

UNIT-1

MODULE-1

CONSTITUTIONAL FRAMEWORK

Introduction

Historical Evolution

In order to know about Indian political structure, it becomes very important to know about the Indian Constitution. There are various rules and Acts which were passed before independence which play a vital role in shaping our Constitution. Some of the important historical events are listed down below:

Regulating Act of 1773

- It was the first step taken by the British Government to control and regulate the affairs of The East India Company in India.
- It recognized, for the first time, the political and administrative functions of the Company.
- It laid the foundations of central administration in India.
- It designated the Governor of Bengal as the '**Governor-General of Bengal**'. The first such Governor-General was Lord Warren Hastings.
- It provided for the establishment of a Supreme Court at Calcutta (1774) comprising one chief justice and three other judges.

Amending Act, 1781

- To rectify the defects of the Regulating Act of 1773, the British Parliament passed the **Act of Settlement or Declaratory Act, 1781**.
- The key provision of this act was to demarcate the relations between the Supreme Court and the Governor General in Council.
- It settled the question of jurisdiction of the Supreme Court.

Pitt's India Act, 1784

- Indian affairs came under direct control of British Government in Britain.
- Distinguished between the commercial and political functions of the Company.
- Allowed the Court of Directors to manage the commercial affairs and created a new body called Board of Control (6 members) to manage the political affairs. Thus, it established a system of dual government.
- Empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.

Charter Act, 1813

- It ended the monopoly of the EIC in India except company's monopoly in "trade with china" and "trade in tea with India"
- Thus, trade with India for all commodities except tea was thrown open to all British subjects. This lasted till 1833 when the next charter abolished the trade of the company.
- Charter Act 1813 for the first time explicitly defined the constitutional position of the British territories in India.

Charter Act, 1833

- Final step towards Centralization.
- Governor General of Bengal became the Governor General of India (Lord William Bentinck was the first governor-general of India).
- Governor General was vested with all civil and military powers.
- It deprived the Governors of Bombay and Madras of their legislative powers.
- The laws made under the previous acts were known as Regulations, while the laws made under this act were known as Acts.
- It ended the activities of the EIC as a commercial body, making it a purely administrative body.
- Introduced law member (Macaulay) in Governor General's Council.

Charter Act, 1853

- Separated the legislative and executive functions of the Governor General's council.
- Provided for addition of six new members called legislative councilors to the council known as the Indian (Central) Legislative Council.
- It introduced for the first time, local representation in the Indian (Central) Legislative Council.
- Introduced an open competition for civil services. The covenanted civil service was thus thrown open to the Indians also.

Government of India Act, 1858

- Also known as the Act for the Good Government of India.
- Rule of company was replaced by the Rule of crown.
- Changed the designation of the Governor-General of India to that of Viceroy of India.
- Viceroy became the agent of the crown.
- This act abolished the dual government of the Pitt's India Act.
- This act also ended the doctrine of lapse.
- The Secretary of State was a member of the British cabinet and was responsible ultimately to the British Parliament.
- Established a 15-member Council of India to assist the Secretary of State for India.

Indian Councils Act, 1861

- Initiated the process of decentralization by restoring legislative powers to Bombay and Madras. (These powers were taken away through Charter Act 1833).
- Introduced representative institutions in India by associating Indians with the law-making process.
- Viceroy nominated some Indians as non-official members of his expanded council. Three Indians nominated were: the Raja of Banaras, the Maharaja of Patiala, and Sir Dinkar Rao.
- It empowered the Viceroy to issue ordinances during Emergency.
- Empowered the Viceroy to frame the Rules of Business (the same power is given to President of India under Art 77).
- Statutory recognition to portfolio system.
- Establishment of new legislative councils for Bengal, NWFP, and Punjab.

Indian Councils Act, 1892

- Though the majority of official members were retained, the non-official members of the Indian
- Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards and municipalities.
- Beginning of representative system in India.
- Council to have the power to discuss budget and of addressing questions to the Executive.

Indian Councils Act, 1909 (Morley-Minto Reforms)

- Introduced for the first time, an element of elections to the Legislative Councils;
- At the Provincial Legislative Councils, non-official members to be in majority;
- Introduction of separate electorates (for Muslims).
- It provided for the first time, association of Indians with the Executive Councils of the Viceroy and Governors. (Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member).

Government of India Act, 1919 (Montague-Chelmsford Reforms)

- The idea of "Responsible Government" stressed
- Office of the High Commissioner of India was created in London
- Indian Legislature became "bicameral" for the first time
- Communal representation extended to Sikhs
- Secretary of State for India now to be paid from British revenue
- Diarchy in provinces by dividing subjects of administration between official members and elected members.
- Created Centre State Relations.

Government of India Act, 1935

- Provided for the establishment of an All-India Federation consisting of provinces and princely states as units. (Note: Princely States did not join and so Federation didn't come into existence)
- Residuary powers were given to the Viceroy.
- Abolished diarchy in the provinces and introduced 'provincial autonomy' in its place.
- Introduced responsible government in provinces.
- Introduced Bicameralism in six out of eleven provinces.
- Extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labor (workers). (1909 – Only for Muslims, 1919 – extended for Sikhs, Indian Christians, Anglo-Indians and Europeans.)
- Abolished the Council of India, established by the Government of India Act of 1858.
- The Secretary of State for India was provided with a team of advisors.
- Established the Reserve Bank of India to control the currency and credit of the country.
- Established the Federal Public Service Commission, Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
- Provided for the establishment of a Federal Court, which was set up in 1937.

Indian Independence Act, 1947

- Declared India as an independent and sovereign state from August 15, 1947.
- Provided for creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth. (Governor General of each were to be appointed by King, on advice of the Dominion Cabinet)
- Empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution and to repeal any act of the British Parliament, including the Independence act itself.
- Abolished the office of the secretary of state for India and transferred his functions to the secretary of state for Commonwealth Affairs.
- It assigned dual functions (i.e. constituent and legislative) to the Constituent Assembly formed in 1946.
- It declared this dominion legislature as a sovereign body. Granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpaw.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C. Johari.
5. Indian Administration by Avasthi and Avasthi
6. Government and Politics of India by W.H. Morrison Jones.
7. Indian Administration by Subhash Kashpaw.

MODULE-2

SOURCES OF INDIAN CONSTITUTION

Introduction

The Indian constitution was drafted by the Drafting Committee of the 'Constituent Assembly'. Dr. Rajendra Prasad was the Chairman of Constituent Assembly. Dr. B.R. Ambedkar was the Chairman of Drafting Committee

The original constitution had 395 Articles in 22 parts and 8 schedules. Now after amendment of the constitution there are 448 Articles in 25 parts and 12 schedules in the constitution.

Indian constitution is a blend of various features which are borrowed from different constitution throughout the world. This is what which makes it the most distinct constitution in the world.

Borrowed Features of Indian Constitution:

1.	British Constitution	Parliamentary form of Government, Rule of Law, Law making procedure, Single Citizenship; Institution of Speaker, doctrine of pleasure tenure of civil servants.
2.	American Constitution	Judicial System, Fundamental Rights
3.	Canadian Constitution	Federal System with a strong central authority; Residual powers, Centre State Relation.
4.	Irish Constitution	Directive Principles, Election of the President of India
5.	Australian Constitution	Concurrent list; Freedom of Trade & Service within country
6.	Weimar Constitution	Emergency Provision
7.	Soviet Constitution	Five Year Plans; Fundamental duties
8.	Govt. of India Act 1935	Office of the governor, powers of the federal jury.
9.	South African	Amendment of Constitution.

Constitution of United States of America:

- Fundamental Rights
- Independence of Judiciary
- Impeachment of President
- Judicial Review
- Role of Vice President
- Preamble to the Constitution
- Removal of Supreme Court and the High Court Judges.

Constitution of the United Kingdom:

- The Parliamentary System
- The Election Procedure
- Office of Comptroller and Auditor General
- Writ Jurisdiction of Courts
- Civil Services
- The Law Making Procedures

- Cabinet System
- Martial Law
- Bicameralism
- Rule of Law
- System of Single Citizenship

Constitution of Ireland:

- Directive Principles of State Policy
- The method of Indian Presidential Election
- Nomination of Members of Rajya Sabha

Constitution of Australia:

- Concurrent List
- Joint sitting of 2 houses of the Parliament
- Provision regarding trade and commerce & intercourse

Constitution of Canada:

- The Federal System with a strong center
- Appointment of the State Governor
- Advisory jurisdiction of SC
- Residuary Powers

Other Constitutions:

- South Africa: Amendment Procedure of the Constitution and Election of Members of Rajya Sabha
- France: Republic, Liberty, Equality, Fraternity.
- Japan: Procedure Established by Law
- Former USSR: Fundamental Duties, Justice (Social, Economic, and Political)
- Germany: Suspension of Fundamental Rights during Emergency

From more than one Constitution:

- Australia and UK: The Parliamentary Privileges
- Australia and USA: Public Interest Litigation

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.

MODULE-3

KEY FEATURES OF INDIAN CONSTITUTION

Salient Features of the Constitution:

Single Constitution for both Union and States:

India has a single Constitution for Union and all the States. The Constitution promotes the unity and convergence of the ideals of nationalism. Single Constitution empowers only the Parliament of India to make changes in the Constitution. It empowers the Parliament even to create a new state or abolish an existing state or alter its boundaries.

Sources of the Constitution:

The Indian Constitution has borrowed provisions from various countries and modified them according to the suitability and requirements of the country. The structural part of the Constitution of India has been derived from the Government of India Act, 1935.

The provisions such as the Parliamentary System of Government and Rule of Law have been adopted from the United Kingdom.

Rigidity and Flexibility:

The Constitution of India is neither rigid nor flexible. A Rigid Constitution means that the special procedures are required for its amendments whereas a Flexible Constitution is one in which the constitution can be amended easily.

Secular State: The term secular state means that all the religions present in India get equal protection and support from the state. In addition; it provides equal treatment to all religions by the government and equal opportunities for all religions.

Federalism in India: The Constitution of India provides for the division of power between the Union and the State governments. It also fulfils some other features of federalism such as the rigidity of the constitution, written constitution, a bicameral legislature, independent judiciary, and supremacy of the constitution. Thus, India has a Federal System with unitary bias.

Parliamentary Form of Government: India has a Parliamentary Form of Government. India has a Bicameral Legislature with two houses named Lok Sabha and Rajya Sabha. In Parliamentary Form of Government; there is no clear cut separation of powers of Legislative and Executive organs. In India; the head of the government is Prime Minister.

Single Citizenship: Constitution of India provides for single citizenship to every individual in the country. No state in India can discriminate against an individual of another state. Moreover, in India, an individual has the right to move to any part of the country or live anywhere in the territory of India except certain places.

Integrated and Independent Judiciary: The Constitution of India provides for an integrated and independent judicial system. The Supreme Court is the highest court of India with authority over all the other courts in India followed by high courts, district courts, and lower courts. To protect the Judiciary from any influence, the Constitution has laid down certain provisions such as Security of Tenure and Fixed Service Conditions for judges etc.

Directive Principles of State Policy: Part IV (Articles 36 to 50) of the Constitution mentions the Directive Principles of State Policy. These are non-justifiable in nature and are broadly classified into Socialistic, Gandhian, and Liberal-intellectual.

Fundamental Duties: These were added to the Constitution by the 42nd Constitutional Amendment Act (1976). A new Part IV-A was created for the purpose and 10 duties were incorporated under Article 51-A. The provision reminds the citizens that while enjoying rights, they should also perform their duties.

Universal Adult Franchise: In India, every citizen who is above the age of 18 years has the right to vote without any discrimination on the ground of caste, race, religion, sex, literacy etc. The universal adult franchise removes social inequalities and maintains the principle of political equality to all the citizens.

Emergency Provisions: The President is empowered to take certain steps to tackle any extraordinary situation to maintain the sovereignty, security, unity, and integrity of the nation. The states become totally subordinate to the Central Government when an emergency is imposed. According to the need; an emergency can be imposed in parts or the whole of the country.

The Constitution of India thus stands as an embodiment of democracy, fundamental rights, and decentralization of power to the lowest or to the grass-root level. In order to protect against any possible dilution of these powers and rights, it has set up the Supreme Court to function as the guardian of the Constitution with the power to invalidate any legislation or executive act if it violates the Constitution and thus affirms and enforces the supremacy of the Constitution.

Preamble

- The Preamble to the constitution embodies the essence of the entire constitution and is like an introduction or preface of a book.
- It explains the purposes and objectives with which the constitution has been written, and hence provides a guideline to the constitution.
- The Objective Resolution, proposed by Pandit Nehru and passed by the Constituent Assembly, ultimately became the Preamble to the Constitution of India.

Objectives

- Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic.
- Provision to all the citizens of India i.e.,
Justice - social, economic and political.
Liberty - of thought, expression, belief, faith and worship.

Equality - of status and of opportunity.

Fraternity - assuring dignity of the individual and unity and integrity of the nation

Is preamble a part of Constitution?

Keshvananda Bharti v/s State of Kerala (1973) case overruled its earlier decision (Berubari Case 1965) and made it clear that the Preamble is a part of the constitution and is subjected to the amending power of the Parliament within the core limits of the basic structure doctrine. It is an important guide to interpret the true spirit of the Constitution. LIC of India Case (1995) - upheld the Preamble and said that it is an integral part of the Constitution.

Can Preamble be amended?

- Keshvananda Bharti (1973) case has held that, Preamble may be amended subject to the basic structure of the constitution.
- In other words, the amendment should not destroy the basic features of it.
- In fact, Preamble has been amended by 42nd Amendment 1976, whereby three words viz. socialist, secular and integrity were added.

Keywords mentioned in the Preamble

- The word '**Sovereign**' emphasizes that there is no authority outside India on which the country is in any way dependent.
- By the word '**Socialist**' the Constitution means that the achievement of socialistic pattern of society through democratic means.
- India is a '**Secular state**' does not mean that India is nonreligious or irreligious, or anti-religious, but simply that the State in itself is not religious and follows the age-old Indian principle of "Sarva Dharma Samabhava". It also means that the State shall not discriminate against the citizens in any way on the basis of religion.
- The State regards religion to be the private affair of a person, including the right to believe or not to believe in a religion.
- The term '**Democratic**' means that the rulers elected by the people only, have the authority to run the government. India follows a system of 'Representative Democracy', where the MPs and MLAs are elected directly by the people.
- Efforts are being made to take democracy to the grassroots through Panchayats and Municipalities (73rd and 74th Constitutional Amendment Acts, 1992).
- However, the Preamble and DPSP envisages not only political democracy, but also social and economic democracies.
- The word '**Republic**' means, the head of the state is an elected representative (directly or indirectly) and not the hereditary monarch.

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UNIT-2

MODULE-1

UNION AND ITS TERRITORY (PART-I)

Union and Its Territory (Article 1 – 4)

The constitution is a legal document and the Indian constitution is the supreme law of India. It explains the various players who are in authority in the country, their power and limits of their power. It also defines the fundamental rights and duties of citizens. World's largest constitution presently having 448 articles in 25 parts and 12 scheduled. But it had 395 articles in 22 parts and 8 schedules in commencement time. Part 1 of the Constitution is titled as The Union and its Territory. These parts come under articles from 1 to 4. Let's discuss the union and its territory in detail.

Union and Its Territory (Article 1 – 4)

Articles 1 to 4 under Part I of the Constitution explains the Union and its Territory.

Article 1:

Article 1(1) states that India, that is Bharat, shall be a Union of States.

Article 1(2) states that the States and the territories will be specified in the First Schedule.

Article 1(3) states that the territory of India will comprise the following –

- i. The territories of the States;
- ii. The Union territories mentioned in the First Schedule; and
- iii. Such other territories as may be acquired.

Article-1 describes India as a 'Union of States'. Dr. B.R. Ambedkar said that the Indian federation was a "Union" because it was indissoluble, and no State had a right to separate from the Indian Union. The country is one integral unit beside the fact that it consists of different states for the convenience of administration.

The phrases 'Union of India' and 'Territory of India' has to be differentiated. The Union of India includes only the States enjoying the Status of being members of the federal system and sharing the powers with the Union.

The territory of India includes not only the States but also the Union Territories and such other territories as may be acquired by India in future. First Schedule of the Constitution has specified states and the Territories both.

Article 2:

It deals with admission or establishment of new States. Parliament may by law admit into the Union, or establish, new States based on terms and conditions.

Article 3:

It states that the Parliament may by law form a new State by separation of a territory from any State or by uniting two or more States completely or in parts or by uniting any territory to a part of any State. It deals with the following:

- Formation of new States
- Alteration of areas of States
- Boundaries or names of existing States

Thus Parliament can increase or diminish the area of any State or can alter the boundaries or names of any State. Parliament follows the following procedures in this regard.

Step-1: Either House of the Parliament, only on the recommendation of the President, can introduce a Bill giving effect to any or all the changes stated above.

Step-2: If such a bill affects the boundary or name of a State, then the President will refer the Bill to the concerned State Legislature before introducing it in the Parliament for their opinion.

Step-3: If the State Legislature fails to express an opinion within the given time limit then it is deemed that it has expressed its views. Parliament is not bound to accept or act upon the views of the State Legislature even if State has submitted their views within the time period.

In the case of Union Territories, it is not necessary to seek the views of Legislatures of Union Territories before such Bill.

Article-4:

It says that any law referred to in Article-2 or Article-3 will contain such provisions for the amendment of the First Schedule and the Fifth Schedule necessary to provide effects to the provisions of law and may also contain such supplemental, incidental, and consequential provisions, as the Parliament may deem necessary.

This Article allows for consequential changes in the Ist Schedule i.e. names of the States in the Union of India and IVth Schedule i.e. a number of seats allotted in the Rajya Sabha for each state. Constitution will not treat any such law altering existing States or creating a new State, as the amendment.

MODULE-2

CITIZENSHIP ACT, 1955

The part-II of the Constitution of India deals with citizenship which comprises 7 Articles [Article 5-11]. The Citizenship Act 1955 lays down rules for the acquisition and determination of Indian citizenship. Enacted in 1955, this act also enables people who were once citizens of India but are now citizens of another country, among others, to apply for an Overseas Citizen of India Card.

