emergencies, Natural or Man-Made" must be included in List III of the Seventh Schedule.
- ii. A bench of not less than three judges and if required, a bench of five Judges of the Supreme Court for the final disposal of the suit in case of water disputes among the States.
- iii. The Article 356, must not be removed but it should be used sparingly and only as a remedy of the last resort and after exhausting action under other articles such as 256, 257, and 355.
- iv. The article 356 must be used according to the report given by the Governor.

v. Whether the Council of Ministers, lost the confidence of the Legislative Assembly or not, must be decided only on the floor of the Assembly and not any other place.

vi. Article 356 must be amended so to assure that, the State Legislative assembly must not be dissolved either by Governor or the President before the proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it.

#### **14.7.10 Recommendations on Decentralization and Devolution:**

i. The village panchayats must be declared as the self-government organizations and must provide with special authority.

ii. The 11<sup>th</sup> and 12<sup>th</sup> schedules to the Constitution must be rescheduled in such a manner that it creates a separate fiscal domine to the Panchayats and Municipalities.

iii. All the local authorities must be given option to borrow the financial assistance from the State Government and other financial institutions.

iv. State panchayat councils must be established under the Chief Minister.

v. The State Election Commissioner must have fixed term of five years-times in State and he must have the similar position like that of High Court Judge.

#### **14.7.11 Recommendations on Socio Economic change and Development:**

i. There must be reservations for SC, ST and BCs (including minorities and especially more Backward Classes), allotment of gas agencies, Public Distribution System with due proportion of women from these communities.

ii. In every District of the country there must be Residential schools for the ST and ST students.

iii. Necessary action must be taken to improve the education quality of the Minorities.

iv. Incentives must be given to those students who learn vocational, technical and scientific courses.

v. Social Policy must be aimed at the STs, SCs and BCs including Minorities with special attention to the girls in each category.

vi. Special protection must be given to safeguard the natural traditions of the cultural heritage and of the intellectual property rights of the tribal people.

vii. Elimination of the Devadasi system, provision of development and education and prevention of HIV/AIDS.

viii. The legislation of the Union for agricultural workers, drafted in 1978-80, must be introduced and passed immediately.

ix. The political representation of Minority communities in legislatures, especially Muslims, has fallen well below their proportion of population. The portion of BCs among them is just zero, this can lead to a sense of alienation. It is recommended that, it is incumbent for the political parties to build up leadership potential in the Minority communities, including STs, SCs and BCs for participation in political life.



**14.8 Conclusion:**

The most important Commission to study the entire structure of the Constitution and to recommend its views about the Constitution, another review Commission was established to review the Constitution of India in the light of the developments since independence, the NDA government went ahead and constituted the National Commission to Review the Working of the Constitution.

The NDA government on 26<sup>th</sup> October, 1999, comprised the issue of the review of the Constitution in the joint session which was addressed by the President R. K Narayan. By the executive resolution in the Parliament, the National Commission to Review the Working of the Constitution (NCRWC), was set up on 22<sup>nd</sup> February 2000, by the Department of Legal Affairs, Ministry of Law, Justice and Company affairs.

Justice M.N Venkatachaliah is appointed as The Chairman of the Review Commission, he was a retired Chief Justice of Supreme Court, and former Chairman of the National Human Rights Commission. There are 10 members in this Commission.

The Review Commission submitted its report on 11<sup>th</sup> March 2002 to the Prime Minister of India A.B Vajpayee, and it suggested 249 recommendations to the government.

**14.9 Model Questions:**

1. Write about the reasons for the appointment of the Constitution Review Commission and terms of references?
2. Discuss about the Recommendations of the Constitutional Review Commission?

**14.10 References:**

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**Dr. C. Vinod Kumar**  
**Lesson Writer**