

BUREAU'S
HIGHER SECONDARY (+2)
POLITICAL SCIENCE
(PART - I)

Approved by Council of Higher Secondary Education, Odisha

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ODISHA STATE BUREAU OF TEXTBOOK PREPARATION AND PRODUCTION
Pustak Bhavan, Bhubaneswar

Bureau's
Higher Secondary (+2) Political Science (Part-I)
(Approved by the Council of Higher Secondary Education, Odisha)

First Edition : 2016/2000 copies

Publication No. : 187

ISBN : 978-81-8005-367-2

Published by :

The Odisha State Bureau of Textbook Preparation and Production,
Pustak Bhavan, Bhubaneswar, Odisha, India.

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Type Setting Designing :

Print-Tech Offset Pvt. Ltd.

Bhubaneswar

Printing:

Jagannath Process Pvt. Ltd.

Cuttack

Price : ₹ 140/-

(Rupees One Hundred Forty Only)

FOREWORD

The Council of Higher Secondary Education, Odisha has restructured the syllabus in Political Science for its Examination 2017 and onwards. The Bureau has prepared textbook in Political Science entitled Bureau's Higher Secondary (+2) Political Science in two parts in conformity with the new syllabus. It has been prepared by a team of experienced and eminent teachers of the State selected by the Council.

At the outset, I acknowledge with thanks the contribution of Writers Sri Pankaj Kumar Pradhan Dr. Satchidananda Mishra, Dr. Manas Behera, Dr. Hari Prasad Tula, Dr. Teresa Beck, Dr. Sunanda Hota. The Bureau is indebted to the members of syllabus committee in Political Science of the CHSE for recommending the book as the only prescribed textbooks for +2 Classes. I also record my grateful thanks to the authorities of Department of Higher Education and Council of Higher Secondary Education for authorising the Bureau to publish this book.

It is hoped that this book will fulfil the aspirations and cater to the needs of the students and teachers of the State. Comments and suggestion on any aspect of this book will be highly appreciated by the Bureau.

Dr. Geetika Patnaik

Director

Odisha State Bureau of Textbook
Preparation and Production,
Pustak Bhavan, Bhubaneswar.

Independence Day
15.8.2016

PREFACE

Following the restructuring of the syllabus of Political Science by the Council of Higher Secondary Education, Odisha, the necessity to bring out a new book was felt urgently. While preparing the new syllabus, all the members of the Syllabus Committee of the CHSE were of the view that all the topics prescribed for study in Political Science need updating in view of the changes which have taken place both in academia and mechanisms in the realm of Politics. The present Board of Writers took up the job with right earnest and had several meetings to finalise the manuscript.

Part I of the book meant for the students of the First Year contains the theoretical position to explain the students the basics of Political Theory. In the books written for the students earlier contained topics on “Political Science”. The focus now has shifted to “Political Theory”. Important concepts like Liberty, Equality, Rights, Secularism, Development etc. has been discussed in detail in view of its practical utility to people in general and the future generation especially. It explains the terminologies of Political Science to the students who had hardly any idea of the subject. The book also includes topics on Indian Constitution to clarify the doubts about our own rights and the functions of Political Institutions that people deal with everyday. So, it seeks to present the abstract terminologies in a simple and lucid manner. The model questions for some topics will help the students to build a better understanding of political vocabulary and evoke inquisitiveness. It is expected that through the new way of presentation, the subject of Political Science would become more interesting and rewarding for the relatively younger students.

At the end, the Board of Writers express their deep appreciation for the courtesy shown to them by the Bureau’s functionaries. They would like to make special mention in this context about the efforts of Dr. Geetika Patnaik, the Director, and Sri Biraja Bhusan Mohanty, Deputy Director for their sincere efforts to bring out the book in time.

Board of Writers

**FIRST YEAR, CHSE
(2016 - 2017)**

POLITICAL SCIENCE

PAPER - I
(Foundations of Politics and Government)

PART - A

POLITICAL THEORY

UNIT - I : UNDERSTANDING POLITICAL THEORY

1. **Political Theory : An Introduction-** What is Politics? Nature and Scope of Politics; Usages of Political Theory.
2. **State :** Definition, Elements of State.
3. **Nature of State Activity :** Individualism, Welfare State, Globalisation.

UNIT - II : BASIC CONCEPTS

1. **Liberty :** Positive & Negative Liberty; Types of Liberty.
2. **Equality :** Meaning; Dimensions; Significance of Equality.
3. **Justice :** Meaning; Dimensions; Significance of Social Justice.
4. **Rights :** Meaning; Types; Human Rights and its significance.
5. **Secularism :** Meaning; Western and Indian approaches to Secularism.
6. **Development :** Meaning; Models of Development; Capitalistic model, Socialist model; Sustainable Development.

PART - B

INDIAN CONSTITUTION AT WORK

UNIT - III : INDIAN CONSTITUTION

1. **Philosophy of the Constitution :** Constitution- the Making; Constituent Assembly; Preamble; Basic Features; Amendment Procedure.

2. **Rights in the Indian Constitution :** Fundamental Right; Directive Principles of State Policy; Relationship between Fundamental Rights & Directive Principles of State Policy; Fundamental Duties.

UNIT - IV : CONSTITUTION AT WORK - I

1. **Election and Representation :** Election and Democracy; Election Commission- Composition and Functions; Challenges to Free and Fair Elections; Electoral Reforms.
2. **Legislature :** Parliament- Composition and Functions, State Legislatures (Odisha Vidhan Sabha) Composition and Functions.

UNIT - V : CONSTITUTION AT WORK - II

1. **Executive :** President- Power & Position; Prime Minister- Functions & Roles; Governor- Power and Position; Chief Minister- Functions & Role.
2. **Judiciary :** Structure of Judiciary, Supreme Court; High Court, Judicial Review; Judicial Activism.



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CHAPTER - 1

POLITICS AND POLITICAL THEORY

- **What is Politics?**
 - **Nature and scope of Politics**
 - **Usages of Political Theory**
 - **Points to Remember**
-
-

What is Politics?

The main objective of this introductory chapter is to enhance our understanding of the concept, Politics and draw attention to the difficulty of having a fixed definition of the term.

The term politics and political are derived from the Greek word polis, which means a city state. One of the prominent philosophers of that time, Aristotle is called the father of Political Science.