Acquisition of Indian Citizenship as per Citizenship Act 1955: Indian Citizenship can be acquired under the following ways: (1) Citizenship at the commencement of the constitution of India (2) Citizenship by birth: NB -- This provision has different clauses for different periods (3) Citizenship by descent (4) Citizenship by registration (5) Citizenship by naturalization.

Article 5: Citizenship at the commencement of the constitution

At the commencement of this Constitution, every person who has his domicile in the territory of India and
(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India; or
(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan

The sixth citizenship article of the Indian constitution provides citizenship rights to migrants from Pakistan to India.

Regardless of anything in article 5, a person who has migrated to the territory of India from the territory currently enclosed in Pakistan shall be deemed to be an Indian citizen at the commencement of this Constitution.

If a person migrated from Pakistan to India before 19 July 1948 shall be considered as an Indian citizen if either of the person's parents or any of his grandparents were born in India as expressed in the Government of India act, 1935 and has been living or residing since the date of migration.

For people who migrated after 19 July 1948, they should be registered as a citizen of India by an officer from the Government of India but for registration, the subjected person has to be a resident in the territory of India for a minimum of six months, preceding the date of his application.

Article 7: Rights of citizenship of certain migrants to Pakistan

Regardless of anything in citizenship article 5 & 6, a person who has after the 1st day of March 1947, migrated from the Indian Territory now encompassing in Pakistan shall not be deemed to be a citizen of India:

Given that nothing in this article shall apply to a person who after having migrated to the territory now included in Pakistan has returned to the Indian territory under a permit for resettlement or returning permanently issued by the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the 19th day of July 1948.

Article 8: Rights of citizenship of certain persons of Indian origin residing outside India

The eighth article reads that any person who or either of whose parents or grandparents were born in India as stated in the Government of India Act 1955 and who is residing ordinarily in any country outside India shall be considered to be a citizen of India.

If he has registered as a Citizen of India by an Indian diplomatic or consular representative in that country on an application made by him or her in the prescribed document form to such diplomatic or consular representative, whether before or after the commencement of the Constitution.

Article 9: Persons voluntarily acquiring citizenship of a foreign state not to be citizens

According to article 9, the Constitution of India does NOT allow dual citizenship, i.e., holding Indian citizenship and citizenship of a foreign country simultaneously.

Article 10: Continuance of the rights of citizenship

The Article 10 states that every person who is or is deemed to be a citizen of India in any of the preceding provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, still be a citizen.

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

Given the already declared provisions in this part, there is nothing else that can take away the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and any other matter regarding the same.

MODULE-3

FUNDAMENTAL RIGHTS

Introduction

Part III of the Indian Constitution consisting of Article 12 to 35 deals with Fundamental Rights. Part III of the Constitution is called the Cornerstone of the Constitution (Sajjan Singh v. State of Rajasthan) together with Part IV (Directive Principles of State Policy) as the 'Conscience of the Constitution'.

Classification of Fundamental Rights

All the Fundamental Rights have been classified under the following six categories:

- Right to Equality (**Art.14-18**)
- Right to Freedom (**Art.19-22**)
- Right against Exploitation (**23-24**)
- Right to Freedom of Religion (**Art.25-28**)
- Cultural and Educational Rights (**Art.29-30**)
- Right to Constitutional Remedies (**Art.32**)

The right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal right under Article 300A in Part XII of the Constitution.

Article 12: Defines state (As used in FRs) which includes:

The Government and Parliament of India,
The Government and legislatures of the states,
All local authorities and
Other authorities in India or under the control of the Government of India.

Article 13: Laws inconsistent with FRs

- Provides shield to FRs by declaring that all laws, which are inconsistent with or in derogation of any of the Fundamental Rights, shall be void to the extent of their inconsistency.
- Here the term law includes ordinance, order, bye-law, rule, regulation, notification, custom or usage.
- Thus, Article 13 imposes an obligation on the State to respect and implement the Fundamental Rights and provides the Judiciary the Judicial Review power.

Article 14: Equality before the Law or the Equal Protection of Law

- It says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Two aspects are there:

Equality Before Law: A negative concept, where no man is above law. It ensures juristic equality under the constitution. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies.

But **certain exceptions** to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.

Equal Protection of Law: A positive concept, which says that law(s) shall be applied equally among individuals who are placed equally. It means like should be treated alike.

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

- This says that the state shall not **discriminate against only of religion, race, caste, sex, and place of birth or any of them.**
- No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to:
 - Access to shops, public restaurants, hotels and places of public entertainment;
 - The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Exceptions:

There are three exceptions to this general rule of non-discrimination:

- The state is permitted to make any special provision for women and children.
- The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.
- The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. The last provision was added by the 93rd Amendment Act of 2005.

Article 16: Equality of Opportunity in matters of Public Employment

- It provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

Exceptions:

- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment
- (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh⁵ and Telangana^{5a}.
- The State can provide for reservation of appointments or posts in favor of any backward class that is not adequately represented in the state services.
- A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular

religion or denomination.

Article 17: Abolition of Untouchability

- It abolishes “untouchability” and its practice in any form is made an offence punishable under the law.
- The enforcement of any disability arising out of untouchability shall be an offence punishable by law.
- Untouchability: not to be understood in its literary or grammatical sense and to be understood as the practice as it has developed historically.
- It’s an absolute right which means there is no exception attached to this article.

Article 18: Abolition of Titles

- No title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign state.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present emolument or office of any kind from or under any foreign State.

Article 19 to 22: Right to Freedom

Article 19:

Article 19 guarantees to all citizens the six rights and they are as follows:

Right to freedom of speech and expression.

Right to assemble peaceably and without arms.

Right to form associations or unions or co-operative societies.

Right to move freely throughout the territory of India.

Right to practice any profession or to carry on any occupation, trade or business.

Article 20: Protection in Respect of Conviction for Offences

It grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

- No ex-post-facto law- This limitation is imposed **only on criminal laws** and not on civil laws or tax laws.
- No double jeopardy
- No self-incrimination- The protection against self-incrimination **extends to both oral evidence and documentary evidence**. However, **it does not extend to**
 - (i) Compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body.

Article 21: Protection of Life and Personal Liberty

It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. According to the Menaka case, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. It must be noted here that Right to life does not include Right to Die or Right to get killed i.e. mercy killing

Giving the widest interpretation to Art 21, the Supreme Court has declared the following rights as fundamental rights within the scope of Art. 21:

- Right to education
- Right to health
- Right to environment
- Right to shelter
- Right to privacy
- Right to speedy trial
- Right of the prisoners
- Right to legal aid
- Right against cruel and unusual punishment
- Right not to be subjected to bonded labour
- Right to travel abroad
- Right against solitary confinement
- Right against handcuffing

Article 21-A Right to education:

It asks the state to provide free and compulsory education to all children between the ages of 6 to 14 years. In the same way, Supreme Court has also held that Freedom of speech and expression guaranteed under Article 19(1) includes the right to know, right to information and right to reply.

Article 22: Protection against arrest and detention

Article 22 grants protection to persons under both kinds of detention namely, punitive and preventive. Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court. Preventive detention, on the other hand, means detention of a person without trial and conviction by a court. If a person is arrested after committing a crime, it is called punitive detention.

Art. 22 provides following protection against such detention.

- Right to be informed of the ground of arrest.
- Right to consult and be defended by a lawyer.
- Right to be produced before a magistrate within 24 hours of his arrest (excluding the time of journey).
- Right not to be detained for more than 24 hours without the authority of a magistrate.

Safeguards against preventive detention:

If the detention is for more than 3 months the matter must be referred to an advisory board in which there shall be a High Court judge. The detention may be continued only where the advisory board considers that there are sufficient grounds for further detention. Grounds of detention must be communicated to the detenu. The detenu must be given an opportunity to

make a representation against the order of detention.

Article 23 & 24: Rights against Exploitation

Prohibition of Traffic in human beings and forced labour.

It prohibits traffic in human beings, begar (forced labour) and other similar forms of forced labour.

Parliament has enacted the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Abolition) Act 1976 to punish for such traffic.

Exception

It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay.

However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

Article 24: Prohibition of employment of children in Factories, etc.

It prohibits the employment of children **below the age of 14 years in any factory**, mine or other hazardous activities like construction work or railway.

But it **does not prohibit** their employment in any harmless or innocent work.

Article 25 – 28: Right to Freedom of Religion

Article 25: **Freedom of conscience and free profession, practice and propagation of religion.**

It says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

The implications of these are:

- > Freedom of conscience
- > **Right to profess**
- > **Right to practice**
- > **Right to propagate**

Article 26: Freedom to manage religious affairs

▪ This article allows every religious denomination or a section of it to establish and maintain institutions for religious and charitable purposes and manage their religious affairs.

▪ They can also acquire and own movable and immovable properties and administer such properties in accordance with law.

Article 27: Freedom from payment of taxes for promotion of any particular religion

▪ It prohibits the state to impose a tax proceeds of which are meant for payment of promotion or maintenance of any particular religion.

▪ It means that the state cannot raise a religious tax and also that the state cannot spend its secular taxes for any particular religion as it would go against its secular character.

Article 28: Freedom from attendance religious instructions or worship in educational institutions:

- Educational institutions wholly maintained by state funds are prohibited from imparting religious instructions.
- However, an institution established by a trust but administered by the state can impart religious instructions. But in these institutions no person can be compelled to attend these instructions.

Article 29 and 30: Educational and Cultural Rights

Article 29: Protection of Interests of Minorities

- It provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.
- Article 29 grants protection to both religious minorities as well as linguistic minorities.

Article 30: Right of Minorities to Establish and Administer Educational Institutions

It grants the following rights to minorities, whether religious or linguistic:

- All minorities shall have the right to establish and administer educational institutions of their choice.
- The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).
- In granting aid, the State shall not discriminate against any educational institution managed by a minority

Article 31: Right to Property and Saving of Certain Laws

Article 31: Abolition of right to property

The Constitution (44th Amendment) Act, 1978 omitted Article 19(1)(f) (Right to acquire, held hold and dispose of property), and shifted the provision in Article 31 (no person shall be deprived of his property except by law) to another article viz. Article 300-A.

The effect of this change is that the right to property is no more a fundamental right.

Thus the Right to property though still a constitutional right, is not a fundamental right.

If this right is infringed the aggrieved person cannot access the Supreme Court directly under Art.32.

Article 32: Right to Constitutional Remedies

- It is the very soul of the Constitution and the very heart of it.
- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution.
- These writs are borrowed from English law where they are known as 'prerogative

writs’.

- The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include habeas corpus, mandamus, prohibition, certiorari and quo warranto.

Habeas Corpus

Means “to have the body of”

- Issued to a person or jailer or an authority who has illegally detained another person in jail to produce the detainee before the court.
- Issued in order to let the court know on what grounds he has been confined and justify the ‘day and cause’ of his detention.
- It is the most effective means to check the arbitrary arrest by any executive authority and protect individual liberty.
- Habeas Corpus is a prerogative writ; available to all aggrieved persons alike. The aggrieved person or any other person on the behalf of aggrieved can approach the court for the issuance of this writ.

Mandamus

Mandamus means! ‘We Command’.

- Issued to governmental or semi-governmental or judicial bodies: inferior court, tribunal, board, corporation or person requiring performance of a specific duty fixed by law.
- The writ can be issued only to enforce mandatory legal duty, not a discretionary function
- It cannot be issued to a private individual.

Certiorari

- The Order is issued by a superior court to an inferior court or tribunal to transmit the records of a
- Case or matter pending before them.
- If the order of inferior court is found to be without jurisdiction or against the principles of natural justice, it is quashed.
- Its object is the secure that the jurisdiction of an inferior court or tribunals is properly exercised.
- Unlike Habeas Corpus, it should be utilized only by the person aggrieved, not by any other person.

Prohibition

- Issued by the Supreme Court or a High Court to an inferior court, forbidding it from continuing proceedings on a case which falls outside its jurisdiction.
- Prohibition is available only when the inferior court or tribunal has not yet made a decision. Certiorari can be issued even after the court or tribunal has made a decision.
- Prohibition wholly concerns with matters of jurisdictional defects, whereas Certiorari is only substantially concerned with such defects.
- The remedies under both Prohibition and Certiorari lie against a judicial or quasi-judicial body, not against an executive body.

Quo Warranto

Means “by what authority”.

- Issued when any private person wrongfully usurps a public office.
- It is to enquire into the legality of the claim which a person asserts.
- The person applying for this writ must show the interest he has in the office with reference to which he seeks the remedy.

Article 33

The Parliament can restrict or abrogate, by law, FR's in the application to:

The members of Armed forces, Paramilitary Forces, police forces, intelligence agencies.

The forces charged with the maintenance of public order.

A parliamentary law enacted under Article 33 can also exclude the Court Martials (tribunals established 3. under the Military law) from the writ jurisdiction of the SC and HC, so far as the enforcement of the Fundamental Rights are concerned.

Article 34

- While Martial Law is in force in any area, the FRs can be restricted.
- The Supreme Court held that the declaration of martial law does not a factor result in the suspension of the writ of habeas corpus.

Article 35

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
5. Indian Administration by Avasti and Avasti
- 6 .Government and Politics of India by W.H.Mrrison Jones.
7. Indian Administration by Subhash Kashpap.

MODULE-4

DIRECTIVE PRINCIPLE OF STATE POLICY

It is enumerated in Part IV of the Constitution from Articles 36 to 51.

This idea is borrowed from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.

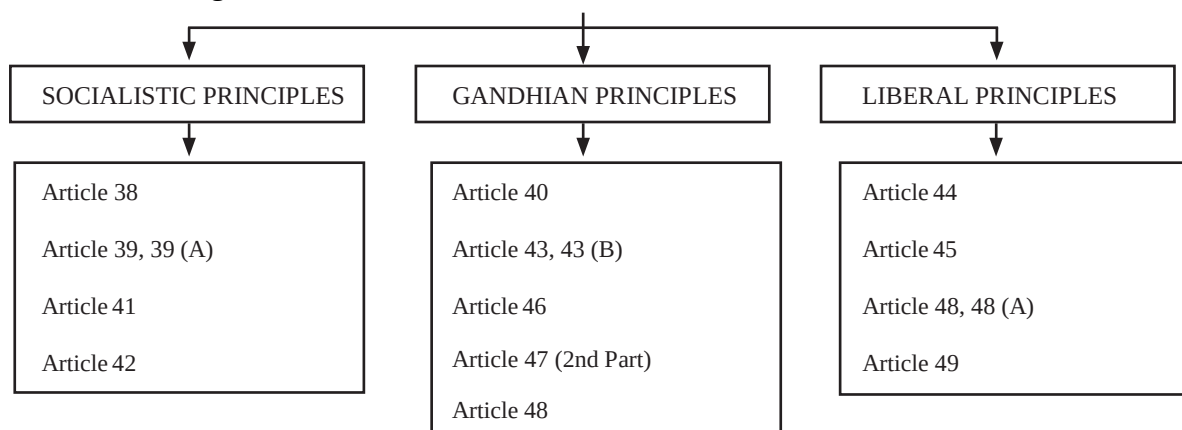
Features of the directive principles

- The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws.
- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.

They embody the concept of a 'welfare state' and not that of a 'police state'.

The Directive Principles are **non-justiciable** in nature. The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.

Different Categories of DPSPs



Articles dealing with Directive Principles:

Article 36

This defines the term state in the same way as A-2, which include:

- The Government of India and the Union Parliament; The Government of the states and their Legislatures; All local authorities;
- Other authorities in India or under the control of the Government of India

Article 37

This declares the importance of DPSPs.

It states that though DPSPs are not justiciable yet they shall be considered fundamental in the governance of the country and it shall be the duty of the state to include these directives in their policies.

Article 38

- This directs the state to create a social order for the promotion of welfare of the people.
- This social order must provide social, economic and political justice.
- Under the 44th Amendment, clause (2) has been added to A-38 which directs the state to minimize inequalities in income, to eliminate inequalities in status, facilities and opportunities.

Article 39

This is a very important article containing a number of directives which go a long way to establish a welfare state in India.

It directs the states to secure the following:

- Adequate means of livelihood for all citizens.
- Control and ownership of the material resources of the community to be distributed in such a manner that it serves the common good.
- The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- Equal pay for equal work for both men and women.
- Health and strength of workers, and children are not abused and the citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.
- Children are given opportunities and facilities to develop in a healthy manner and their childhood and youth are protected against exploitation and moral and material abandonment (added by 42nd Amendment, 1976).
- Thus, A-39 is very wide in its scope. It requires the state to ensure adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labor.

Specially A-39 (b and c) lay the foundations of a welfare state.

Article 39A

Added to the Constitution by 42nd Amendment 1976, this article requires the state to provide for equal justice and free legal aid.

Article 40

- This directs the state to organize village panchayats and confer adequate powers to them so that they can function as units of self-government.
- Accordingly, the Parliament has passed the 73rd Amendment of 1992 which has introduced panchayats in Part IX in the Constitution.

Article 41

Under this Article, the state is directed to provide right to work, to education and to public assistance subject to its economic capacity.

Article 42

- Under this article, the state shall make provision for securing just and humane conditions of work and maternity relief.
- The state has enacted laws such as the industrial Disputes Act, Minimum Wages Act,

Maternity Relief Act, etc., to implement this article.

Article 43

This article directs the state to make efforts to secure living wages and organize cottage industries in rural areas.

Article 44

This article deals with the implementation of a Uniform Civil Code for the citizens throughout India.

The state is supposed to take steps to establish a Uniform Civil code for all the citizens irrespective of caste, creed or religion.

Article 45

Provision for free and compulsory education for children till the age of 14 years.

However, this article has been amended by **86th Amendment Act, 2002** which has inserted A-21A in the constitution making right to education a fundamental right for all children between 6-14 years of age.

Now **45-A** directs the state to make provisions for early childhood care and education for all **children till the age of 6 years.**

Article 46

It seeks to protect the educational and economic interests of SC/STs and other weaker sections. A number of educational facilities have been extended to SC/STs in pursuance of this article.

Article 47

The state has been directed by this article to raise the level of nutrition and the standard of living and to improve public health. This also includes prohibition of liquor and intoxicating drugs.

Article 48

- Organization of agriculture and animal husbandry.
- The state under this article has to organize agriculture and animal husbandry on modern and scientific lines.
- This also includes prohibition of killing of cows, calves and other milch and draught cattle.

Article 48-A

- Added by 42nd Amendment, 1976, this article enjoins on the state task of protecting and improving environment, forests and wild life.
- A number of acts relating to protecting the environment, forests and wild life have been enacted.

Article 49

This article obligates the state to protect monuments and places of national importance.

Article 50

Separation of judiciary from the executive in the public services of the state.

Article 51

To promote international peace and security and maintain just and honorable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

Amendments to Directive Principles**42nd Constitutional Amendment Act, 1976**

Article 39A -To promote equal justice and to provide free legal aid to the poor.

Article 39F -To secure opportunity for healthy development of children.

Article 43A - To take steps to secure the participation of workers in the management of industries

44th Constitutional Amendment Act, 1978

Article 38 (2) - To minimize inequalities in income, status, facilities and opportunities.

86th Constitutional Amendment Act, 2002

This amendment changed the subject matter of Article 45, and made elementary education a Fundamental Right under Article 21A.

Article 45 - To provide early childhood care and education for all children until they complete the age of 14 years.

97th Constitutional Amendment Act, 2011

Article 43B - To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpaw.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
5. Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H.Morrison Jones.
7. Indian Administration by Subhash Kashpaw.

MODULE-5

FUNDAMENTAL DUTIES

Introduction

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.

The Fundamental Duties of the citizens are enumerated in A-51A.

42nd Amendment Act 1976 - They were included in 1976 by the 42nd Amendment on the recommendation of **Sardar Swaran Singh Committee**.

Fundamental Duties did not form part of the Constitution as originally adopted.

The duties are addressed to the citizens only.

Not Enforceable - Although, these duties are not enforceable by a Court, they provide a valuable guide and aid in the interpretation of the Constitution.

The Fundamental Duties can be imposed through some suitable legislation.

Eleven Duties- The fundamental duties are 11 in number.

42nd Amendment Act 1976 - Ten duties were included in the Indian Constitution by the 42nd Amendment Act 1976 and

86th Amendment Act, 2002 - The Eleventh duty was added by the 86th Amendment Act, 2002.

Fundamental Duties

51A (a) to abide the Constitution and respect its ideals and institutions, the National Flag and the National Anthem

51A (b) to cherish and follow the noble ideals which inspired our national struggle for freedom

51A (c) to uphold and protect the sovereignty, unity and integrity of India

51A (d) to defend the country and render national services when called upon to do so

51A (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women

51A (f) to value and preserve the rich heritage of our composite culture

51A (g) to value protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

51A (h) to develop the scientific temper, humanism and spirit of inquiry and reform

51A (i) to safeguard public property and to abjure violence

51A (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement

51A (k) Duty of the parent or guardian to provide opportunities for education to his child, as the case may be, ward between the age of six and fourteen years (added by 86th Amendment Act, 2002)

FDs are Non-enforceable and Non-justiciable

- The fundamental duties are non-enforceable and non-justiciable in character.
- It means that no citizen can be punished by a court for violation of a fundamental duty.
- In this respect, the fundamental duties are like the directive principles of the constitution in Part IV.
- Courts can certainly take cognizance of laws seeking to give effect to fundamental duties.

Legal Provision for Implementation of Fundamental Duties

- The Verma Committee (1999) identified the existence of following legal provision
- The prevention of insults to National Honor Act (1971)
- The various criminal laws provide for punishment for encouraging enmity and discrimination
- The Protection of Civil Right Act (1955)
- The Representation of people Act (1951)
- The Wildlife Protection Act (1972) and
- Forest Conservation Act (1980)

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
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7. Indian Administration by Subhash Kashpap.

UNIT-3

MODULE-1

UNION GOVERNMENT AND ITS ADMINISTRATION

INTRODUCTION

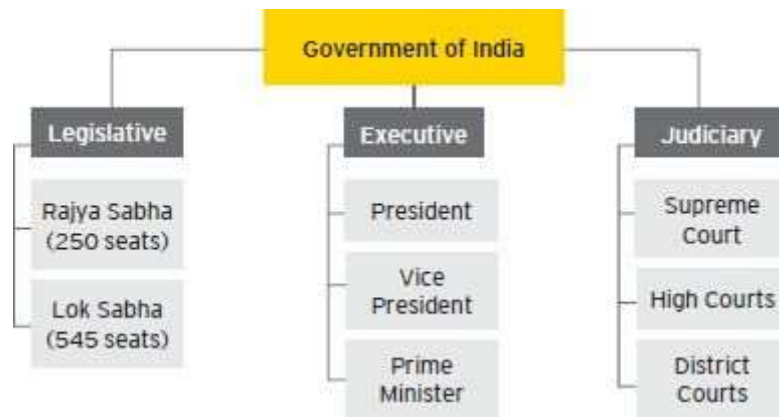
Structure of the Government in India The Government of India (GoI), officially known as the Union Government and also known as the Central Government, was established by the Constitution of India, and is the governing authority of the union of States (29), and Union Territories (7), collectively call the Republic of India, headquartered in New Delhi, the Capital of India.

The Constitution of India adopted by the Constituent Assembly of India on 26 November 1949, and which came into effect on 26, January 1950 is the supreme law of the country. It is a living document, an instrument which makes the government system work. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. The Constitution follows parliamentary system of government and the executive is directly accountable to the legislature.

The Constitution of India is Federal in nature but unitary in spirit. The common features of the federation such as: its Written Constitution, its Supremacy, its rigidity, two governments, division of powers, bi-cameralism and independent judiciary, as well as unitary features like single Constitution, single citizenship, integrated judiciary, flexible constitution, a strong Center, appointment of State Governor by the President of India, All-India Services, Emergency provisions etc., this unique combination seen in the constitution makes it Quasi-Federal in form.

Each State and each Union Territory has its own government, Governor in case of States and Lieutenant Governor in case of Union Territories and a Chief Minister. The 73rd and 74th Amendment Act introduced the system of Panchayati Raj in rural areas and Municipality in urban areas. The Constitution declares India to be sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty, and endeavors to promote fraternity among them.

Structure of the Central Government The Government of India or the Central or the Union Government is divided into three main sections viz., (i) The Executive, (ii) The Legislature, and (iii) The Judiciary. The structure and the responsibility of each section of the government are indicated below in Chart-1.



Legislature: The legislative power in India is exercised by the Parliament, a bicameral legislature consisting of the President of India, the Rajya Sabha (upper house or the Council of States and consists of members appointed by the President and elected by the state and territorial legislatures), and the Lok Sabha (lower house Government of India (Central/Union Government)).

Legislature or Parliament Legislature consists of:

- Lok Sabha + Rajya Sabha
- Prime Minister (MP)

Executive: Executive consists of:

- President
- Vice President
- Cabinet Ministers

Judiciary: Judiciary consists of: Supreme Court of India Responsibility To pass the laws made by the Legislature and implement the same Responsibility To enact laws Responsibility To solve conflicts between Executive & Legislature 131 or the House of people). The Parliament does not enjoy complete sovereignty, as its laws are subject of judicial review by the Supreme Court of India, but does exercise some control over the executive branch. The members of the cabinet, including the prime minister and the council of ministers, are either chosen from parliament or elected there to within six months of assuming office. The cabinet as a whole is responsible to the Lok Sabha, which is a temporary house and can only be dissolved when the party in power loses the support of the majority of the house. Whereas, the Rajya Sabha is a permanent house which can never be dissolved though its members are elected for six-year term.

Executive Branch: The executive branch of government is the one that has sole authority and responsibility for the daily administration of the state bureaucracy. The division of power into separate branches of government is central to the republic idea of the separation of powers.

THE PRESIDENT

Articles 52 to 78 in Part V of the Constitution deal with the Union executive. The union executive consists of the President, the Vice-President, the Prime Minister, the council of Ministers and Attorney general of India.

At the head of the Union Executive stands the President of India. The executive power of the Union including the Supreme command of Defense Forces is vested in him. But the executive power of the Union vested in the President must be exercised in accordance with the Constitution and the Constitution prescribes that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions (Article 74).

Qualifications:

In order to be qualified for election as President, a person must

- be a citizen of India;
- have completed the age of 35 years;
- be qualified for election as a member of the House of the People; and
- must not hold any office of profit under the Government of India or the Government of any State or under any local or any other authority, subject to the control of any of the said Governments (Article. 58).

Election of the President:

The President of India is indirectly elected through an electoral college consisting of

1. the elected members of both the Houses of Parliament; and
2. the elected members of the Legislative Assemblies of the State.

The election takes place on the basis of proportional representation by means of the single transferable vote system. The voting is done by secret ballot. The Constitution also says that parity shall also be maintained between the States as a whole and the Union.

Terms of Office:

The President holds office for a term of five years from the date on which he enters upon his office. However, this term may be cut short if he resigns from office before the expiry of five years by writing addressed to the Vice-President; or if he is removed from office through impeachment on grounds of violation of the Constitution. Similarly, his term stands automatically extended beyond the expiry date if his successor is not elected or does not assume office.

Impeachment of the President:

The President of India can be removed from his office before the expiry of his normal term through the process of impeachment. He can be impeached only on grounds of violation of the Constitution. An impeachment is a quasi-judicial procedure in Parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated.

But the charge cannot be preferred by a House unless

1. a resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than one-fourth of the total number of members of that House; and
2. the resolution is then passed by a majority of not less than two-thirds of the total membership of the House.

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

POWERS OF THE PRESIDENT

A. Executive powers

The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry out the business of the Government. However, it is evident that President is not free to use his powers; rather he acts on the advice of the Council of Ministers.

The executive powers of the President include administrative powers and military powers. Administratively, the President may not discharge any function as there are ministries responsible for such an act. This way President becomes a formal head and action is taken in his name. The administrative power also includes the power to appoint and remove the high dignitaries of the State. The President shall have the power to appoint

- The Prime Minister of India.
- Other Ministers of the Union.
- The Attorney-General for India.
- The Comptroller and Auditor General of India.
- The judges of the Supreme Court.
- The judges of the High Courts of the States.
- The Governor of a State
- A commission to investigate interference with water-supplies.
- The Finance Commission.
- The Union Public Service Commission and joint Commissions for a group of States.
- The Chief Election Commissioner and other members of the Election Commission
- A Special Officer for the Schedule Castes and Tribes.
- A Commission to report on the administration of Scheduled Areas.

- A Commission to investigate into the condition of backward classes.
- A Commission on Official Language.
- Special Officer for linguistic minorities.
- The President shall also have the power to remove - His Ministers, individually;
- The Attorney-General of India;
- The Governor of a State;
- The Chairman or a member of the Public Service Commission of the Union or of a State, on the report of the Supreme Court;
- A Judge of the Supreme Court or High Court or the Election Commissioner, on an address of Parliament.

B. Legislative Powers:

Like the Crown of England, the President of India is a component part of the Union Parliament. The legislative powers of the President, to be exercised according to Ministerial advice, includes

- I. Summoning, prorogation of both Houses of Parliament, and dissolution of the lower House.
- II. The right to address and to send messages to either House of Parliament either in regard to any pending Bill or to any other matter.
- III. Nomination of members to the Houses. The President nominates 12 members to the Council of States from persons having special knowledge or practical experience in the fields of literature, science, art and social service. He is also empowered to nominate not more than two members to the House of People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House.
- IV. Laying reports, etc. before Parliament like the budget, report of the Auditor-General relating to the accounts of the Government of India, recommendations of the Finance Commission, reports of the UPSC, the Special Officer for SCs and STs, Commission on backward classes, the Special Officer for linguistic minorities etc.
- V. Previous sanction of legislation relating to formation of new States or the alteration of boundaries, a Money Bill, a bill involving expenditure from the Consolidated Fund of India, a bill affecting taxation in which States are interested or affecting the principles laid down for distributing moneys to the States and so on.
- VI. Assent to legislation and veto.
- VII. Disallowance of State legislation: There is no provision in the Constitution of India for a direct disallowance of State legislation by the President, but there is provision for disallowance of such bills as are reserved by the State Governor for the assent of the President. The President may also direct the Governor to return the Bill to the State Legislature for reconsideration; if the Legislature again passes the Bill by an ordinary majority, the Bill shall be presented again to the President for his reconsideration. But if he refuses his assent again, the Bill fails.
- VIII. Ordinance-making power: The President enjoys the power to legislate by ordinance when Parliamentary enactment on the subject is not possible. An ordinance may relate to any subject in respect of which Parliament has the right to legislate and is subject to the same limitations as legislation by Parliament. Thus, an ordinance cannot contravene the Fundamental Rights any more than an Act of Parliament.

C. Military Powers:

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

D. Diplomatic Powers:

The President represents the nation in international affairs, appoints Indian representatives to other countries; receives diplomatic representatives of other States; and has the power of making treaties and implementing them, subject, of course, to ratification by Parliament.

E. Judicial Powers: Article 72(1) of the Constitution of India states that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

F. Emergency Powers: The President has extraordinary powers to deal with emergencies. He is given the power to make a proclamation of emergency on the ground of threat to the security of India or any part thereof, by war, external aggression or armed rebellion. He also has the power to make a proclamation that the Government of a State cannot be carried on in accordance with the provisions of the Constitution (i.e., breakdown of Constitutional machinery). The President is empowered to declare that a situation has arisen whereby the financial stability or credit of India or of any part thereof is threatened (Article 360).

G. Discretionary Powers: There can be at least two situations in which the President may have to take a decision in his discretion, because the advice of the Ministers may not be available. Such a situation arose in 1979 after Morarji Desai's resignation as Prime Minister. The President did not invite Jagjivan Ram. He accepted the advice of Charan Singh, and dissolved the Lok Sabha. The President took his action in his discretion.

There is no mention of the term 'discretion', in the Constitution, in connection with the powers of the President. However, eminent Constitutional experts like D.D. Basu, N.A. Palkhiwala, T.K. Tope, H.M. Seervai and V.M. Tarkunde are of the opinion that like the Queen of England, the President of India has discretion in the appointment of Prime Minister, and dissolution of Lok Sabha. In normal times, the President acts according to well established customs.

THE VICE-PRESIDENT

The post of Vice-President of India is modelled on the lines of American Vice-President. In India, Vice-President has a second-highest office in the country. Article 63 of the Indian Constitution mentions the post of Vice-President.

Part V of the Constitution of India under Chapter I (Executive) also discusses about the office of the Vice-President of India. The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office. Let's see the articles 63-73 which deal with the qualifications, election and removal of Vice-President of India.

ARTICLE 63: THE VICE-PRESIDENT OF INDIA

There shall be a Vice-President of India.

ARTICLE 64: THE VICE-PRESIDENT TO BE EX-OFFICIO CHAIRMAN OF THE COUNCIL OF STATES

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit: Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

ARTICLE 65: THE VICE-PRESIDENT TO ACT AS PRESIDENT OR TO DISCHARGE HIS FUNCTIONS DURING CASUAL VACANCIES IN THE OFFICE, OR DURING THE ABSENCE, OF PRESIDENT

1. In the event of the occurrence of any vacancy in the office of the President by reason of this death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.
2. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.
3. The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

ARTICLE 66: ELECTION OF VICE-PRESIDENT

- a. The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.
- b. The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
- c. No person shall be eligible for election as Vice-President unless he –
 - (a) is a citizen of India;
 - (b) has completed the age of thirty-five years; and
 - (c) is qualified for election as a member of the Council of States.A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 67: TERM OF OFFICE OF VICE-PRESIDENT

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office: Provided that

- a. A Vice-President may, by writing under his hand addressed to the President, resign his office;
- b. a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- c. A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

ARTICLE 68: TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF VICE-PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY

- a. An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.
- b. An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

ARTICLE 69: OATH OR AFFIRMATION BY THE VICE-PRESIDENT

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say – “I, do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will discharge the duty upon which I am about to enter.”

ARTICLE 70: DISCHARGE OF PRESIDENT’S FUNCTIONS IN OTHER CONTINGENCIES

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

ARTICLE 71: MATTERS RELATING TO, OR CONNECTED WITH, THE ELECTION OF A PRESIDENT OR VICE-PRESIDENT

All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
3. Constitution of India by J.C.Johari.
- 4.Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap.

MODULE-2

THE UNION COUNCIL OF MINISTERS

INTRODUCTION

The Union Council of Ministers, headed by the Prime Minister, is the real executive of the country. The President has to exercise all his powers in accordance with the advice tendered by the Council of Ministers. Composition of the Union

Council of Ministers: The Council of Ministers consists of the Prime Minister and other Ministers. The number of Ministers is not fixed. It varies from time to time. The Prime Minister and other Ministers are appointed by the President. The President has to appoint the leader of the majority party as the Prime Minister. It is in accordance with the advice of the Prime Minister that the President appoints other Ministers.

Following are the four categories of Ministers in the Council of Ministers:

- a. **Cabinet Ministers:** Cabinet Ministers are those Ministers who hold very important portfolios like Defense, Home and Foreign Affairs, etc. They are highest in status, emoluments, and powers. It is these Ministers who constitute the Cabinet which has been described as a 8 wheel within a wheel. Their number varies from time to time but seldom exceeds twenty. Cabinet Ministers and senior Ministers collectively formulate the policy of the Government and are entitled to attend all meetings of the Cabinet. Occasionally, senior leaders are included in the Cabinet as Ministers without portfolio.
- b. **Ministers of State:** They are next in seniority and hold independent charge of a department or a sub-department generally included in the portfolio of a Cabinet Minister. They have no share in the formulation of the Government's general policy and attend Cabinet meetings only when specially invited and when affairs of their departments are to be considered.
- c. **Deputy Ministers:** Deputy Minister, who are next in rank to Ministers of State do not hold independent charge of any department and perform such functions as the Minister-in-charge may delegate to them.
- d. **Parliamentary Secretaries:** They have no independent powers or functions. They assist the Ministers to whom they are attached in the Parliamentary work. They are, in fact, probationers under training and may hope to rise to higher ranks if they make good. Thus, we can say that whereas the Council of Ministers includes all categories of Ministers, Cabinet is only a part of the Council of Ministers and includes only some important Ministers. The Council of_ Ministers meets very rarely; Cabinet meets quite frequently.