The Science of Politics, more popularly known as “Political Science” in Indian academia, does not date back to more than hundred years. Initially the subject had a limited field of study, revolving round the State, its machinery-the Government, its personnel-princes, politicians, ministers and legislators. Politics now is not limited to a small part of social activity. Its scope has become more inclusive because of the following reasons: Rise of democracy in its new avatar in broader and wider suffrage (Universal Adult Suffrage) broadened the base of politics. Decolonisation, spread of mass education, mass-based political parties and revolutionary development in the media- press and electronic (World Wide Web and internet included) led to more

democratisation of politics. Also, gradually the scope of the subject widened with the advent of the modern welfare state; the State following the individual from cradle to the grave. There was a re-thinking on the definition of what is political. New definitions like “shaping and sharing of power” and “authoritative allocation of values” further added new dimension to the definition of politics. The feminist pronouncement that “personal is political” further broadened the scope of Politics. Thus, Political is no longer limited to formal institutions and its stake holders; it includes the non formal actors and processes also.

Laski: “The study of politics concerns itself with the life of men in relation to organised states”.

The study of politics is usually seen to cover three subdivisions: Political Science, Political Theory and Political Philosophy. These terms are often used interchangeably but between which distinctions are sometimes drawn.

The word, theory, is Greek, derived from the word ‘theorem’. In the Greek language ‘theorising’ means to look at, an occurrence, to observe what is going on and of seeking to understand, by an intelligent observer; one who looks at what is going on, asks himself questions about it and tries to understand it. What may emerge from ‘theorising’: is a conclusion - an understanding’ of what is going on- ‘a theorem’.

Political theory is thus, that branch of political science which attempts to arrive at generalizations, inferences, or conclusions to be drawn from the data gathered by other specialists, not only in political science, but throughout the whole range of human knowledge and experience.

To sum up, one may say that political theory is an overview of what the political order is about. It is symbolic representation of what is ‘political’. It is a formal, logical and systematic analysis of the processes and consequences of political activity. It is analytical, expository and explanatory. It seeks to give order, coherence, and meaning to what is described as ‘political’. Political Theory, thus, is a theory about what is ‘political’, the science and philosophy of something that is ‘political’.

What is Political Theory?

Political theory is one of the core areas in Political Science. From ancient Greece to the present, the history of political theory has dealt with fundamental and perennial ideas of Political Science. Political theory reflects upon political phenomenon,

processes and institutions and on actual political behaviour by subjecting it to philosophical or ethical criterion. Political Theory has been very comprehensively defined by John S. Dryzek, Bonnie Honig and Anne Phillip as follows:

Political Theory is an interdisciplinary endeavour whose centre of gravity lies at the humanities end of the happily still undisciplined discipline of political science. Its traditions, approaches, and styles vary, but the field is united by a commitment to theorize, critique, and diagnose the norms, practices, and organization of political action in the past and present, in our own places and elsewhere. Across what sometimes seem chasms of difference, political theorists share a concern with the demands of justice and how to fulfil them, the presuppositions and promise of democracy, the divide between secular and religious ways of life, and the nature and identity of public goods, among many other topics. Political theorists also share a commitment to the humanistic study of politics (although with considerable disagreement over what that means), and a scepticism towards the hegemony sometimes sought by our more self consciously “scientific” colleagues.

NATURE AND SCOPE OF POLITICS

Nature of Political Theory

1. *Political theory is dispassionate and disinterested.* As a branch of Political Science, Political Theory describes political reality without trying to pass judgement on what is being depicted either implicitly or explicitly. As a philosophy, it prescribes rules of conduct which will secure a good life for all in the society and not simply for certain individuals or classes. The theorist will not himself have a personal interest in the political arrangements of any one country or class or party. His vision of reality and his image of the good life will not be clouded because of the absence of bias and preferred ideology. On the other hand, the intention of an ideology is to justify a particular system of power in society. The ideologue is an interested party: his interest may be to defend things as they are or to criticise the status –quo in the hope that a new distribution of power will come into being. Rather than dispassionate description, the ideologue may have a distorted picture of reality.
2. *Political theory is one of the core areas in Political Science.* From ancient Greece to the present, the history of political theory has dealt with fundamental and perennial ideas of Political Science. Political theory reflects upon political

phenomenon, processes and institutions and on actual political behaviour by subjecting it to philosophical or ethical criterion.

3. *Political theory is mostly concerned with ethical or normative questions:* Political theory is regarded as a distinctive approach to the subject. Political theory involves the analytical study of ideas and doctrines that have been central to political thought. Traditionally, this has taken the form of a history of political thought, focusing upon a collection of ‘major’ thinkers – for instance, from Plato to Marx – and canons of ‘classic’ texts. As it studies the ends and means of political action, political theory is clearly concerned with ethical or normative questions, such as ‘Why should I obey the state?’, ‘How rewards should be distributed?’ and ‘What should be the limits of individual liberty?’ This traditional approach has about it the character of literary analysis: it is primarily interested in examining what major thinkers said, how they developed or justified their views, and the intellectual context in which they worked.
4. Apart from the historical study of classics, *there is an alternative approach called formal political theory.* It draws upon the examples of other branches of knowledge, such as, economic theory in building up models based on procedural rules, usually about the rationally self-interested behaviour of the individuals involved. Formal political theory has attempted to understand better the behaviour of actors like voters, politicians, lobbyists and bureaucrats, and has spawned ‘rational choice,’ ‘public choice’ and ‘social choice’ schools of thought.
5. Although its proponents believe it to be strictly neutral, its individualist and egoistical assumptions have led some to suggest that *it has an inbuilt bias towards conservative values.*
6. *Politics is natural to human beings. It has evolved from human nature.* Human being, the most intelligent creation of planet Earth is endowed with a creative genius. He strives to understand the natural laws of the environment he lives in and also makes constant improvisation to suit it to his requirement. From the prehistoric days he is living in groups that is, among other human beings. His natural instinct to survive keeps him among people who are his competitors (rivals) for most of his coveted things. So there is constant competition (rivalry, conflict) within the group among members and also between groups. Group living for the survival; individual striving to be recognised as the best to acquire the most coveted rewards, prizes and ultimately the power to control and

influence others' lives. Thus the instincts of cooperation and competition are simultaneous processes in all human endeavours. To understand what is political/social, we must never forget operation of these two basic human instincts, cooperation and competition in the Homo sapiens and between the living and their environment.

7. Again, human beings are unique in two respects: firstly, they possess reason and the ability to reflect on their actions. Secondly, they also have the capacity to use language and communicate with each other. Unlike other species, they can express their innermost thoughts and desires; they can share their ideas and discuss what they consider to be good and desirable. Political theory has its roots in these twin aspects of the human self. It analyzes certain basic questions such as how society should be organized? Why do we need government? What is the best form of government? Does law limit our freedom? What does the state owe its citizens? What do we owe each other as citizens? Political theory examines questions of this kind and systematically thinks about the values that are necessary for political life – values such as freedom, equality and justice. It explains the meanings and significance of these and other related concepts. It clarifies the current definitions of these concepts by focusing on some major political thinkers of the past and present. It also examines the extent to which freedom or equality are actually present in the institutions that we participate in everyday such as schools, shops, buses or trains or government offices. At an advanced level, it looks at whether existing definitions are adequate and how existing institutions (government, bureaucracy) and policy practices must be modified to become more democratic. The objective of political theory is to train citizens to think rationally about political questions and assess correctly the political events of our time.

SCOPE OF POLITICAL THEORY

Scope means the subject matter of a discipline. Political theory studies the following institutions, structures and processes.

State

As referred to earlier, cooperation and competition are simultaneous processes in all human endeavours. But it leads to situation of conflict if left unregulated. So there was a stage in the process evolution of human political consciousness to design

an organisation to regulate the other regarding human conduct: behaviour and action of every human being within a specific geographical area. The organisations that came up gradually took the shape of state in embryonic form. When it came to be designated to regulate the whole community it became a 'polis' in the Greek city states of ancient time. The essence of political is thus the search for bringing about an order that (the Greeks) consider good. The term politics is derived from the Greek word polis meaning both 'city' and 'state'. It denoted an organisation where rules were framed and decisions were made for the whole community and there was regulation of other regarding behaviour of every member of the community. Thus political came to be known as something 'public' in contrast to 'private' or something personal or applicable to a limited number of people. Thus political in this context means the collective power to take decisions about the good life of a community.

Formal Institutional Arrangements of the State

The term politics, political are derived from the Greek word polis, which means a city state. A city state was inhabited by citizens and unlike in our time they did not distinguish between society and the state or between social and political. Life, to them was a whole, where the social and political were closely knit together. One of the prominent philosophers of that time, Aristotle said that state came in to existence for the bare necessities of life but continues to exist for the sake of good life. However, in the modern time the scope of politics is not so broad. In the first half of the 20th century, till the ascendancy of feminism, state, government and the state-individual relation was the subject matter of politics. Gradually the scope of the subject widened with the advent of the modern welfare state; the State following the individual from cradle to the grave. There was a re-thinking on the definition of what is political. New definitions like "shaping and sharing of power" and "authoritative allocation of values" further added new dimension to the definition of politics. The feminist pronouncement that "personal is political" further broadened the scope of Politics.

Whatever may be the age or context of a definition, the core of political has been the study of state and government. What is the state? What is a Government? What are the different institutions Government? Where from the State/ Government derives its powers to control the individual? Why should the individual obey the State? - These are the questions that have cropped up in different ages. Starting from Plato and Aristotle in ancient Greece to John Rawls in 20th century, philosophers and social thinkers have given the answers, sometimes contextual, more often timeless

in quality. So the study of state and government in the past were done by scholars of many hues in different historical contexts. It was termed a master science by Aristotle. He is considered as the originator of Politics as a subject of study. He has been challenged by people of the subsequent ages. Hobbes claimed that he himself was the pioneer of the scientific study of civic society. So the parenthood of the subject has never been uncontroversial nor its scientific character.

The above discussion refers to institutions of the state: the legislature, the executive, the judiciary and by extended meaning to the President, the Prime Minister, the Parliament, the Defence Forces and the police etc. It refers to the decision making power of these institutions. Thus political in this context means the study of the mechanism of the state/ government. A new issue comes here: what is state? The question is by no means an easy one to answer, nor is there a general agreement as to what the answer should be. It must first be noted that there are various forms of the state, which differ from one another in important ways. There are different forms of the state, but whatever form one has in mind, the state as such is not a monolithic block. To start with, the state is not the same as the government. It is rather a complex of various elements of which the government is only one. In a Western-type liberal-democratic state, those who form the government are indeed with the state power. They speak in the name of the state and take office in order to control the levers of state power. Nevertheless, to change the metaphor, the house of the state has many mansions and of those, the government occupies one.

Relationship between State and Society: Power Equations

The study of politics is vitally concerned with the relationship of state and society. Its prime focus is the study about State. But it does not neglect what happens in the wider sphere of society and how social may influence the 'distribution of power'. Although the state depends on force, it does not rest on force alone. This explains the notion of the legitimate use of power. Power, in general, and the power of the state, can be exercised in different ways. Coercion is one form of power and perhaps the easiest to understand, but it is not the only one. Not all power relations are to be understood on the basis of the same crude model. If a Professor, through force of argument and breadth of knowledge helps students to form their ideas, such a person exercises a kind of power, though not against the students' will. In other words, all holders of power try to get those who are subject to their rule to believe in the rightness and justness of the power they wield. This attempt at justification in order to make people consent constitutes the process of *legitimation*.

The definitions of Politics emphasise the concept of power of the state, its institutions and of individual actors (powerful or otherwise) in the society. 'Politics is about power and how it is distributed.' But power is not an abstract entity floating in the void. It is embodied in human beings. Power is a relationship, existing wherever a person can impose his will on other persons, making the latter obey, whether they want to or not. Hence, it predicates a situation characterised by leadership, a relation of domination and subordination. Max Weber said that the concept of politics is 'extremely broad-based and comprises any kind of independent leadership in action.' In whatever context such leadership in action exists, politics is present. Thus, political would include any situation where power relations exist, i.e. where people are constrained or dominated or subject to authority of one kind or another. It also includes situations where people are constrained by a set of structures or institutions rather than by the subjective will of persons. Such interpretations cover even personal and private relations within the family. So the feminist definition of 'personal is political' is aptly covered by such meaning of political. Political also includes the use of state by one group to exercise power over another.

Legitimation

Legitimation is a central concern of Politics. C. Wright Mills writes, 'The idea of legitimation is one of the central conceptions of political science.' The study of politics is centrally concerned with the methods by which holders of power try to get their power justified, and with the extent to which they succeed. It is crucial in studying any political system to investigate the degree to which people accept the existing power structure as legitimate, and thus, how much the structure rests on consent as distinct from coercion. It is also important to ascertain the actual justification of power, which is offered; that is to say, the methods by which a system of power is legitimised.