Functions of the Cabinet Policy Formulation: The Cabinet is responsible for policy formulation, both with regard to national and international problems. All policy decisions are taken by consensus and are conveyed by the Prime Minister to the President.

Control over Administration: The types of control over administration can be broadly divided into two—Internal Control and External Control. Internal controls form part of the administrative machinery and work automatically and spontaneously with the movement of the machinery.

They comprise of the following:

- Budgetary Control
- Personnel Management Control
- and M System
- Administrative Ethics and Professional Standards
- Leadership External controls work within the general Constitutional machinery, e.g. legislative control, executive control and judicial control. Public control is also a form of external control.

Legislative Powers: All the Ministers are members of Parliament and, thus, participate in legislation. Most of the Bills are introduced in the Parliament by the Ministers and are always passed by the Parliament because of the support they enjoy. The Bills to be introduced by the Ministers are considered by the Cabinet and approved. The Cabinet may make such changes in the Bills as it thinks are necessary.

Financial Powers: The Cabinet is responsible for all expenses of the Government and the sources of revenue to finance the expenditure. The annual budget prepared by the Finance Minister is controlled by the Cabinet. Here, it may be noted that the budget proposals are kept strictly secret and the Finance Minister takes the Cabinet into confidence only an hour before the introduction of the budget in Parliament. The Cabinet cannot make any changes in the budget. But in the light of discussion on the budget proposals in the Parliament, the Cabinet makes alterations. The alterations thus made are subsequently announced by the Finance Minister. The Cabinet is responsible for approving the economic and fiscal policies and also for taking decisions on the reports submitted by the Finance Commission and the Comptroller and Auditor-General of India.

Power of making Appointments: The President enjoys vast powers of appointing high dignitaries of the State. These appointments are in reality made by the President on the recommendation of the Cabinet. The advice of the Cabinet is binding on the President and virtually all the functions of the President are performed by this body. The President may ask the Cabinet to reconsider its advice but only once. The advice given after reconsideration is binding on the President. The Cabinet is a corporate body. It not only co-ordinates the work of various departments but also resolves the inter-departmental disputes. M.V. Pylee calls the Cabinet “the formulator of national policies, the highest appointing authority, the arbiter of inter-departmental disputes and the supreme organ of co-ordination in Government”.

Cabinet Meetings: The Cabinet, ordinarily, meets once a week, and more often if the occasion demands. The Prime Minister presides over its meetings. But in case the Prime Minister is out of town for some length of time, a senior Minister, nominated by the Prime Minister himself, presides over Cabinet meetings. After the meeting is over, the Cabinet Secretary, who remains present in it, prepares and circulates a summary embodying the decisions reached. Cabinet Committees To relieve the Cabinet of some burden of work, Cabinet committees have been set up. N. Appalaswamy of the Machinery of Government (1949) recommended setting up of standing committees of Cabinet over defined fields, with appropriate strengthening of the secretariat and other organs of these committees. These were the instruments to 'organize co-ordination on a decentralized basis'. The Cabinet Committees should cover between them all important areas of Governmental activity. It is also essential that they meet regularly so that sustained attention is given to complex problems and the progress of implementing important policies and programs is kept under constant review. The number and names of the Cabinet committees do not remain unchanged.

But three or four such committees have existed under all Governments in power at the Centre, namely:

- a. Political Affairs Committee: It is chaired by the Prime Minister. Its other members include the Home Minister, the defense Minister, and the External Affairs Minister. The committee deals with all important matters relating to both internal developments and foreign relations.
- b. Economic Affairs Committee: Its members are the Prime Minister (Chairman), Finance Minister, Rural Development Minister, and Industry Minister. Its main function is to direct and co-ordinate Governmental activities in the economic field and generally to regulate the working of the national economy.
- c. Committee on Parliamentary Affairs: Its members include Information and Broadcasting Minister, Minister for Labour and Parliamentary Affairs, Law Minister, with the Home Minister as its chairman. The committee looks after the progress of Government business in Parliament to secure the smooth passage of legislation and determine the Government's attitude to non-official Bills and resolutions coming up before Parliament.
- d. Appointment Committee: The members of the Appointment Committee are the Prime Minister who is also its chairman, the Home Minister and the Minister concerned. Its main function is to take decisions in respect of
 - Secretariat appointments of the rank of Deputy Secretary and above;
 - Chairman, Managing Directors and General Managers and state-owned public corporations, companies and enterprises including Governor of Reserve Bank;
 - Other appointments which are made by the Government or which require the approval of the Government of India, and which carry a salary;
 - To decide all cases of disagreement between the Union Public Service Commission and the Department concerned in regard to any appointment. Five other ad hoc committees have also been set up out of which two deal with the problem of prices. The Third Cabinet Committee reviews the performance of the public undertakings

including export promotion and import substitution and also covers denudation of forests and trees. The fifth one deals with the question of rise in aluminum prices in view of the increased power rates.

References:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
3. Constitution of India by J.C.Johari.
- 4.Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap.

MODULE-3

The Prime Minister

The Constitution of India gives formal recognition to the pre-eminent position which the Prime Minister enjoys in relation to the Council of Ministers. Article 74(1) says, “There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President in the exercise of his functions.”

Functions of the Prime Minister:

The Prime Minister is the key stone of the Cabinet arch. He controls the entire administration. Unlike the powers of the President which are in name only, the powers of the Prime Minister are real and vast. The Prime Minister is the central figure in the formation, existence and termination of the Cabinet. In Britain, the position of the Prime Minister has been described by Lord Morley as ‘primus inter-pares’, i.e., first among equals. In theory, all Ministers or members of the Cabinet have an equal position, all being advisers of the Crown, and all being responsible to Parliament in the same manner. Nevertheless, the Prime Minister has a pre-eminence, by convention and usage. The position of the Ministers and the Prime Minister is similar in India. Thus,

- The Prime Minister is the leader of the party in majority in the popular House of the Legislature.
- He has the power of selecting the other Ministers and also advising the President to dismiss any of them individually, or require any of them to resign.
- The allocation of business amongst the Ministers is a function of the Prime Minister.
- He is not only the chairman of the Cabinet, but is also the chairman of important 11 Cabinet committees.
- He summons the meetings of the Cabinet and presides over them.
- While the resignation of other Ministers merely creates a vacancy, the resignation or death of the Prime Minister dissolves the cabinet.
- The Prime Minister is the link between the President and the Cabinet.
- Though individual Ministers have the right of access to the President on matters concerning their own departments, and important communication, particularly relating to policy, can be made only through the Prime Minister.
- The Prime Minister is in charge of coordinating the policy of the Government and has, accordingly, a right of supervision over all the departments.

In short, the Prime Minister is head of the ruling party, the Parliament and the Government at the same time. He is chief advisor to the President and working head of the Union of India.

He is the main spokesman of the country in national and international matters. However, the actual position of the Prime Minister depends greatly upon his or her personality and political situation in the country.

THE PRIME MINISTERS'S OFFICE:

The Prime Minister's Office, known as the Prime Minister's Secretariat till June 1977, came into existence in August 1947, when India emerged as an independent nation. It took the place of the Secretary to the Governor-General (Personal), as the Prime Minister assumed functions which, prior to August 15, 1947, the Governor-General performed as head of the Government. The Prime Minister's Office (PMO) occupies the status of a department of the Government of India under the Allocation of Business Rules, 1961. It is a link between the Prime Minister and his Ministers, the President, Governors, Chief Ministers and Foreign Representatives. The Prime Minister's Secretariat assists the Prime Minister in his public activities and functions as head of the Government.

Its functions are:

- To deal with all references which under the Rules of Business have come to the Prime Minister.
- To help the Prime Minister in respect of his responsibilities as the Chairman of the Planning Commission and the National Development Council.
- To look after public relations, such as, contact with the press and general public.

References:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
3. Constitution of India by J.C.Johari.
- 4.Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap.

MODULE-4

THE CABINET SECRETARIAT

The efficiency of the Cabinet depends, to a large extent, on the Cabinet Secretariat whose duty is

- to prepare the agenda of the Cabinet meeting,
- to provide information and material necessary for its deliberations,
- to draw up records of the discussions and decisions both of the Cabinet and its committees,
- to oversee the implementation of the necessary decisions by the Ministries concerned. This involves the calling of information from various Ministries and departments.
- to keep the President, the Vice-President and all the Ministries informed of the major activities of the Government conducted in several Ministries by undertaking the circulation of monthly summaries and brief notes on important matters.
- to service the Committees of Secretaries which meet periodically under the chairmanship of the Cabinet Secretary to consider advise on problems requiring inter-ministerial consultation and co-ordination.
- to finalize the rules of business and allocate the business of the Government to the Ministries and departments under the direction of the Prime Minister and with the approval of the President.
- to give secretarial assistance to the Cabinet committees.

Organization of the Cabinet Secretariat: The Cabinet Secretariat is headed by the Prime Minister who is assisted by a Cabinet Secretary and other secretariat staff. The Secretariat was re-organized in 1961 and consists of two Departments, viz., the Department of Cabinet Affairs, and the Department of Statistics.

Department of Cabinet Affairs: The Department of Cabinet Affairs is divided into four wings

1. **Main Civil Secretariat:** The main secretariat is headed by the Cabinet Secretary. Below him, there are three Secretaries including one Secretary (Co-ordination), followed by one Additional Secretary, four Joint Secretaries and one Secretary (TPIC), an ex-officio Joint Secretary and six Deputy Secretaries. The main civil wing is the institutional machinery through which the Cabinet Secretary provides the secretarial service to the Cabinet and its Committees. It also provides secretarial service to the Committees of Secretaries which function under the chairmanship of the Cabinet Secretary.

The civil wing is divided into four sections: Co-ordination Section

- Cabinet Section
 - General Section
 - Administrative Section
2. O and M Division: The Organization and Methods Division was created in March, 1954. It functions directly under the Prime Minister. It pays attention not only to what is done but also to how it is done and at what cost in time, labour, money and also pays attention to the design of the machinery and its working processes.
 3. The work of O and M Division is carried on through the O and M units set up in each Ministry, each unit being under the charge of a Deputy Secretary functioning as an O and M officer in addition to his own duties. The Director, O and M Division exchanges ideas and experiences with the O and M officers of various Ministries from time to time by holding joint meetings. The Deputy Director, O and M Division, pays informal visits to the various Ministries to see whether the prescribed procedures are being followed or not. He also tenders advice on various problems of O & M work.
 4. Military Wing: The function of the Military wing is to provide secretarial service to the Defence Committee of the Cabinet, National Defence Council, Military Affairs Committee, the Defence Minister's Committee, the Defence Minister's Production Committee and a host of other committees dealing with matters relating to defence.
 5. Economic Wing: The Economic wing is responsible for all secretariat work connected with the Economic Committee of the Cabinet, the Committee of Economic Secretaries and the Supply Committee.

Department of Statistics: The Department of Statistics was created in April, 1961 as a central statistical body.

- It considers statistical methods;
- It advises and issue general directions regarding the setting up of standards, norms, and method of collection to all the central and State agencies and to deal with references from them on such questions;
- It co-ordinates the activities of various statistical agencies; and
- It promotes, in general, the collection and compilation of statistics on scientific lines.

Besides, the Department also provides administrative support to the Central Statistical Organization (C.S.O.), National Sample Survey (N.S.S.) and the Indian Statistical Institute. (I.S.I.). Whereas C.S.O and I.S.I, are attached offices, the N.S.S. is a subordinate office of the Cabinet Secretariat.

The Cabinet Secretary: In the official Warrant of Precedence, the Cabinet Secretary has been given the highest place among the civil servants. He sits near the Prime Minister in the Cabinet meetings and briefs him on various points on the agenda. He is the chairman of the Senior Selection Board and, also, of the Committee of Secretaries on Administration. Again, it is the Cabinet Secretary who presides over the Chief Secretaries' Conference.

The Ayyangar Report described the Cabinet Secretary as an administrative officer of the highest rank selected for the office for his special qualities of tact, energy, initiative and efficiency, and recommended that he should be entrusted, as head of the Cabinet Secretariat, with the positive function of securing co-ordination as well as timely and effective action by all departments of the Government of India in all matters in which the Cabinet as a whole or the Prime Minister is interested. He should be a person commanding the respect and confidence of all ranks of the permanent services there is need for a senior officer of ripe experience to be placed at the head of the Cabinet Secretariat.

In U.K. it is said that "The Cabinet Secretariat is under a Cabinet Secretary. He is a very senior civil servant. He is almost the pivot of the Cabinet system. From the account of his relationship with permanent officials it would appear that he is a sort of adviser and conscience-keeper to all the permanent officials. They come for advice and guidance whenever there are inter-departmental difficulties. He seems to be a man in whom all permanent officials have great confidence..."

References:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
3. Constitution of India by J.C.Johari.
- 4.Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap.

MODULE-5

THE ELECTION COMMISSION

INTRODUCTION

The Constitution of India has adopted a democratic system of Government based on the principle of universal adult franchise. For the successful operation of the democratic system, the Constitution under Article 324 provides for an independent Election Commission to ensure free and fair elections. The Election Commission consists of a Chief Election Commissioner and such Commissioners as the President may from time to time appoint.

At present, Election Commission is a multi-member body consisting of a Chief Election Commissioner and two other Election Commissioners who enjoy equal status and have equal power. The Chief Election Commissioner and other Election Commissioners are appointed by the President for a term of six years or up to the age of 65 years. They can be removed by the President on grounds of proved misbehavior or incapacity in the like manner and on the like grounds as a Judge of the Supreme Court. The Election Commission shall have the power of superintendence, direction and conduct of all elections to Parliament and the State Legislatures and of elections to the offices of the President and Vice-President.

FUNCTIONS

- I. The preparation of electoral rolls before each general election and registration of all eligible voters.
- II. The delimitation of constituencies.
- III. The recognition of various political parties and allotment of election symbols to these parties.
- IV. Preparation of code of conduct for the political parties.
- V. Keeping voters list up-to-date at all times.
- VI. The preparation of roster for central broad-casts and telecasts by various political parties, etc.
- VII. The conduct of polls.
- VIII. The Election Commissioner has not only the power of holding elections but also to cancel it and order repoll of it if rigged. It is also the responsibility of the Election Commission to hold by-elections.
- IX. To notify the dates and schedules of elections so that nomination papers are filled and properly scrutinized before the elections.

- X. To request the President of India or the Governors of the States for requisitioning as much staff as necessary for conducting elections.
- XI. Under the Peoples Representation Act, the Election Commission also has the power to disqualify a candidature. The independence of the Election Commission and its insulation from executive interference is ensured by a specific provision in Article 324(5) of the Constitution to the effect that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a judge of the Supreme Court and that the conditions of his service shall not be varied to his disadvantage after his appointment. The other Election Commissioners cannot be removed from office except on recommendation made by the Chief Election Commissioner. All Election Commissioners have equal say in the decision making of the Commission.

Appointment & Tenure of Commissioners

- The Chief Election Commissioner and the Election Commissioner are appointed by the President of India.
- Each of them holds their offices for a period of 6 years or up to the age of 65 years, whichever comes first.
- They receive the same perks and pay as Supreme Court Judges.
- The only way a Chief Election Commissioner can be removed from office is upon an order of the President supported by the Parliament.
- The Election Commissioner or Regional Commissioner can only be removed from office by the Chief Election Commissioner.

Advisory and Quasi-Judiciary Powers

- The Election Commission of India has advisory jurisdiction in terms of post-election ineligibility of sitting members of the Parliament and State Legislature.
- Cases where an individual is found guilty of malpractice at elections by the Supreme Court or High Courts are referred to the ECI for its opinion of the said person's disqualification. In such cases, the judgement passed by the ECI is final and binding on the President of India or the Governor as per jurisdiction.
- The Election Commission of India also has the power to ban any candidate who has not lodged an account of election expenses by the deadline and as per the law.
- ECI can also remove or reduce the period of disqualification as per the law.

Administrative Powers

- Allotting territorial areas for electoral constituencies in the country
- Organize and amend electoral rolls and register eligible voters
- Inform dates and schedule of elections and scrutinize nomination papers
- Give recognition to political parties and assign election symbols to them.

ECI appoints the following seats:

- Chief Electoral Officer
- District Election Officer
- Returning Officer
- Electoral Registration Officer

The chief election commissioner

The chief election commissioner is appointed to conduct free and fair elections in the country. The president of India will appoint the chief election commissioner. It is essential machinery for the functioning of democracy. It has been an independent constitutional authority since 25 January 1950. The efforts of the body are to beat corruption and manipulation existing in the Indian elections. There are two election commissioners in addition to the chief of the election commission to look into the process of the elections.

Chief Election Commissioner of India- Role

The chief election commissioner is responsible for the conduct of elections

- To parliament
- State legislatures
- Offices of the president and vice president

The commission is headquartered in Delhi. It has staff members of 350 and a secretariat at the base. In states with a handful of core staff and in varying numbers depending on the size of the state who work on a full-time basis to keep the engines of democracy running at all times fairly and smoothly.

The duties of the chief election commissioner will be

- To show who is entitled to vote
- Supervises the nomination of the candidates
- Registers political parties
- Monitors the election campaign
- Looks into the funding and expenditure by candidates
- Facilitates the coverage of the election by the media
- Organizes the polling booths
- Checks into the counting of votes
- Declaration of results

The electoral rolls are updated as new voters get added in, the election commission has proper administrative machinery in place for the

- Preparation
- Maintenance
- Revision

The election commission has looked into getting the electoral rolls automated so that there are better accuracy and speed, and updating is easier. The election can be conducted by the date prescribed by the election commission when it sees the preparations are conducive enough to hold them. The election commission can also defer the elections in extraordinary circumstances.

References:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
- 4.Indian Administration by Avasti and Avasti

MODULE-6

PARLIAMENTARY HOUSES

Parliament of India comprises President, Lok Sabha (Lower House) and Rajya Sabha (Upper House.) Lok Sabha is called House of People while Rajya Sabha is called the Council of States. The names, 'Lok Sabha' & 'Rajya Sabha' were adopted in 1954 by the Indian Parliament. Article 79-122 in the Indian Constitution deals with the Indian Parliament.

What is the main difference between Lok Sabha and Rajya Sabha?

The major differences between the upper house and lower house of the Parliament are given in brief in the table below:

Comparison between Lok Sabha and Rajya Sabha		
Difference	Lok Sabha	Rajya Sabha
What it is called?	House of People	Council of States
What is the meaning of the name?	House of People, where people who are qualified to vote can elect their representative by way of direct elections	Council of States, where the representatives are indirectly elected by the elected representative of the Assemblies of States and Union Territories
What is the tenure of the house?	It continues for 5 years Note: It can be dissolved earlier by passing no-confidence motion	It is a permanent body.
Who heads the house?	Speaker	Vice President of India as the Chairman of the house
What is the minimum age to become a	25 years	30 years

member?		
What is the strength of the house?	552 members	250 members
What are the functions of the house?	All bills originate in Lok Sabha mostly and after passing through Rajya Sabha, they are returned for Lok Sabha approval. It plays a major role in legislation.	Rajya Sabha has special powers to announce that it is required and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all-India services common to the Union and the States.

Who is more powerful between Lok Sabha and Rajya Sabha?

Lok Sabha and Rajya Sabha along with President together make up the Parliament. Both the houses have been conferred with powers. However, there is a slight difference between the powers of both. Lok Sabha is more powerful than Rajya Sabha on specific matters which are given below:

- Lok Sabha can express a lack of confidence in the government by following ways which Rajya Sabha cannot:
 - By not passing a motion of thanks on the President's inaugural address
 - By rejecting a money bill
 - By passing a censure motion or an adjournment motion
 - By defeating the government on a vital issue
 - By passing a cut motion
- Note:** Rajya Sabha, however, can criticize the acts and policies of the government.
- Money Bill under Article 110 can only be introduced in Lok Sabha.
 - Financial Bill under Article 110 (1) can also be introduced only in the Lok Sabha
- Note:** The powers with the passage of the bill, however, are same
- Speaker of Lok Sabha decides which bill is Money Bill and the same power is not given to the chairman of Rajya Sabha
 - In case of a joint sitting of both houses, Lok Sabha with greater number always wins
 - With respect to the union budget, Rajya Sabha can only discuss the budget and cannot vote on the demands for grants

How many members are there in Lok Sabha and Rajya Sabha?

Composition of Lok Sabha		Composition of Rajya Sabha	
Maximum	530 represent the States	Maximum	238 elected

Strength – 552		Strength – 250	indirectly and are representatives of States and Union Territories
	20 are the representatives of Union Territories		12 are nominated by President
	2 are nominated by the President from Anglo-Indian Community	Current strength – 245	228 represent States
Current Strength – 545	530 represent States		4 represent Union Territories
	13 represent Union Territories		12 are nominated by President
	2 are nominated from the President from Anglo-Indian Community		–

How are members elected in Lok Sabha and Rajya Sabha?

The principle of election for both the houses is different. There are three kinds of representation in both the houses:

- Representation of States
- Representation of Union Territories
- Nominated Members

Difference between Lok Sabha and Rajya Sabha w.r.t Representation of States

Lok Sabha	Rajya Sabha
• Members are directly elected by the people from the territorial constituencies in the states • Election Principle used – Universal	• Members are elected by the elected members of state legislative assemblies • Election Principle used – Proportional Representation by

Adult Franchise

- Eligibility to Vote: Any Indian Citizen of/above 18 years of age

Note: Voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988

means of **Single Transferable Vote**

- Allotment of Seats – On the basis of population

Note: Number of representatives varies from state to state

Difference between Lok Sabha and Rajya Sabha w.r.t Representation of Union Territories

Lok Sabha

- Parliament is empowered to choose the members from the UTs in any manner as it desires
- Election Principle used – **Direct Election**

Note: Union Territories (Direct Election to the House of the People) Act, 1965, has been enacted by which the members of Lok Sabha from the union territories are chosen by direct election.

Rajya Sabha

- Members are indirectly elected by members of an electoral college specially constituted for the purpose
 - Election Principle used – **Proportional Representation** by means of **Single Transferable Vote**
- Note:** Out of seven UTs, only Delhi and Puducherry have representation in Rajya Sabha

Difference between Lok Sabha and Rajya Sabha w.r.t Representation of Nominated Members

Lok Sabha

President nominates 2 members from Anglo-Indian Community if they are not adequately represented
Note: The provision to nominate Anglo-Indians was extended till 2020 by 95th Amendment Act, 2009

Rajya Sabha

President nominates 12 members from people who special knowledge and practical experience in :

- Art
- Literature
- Science
- Social Service

References:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Indian Polity by Lakshmikanth.
- 3.Constitution of India by J.C.Johari.
- 4.Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap

UNIT-4

MODULE-1

STATE ELECTION COMMISSION

The State Election Commission:

The Constitution of India vests in the State Election Commission, consisting of a State Election Commissioner, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and the Municipalities (Articles 243K, 243ZA).

*The State Election Commissioner is appointed by the Governor.

As per article 243(C3) the Governor, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the SEC by clause (1).

What was the need for State Election Commissions?

Under the Constitution, establishment of local self-government institutions is the responsibility of the states (entry 5, List II, Seventh Schedule).

However, experience showed that not all state governments were serious about empowering Panchayati Raj institutions as elections were not being conducted regularly.

The Constitution was amended in 1992 to define the term (five years) for these institutions. Simultaneously, another provision was made for setting up a constitutional authority, the SEC, on the lines of the EC to conduct regular panchayat elections.

The ECI and SECs have a similar mandate; do they also have similar powers?

The provisions of Article 243K of the Constitution, which provides for setting up of SECs, are almost identical to those of Article 324 related to the EC. In other words, the SECs enjoy the same status as the EC.

Article 243K in The Constitution Of India 1949

243K. Elections to the Panchayats The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1)

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats

State Election Commissioner

Appointment; term and compensation.

(a) The State Election Commissioner shall be appointed by the Governor for a term of 4 years and confirmed by a majority of the members elected to the Senate. Until such appointment and confirmation the State Auditor shall serve as the State Election Commissioner without additional compensation. In the event of a vacancy in the office, the Governor shall appoint a successor to fulfill the unexpired term and said successor shall be confirmed by a majority of the members elected to the Senate.

(b) The salary of the State Election Commissioner shall be as provided in the Budget Act.

(c) The State Election Commissioner shall serve in this capacity on a full-time basis and the State Election Commissioner's powers and duties prescribed by this title shall remain with the Election Commissioner and shall not be delegated to any other individual or group.

(d) The State Election Commissioner shall not hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office; or

(2) Elective office or position of a political party nor shall the State Election Commissioner be an appointed official to any federal, state, county, city or incorporated municipality, commission or administrative body. This limitation shall not apply to persons selected to serve on or appointed to the Election Assistance Commission's Standards Board or Board of Advisors established by P.L. 107-252 .

(e) The State Election Commissioner shall not directly or indirectly use or seek to use the State Election Commissioner's authority or official influence to control or modify the political action of another person or at any time participate in any political activities or campaigns.

General powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

(1) To furnish, by purchase, lease, or otherwise, such equipment, supplies and services that may be required in order to conduct the Commissioner's own powers and duties prescribed in this title;

(2) To order any department, board, commission or agency of this State to transfer to the Commissioner any equipment or supplies to the Commissioner's custody that are owned by the State and not in use by the department, board, commission or agency concerned, which may be used by the Commissioner in conducting the functions of the Commissioner's office;

(3) To select and maintain in the City of Dover, preferably in a building owned by the State, suitable office space;

(4) To make reasonable rules and regulations with respect to the functions of the Commissioner's office and with respect to the manner of making entries in registration and election records to be followed by the Department and all registration and election officers;

(5) To have the sole responsibility for the security of the records in the Commissioner's office which shall not be delegated to anyone;

(6) To prescribe the form of the registration and election records which under this title are to be uniform throughout this State so long as they are not in conflict with this title;

(7) To supply necessary instruction and assistance to the Department and all registration and election officers in order to insure uniform operation of this title throughout the State. In addition, the Commissioner may develop standards and operating procedures for the purpose of having a statewide uniform election system. These standards shall be directed toward ensuring consistency in the redistricting process, the use of technology and the conduct of general, primary special and school elections. The Commissioner shall collaborate with the Department in developing additional standards or amending or revising existing standards;

(8) Such other powers and duties as may be necessary in order for the Commissioner to carry out the Commissioner's own functions under this title;

(9) To be an ex officio member of the State Board of Elections;

(10) To attend each State Board of Elections meeting at which time the Commissioner may do the following:

a. Participate in any and all discussions; and

b. Cast a vote only in the event of a tie;

(11) To collect unofficial results for each primary, special and general election for each election district used in the said election and to tabulate, report and disseminate the results of the election as soon as possible to the public;

(12) Subject to the policies and directives of the State Board of Elections, to have general supervision over the county directors, deputy county directors, and other employees of the Department of Elections in carrying out their respective duties and responsibilities;

(13) To establish procedures to allow citizens to report possible violations of this title to the Commissioner, to any county director, or to deputy county director, which shall include procedures for anonymous reporting of possible violations thereto;

(14) To investigate information coming to the attention of the Commissioner that, if true, would constitute a violation of rules.

(15) To prepare and publish manuals and guides explaining the duties of individuals covered by this title, including without limitation and to promulgate instructions and public information materials to facilitate compliance with, and enforcement of this title.

Lists and files of registered voters.

- (1) A file of all registered voters in the State once per month.
- (2) A file of all registered voters in the State current as of the registration deadline before a primary or general election no later than 7 working days following the registration deadline for a primary or general election.
- (3) Upon request, up to 8 copies of the list of registered voters for each election district in the State current as of the registration deadline before a primary or general election no later than 7 working days following the registration deadline for a primary or general election. These lists shall contain, as a minimum, the name, address, political party affiliation, and election district of each registered voter in each election district.
- (b) The state chair of each major political party, or county chairs if there is no state chair, may designate in writing other persons, not exceeding 2 in each county, to whom all or specified portions of the party's lists are to be made available from the Commissioner.
- (c) Upon request but no more than once per month, the State Election Commissioner shall provide without charge a file of all registered voters in the State to any minor political party eligible to place candidates on the ballot.
- (d) The State Election Commissioner, in collaboration with the Department, shall prepare supplemental poll lists for each election district in the State that contain corrections and names of registered voters who have updated their registration records between the registration deadline and a date or dates selected by the Department. The Department shall make available 2 copies of the supplemental poll lists for the election districts within their jurisdiction to the principal political parties on the Saturday before a primary or general election.
- (e) The State Election Commissioner shall, upon request, provide free of charge to any candidate for election who has qualified to appear on an upcoming primary or general election ballot a file and/or list of registered voters for the jurisdiction for which that person has qualified as a candidate.

- (1) The request for a file and/or lists may be made by the candidate or by a member of the candidate's committee listed on the appropriate form filed in accordance with Chapter 80 of this title.

- (2) The State Election Commissioner shall designate the file and lists that shall be provided free of charge.

(3) Requests for files or lists in accordance with this section shall be made no later than the last day of registration for an upcoming primary or general election. Requests made after this deadline will be produced as soon as possible, but so as not to interfere with production of files or products required by this title for the conduct of the election or those requested prior to the deadline stated above.

(f) The State Election Commissioner shall, upon request, but no more frequently than once per month, provide files of registered voters in the State to any State agency, county or local government for use in conducting State, county or local government business.

(g) The State Election Commissioner, in collaboration with the Department, shall establish a reasonable cost for files and lists of registered voters requested by persons or organizations not eligible to receive lists in accordance with this section. These costs shall be reviewed at least once every 2 years and updated as appropriate.

(h) Files and lists provided to members of the General Assembly and state agencies or county or local governments pursuant to subsection

(f) of this section shall include voter names, addresses, political party affiliation, voting history, telephone numbers and dates of birth. Files and lists provided to major and minor political parties pursuant to subsections (a) through (d) of this section and to candidates for elective office pursuant to subsection (e) of this section shall be limited to voter names, addresses, political party affiliations, voting history, legislative district information, telephone numbers and years of birth. Files and lists provided to the public shall be limited to voter names, addresses, political party affiliations, voting history, legislative district information, and years of birth. The Delaware Freedom of Information Act, Chapter 100 of Title 29, shall not apply to information contained in voter lists and files created and maintained pursuant to this title.

(i) The State Election Commissioner, in collaboration with the Department, shall develop and implement policies and procedures for protecting the information about persons in the State's election management system, and on records and electronic media in the possession of the State Election Commissioner's office and the Department.

Duplicate registrations.

At least monthly and within 10 days following the last registration day for each primary and general election, the Commissioner shall notify the county director and county deputy

director of suspected duplicate registrations in any county where such duplicate registration is suspected to have occurred. The applicable county director and county deputy director shall review the list of suspected duplicate registrations and correct the registration records as appropriate.

Coordination with state agencies.

The State Election Commissioner, in collaboration with the Department, shall implement as soon as practical automated transfers or exchanges of voter registration information and information necessary to maintain an accurate list of registered voters between the State's election management system and other state databases.

Political activity limited; penalty.

(a) No employee of the Office of the State Election Commissioner shall directly or indirectly use or seek to use that employee's own authority or official influence to control or modify the political action of another person or at any time actively participate in any political activities or campaigns.

(b) Any person who shall violate this section shall be fined not more than \$500 and shall forfeit that employee's position or employment.

MODULE-2

Institutes and Bodies for the welfare of SC/ST/OBC and Women

NATIONAL COMMISSION FOR SC AND ST

It was created by the 65th amendment and replaced the special officer for SC and ST. By 89th amendment it was bifurcated and a National commission for SC was created.

Functions of NCSC:

- 1.To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
- 2.To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SC's;
- 3.To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the Union or a state;
- 4.To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- 5.To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
- 6.To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.

Composition:

According to Article 338B. (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-

Chairperson and other Members so appointed shall be such as the President may by rule determine. (3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal. (4) The Commission shall have the power to regulate its own procedure.

The functions of NCST

- To investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- To participate and advise in the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- To make in such reports, recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes, and
- To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Composition:

According to Article 338B. (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine. (3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal. (4) The Commission shall have the power to regulate its own procedure.

The commission submits an annual report to the president. It can submit a report on any other time as it may seem right to it. Such a report is tabled by president in parliament along with Action taken on it and reasons for non acceptance of advice. **Reports belonging to states are sent by president to concerned governors who do the same in respective legislatures.**

National Commission for OBC'S:

The NCBC Bill, passed by Parliament of India inserted Article 338B into the Constitution after Articles 338 and 338A which deal with the National Commission for Scheduled Castes (SC) and National Commission for Scheduled Tribes (ST) respectively.

Composition:

According to Article 338B. (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine. (3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal. (4) The Commission shall have the power to regulate its own procedure.

Functions of NCBC:

The commission considers inclusions in and exclusions from the lists of communities notified as backward for the purpose of job reservations and tenders the needful advice to the Central Government as per Section 9(1) of the NCBC Act, 1993. Similarly, the states have also constituted commissions for BC's. As of 24 July 2014 over two thousand groups have been listed as OBCs. The National Commission for Backward Classes, National Commission for Scheduled Castes as well as National Commission for Scheduled Tribes [1] have the same powers as a Civil Court. Initially National Commission for Backward Classes was not empowered to look into the grievances of persons of Other Backward Classes (under Article 338 read with Article 338 of the Constitution, National Commission for Scheduled Castes was the competent authority to look into all the grievances, rights and safeguards relating to Backward Classes). But consequent to the 102nd Constitutional Amendment Act and the insertion of Article 338B, these powers are now vested in NCBC.

According to Article 338B It shall be the duty of the Commission—

1. to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
2. to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;
3. to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;
4. to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
5. to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

6. to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

National Commission for the Welfare of Women:

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India) to:

- review the Constitutional and Legal safeguards for women
- recommend remedial legislative measures
- facilitate redressal of grievances and
- advise the Government on all policy matters affecting women.

CONSTITUTION OF THE COMMISSION SECTION 3: National Commission for Women Act, 1990

1. The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on and to perform the functions assigned to, it under this Act.

2. The Commission shall consist of :-

(a) A Chairperson, committed to the cause of women, to be nominated by the Central Government.

(b) five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of women, women's voluntary organizations (including women activist), administration, economic development, health, education or social welfare; Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;

(c) a Member-Secretary to be nominated by the Central Government who shall be:-

- i. an expert in the field of management, organizational structure or sociological movement,
- or ii. an officer who is a member of a civil service of the Union or of an all India service or holds a civil post under the Union with appropriate experience

Functions of NCW:

The major functions of the NCW Include:

- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws
- Present reports to central government on work done towards these safeguards
- Make recommendations for effective implementation of such safeguards to Union or state governments
- Review women related to legislations and bring out inadequacies and shortcomings
- Take up cases of violation of law against women to appropriate authorities
- Look into complaints and take suo-moto action over them.
- Work towards women's rights
- Mitigating hardships of women and ensure welfare and relief
- Call for special studies or investigations into specific problems or situations
- Participate in planning process of socio-economic development of women

Report of the Commission:

The Commission presents an annual report to the Central Government. It can also submit a report as and when it thinks necessary. The Central Government places all such reports before each House of Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations. If any such report is related to any matter with which any state government is concerned, the Commission forwards a copy of such report to such state government. The state government places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the commission.

The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission:

The Commission can appoint the committees necessary for dealing with the special issues taken up by it from time to time. It is also empowered to co-opt as members of any such committee the persons from outside the Commission (i.e., those who are not members of the Commission). The co-opted persons can attend the meetings of the committee and take part in its proceedings but without the right to vote. The Commission shall regulate its own procedure and also the procedure of its committees. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- summoning and enforcing the attendance of any person from any part of India and examining him on oath
- requiring the discovery and production of any document
- receiving evidence on affidavits
- requisitioning any public record from any court or office
- issuing summons for the examination of witnesses and documents and

- any other matter which may be prescribed by the Central Government.

Working of the Commission:

The Commission processes the complaints received verbally or in writing. It also takes into account suo moto notice of cases related to women. The complaints received relate to various categories of crimes against women such as domestic violence, harassment, dowry, torture, murder, kidnapping/abduction, complaints against NRI marriages, desertion, bigamy, rape, police harassment, brutality, cruelty by husband, deprivation of rights, gender discrimination, sexual harassment at workplace and so on.