The Composition of the State Elite

The state is a set of institutions staffed by people whose ideas and basic attitudes are largely influenced by their origin and social environment. They chiefly stem from the fact that state power is structured or broken up, so to speak, into distinct sectors. The specific relationship of the various sectors is determined by the political system within which they operate: The internal structure, say, of a communist state. A further question involves the personnel of these sectors. The state, after all, is not a machine;

though the phrase 'machinery of the state' may be used. The state is a set of institutions staffed by people whose ideas and basic attitudes are largely influenced by their origin and social environment. The composition of the state elite is an important problem in the study of politics.

Political Values and authoritative allocation of values

David Easton defines politics in relation to the authoritative allocation of values in a society. But the question is what a value is and why value allocation is important? Why it should be authoritative. The term 'value' has a meaning in political theory that is both similar to and yet distinct from the meaning assigned to it in everyday speech. In political usage, values are group conceptions, deeply held convictions of the relative desirability of things. In addition, there are four other aspects of the political concept of value. They are: (1) values exist at different levels of generality or abstraction; (2) values tend to be hierarchically arranged (3) values are explicit and implicit in varying degrees; and (4) values often are in conflict with one another.

Values are very important for the survival of any organisation- political or social. Any stability or continuity of an organisation comes from the deeply held conviction of its members about its desirability/ utility. Values refer to moral principles or ideals, which should/ ought or must be brought about. Examples of political values include 'justice', 'liberty', 'human rights', 'equality' and 'toleration'.

Political is also inherently Conflictual (conflict and disagreement)

There are several categories of values in circulation in any polity, at a given time, competing for supremacy. Competing values cause conflict. When values often are in conflict with one another, how can an organisation like the state survive? Thus, political is also inherently conflictual. So there is the necessity of deciding the more superior or supreme value. It is the state that has been assigned the power to make the authoritative allocation of values in a society. Politics compares number of values in circulation; tries to find the most appropriate (best) value and makes indisputable list of those values for the survival and organization of government. So political also means the authoritative allocation of the state on the values by which a particular community governs its life.

Political is naturally Futuristic

However it would be a mistake to confine the term 'political' to these common power of state institutions. A broader definition is needed to understand the 'political'.

Consider the situation of human beings today. They do not live in seclusion, unconcerned with what is happening around the world. Because of the development of transportation and communication in the age of electronic revolution, human beings have become Global citizens. They revolt against injustice, inequality, exploitation wherever it happens in the world and express their empathy through social media, public agitations, and demonstrations for the unknown. Global citizens ought to pursue the idea of good for the global polity. So what is needed is a new set of values for the global village. Finally, there can be a grand political theory that reflects on the entire human kind or the values by which the entire humanity may govern its life. Thus Political is also futuristic.

USAGES OF POLITICAL THEORY

Why Should We Study Political Theory?

Usefulness of Political Theory for Students

First, basic Knowledge of politics is necessary for every citizen- present or future: Human beings are political animals. Politics is natural to and inherent in every human activity. The competition and harmony needed for human progress demands the use of Politics. Otherwise the resultant conflicts to find solution or settle issues would lead to a state of war and ultimate extinction of *Homo sapiens*. Since the time Aristotle said this, we have progressed a lot in every field and the scope of what is political has not lagged behind. We no longer say that politics exist only in the public sphere. As the feminists have proclaimed politics is not absent in the domestic sphere and have a dictum “personal is political”. So a basic knowledge of political theory is a necessity to understand politics to avoid its harmful effect and it is important for everybody. We learn mathematics and science in schools. It does not mean that every student becomes a scientist or a mathematician. Is it not because basic arithmetic is useful to life in general? So also is the case for political theory.

Secondly, it can nurture an educated and vigilant citizenry: the students are all going to be citizens entitled to vote and decide other issues. To act responsibly, it is helpful to have a basic knowledge of the political ideas and institutions that shape the world we live in. So also an educated and vigilant citizenry makes those who play politics more public-spirited.

Thirdly, it is needed for clarification of Concepts: Freedom, equality and secularism are not abstract issues in our lives. What political theory encourages us to do is examine our ideas and feelings about political things. Just by looking at those

more carefully, we become moderate in our ideas and feelings. Political theory helps to understand the concepts and terms used in a political argument and analysis: like the meaning of freedom, equality, democracy, justice and rights. In fact, the clarification of concepts in every area of study is very essential for the development of knowledge—whether natural science or philosophy. These terms mentioned earlier are not only frequently used in daily conversation, but also in political theory discourse. An understanding of these terms is important for it helps one to know the way these terms have been employed, the shifts in their definition and their usage in a structure of argument.

Finally, study of Political Theory nourishes rational debating and effective communicating: Political theory exposes us to systematic thinking on justice or equality so that we can polish our opinions and argue in an informed manner and for the sake of common interests. Such skills of debating rationally and communicating effectively are likely to be great assets in the global informational order.

The general usage of Political Theory

As the History of Political Thought

From ancient Greece to the present, the history of *political theory has dealt with fundamental and perennial topics of politics*. Political theorists since Aristotle try to define the political to understand political practices and their application. Aristotle's remarks that 'man is a political animal' takes account of the inherent human desire for society and the fact that human beings need and can find fulfilment only through a political community. For Aristotle, the political is important for it stands for a common political space in which all citizens participate. However, the ambit of politics has to be limited. The political dimension of political theory concerns itself with the form, nature, organisation of the state or government and its relationship with the individual citizen.

Political theory offers detailed and elaborate study particular political philosophies, from Plato to contemporary times. Their works are studied for their normative statements about the desirability of certain types of institutions, governments and laws, which are usually accompanied by rational arguments. The classics are timeless in quality, permanent in relevance and universal in their significance. By studying the works and books of great pioneers, we try to know a concept, its meaning and its significance for our own use. Thus the history of political theory is marked by both continuity and innovation. By reading those works we are in the company of the

great philosophers, through their writing. It is like attending a satsang (a religious congregation) in a ‘virtual world’. We can argue, debate with them (of course not with their physical presence) and get answers to some perennial questions, puzzles and problems. *This way political theory revives the discourse with the past-philosophers, ideas and ideologies for modern use.*

According to Rajeev Bhargava political theory is a new kind of cosmology. To him, political theory now performs three key separate functions. “It explains at the most general level possible, it evaluates and tells us what we should do and it speculates about our current and future condition.” That political theory has transformed itself to a new cosmology that can compete with theological cosmology and ideology.