The complaints are acted upon in the following manner:

1. Specific cases of police apathy are sent to the police authorities for investigation and cases are monitored.
2. Family disputes are resolved or compromises struck through counseling.
3. Disaggregated data are made available to various state authorities to facilitate action.
4. In sexual harassment complaints, the concerned organizations are urged to expedite cases and the disposal is monitored.
5. For serious crimes, the Commission constitutes an Inquiry Committee to provide immediate relief and justice to the victims of violence and atrocities.

MODULE-3

Structure of the state government

INTRODUCTION

In a federal form of government, the state government is the government of a country's subdivisions and shares political power with the national government.

In the Constitution of India, which is a sovereign socialist secular democratic republic, the country has three levels of governments: The Central, the States and the Union Territories, besides the third level of governments, comprising the panchayats in rural areas and municipalities in urban areas. In India, the state governments are the level of government below the central government. Each state of the country is governed by the state government. There are 29 state governments in our country, each of which is headed by the governor and the chief minister. The CM also heads the council of ministers.

Structure of the state government



Executive: State Executive comprises the governor and the chief minister with his council of Ministers. The Governor of each state is appointed by the President for a period of five years.

Executive power of the state is vested in the governor. But the actual powers for proper functioning of the state are vested in the CM and his council of ministers.

Judiciary: State high courts have jurisdiction over the whole state. In the states, the judicial setup is headed by the chief justice. He manages and controls the entire judicial system of the state pertaining to criminal, civil and all other forms of litigation. State high courts have to, however, report to the Supreme Court of India, which may override the high court's findings and judgements.

Legislature: Each state has a legislative assembly. It consists of the governor and one House or two Houses, as the case may be. In seven states, the state government's legislature is bicameral. These states are Bihar, Andhra Pradesh, Telangana, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh. These states have two Houses known as legislative council and legislative assembly. The rest of the states are unicameral. There is only one House known as legislative assembly. State Legislature or State Assemblies are headed by the CM.

The Governor

Article 157 in The Constitution of India 1949 says that no person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty five years. Governor is also the chief executive head of the state, who exercises his function in accordance with the advice of council of ministers of the state concerned. In addition to this, the governor holds dual role as he functions as an agent of central government also.

Under Article 153 there shall be Governor of each state and also nothing in this article shall prevent the appointment of the same person to be appointed as Governor of two or more states. The executive power of the state shall be vested in the Governor and shall be exercised by him directly or through officer subordinate to him.

Appointment of Governor

Qualification for appointment as governor (Article 157)

The constitution has laid down following qualifications to be appointed as Governor:

- No person shall be eligible to be appointed as Governor unless he is citizen of India
- He should have completed the age of 35 years.
- He should be such a person who is outside the state so as to not indulge in local politics
- When the same person is appointed as governor for 2 or more states, the emoluments and allowances payable to the Governor shall be allocated among the states in such a manner as the President by order determine.

- The emoluments and allowances of the Governor shall not be diminished during his term of office.

Powers of Governor:

The Governor of the state shall possess executive, legislative, financial and judicial powers. But he does not possess diplomatic, military or emergency powers which President of India has.

The powers and functions of Governor can be classified under following heads:

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers

Executive Powers

As stated above the executive powers refer to those powers which are exercised by the council of ministers in the name of Governor. Hence Governor is only nominal head and council of ministers is the real executive. The following posts are appointed by Governor and hold office during his term: Chief Minister of the state, other ministers of the state on the advice of Chief Minister, Advocate General. He can recommend the imposition of constitutional emergency in a state to the President. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.

Legislative Powers:

This power of Governor can be classified further in to 2 sub-groups i.e. writ to bills and writ legislature.

With Respect to Bills

When a bill other than money bill is presented before Governor for his assent, he either gives assent to the bill, withhold his assent to the bill, return the bill for reconsideration of houses, but if the bill is passed again by state legislature with or without amendments, he has to give his assent or reserve the bill for consideration of President.

However, the Governor also cannot send money bill back for reconsideration. This is because the money bill would usually be introduced with prior assent of Governor only. In case the money bill reserved for President's assent, the President has to state whether he is giving assent or withholding his assent.

With Respect to Legislature:

He has the power to summon, prorogue the state legislature and can also dissolve the legislative assembly when it loses the confidence (art 176).

Financial Powers

- He lays before the legislature annual financial statement (state budget)
- Money bill can only be introduced in state legislature on his prior recommendation

- No demand for grant can be made except on his recommendation
- Money from contingency fund can be withdrawn after his recommendation for meeting the unforeseen expenditures
- He constitutes finance commission for every 5 years to review the financial situation of municipality and panchayats.

Judicial Powers

President consults the Governor of the concerned state while making appointment to the judges of State High Court.

Pardoning power

He has the below pardoning powers against any offences to which state power extends.

- Pardon- completely absolve the offender
- Reprieve- stay on execution of sentence
- Respite-awarding lesser punishment in some special circumstances
- Remission- reduction of sentence without changing the character
- Commutation-substitution of one form with other

Discretionary Powers

Ordinance making power

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Our constitution by the Subhash Kashpap.
- 3.Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
- 5.Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H.Mrrison Jones.
7. Indian Administration by Subhash Kashpap.

MODULE-4

CHIEF MINISTER

INTRODUCTION

He is the head of the state government. While the governor is the nominal executive of the state government, the person who becomes the chief minister is the real executive of the government. The real executive is called 'de facto' executive that means, 'in fact, whether by right or not.'

Appointment of Chief Minister

Just like the Prime Minister, provisions of whose appointment are not mentioned in the Indian Constitution, Chief Minister's appointment particulars are not mentioned in the Constitution. According to Article 164 in the Indian Constitution, Governor appoints Chief Minister. However, the Governor cannot appoint any random person as the Chief Minister but has to follow a provision.

A leader of the party that has got the majority share of votes in the assembly elections, is appointed as the Chief Minister of the state.

Note:

- When no party gets a majority in the elections, governor exercises his own discretion and appoint a Chief Minister accordingly.
- In a case where no party has won the majority votes, Governor appoints the member of the largest party or one from the coalition (if occurs) as the Chief Minister and then he is given 1 month time to prove confidence in the house.
- If the incumbent dies in the office, Governor at his own discretion can appoint a Chief Minister however, the ruling party nominates a member and Governor usually

appoints that person as the Chief Minister. This person then has to prove confidence within a specified time.

- A person not belonging to either house (Legislative Assembly & Council) can also be appointed as the Chief Minister, however, within six months of his tenure as a CM he should be elected to either house without which he ceases to be a CM.
- Chief Minister can belong to any house in the State Legislature.

The term of Chief Minister's office:

Aspirants should clearly understand that the **term of Chief Minister is not fixed** and he holds his office during the pleasure of the governor.

Note:

- Governor cannot remove him any time.
- Governor cannot even dismiss him till the time he enjoys the support of the majority of the house.
- When CM loses his majority support, he has to resign and Governor dismisses him then.

Functions of the Chief Minister:

The CM of the state performs functions in relation to the different categories of people:

1. In relation to the Council of Ministers
2. In relation to the Governor
3. In relation to the State Legislature

Other than that, he also performs the following functions:

1. He chairs the State Planning Board
2. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time
3. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister.

In Relation to the Council of Ministers:

The Chief Minister is the head of state council of ministers. He performs the following functions:

1. He recommends to the governor on who to appoint as ministers
2. He designates or reshuffles the portfolios of the ministers
3. He can ask a minister to resign
4. Meeting of the council of ministers is headed by him
5. All activities of the ministers are guided and controlled by the Chief Minister
6. If he resigns, the entire council of ministers collapses.

Note: If the CM dies (or resigns), the council automatically dissolves.

In Relation to the Governor:

In relation to the governor, the Chief Minister performs the following functions:

1. All the activities, decisions that are taken up by the council of ministers are communicated to the governor by the chief minister
2. To report to the governor, information about the administrative affairs if and when asked by the governor
3. If any minister has decided on any issue, the same has to be reported to the Governor by the Chief Minister when the same has not been considered by the council.
4. He gives his advice to the governor for the appointment of the following persons:
 1. Advocate-General
 2. Chairman of state public service commission
 3. The state election commission, etc.

In Relation to the State Legislature

He is the leader of the house and holding this position, he performs the following functions:

1. Before a governor prorogues and summons the sessions of the state legislature, the Chief Minister's advice is a must
2. Legislative Assembly can be dissolved at any time on his recommendation to the governor
3. All government policies are announced by him on the floor of the house.

State Council of Ministers

State Council of Ministers is similar to Central Council of Ministers. The state council is headed by the Chief Minister. The council comprises ministers appointed by the governor on the recommendation of the CM.

Appointment of the Council of Ministers :

They are appointed by the governor on the advice of the CM. Governor also appoints a tribal affairs minister for the following states:

1. Chhattisgarh
2. Jharkhand
3. Madhya Pradesh
4. Odisha

Note: Bihar was also one of the states to have tribal affairs minister, however, 94th Amendment Act 2006 freed Bihar from this obligation. (Read other important amendments of the Indian Constitution in the linked article.)

Composition of Council of Ministers:

The size of the council is not mentioned in the Indian Constitution. Chief Minister decides the size and the rank of the ministers as per the requirement in the State Legislature.

There are three categories of Council of Ministers:

1. Cabinet Ministers- They attend cabinet meetings and play important role in state government.
2. Ministers of State- They can be independent in charge of department that aren't attached to cabinet ministries or in charge of specific department part of a ministry /specific work in a ministry which is headed by a cabinet minister. They take part in cabinet meetings only on special invitation.
3. Deputy Ministers- They are attached to cabinet ministers or ministers of state and assist them in their work.

Collective Responsibility:

The provision of collective responsibility is dealt with by Article 164. The Article mentions that the council of ministers are collectively responsible to the state legislature. (To read more about the important articles in the Indian Constitution, refer to the linked article.) This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission.

Note:

- When the legislative assembly passed a no-confidence motion against the council, all the ministers of the council have to resign including those belonging to Legislative Council too.
- The council of ministers can advise the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

Articles related to State Council of Ministers:

The following articles of the Indian Constitution are important to be read by the aspirants for UPSC 2020. These articles are attached to the council of ministers. Refer to these in the table given below:

Article 163 : Council of Ministers to aid and advise Governor

Article 163 : Council of Ministers to aid and advise Governor

Article 164 : Other provisions as to Ministers

Article 166 : Conduct of business of the Government of a State

Article 167 : Duties of Chief Minister as respects the furnishing of information to Governor, etc.

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.

2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C. Johari.
5. Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H. Morrison Jones.
7. Indian Administration by Subhash Kashpap.

MODULE-5

STATE SECRETARIATE

The term “Secretariat” is used to refer to the complex of departments whose administrative heads are secretaries and political head the Ministers. The secretariat departments must be distinguished from the executive department. Not all departments attached to them. Some of the secretariat departments are engaged in advisory and controlling functions and do not, therefore have executive departments reporting to them. Generally, the head of the executive department is a specialist and the secretary, the administrative head, who supervises his work is the generalists civil servant, normally a senior member of the I.A.S.

While the Governor and the chief minister enjoy a constitutional status under the Constitution of India, the chief secretary, his secretariat and state services have been created to make the state government function on the pattern of secretariat of the Central government.

The state secretarial consists of departments of state government which are headed politically by the ministers and administratively by the secretaries.

The chief secretary is the head of the entire state secretariat while a secretary is a head of one or two departments. The secretary is a senior administration officer of generalist variety. The secretary is the secretary to the state government as a whole and not to the individual minister concerned. The number of secretariat departments vary from state to state and may range from 15 to 40 departments.

Functions:

The secretariat is a policy-making body of the government and normally performs the following functions:

1. Assisting the minister in policy-making and modifying policies from time to time, as and when necessary;
2. Framing legislation and rules and regulations;
3. Budgeting and control of expenditure in respect of activities of the ministry;
4. Supervising and control over the execution of policies and programmes by the executive departments;
5. Coordination and interpretation of policies;
6. Assisting other branches of Government and maintaining contact with central and other state governments and outside agencies;
7. Assisting the minister in the discharge of his parliamentary responsibilities;
8. The secretariat acts as the spokesman of the Government.
9. All matters of general policy;
10. Inter-department coordination;
11. Matters involving the framing of new legal enactments of rules of amendments in the existing ones. Cases involving interpretation or relaxation of existing rules or government orders;
12. Correspondences with the Government of India and other State Governments;
13. All matters relating to the preparation or adoption of new plan schemes, and important modifications in the existing schemes;
14. Review of the progress of the plan schemes both physical and financial.
15. Inspection reports and tour notes recorded by heads of departments;
16. All India conference and important conference at the state level;
17. Public accounts committee, Estimates committee, Assembly/Parliament questions;
18. Delegation of powers;
19. Litigation notice under section 80 CPC;
20. Appeals, Revision, etc., within the power of the State Government.

Financial Matters

1. Scrutiny and approval of departmental budget estimates, major appropriation of accounts, surrender of funds and supplementary grants;
2. All proposals involving new items of expenditure;
3. Financial sanctions not within the competence of the head of department;
4. Sanction of expenditure from contingency fund;
5. Write-off cases beyond the powers of heads of department and audit objections regarding the officer of the heads of department.

Service Matters:

1. Approval of service rules and amendment thereto;
2. Papers relating to senior appointments/promotions/transfers of deputy heads of department

- and above, plus, cases of disciplinary proceedings against their officers;
3. Initial appointment of officers belonging to the state service and inflection of major punishments on them;
 4. Creation of posts, their extension and continuance, re-employment, resignations, special pay and allowances and positions; not within the powers of heads of departments.
-

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Indian Administration by Avasti and Avasti
5. Indian Administration by Subhash Kashpap.

UNIT-5

MODULE-1

LOCAL GOVERNMENT AND ITS ADMINISTRATION

INTRODUCTION

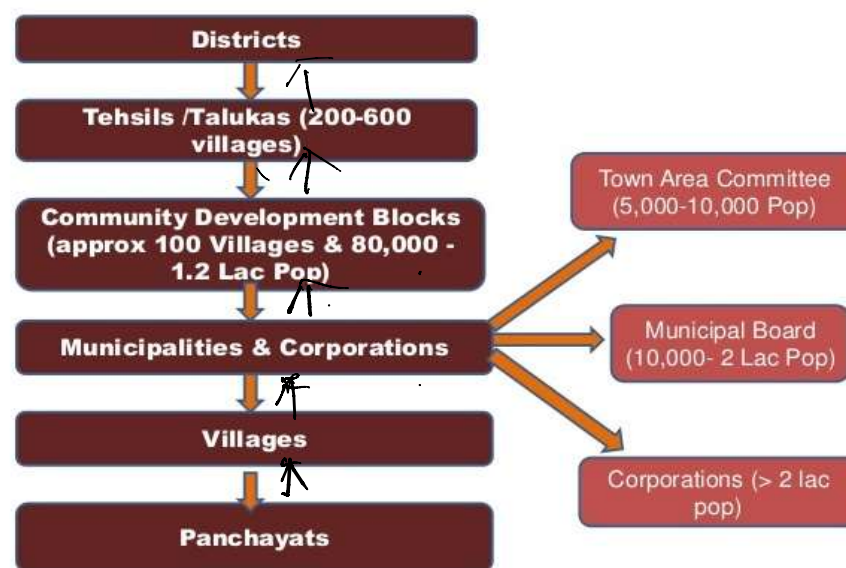
The District Administration is the focal point for field level organizations and implementation of all government contingency plans related to disaster management. Considerable powers have therefore been vested in the District Collector to carry out operations effectively in the shortest possible time. The District Administration is required to prepare in advance a contingency district disaster management plan depending on the type of disasters likely in the district. Contingency Plans are required to keep into account the type of preparedness and the relief material required to be mobilized. The concerned departments need to work together in a coordinated manner and provide an efficient feedback and monitoring system to the District Collector.

STRUCTURE OF DISTRICT ADMINISTRATION

The general structure of the administration in the district is in a series of tiers, usually three, sometimes four tiers. There will be one level which comprehends the whole district within its jurisdiction. It may be the Collector, the District Magistrate, or the Superintendent of Police or the district agricultural officer; it may be the chairman of the Zillah Parishad, or the district education officer, or the health officer and so on.

Secondly, there is usually an intermediate territorial level. Sometimes there are two intermediate levels in the large districts. The intermediate level can be the tahsil, or a sub-division, or a block, or a Panchayat Samiti, a circle inspector of agriculture and so on. Then at the ground level, in the so-called grass-roots level, the village provides a convenient territorial jurisdiction. Here we have the village panchayat, the nyaya panchayat, the village headman, the village chaukidar, the village patwari, the village level worker – each an important element in the administration of the district.

Now one observes a certain common pattern of departmental and functional jurisdiction, normally at three and sometimes at four levels of the District Administration. After having a brief account of the structure, now we move to the detailed discussion of the structure of District Administration.



DISTRICT

Each district in India has an officer-in-charge who represents the state governments in that area in the capacity of Collector, District Magistrate and District Officer. He is the head of the administration in the district and for the 104 performance of his functions he has a well-knit hierarchy in the district which will be dealt in the succeeding pages. The functions of the Collector are well known; their keynote is Quantity, not Quality Whatever cannot be assigned to a defined or technical department is given to the Collector, but which ever serves as a source of strength to him like the control over the police is assigned to an outsider.

DISTRICT COLLECTOR

The position of District Collector was created by Warren Hastings in 1772. The main functions of the district collector were to supervise general administration, to collect land revenue and to maintain law and order in the district. He was the head of the revenue organization. He was responsible for registration, alteration, and partition of holdings; the settlement of disputes; the management of indebted estates; loans to agriculturists, and famine relief.

All the other officials in the district were subordinate to him and were responsible to inform him of every activity in their respective departments.

He was also vested with the functions of the District Magistrate. As a District Magistrate, he supervised the police and inferior courts in the district. Along with these, he also performed judicial functions.

After the independence of the country, the judicial powers of the collector were transferred to the judicial officers of the district. With the launch of Community Development Program, the collector was also entrusted with the additional work of implementing the government's development programs in the district.

Powers, Duties and Responsibilities District Magistrate/Collector:

The District Magistrate or the Collector is the chief executive and chief administrative and revenue officer of a district. He makes necessary co-ordination of the official agencies functioning within the district. The functions and responsibilities of the District Magistrate Collector may be broadly classified as follows:

- Collector
- District Magistrate
- Deputy Commissioner
- Chief Protocol Officer
- Chief Development Officer
- Returning Officer

1.Duties and responsibilities of a collector are as follows:

- Land assessment
- Land acquisition
- Collection of land revenue, maintenance of land records, land reforms etc.
- Collection of income tax dues, excise duties, irrigation dues etc.
- Distribution of agricultural loans
- Disaster management during natural calamities such as floods, famines or epidemics
- Crisis management during riots or external aggression
- Chairman of the District Bankers Coordination Committee
- Head of the District Industries Centre

2.Following are the duties and responsibilities of a District Magistrate:

- Maintenance of law and order
- Supervision of the police and jails
- Supervision of subordinate Executive magistracy
- Hearing cases under the preventive section of the Criminal Procedure Code
- Supervision of jails and certification of execution of capital sentences
- To submit the annual criminal report to the government

3.The duties and responsibilities of a Deputy Commissioner are as follows:

- Report to divisional commissioner on all matters
- Act as ex-officio chairman of the District Development Authority in absence of divisional commissioner

4.Following are the duties and responsibilities of a Chief Protocol Officer:

- Conducts the census work
- Look after the supply and proper distribution of daily necessity good
- Hears and takes adequate steps to redress the grievances of the local people
- Supervises the activities of the young government officers in the district and arrange for their training etc.

5.The duties and responsibilities of a Chief Development Officer are as follows:

- Conduct all the development plans and projects of the district
- Put into effect the policy of democratic decentralization
- Act as the chief liaison officer of the state government within the district

6.Following are the duties and responsibilities of a Returning Officer:

- Conduct all the election works in the district
- Supervise and coordinate election in the district

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Our constitution by the Subhash Kashpap.
- 3.Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
- 5.Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H.Mrrison Jones.

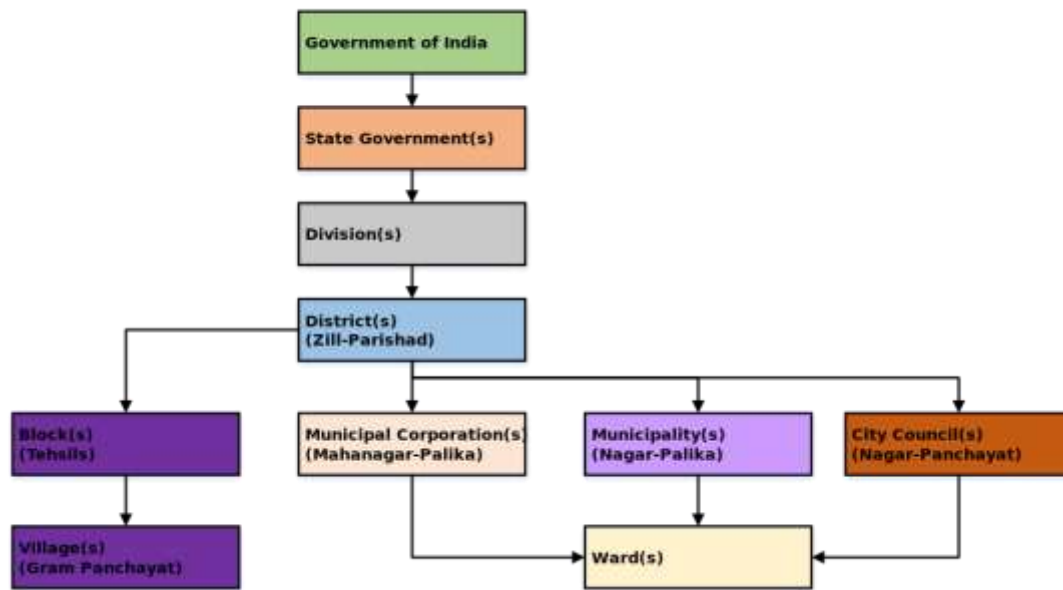
MODULE-2

LOCAL ADMINISTRATION

The existence of local government has always been defended on the basis that it is a crucial aspect of the process of democratization and intensification of mass participation in the decision-making process. No political system is considered complete and democratic if it does not have a system of local government.

Local government serves a two-fold purpose. The first purpose is the administrative purpose of supplying goods and services; the other purpose is to represent and involve citizens in determining specific local public needs and how these local needs can be met. Local representative government is a process that spans and connects representation and administration at local levels within local government structures. In order to understand the function and structure of local government, it is important to define local government and understand the meaning of local government democracy and values. The significance of local government will be addressed. With these aspects of local government in mind, attention will be directed towards the typical structure of local government as the administrative structure of local government forms the basic framework where in local public policy is determined and implemented. Therefore attention will be directed to the composition of councils and their activities.

Administrative structure of India



Municipal Corporation in India

The urban local government which works for the development of any Metropolitan City with a population of more than one million is known as the Municipal Corporation in India. The members of the Municipal Corporation are directly elected by the people and are called Councilors.

About Municipal Corporation in India

Municipal Corporations are local level governments in India. It's also called as Mahanagar Palika, Nagar Palika, Nagar Nigam, City Corporation, etc. A city is administered by a Municipal Corporation if the population of that city exceeds one billion. Municipal Corporations are largely dependent on the property tax collected for their revenue. The other sources of revenue include water tax, professional tax, drainage tax, etc. and some fixed aid from the state government. Mumbai Municipal Corporation or Brihanmumbai Municipal Corporation is the richest Municipal Corporation in India.

Its budget exceeds than that of some of the smaller states of India.

Composition of the Municipal Corporation

Based on the population of that particular city, the city or Municipal Area is divided into certain wards. A representative is chosen for each ward by the people in that ward. A chosen representative of a particular ward is called as councilor or corporator. Corporators are elected for a period of five years.

Administration

Any party winning more than half the total seats of Municipal Corporation wins the election. The winning party gets to have its mayor in the Municipal Corporation. A mayor is the ceremonial head while the administrative head is the Municipal Commissioner. Municipal Commissioner is appointed by the state government who is an IAS officer. The job of the Municipal commissioner is to implement the policies of the Municipal corporation and preparation of the budget. Whereas, the mayor assumed a political role.

Functions of the Municipal Corporation

- Urban planning including town planning.
- Regulation of land-use and construction of buildings.
- Planning for economic and social development
- Water supply for domestic, industrial and commercial purposes.
- Public health, sanitation conservancy, and solid waste management.
- Fire services.
- Urban forestry, protection of the environment and promotion of ecological aspects.
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- Slum improvement and up-gradation.
- Urban poverty alleviation.

Who are the members of a Municipal Corporation?

The Municipal Corporation consists of a committee which includes a Mayor with Councilors. The Corporations provide necessary community services to the Metropolitan Cities and are formed under the Corporation Act of 1835 of Panchayati Raj system. The Mayor heads the Municipal Corporation. The corporation remains under the charge of Municipal Commissioner. The Executive Officers along with the Mayor and Councilors monitor and implement the programs related to planning the development of the corporation. The number of Councilors also depends upon the area and population of the city. In India, the four metropolitan cities; Delhi, Mumbai, Kolkata and Chennai, have the largest corporations.

Who conducts Municipal Corporation Elections?

The elections to the Municipal Corporations are conducted under the guidance, direction, superintendence and control of the State Election Commission. The corporations fall under

the State government jurisdiction, therefore there are no uniform provisions for the election of the municipal bodies. In some States, the elections are organized by the state governments, while in some states, the Executive Officers arrange the same.

How are Municipal Corporation Elections conducted?

The members of the Municipal Corporation are elected by the people through direct elections. The elections are held for a particular ward in the city. The electoral roll of a particular ward elects the representative or Councilor for their ward. The electoral roll for each ward is divided into one or several parts depending upon the area within the ward where the voters of each part reside.

This means that the voters included in each part belong to a street or a road or a named area within that ward. The voters from all the parts together form the electoral roll of a particular ward.

Qualification for contesting Municipal Corporation elections

A person can contest elections for Municipal Corporation if he/she fulfills the following criteria:

- She/he must be a citizen of India
- She/he must have attained the age of 21 years
- is/her name is registered in the Electoral Roll of a ward
- She/he is not earlier disqualified for contesting Municipal Corporation elections.
- She/he must not be an employee of any Municipal Corporation in India

There are few seats which are reserved for scheduled tribes, scheduled castes, backward classes and women. Every candidate's nomination form should have a declaration stating the class, caste, or tribe that she/he belongs to. There should be a declaration that the candidate is a woman, in case the seat is reserved for a women candidate.

The Term of a Municipal Corporation

The office of Municipal Corporation runs for a period of five years since the beginning of its first meeting. It is subject to dissolution under various circumstances:

- If the State finds the Corporation lagging in its duties
- If the State finds the corporation exceeding or abusing its power
- Declaration of the Municipal elections in the State as void, or withdrawal of the entire area of the ward from the municipal operations.

Roles and Duties of a Councilor

The Councilors under the Municipal Corporations perform the following duties:

- To work towards the welfare and interests of the municipality as a whole.
- To participate in the council meetings, council committee meetings and meetings of other related bodies.
- To participate in developing and evaluating the programs and policies of the municipality
- To keep the privately discussed matters in council meetings in confidence.
- To get all the information from the chief administrative officer about the operation and administration of the municipality.
- To perform any other similar or necessary duties.

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Our constitution by the Subhash Kashpap.
- 3.Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
- 5.Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H.Mrrison Jones.
7. Indian Administration by Subhash Kashpap.

MODULE-3

PANCHAYAT RAJ

Panchayati Raj is the oldest system of local government in the Indian subcontinent. Panchayati Raj Institutions as units of local government have been in existence in India for a long time, in different permutations and combinations. However, it was only in 1992 that it was officially established by the Indian Constitution as the third level of India's federal democracy through the 73rd Amendment Act.

The Panchayati Raj Institution (PRI) consists of three levels:

- Gram Panchayat at the village level
- Block Panchayat or Panchayat Samiti at the intermediate level
- Zillah Panchayat at the district level

The word “Panchayat” means assembly (ayat) of five (panch) and raj means “rule”. Traditionally Panchayats consisted of elderly and wise people chosen by the local community, who used to settle disputes between individuals and villages. The leader of the panchayat used to be called as Mukhya or Sarpanch. Generally the elder-most or

most senior person would be elected to this position. The Panchayati Raj system is also recognized as a form of direct democracy (i.e. they exercise all powers of a government at a village level), as opposed to the popular notion that it is a type of representative democracy. As per January 2019, there are 630 Zillah Panchayats; 6614 Block Panchayats and 253163 Gram Panchayats in India. There are currently more than 3 million elected representatives (of which more than 1 million are women) for panchayats at all levels.

In modern India, Mahatma Gandhi was one of the leading advocates of Gram Swaraj i.e. village self-governance where the village would be responsible for its own affairs. The Panchayati Raj system of governance can be found all over South Asia in countries such as Pakistan, Bangladesh and Nepal, where it goes by the same name.

Key Features of Panchayat Raj System:

- The Gram Sabha is a body consisting of all the people registered in the electoral rolls who belong to a village comprised within the area of the Panchayat at the village level. Gram Sabha is the smallest and the only permanent unit in the Panchayati Raj system. The powers and functions of Gram Sabha are fixed by state legislature according to the law on the subject.
- Seats are reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and chairpersons of the Panchayats at all levels are reserved for SCs and STs in proportion to their population.
- One-third of the total number of seats are to be reserved for women. One-third of the seats reserved for SCs and STs, are also reserved for women. This policy extends to the office of the chairperson at all levels as well (Article 243D). The reserved seats may be allotted by rotation to different constituencies in the Panchayat.
- There is a uniform policy with each term being five years. Fresh elections must be conducted before the expiry of the term. In the event of dissolution, elections compulsorily within six months (Article 243E).
- Panchayats have the responsibility to prepare plans for economic development and social justice with respect to the subjects as per the law put in place, which also extends to the various levels of Panchayat including the subjects as illustrated in the Eleventh Schedule (Article 243G).

Gram Panchayat

Gram Panchayat consists of a village or a group of villages divided into smaller units called “Wards”. Each ward selects or elects a representative who is known as the Panch or ward member. The members of the Gram Sabha elect the ward members through a direct election. The Sarpanch or the president of the Gram Panchayat is elected by the ward members as per the State Act. The Sarpanch and the Panch are elected for a period of five years. Gram Panchayat is governed by the elected body and administration. The secretary is normally in charge of the administrative duties of the Gram Panchayat.

Block Panchayat

Panchayat Samiti (also called Taluka Panchayats or Block Panchayats) is the intermediate level in Panchayati Raj Institutions. The Panchayat Samiti acts as the link between Gram Panchayat (Village) and District Panchayat (Zillah). These blocks do not

hold elections for the Panchayat Samiti council seats. Rather, the block council consists of all of the Sarpanch and the Upa Sarpanch from each Gram Panchayat along with members of the legislative assembly (MLA), members of parliament (MPs), associate members (like a representative from a cooperative society) and members from the Zillah Parishad who are a part of the block. The Gram Panchayat members nominate their Sarpanch and Upa Sarpanch amongst their ranks, which extend to the selection of the chairperson and vice-chairperson as well. The Executive Officer (EO) is the head of the administration section of the Panchayat Samiti.

District Panchayat

The District Panchayat also known as the District Council or Zillah Parishad is the third tier of the Panchayati Raj system. Like the Gram Panchayat, the District Panchayat is also an elected body. Chairpersons of Block Samitis also represent the District Panchayat. Like the Block Panchayat, the MP and MLA are also members of the district panchayat. The government appoints the Chief Executive Officer to carry out the administration of the district Panchayat along with the Chief Accounts Officer, the Chief Planning Officer and one or more Deputy Secretaries who work directly under the Chief Executive Officer and assist him/her. The Zillah Parishad chairperson is the political head of the district panchayat.

The primary objective of establishing the third tier of the government is to increase democratic participation, better articulate local needs and priorities, and to ensure a more efficient use of local resources along with greater accountability and transparency. Accordingly, 29 functions have been proposed to be transferred to local governments in the rural area. These institutions have been playing an important role in several flagship programs of the central and state governments, perhaps more role in implementation and monitoring.

PRIA's involvement with Panchayati Raj

PRIA has been involved with Panchayati Raj ever since the first Panchayati Raj elections took place in 1995/96. By focusing on Capacity Building, Knowledge Building and Policy advocacy, PRIA sought to engage and inform the voter into making the decision that works best for them, along with giving them information on the election process specifically and the voting process in general. To this end, PRIA organized many events and functions such as PEVAC (Pre-election Voters' Awareness Campaign), radio dramas, exposure visits, promotion of women and Dalit leadership etc. PRIA's expertise in working with Panchayats of all levels led to PRIA joining various government committees for the Panchayat such as the Expert Committee on Planning and Decentralization and the Task Force on the Gram Sabha.

Zillah Parishad

Zillah Parishad: Composition and Function of Zillah Parishad

Composition:

Revenue district shall be the jurisdiction of Zillah Parishad (ZP). It was considered to be a coordinating unit, unlike Panchayat Samiti, in addition to performing supervisory functions. All the presidents of the Panchayat Samiti are the members of the Zillah Parishad.

The members of legislative assembly representing the district are also the members of the parishad, including medical and health, agriculture, veterinary, engineering, education, backward classes welfare, public works and other development departments. The Chairman of the Zillah Parishad should be the District Collector and Magistrate, and one of the district officers will have to act as the Secretary of Zillah Parishad.

Among other things, B. R. Mehta Committee recommended the following functions:

Functions:

The committee desired that the Zillah parishad shall be at the risk of repetition, a coordinating and supervisory body and never discharge executive functions.

The functions of the Zillah Parishad are enumerated below

1. It has to approve the budgets of samitis in the district.
2. It must distribute funds given by the government to the Panchayat Samiti.
3. It has to coordinate and consolidate the block plans in the district.
4. It has to process the request for grants to the state government.
5. It has to supervise the functions of Panchayat Samiti in the district.

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C. Johari.
5. Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H. Morrison Jones.
7. Indian Administration by Subhash Kashpap.

UNIT-6

MODULE-1

THE UNION JUDICIARY

The Union Judiciary

The Indian judiciary is an independent body divested from the executive and legislative bodies of Indian Government. It takes care of Law and order in the Country along with solving problems.

The judicial system is stratified into various levels



The Supreme Court (Articles 124-147)

Chapter IV under Part V of the constitution (Union) deals with The Union Judiciary. The constitution and jurisdiction of Supreme Court is stated in detail from articles 124-147. Unlike the other two branches, executive and legislature, in India Judiciary is integrated. This means that even though there may be High Courts in states, the law declared by the Supreme Court shall be binding on all courts within the territory of India (Article 141). Now let's look into the details of each article dealing with the Union Judiciary.

Article 124: Establishment and Constitution of Supreme Court

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

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

Provided further that –

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a judge may be removed from his office in the manner provide in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and –

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I: In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court of before any authority within the territory of India.

SUPREME COURT JUDGE

The Indian Judicial system has Supreme court at its apex level, which at present is located only in the capital city of Delhi and is presided by the “Chief Justice of India”. Who is appointed by the President of India.

Qualifications of Judge:

- He should be a citizen of India.
- He should have been a Judge of a High Court for 5-years. (or)
- He should have been an advocate of a High Court for 10-years.

TENURE OF JUDGE:

- He holds office until he attains the age of 65 years.
- He can resign his office by writing to the President.
- He can be removed by the President on the recommendation of the Parliament for his misbehavior /incapacity.

JURISDICTION POWERS OF THE SUPREME COURT:

Jurisdiction (Articles 141, 137)

Articles 137 to 141 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Art 141, states that Law declared by Supreme Court is binding on all the courts in India and Art 137 empowers SC to review its own judgment. The Jurisdiction of the Supreme Court of India can broadly be categorized into three parts:

1.Original Jurisdiction- (Art 131)

This jurisdiction extends to cases originating in SC only and states that Indian SC has original and exclusive jurisdiction in cases between:

The government on one hand and one or more states on the other
 Government and one or more states on one side and other states on the other
 Two or more states

2.Appellate Jurisdiction- (Art 132,133,134)

The appeal lies with SC against the high court in the following 4 categories

1. Constitutional matters-if high court certifies that the case involves a substantial question of law that needs interpretation of the constitution.
2. Civil matters- if the case involves a substantial question of law of general importance
3. The criminal matters-if high court has on appeal reversed the order of acquittal of an accused and sentenced him to death or has withdrawn for trial before itself any case from subordinate court
4. Special leave to appeal is granted by SC if it is satisfied that the case does not involve any question of law. However, it cannot be passed in case of the judgment passed by a court or tribunal of armed forces.