The use of Political Theory as a Technique of Analysis

Political theory enables us to identify the important political issues and describe their use and abuse in the political structure by using the analytical method. It can help us in arranging our facts in a meaningful way to arrive at usable solutions. The use of theoretical framework also helps making research more reliable and predictable.

Thus, Aristotle’s remarks that the individual is a political animal indicates the primacy of politics and the fact that political thinking takes place at various levels and in a variety of ways. The political in such a view not only becomes all pervasive, but the highest kind of activity. Politics symbolises a collective public life wherein people create institutions that regulate their common life. We become aware of questions, puzzles and dilemmas faced by ordinary citizen and professionals, those necessitate an answer. These are the perennial questions of Politics: for instance, are individuals equal? Is the state more important than the individual? How to justify violence employed by the state? Is there an inherent tension between freedom and equality? Is the minority justified in dictating terms to the majority and vice-versa? One’s response to these statements often reflect the dilemma of *ought* versus *is*; just (shreya) versus dearest (priya). It is because of this basic reason that political theory is to be a part of an open society, for there would always be liberals and conservatives training in political theory that would help one to answer the aforesaid questions logically, speculatively and critically.

The use of Political Theory in Formal Model Building

This Formal Model Building is particularly popular in the United States, for it considers political theory as an exercise in devising formal models of political

processes; similar to the ones in theoretical economics. These models serve two purposes: first they are explanatory, offering systematically the factors on which political processes are based. Second, they are normative, for they try to show the consequences that accrue from following a certain rule. Joseph Schumpeter's elitist theory of democracy is based on the assumption that a human being takes his economic life more seriously than his political one.

Significance of Political Theory

John Plamenatz, in his essay entitled "The Case of Political Theory" says that political theory has its uses as the following:

- (i) Political theory is a serious and difficult intellectual activity and the need for this kind of exercise, in modern times, is indeed much greater.
- (ii) It is a study of values, norms and goals, though it does not produce the same kind of knowledge as empirical political theory does.
- (iii) It is a study of theories which have, historically, powerfully influenced men's images of themselves, and of society, and profoundly determined their social and political behaviour.
- (iv) It has an element of socially conditioned ideology. This ideology may be an illusion, and yet, unless man had these illusions, the course of social development would not have been what it is. It produces a coherent system of political principles which can guide us to an appropriate political action. Its political theorists, as Plamenatz says, "do not, like honest shopkeepers, display a large variety of goods, describing them all accurately and leaving it to the customer to choose what pleases him most. They produce a hierarchy of principles, and try to explain how men should use them to make their choices... They are not mere purveyors of ideas; they are the preachers and the propagandists."

C. Wright Mills writes, "Political philosophies are intellectual and moral creations. They contain high ideals, easy slogans, dubious facts, crude propaganda, and sophisticated theories." He describes the significance of political theory, saying:

- (i) "Firstly, it is itself a social reality; it is an ideology in terms of which certain institutions and practices are justified and others attacked; it provides the phrases in which demands are raised, criticisms made,

exhortations delivered, proclamations formulated, and at times, policies determined.

- (ii) Second, it is an ethic, an articulation of ideal, which, at various levels of generality and sophistication, is used in judging man, events and movements and as goals and guidelines for aspirations and policies.
- (iii) Third, it designates agencies of action, of the means of reform, revolution and conservation. It contains strategies and programmes that embody both ends and means. It designates, in short, the historical levels by which ideals are to be won or maintained after they have been won.
- (iv) Fourth, it contains theories of man, society, and history, or at least assumptions about how society is made up of, and how it works. It tells us how to find out where we stand, and where we may be going.”

CONCLUSION

Political theory aims at comprehending the world in which it comes into being. It tries to identify its salient character, to understand its crisis and it assesses its capacity to resolve that crisis. Political theory contributes to the capacity of man to understand himself and after himself, his polity and his history. It exhorts man to take command of his own common affairs. In short, it explains, illuminates, understands, evaluates, enlightens and alters.

By way of conclusion, one may say that political theory builds a model of the highest political order, serves as a guide to the systematic collection of data and provides an analysis of political data. As a science, political theory describes political reality without trying to pass judgement on what is being depicted. As a philosophy, it describes rules of conduct which help secure good life for all.

POINTS TO REMEMBER

- Politics is essentially a social activity through which people make, preserve and change the general rules of social life.
- Politics is, on the one hand, about disagreement and conflict, and on the other a desire to cooperate and act collectively.
- The word ‘Politics’ can be understood as a particular social phenomenon as well as a systematic study of that phenomenon. Some scholars however, treat

politics as a specific kind of activity whereas the term political science is used to mean an 'organised body of knowledge concerning such activity.

- There exist a number of views on the definition of politics. It can be viewed as the art of government or as 'what concerns the state', as the conduct of public affairs, as a resolution of conflict through debate and compromise. It can also be understood in terms of power.
- The scope of Political Science is very vast. It includes in its study, State and government, comparative study of constitutions, political philosophy, relation between individual and the state, political dynamics etc.
- Systematically studies institutions and functioning of human society, man's behaviour in society and the interpersonal relationships of individuals as members of society are called social sciences. When we rely on more than one discipline for the study of any problem our approach is called interdisciplinary.

MODEL QUESTIONS

(Group - A)

1. **Which of the following statements are true/false about Political theory?**
 - (a) It discusses ideas that form the basis of political institutions
 - (b) It explains the relationship between different religions
 - (c) It explains the meanings of concepts like equality and freedom
 - (d) It predicts the performance of political parties
2. Politics is more than what politicians do. Do you agree with this statement? Give examples.
3. In what ways is the study of political theory useful for us? Identify four ways in which the political theory can be useful to us?
4. Do you think that a good/ convincing argument can compel others to listen to you?
5. Do you think studying political theory is like studying mathematics? Give reasons for your answer.

(Group - B)**1. Correct (errors if any) of the following sentences :**

- (a) Plato is called the father of Politics.
- (b) Authoritative allocation of values is a function of philosophy.

2. Answer in one word/sentence

- (a) Why politics is conflictual?
- (b) Why Political theory is futuristic?