However, under this jurisdiction, SC can transfer to itself cases from one or more high courts if it involves the question of law in the interest of justice.

3.Advisory Jurisdiction (Art 143)

Article 143 authorizes the President to seek an advisory opinion from the Supreme Court in the two categories of matters-(a) matters of public importance (b) of any question arising out of pre-constitution, treaty, agreement, engagement, Sanad or other similar instruments.

Also, Art 144 states that all authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.

Powers of the Supreme Court:

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine up to 2000. Civil contempt means willful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of the court or causing interference in judicial proceedings
2. **Judicial review** - to examine the constitutionality of legislative enactments and executive orders. The grounds of review is limited by- Parliamentary legislation or rules made by the Supreme Court.
3. Deciding authority regarding the election of President and Vice President
4. Enquiring authority in conduct and behavior of UPSC members
5. Withdraw cases pending before high courts and dispose of them itself.

Reference Books:

1. Introduction to the Constitution of India, 23rd Edition by the Durga Das Basu.
2. Our constitution by the Subhash Kashpap.
3. Indian Polity by Lakshmikanth.
4. Constitution of India by J.C. Johari.
5. Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H. Morrison Jones.
7. Indian Administration by Subhash Kashpap.

MODULE-2

High Courts in India

INTRODUCTION

As per the Constitution of India, Articles 214-231 deals with the provisions of the High Courts in India. At present, we have 24 high courts in the country, which includes 3 common high courts. Article 217 deals with the appointment of judges. However, there is also a procedure for removal of Judges of the High Court.

High Court

According to the Indian Constitution, Articles 214-231 deals with the provisions of High Courts in India. It provides for separate high courts for separate states but according to 7th constitutional amendment acts the same high court can be the court for more than one state. At present, we have 21 high courts in the country, which includes 3 common high courts.

Constitution and composition of High courts

Every high court consists of a Chief Justice and a number of judges, who are determined by the President from time to time. Article 217 deals with the appointment of judges and states that every judge of high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the state.

Qualification:

- He should be a citizen of India.
- He should have held a judicial office in the territory of India for 10 years (or)
- He should have been an advocate of a High Court for 10 years.

Tenure of Judge:

- He holds office until he attains the age of 62 years.
- He can resign his office by writing to the President.
- He can be removed by the President on the recommendation of the Parliament for his misbehavior /incapacity.

Jurisdiction and powers of High Court:

The powers and jurisdiction of High Court can be classified under following heads:

1) **Original Jurisdiction-** it means that applicant can directly go to High Court and not by means of appeals. This power is used in the following matters

- Disputes arising out of relating to members of Parliament and state legislative assembly
- Relating to marriage, law, admiralty divorce, contempt of court etc.;
- Enforcement of fundamental rights (Supreme Court also has this power)
- Cases transferred from other court to itself which involves a question of law.

2) **Writ Jurisdiction-** Article 226 states that High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority

including in appropriate cases, any government, within those territories' directions, orders, or writs.

3) Appellate Jurisdiction-

It is said that the high court is the primary court of appeal i.e. it has power to hear the appeals against the judgment of the subordinate courts within its territories. This power can be classified in to 2 categories-Civil jurisdiction and Criminal jurisdiction

In civil cases its jurisdiction includes to the orders and judgments of the district courts, additional district courts and other subordinate courts.

In criminal cases its jurisdiction includes judgments relating to sessions courts and additional sessions court. These cases should be involving imprisonment for more than 7 years, confirmation of any death sentence awarded by session court before execution

4) Power of Superintendence

The High Court has this power over all courts and tribunals except those dealing with the armed forces functioning in the state. Hence in the exercise of this power it may

- Call for return from such courts
- May issue general rules and prescribe forms for regulating the practice and proceedings of such courts
- Prescribe the form in which books and accounts are being kept by the officers of any court
- Settle fees payable to the sheriff clerks, officers and legal practitioners

The constitution does not place any restriction on this power of superintendence over the subordinate courts, it is not only by means of appeal by the person, it can be *Suo motto*. It is of the nature of revision as it verifies the earlier judgments. In this regard it is considered as a special function as the Supreme Court has no similar power vis a vis the High Court.

5) Control over Subordinate Courts

This is an extension of the above supervisory and appellate jurisdiction. It states that the High Court can withdraw a case pending before any subordinate court, if it involves the substantial question of law. The case can be disposed of itself or solve the question of law and return back to the same court. In the second case the opinion tendered by High court would be binding on the subordinate court. It also deals with matters pertaining to posting promotion, grant of leave, transfer and discipline of the members there in. In this regard it appoints officers and servants to be made by Chief Justice or such other judge of High Court as the Chief Justice may direct.

6) Court of Record

It involves recording of judgments, proceedings and acts of high courts to be recorded for the perpetual memory. These records cannot be further questioned in any court. Based on this

record it has power to punish for the contempt of court either with simple imprisonment or with fine or both.

7) Judicial Review

This power of High Court includes the power to examine the constitutionality of legislative and executive orders of both central and state government. It is to be noted that the word judicial review is nowhere mentioned in our constitution but the Article 13 and 226 explicitly provide High Court with this power.

8) Extension of jurisdiction of High Court to Union Territories

Parliament by law may extend the jurisdiction of a High Court to or exclude the jurisdiction of a high court from any union territory.

Procedure for removal of Judges:

The judge's enquiry act governs the removal or impeachment of judges of High Court. Hence the grounds for removal are

- Proved misbehavior
- Incapacity

He is removed by the President as per the removal order passed by each house of the parliament by a special majority i.e. a majority of the total membership of the house and a majority of not less than two thirds of members present and voting. A detailed procedure followed is as follows:

1. The initial removal motion to be signed by 100 members in Lok Sabha or by 50 members of Rajya Sabha and be presented to the speaker/ chairman of the house.
2. The speaker has the option of either accepting or rejecting the motion
3. If it is accepted a committee would be constituted to investigate the matter
4. The committee so constituted consists of chief justice or judge of Supreme Court, chief justice of high court and a distinguished jurist.
5. If the committee ascertains the guilty of the judge then the houses take up the issue.
6. If the motion is passed in each house of the parliament by a special majority then the it is later presented to the President for his assent.
7. The President then passes order for removal of judge. The judge is considered removed from that day. (Infact no judge has been removed till now)

Transfer of a judge from one high court to another (Article 222) – according to it the President may after consultation with the chief justice of India transfer a judge from one High Court to any High Court. Also, when a judge has been or is so transferred he shall during the period he serves, after the commencement of the constitution act as a judge of the other high court, so shall be entitled to receive in addition to his salary such compensatory allowance as

may be determined by Parliament by law and until so determined such compensatory allowance as the President may by order fix.

Later on, in 1977 in K Ashok Reddy case ruled that there requires judicial review in case of arbitrary transfer of judges. Hence as to locus standi only the judge who is transferred can challenge it.

Appointment of acting Chief Justice (Article 223) - when the office of Chief Justice of a High Court is vacant or when any such Chief Justice by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes.

However, appointments of persons other than district judges to the judicial service of a state shall be made by the Governor of the state in accordance with rules made by him after consultation with the state public service commission and with the high court exercising jurisdiction in relation to such state.

Establishment of a common High Court for two or more States:

(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the Subordinate Courts are situate; and

(c) the reference in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 210 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Our constitution by the Subhash Kashpap.
- 3.Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
- 5.Indian Administration by Avasti and Avasti
6. Government and Politics of India by W.H.Mrrison Jones.

MODULE-3

WRIT

Writs are a written order from Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights. Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme Court and High Court against the violation of his/her fundamental rights. The same article gives the Supreme Court power to issue writs for the enforcement of rights whereas the High Court has the same power under Article 226.

Types of Writs in India:

Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

- Habeas Corpus
- Mandamus
- Prohibition
- Certiorari
- Quo-Warranto

Habeas Corpus

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/ High Court orders one person who has arrested other person to bring the body of the latter before the court.

Facts about Habeas Corpus in India:

- Supreme Court or High Court can issue this writ against both private and public authorities.
- Habeas Corpus cannot be issued in the following cases:
 - When detention is lawful
 - When the proceeding is for contempt of a legislature or a court
 - Detention is by a competent court
 - Detention is outside the jurisdiction of the court

Mandamus

The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public official, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Facts about Mandamus in India:

- Unlike Habeas Corpus, Mandamus cannot be issued against a private individual
- Mandamus cannot be issued in the following cases:
 - To enforce departmental instruction that does not possess statutory force
 - To order someone to work when the kind of work is discretionary and not mandatory
 - To enforce a contractual obligation
- Mandamus can't be issued against Indian President or State Governors
- Against the chief justice of a high court acting in a judicial capacity

Prohibition

The literal meaning of 'Prohibition' is 'To forbid.' A court which is higher in position issues Prohibition writ against a court which is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.

Facts about Prohibition in India:

- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is against issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or to squash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.

Facts about Certiorari in India:

- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities
- Post-1991: Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals
- It cannot be issued against legislative bodies and private individuals or bodies.

Quo-Warranto

The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office

Facts about Quo-Warranto in India:

- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved
- It can't be issued against private or ministerial office

Note: This writ gives the right to seek redressal to any individual other than the aggrieved person.

General Facts about Writs in India:

- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs
- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs.'

PIL (PUBLIC INTEREST LITIGATION)

Public Interest Litigation:

The meaning, origin, development and the scope of Public Interest Litigation and the locus standi for resorting to this jurisdiction of the Supreme court has been described by that court itself as follows;

‘PIL’ means and is” has been deeply surveyed, explored and explained not only by various Judicial pronouncements in many countries, but also by eminent Judges, Jurists, activist Lawyers, outstanding scholars, Journalists and Social scientists, etc. Basically, the meaning of the word “Public Interest” is defined in Oxford English dictionary as “the common well-being also public welfare”

Objectives

- To gain knowledge on PILs procedure
- To know on the categories involved in PIL
- To obtain knowledge on its pros and cons
- To know about the PILs nature in detail

Chapterization

Procedures to File a Pil in the Court

Any citizen of India can approach the court for public case (upon the interest of public) by filing a petition:

- Under Supreme Court Article 32 of the constitution
- Under High Court under Article 226 of the constitution
- Under Court of Magistrate under Section 133 CRPC

At present, a court can treat a letter as a writ petition and take action upon it. In such cases, the court has to be satisfied that the writ petition compiles the following;

1. Where the letter is addressed by the aggrieved person
2. A public-spirited individual
3. A social action group for the enforcement of legal or constitutional rights to any person who, upon poverty or disability, are not able to approach the court for redress.

Categories Involved in Filing A PIL

The guidelines provide that ordinarily letter/petitions falling under one of the following 10 categories will be entertained as PIL:

1. Bonded labor matters
2. Neglected children
3. Non-payment of minimum wages
4. Petitions from jails complaining of harassment, death in jail, speedy trial as a fundamental right, etc.
5. Petitions against police for refusing to register a case, harassment of bride, bride-burning, rape, murder, kidnapping, etc.
6. Petitions against atrocities on women, in particular harassment of bribe, bribe-burning, rape, murder, kidnapping, etc.
7. Petitions complaining harassment or torcher of persons belonging to scheduled caste and scheduled tribes
8. Petitions pertaining to environmental

Pros and Cons of the PIL:

Pros

- citizens get an inexpensive remedy to solve the problem of crime as there is only a nominal rate of court fees
- courts can concentrate on larger public issues such as the issues of Human Rights, consumer welfare and environment
- PILs have made it easier for the judiciary to haul up the executive when it is not performing its duties properly
- If the petitioner is socially or economically weak and cannot provide necessary evidence to support his case, the court orders appointed commissions to look into and collect information about the case.

Cons

- Many people started handling PIL as tool for harassment because frivolous cases can be filed without heavy court fee as compared to private litigations
- Due to the flexibility of character of the PIL, the opposite party gets an opportunity to ascertain the precise allegation and respond to specific issues.
- The judiciary has been criticized due to the overstepping of its jurisdiction and that it is unable to implement its order effectively

- PIL as being misused in many ways, by the public agitating for private grievances in the grab of public interest by seeking publicity rather than supporting the public cause.

M.C. Mehta, a lawyer by profession, acted in such way that by looking to the number of PIL filed by him, it will be clear that many landmark judgements in various fields mainly environment was obtained by him. Some of them include;

1. Oleum gas leakage case
2. Child labor case
3. Gamma rays case
4. Delhi vehicular pollution case
5. Ganga pollution case and so on

Example: There are many cases involved in Public Interest Litigation as one of the main causes for the case and its judgement. In the case of Sheela Barse Vs. State of Maharashtra, the case dealt with a historical judgement on the issue of custodial violence against women. The Court held that there must be separate police lockups for women convicts to protect them from further trauma and brutality. In the case of M.C. Mehta Vs Union of India, it leads to the landmark judgment which lashed out at the civic authorities allowing untreated sewage from Kanpur tanneries making its way into the Ganges. In the case of Paramanand Katara Vs. Union of India, Supreme Court held that in the field of Public Interest Litigation, which was filled by a human rights activist for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to injured person as soon as possible without waiting for any procedural formalities.

Nature of Public Interest Litigation

Principles and Basis Of Jurisdiction

The introduction of social action litigation popularly known as Public Interest Litigation (or) PIL supreme court shows its Judicial Activism the court has entertained the complaints made through letters address to it by public spirited citizens of the violation of the rights of disadvantages, dispossessed and deprived persons (or) group of persons who because of their future (or) socially (or) economically disadvantaged position unable to approach the court for itself the trade rule of locus standi has been relaxed.

Public Interest

In PIL, the strict rule of locus standi approved to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bonfire and having sufficient interest in instituting an action for reducing of public wrong (or) public injury but who is not a meddlesome busy body (or) meddlesome interloper, since the domestic object of PIL is to ensure observance of the provision of the constitution (or) the law which can be best achievement to advance the cause of community (or) disadvantage of groups and individuals (or) Public interest by permitting any person, having no personal gain (or) private motivation (or) any other oblique consideration but acting bonfire and having sufficient interest in maintaining an action or judicial redress for public injury to put the judicial machinery in motion like Action popularities of Roman law whereby any citizen could bring such an action in respect of a public delict.

Nature of PIL Jurisdiction

The PIL jurisdiction forged by supreme court is an extension of its jurisdiction under Article 32 of the constitution. PIL is not in the nature of adversary litigation, but it is a challenge and an opportunity to the government and its officers to take basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them socio and economic Justice which is the signature tune of our constitution.

Grievance and Relief

In PIL the court has power to take affirmative action by issuing specific directions in cases of governmental inaction (or) lethargy to perform its functions under law further, the court has power to award cost to the petitioner who brought an important matter before the court for compensation to persons who have suffered on and of the violation of their constitutional (or) legal rights.

Protection of Weaker Sections of Society

Public (or) social interest litigations is innovative strategy which has been evolved by the supreme court for the purpose of providing easy access to justification to the weaker sections of Indian humanity and it is powerful tool in the hands of public spirited individual and social action groups for combating exploitation and injustice and securing for the under privileged segments of society their social and economic entitlement.

In M.C. Mehtha Vs. state of Tamil Nadu, the Supreme Court issued directions for the welfare and protection of children employed in match factories. In numerous cases, the supreme court has passed orders and issued directions for the welfare and protection of labor.

In people's union for Democratic Rights Vs union of India (U.O.I). The supreme court in this case passed an order for Payment for minimum wages to the labor.

Protection of Environment

In *M.C. Mehtha Vs. Union of India (U.O.I)* in this case the Supreme Court ordered for closure of tanneries near Kanpur which were polluting river Ganges and creating Industrial pollution affecting lifetime of world wonder Taj mahal

Securing Human Rights and Human Dignity

In *Bandhu Mukthi morcha Vs. Union of India*, the Supreme Court said Article 21 assures the Right to Live with Human dignity, includes free from exploitation.

Matters of Public Importance

In matters of great public importance, the Supreme Court has passed appropriate orders under its PIL jurisdiction;

- To check arbitrary and mollified use of executive discretion
- Widening area of Public Interest Litigation
- Grand of variety of reliefs

Care and Caution Needed

In recent years there has been tremendous development and dynamic progress of COSMOS of PIL. However, great care and caution is needed on the part of court in entertaining PIL. It has been pointed out by the supreme court that – “Public Interest Litigation is a weapon which can be used with great care and circumspection and the Judiciary has to be extremely careful to see behind the beautiful veil of public interest an ugly private malice, vested interest and seeking is not lurking.

Judiciary may step in where it finds the actions on the part of Legislature (or) the executive is illegal (or) unconstitutional but the same by itself would not mean that public interest litigation would be converted into an adversarial litigation.

Conclusion

Public Interest Litigants, all over the country, has not taken very kind towards various court decisions. It is a welcome move from the part of the judiciary that no one in the country even PIL activists must be responsible and accountable. Now a day, PIL are increasing in number as there are a number of incidents which curtails or hurts the feeling of people as well as their rights as the citizens of the country. For instance, mass petitions were filed in many rape cases as well as murder cases in our country due to the lack of interest from the part of investigating agencies and even from the part of Government. The Supreme court has also set up legal aid in favour of the millions of people in India, and it also plays an inevitable role in the field of PIL in expanding its scope so that it turns to be a counter balance to the lethargy as well as inefficiency of the executive. Hence, the machinery governing Public Interest Litigation is undergoing a serious reconstruction or rethinking for possible developments in this field so that the people deserved will be awarded justice as well as the people who abuses it will be punished accordingly.

Reference Books:

- 1.Introduction to the Constitution of India,23rd Edition by the Durga Das Basu.
- 2.Our constitution by the Subhash Kashpap.
- 3.Indian Polity by Lakshmikanth.
4. Constitution of India by J.C.Johari.
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