3. Short Questions (to be answered in 3/4 sentences)

How power equations operate between politics and society?

(Group - C)**Essay Type Questions**

- 1. Discuss the nature of Political Theory.
- 2. Examine the scope of Political Theory.



CHAPTER - 2

STATE

- **Meaning**
 - **Nature and need for the state**
 - **Elements of the state**
 - **Distinction between: State and Society; State and Government; State and Association; State and Nation**
 - **Points to Remember**
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MEANING

The study of Political Science begins and ends with the state. The state is the central object of all political inquiries. But what is state? It is now indiscriminately used as a synonym for 'Government', 'Nation', 'Society' etc. It is even used to refer to the regions or units of a federal state like the Indian union and the U.S.A. We must, therefore have a clear idea about the meaning and nature of the state.

A state means a community or a society politically organized through a government within a definite territory. The political scientist, Garner provides a comprehensive definition of the state. It is "a community of persons, more or less numerous, permanently occupying a definite territory, independent or nearly so, of external controls, and possessing an organised government to which the great body of inhabitants render habitual obedience."

NATURE & NEED FOR THE STATE

According to Aristotle, “the state comes into existence for life and continues for good life.” The state as an association exists to preserve and promote the common interests of its people: This view, however, is not accepted by all. To some, the state is an evil- a force coming in the way of economic and social progress and threatening human liberty. There are others, on the other hand, to whom the state, the highest form of human association, is a positive thing. In spite of the two contradictory views, the fact that the state continues to exist shows its necessity and importance, It exists to enable men at least potentially, to realise the best that is in themselves” (H. J. Laski). The people need the state, primarily for maintenance of public order and protection of their life and liberty against internal and external danger.

ELEMENTS OF THE STATE

The state has four essential elements:

- (a) Population
- (b) Territory
- (c) Government
- (d) Sovereignty

What follows now is a brief elaboration of these elements.

Population

The State is a human institution. Hence population is its first and foremost element. No state can be imagined without the people, as there must be some to rule and others to be ruled. The people constitute its “personal basis”.

It is however, difficult to fix the size of the population of a state. For the Greek Philosopher Plato, the ideal state should not contain more than 5040 people. But Rousseau the French philosopher would treat 10,000 inhabitants as the ideal population. Modern states greatly vary in population. While some modern states (e.g. the USA, Russia and Canada) are still under populated relating to area, resources and similar factors, others (e.g. China, India, Egypt) are confronted by the problem of population which is expanding too rapidly for their natural and technological resources. There is no such hard and first rule as to the number of people required to make a state. The population of a state must be large enough to preserve the political independence and to exploit its natural resources and small enough to be well governed.

But it is the kind of people that matters more than their numbers. What kinds of people comprise a particular state? Are they literate, well educated, culturally advanced? Aristotle rightly has said that a good citizen makes a good state. So what is important is the quality of people, their character, their culture and their sense of belonging to the state.

Territory

People cannot constitute a state, unless they inhabit in a definite territory. When they reside permanently in a fixed place, they develop a community of interests and a sense of unity. It becomes easy to organise them into a political unit and control them. So the state requires a fixed territory, with clearly demarcated boundaries over which it exercises undisputed authority. Territory is its “material basis”. The territory of a state comprises:

- (i) Land, mountains, rivers and lakes within its frontiers.
- (ii) Territorial water, extending six miles into the sea from the coast.
- (iii) Air space above its territory.

The state has full rights of control and use over its territory. Any interference with the rights of one state by others may lead to war.

But how much territory is necessary for the maintenance of state? There is no accepted rule as to the size of a state’s territory. In the modern world, we find states of all sizes and shapes. More important than the size are the natural resources and the location of the state. A geographically contiguous territory is an asset; otherwise it creates problems of administration and control.

Government

Government is the important- indeed, indispensable machinery by means of which the state maintains its existence, carries on its functions and realises its policies and objectives. A community of persons does not form a state, unless it is organised by an established government.

Government usually consists of three branches: the Legislature, the Executive and the Judiciary. Their respective functions are legislation, administration and adjudication. The particular form of government depends upon the nature of the state which in turn depends upon the political habits and character of the people.

Sovereignty

The fourth essential element of the state is sovereignty. It is that important element which distinguishes the state from all other associations. The word 'Sovereignty' denotes supreme and final legal authority and beyond which no further legal power exists. Sovereignty has two aspects- internal and external. Internal sovereignty is the supreme authority of the state over all individuals and associations within its geographical limits. By virtue of it, the state makes and enforces laws on persons and associations. Any violation of these laws will lead to punishment. External sovereignty implies the freedom of the state from foreign control. No external authority can limit its power. India before 1947 was not a state because though it had the other three elements, i.e., population, territory and government, the fourth and the most important one i.e., independence was missing.

A state's sovereignty extends to its territory. The sovereignty of the state over its territory and its people must be accepted as undisputed. A state also requires recognition by other sovereign states. Such recognition is provided by the community of states; international organisations like the United Nations, which grant membership to sovereign states. The UN membership is a means of recognising state's sovereignty whenever a new state comes into existence, its recognition by other states and by UN is extremely important.

The term 'state' generally used for the units of the Indian Republic or for any of the fifty states which make the United States of America, is a misnomer. None of them enjoys sovereignty. Lack of sovereignty gives them no position or rank as states. Only by courtesy, we call them as states.

Every state must have its population, a definite territory, a duly established government and sovereignty. Absence of any of these elements denies to it the status of statehood.

Distinction between :

(i) State and Society : Society may be defined as an association of human being which includes the whole complex of the relations of man to his fellows. It consists of all organised institutions and associations within the community. The state is one such institution and even though it is the most important group, it is not identical with society.

The difference between state and society are many:

- (1) The society is a bigger whole, the state is just a part to it; society comes first and the state is created from it.
- (2) The state is a territorial organisation. It comprises a definite territory in which it is supreme. But society has no territorial limits. It may extend from a Village to the whole world.
- (3) Society may be organised or unorganised but a state must have an organisation, viz., government.
- (4) The authority of society mainly finds expression through customs while the state exercises its authority through laws enacted and enforced by Government.
- (5) Whereas society can use moral persuasion and influence, the state is the only institution which can legitimately use coercion or force. As Earnest Barker puts it, the area of society is voluntary co-operation, its energy that of goodwill, its method that of elasticity; While the area of the state is rather that of mechanical action.

But to distinguish between the state and society is not to deny their mutual relation. The state regulates through laws, the external conduct of men in society and provides the broad framework of social order. Society, in its turn, nourishes the state with economic, cultural, religious and humanitarian activities.

(ii) State and Government : Often the term 'State' and 'Government' are used interchangeably, but the two are not the same It is necessary to note the following points of difference between state and government.

- (1) State stands for the whole community, which is politically organised, whereas government stands only for a group of persons, who exercise power on behalf of the state.
- (2) Sovereignty or the supreme controlling power lies in the state and it exercised through its instrument that is government.
- (3) The state is permanent, whereas the governments change. Changes in the government do not affect the existence of state The state enjoys continuity.
- (4) The State is an abstract concept, whereas the government is the concrete, physical embodiment of the state.

Prof. Laski makes a significant observation regarding the distinction between state and government. According to him, the distinction is one of theoretical interest than of practical significance. 'For every act of state that we encounter is, in truth, a governmental act. The will of the state is in its laws, but it is the government which gives substance and effect to their content'.

(iii) State and Association : The state is an association, but there are vital differences between the state and other associations.

- (1) The state is essentially a territorial organisation. The activities of a state are confined to its own territory. But other associations may not be confined to a particular territory. Associations like the Rotary Club or the Red Cross Society have a world-wide organisation. They are global in their membership and activities.
- (2) Membership of the state is compulsory. No one can escape the membership of the state, but the membership of an association is of a voluntary nature. A person may or may not become the member of any association. Its membership is acquired or given up by the free choice of an individual.
- (3) Individual may become member of any number of associations he likes, but he cannot be a member of more than one state at the same time.
- (4) The state is an entity, while other associations may or may not be so.
- (5) An association is concerned with one or at best a few specific interests of a particular group of persons. The state is a common association of all its citizens and is concerned with general interests common to the people as a whole.
- (6) Sovereignty is a differential element of the state. It distinguishes the state from other associations. The state possesses coercive authority by means of which it can compel the citizens to obey its laws. The citizens can be deprived of life, liberty or property if they violate the laws of the state. Other associations have no such supreme or coercive power to enforce their rules. The utmost punishment which other associations can inflict is expulsion.
- (7) The supremacy of the state over other associations is an established fact. It controls and coordinates the activities of all associations in society. It may or may not allow a particular association to exist.

(iv) State and Nation : The modern state usually takes the form of a nation - state. The frontiers of the state are called national frontiers; the interest of the state is described as national interest; the character of the people of a state is called its national character. These two terms 'state' and 'Nation' have been inter-changeably used. But in terms of political science, these two terms are quite distinct from each other.

Etymologically they have been derived from different sources. The term 'State' has been derived from the word 'State' where as the term 'Nation' is derived from the Latin word 'Natio', which commonly connotes the idea of birth or race. But despite their different sources of origin, the two terms have acquired their own meanings in common usage. Prof R.N. Gilchrist believes that the term 'nation' is very near in meaning to state. It has a broader significance. It is the state plus nationality. He gives the example of British Nation. When we speak of the British Nation, we mean the British people organised in one state and acting spontaneously as a unity. "The nation" says T. Green "underlines the state, and the state is "the nation organised in a certain way".

However, following distinctions can be made between State and Nation.

1. The state is a concrete political organisation whereas the nation is abstract and spiritual.
2. The state is constituted of the four essential elements, namely, Territory, Population, Government and sovereignty where as the nation is constituted of many cultural elements, all of which are most indispensable for the existence of the nation. A nation grows on a much wider base. It refers to people living in a defined territory inspired by a sense of unity, common political aspirations, common interests, common history and common destiny, though they belong to different nationalities. In other words, groups of people of different races, with different religions, language and culture, may live together and feel united as citizens of the same state, owing to their allegiance to that state.

The distinction between the nation and the state is particularly important in view of the struggles by many nations for state hood. When we talk about international relations we are actually referring to inter- state relations. Since 1920 the principle of national self- determination, through which each nation has the right to be independent and to choose suitable form of government for itself had been almost universally accepted. This principle has led to the establishment of 'nation states'

However, this is not the case with all the states in the world today. So the nation and the state do not coincide or used inter-changeably. These are people, who

feel part of the same nation and are spread across different states. The Kurdish people, for instance, are spread across Iran, Iraq, Syria and Turkey and consider themselves to be a nation. A question that concerns contemporary political philosophers is whether all the people who consider themselves to be a nation can demand statehood and whether they are entitled to statehood?

At the start of 21st century, increasing economic globalisation, mass migration and technological advancements like internet and mobile phones, have made the world ‘a global village’. The life styles of all the people over the globe are now strikingly similar; national identity becomes irrelevant at the everyday level for many classes of people. Writers argue that in the face of a globalised world, Political formalities like the nation - state will lose their earlier role and relevance. Some writers believe that rather than national formations, its trans-national economic and political alliances which will take place in the coming centuries. In this context, writers point to the example of European Union (E.U) as a proof of the decline of the nation-state. Many writers believe that the world will move towards cosmopolitan, universal global culture in place of nation-states.

However, in 21st century decline of nation-state seems nowhere in evidence. Nationalism as a political force is alive and national ‘self-determination’ movements are active whether in Kashmir, in Palestine or liberation of East Timor from Indonesia.

Thus, the state is an all-pervasive, compulsory, permanent and theoretically an omnipotent association, while other associations are limited in their scope, procedure and functions. It is the state which upholds and enforces order amongst other associations within its boundary. The state, therefore is truly called “an association of associations”.

POINTS TO REMEMBER

- The state is the central concept in the study of political Science. The state is a politically organised society with a definite territory.
- The state has certain basic elements like population, territory, government and sovereignty.
- Sovereignty which implies internal supremacy and freedom from external control is the chief attribute of a state.
- The society is a bigger whole whereas the state is only a part of it. The society preceded the state and can exist without definite territory and government.

- Similarly the state is different from the government. The state is an abstract concept, whereas the government is the concrete, physical embodiment of the state.
- Modern states are called nation-states and the two terms. ‘Nation’ and State are used interchangeably. However there are distinctions between the two concepts.
- The state is called an “association of associations” because of its supreme power i.e., sovereignty.

MODEL QUESTIONS

(Group - A)

1. Fill in the Blanks

- (a) The study of Political Science ——— and ends with the state.
- (b) A state means a community or a society politically organized through a government within a ——— territory.

2. Very short Questions

- (a) What is the first and foremost element of state?
- (b) Who said that 10,000 inhabitants as the ideal population?
- (c) Who has said that a good citizen makes a good state?

3. Questions to be answered in 4/5 sentences

- (a) Which comprises the parts of the territory of a state?
- (b) What are the difference between state and society?
- (c) Point out the differences between state and government.
- (d) How do you distinguish can be made between State and Nation

(Group - B)

Essay Type Questions

1. Define State. Discuss the elements of state.



CHAPTER - 3

NATURE OF STATE ACTIVITY

- **Introduction**
 - **Individualism: Background and Meaning**
 - **Welfare state: Background, Meaning, Justification and Criticism, Compulsory and Optional Functions of the state.**
 - **Globalisation: Background, Meaning Impact on functioning of the state, Justification and Criticism.**
 - **Points to Remember**
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MEANING

Let us begin by asking some questions, what is the state supposed to do? In other words, what is the sphere of state activity? Is it too large or too narrow? Should the state perform wide ranging functions, there by exercising control over large areas of our collective and individual life or should it limit its functions to a few ? Under what kind of state activity would it be best possible to promote individual freedom and happiness? These are extremely important issues surrounding the state and its relationship with the individual. But, there are serious disagreements among scholars and opposing theoretical positions on the nature of state activity, In this chapter we have to restrict ourselves to a preliminary explanation of three such views, namely, individualism, welfare state and globalisation, These views are associated with the evolution of the modern liberal state, However, on the nature of state activity, Marxist and socialist theories offer entirely different conceptions and these can be studied later.

INDIVIDUALISM

Background and Meaning

Individualism is the core principle of liberal ideology. Liberalism is the ideology of the industrialised western world. It was the product of breakdown of feudalism and the rise, in its place, of a market or capitalist society. Early liberal ideology reflected the aspirations of a rising industrial middle class and became closely associated with the development of Capitalism. Early or classical liberalism, which had started taking shape in the eighteenth century, emerged as a developed political creed in the early nineteenth century. Initially, liberalism attacked absolute government and feudal privilege. An absolute government is one which possesses arbitrary and unlimited power while liberalism advocated constitutional government. By the early nineteenth century a distinctively liberal economic doctrine had developed that supported laissez faire capitalism and condemned all forms of state intervention.

Individualism or the individualistic theory of state activity, identified with early liberalism, reflects a belief in the supreme importance of the individual as opposed to any social group or collective body. Human beings are seen primarily as individuals possessing separate and unique identities. Hence, it becomes necessary to constitute a society within which individuals can flourish and develop, each pursuing 'the good' as she or he understands it, to the best of her or his abilities. It is argued that the individual is endowed with reason which enables her or him to find what is most conducive to his/her interests. Individuals are considered to be proprietors of their own persons and capacities. They are largely self reliant creators owing nothing to other individuals or society. Hence, any kind of external constraint upon the individuals leading to interference in her or his liberty is not acceptable. This implies a deeply hostile attitude towards the state and all forms of government intervention.

Individualism asserts, that individual's freedom can be maximum if functions of the state are reduced to minimum. It champions the idea of 'that state is the best which governs the least'. The individualistic theory considers protection of the individual from violence and fraud to be the sole duty of government. The basic function of the state, hence, is to look after external and internal security and do police work so that in all other fields like industry, trade, education, art, science, sports, etc. the individual is given complete freedom and initiative. It is not the business of the state to look after welfare of the people. Common good of the society is best achieved if individuals have freedom to pursue their own interests. Individualism

advocates the policy of Laissez Faire, a French term, which means 'leave alone'. It implies non intervention by the state in the economic activities of the individuals. Industry and market must remain free from state control. It also regards the property rights of individuals as a necessary condition of liberty. The state simply has to guarantee enjoyment of property rights and enforce contracts.

It is no surprise that this theory considers the state as a 'necessary evil'. It is 'necessary' because it establishes order and security and assures that contracts are enforced. Without the state the freedom of individuals cannot be safeguarded. It is 'evil' because it imposes regulations and restrict the freedom of individuals. Therefore, individualism favours a minimal or 'night watchman' state. Adam Smith, John Stuart Mill and Herbert Spencer are some of the leading exponents of this theory.

Justification

Individualists justify their position on various grounds: (a) Ethical (b) Economic (c) Biological, and (d) Practical

(a) Ethical : The ethical argument asserts that state interference goes against the development of individual's personality and character. If the state encroaches upon the individual's field and performs functions which the individual should do, the individual loses ability and initiative. This leads to dependence on others and denial of a chance to develop ones individuality. State interference is ethically wrong. Jeremy Bentham argued that individuals are the best judges of right and wrong, moral and immoral. Hence, the state should not interfere in the activities of law abiding citizens. John Stuart Mill strongly defends liberty of thought and expression of individuals because it is useful to society and is the basis of human dignity. He also defends individuals' complete freedom of conduct in all matters not affecting the community, that is, in the case of 'self regarding actions'. The state is prohibited from curtailing or damaging the liberty of thought, expression and conduct, which is crucial for the fullest development of one's personality.

(b) Economic : The justification of individualism on economic grounds is based on a deep faith in the mechanisms of the free market and the belief that the economy works better when left alone by government. Adam P Smith, hence, advocated the abolition of restrictions imposed on business and industry by the government. He insisted that all the producers should have the freedom to sell their goods, services and labour in a free market where prices are determined by free competition. Freedom

of enterprise, freedom of trade and freedom of controls (between buyer and seller as well as between employer and worker) definitely reduce functions of the state and allow the market mechanism to work without any governmental regulation. Such a system of Laissez faire, capitalism is seen as the best guarantee for increasing production, guaranteeing prosperity and upholding individual liberty. This system allows individuals to rise and fall according to merit, thereby ensuring justice.

(c) Biological : One of the boldest presentations of the individualistic doctrine was done by Herbert Spencer. Spencer advanced a vigorous defence of the doctrine by basing his arguments upon the ideas of the famous, British scientist Charles Darwin who presented the theory of evolution of the biological world. According to him a wide range of living species' have developed on earth, while many other species have become extinct. There is a struggle for existence and a process of 'natural selection' decides which species are fittest to survive by nature and which are not.

While Darwin applied these ideas to the natural world, Spencer argued that a process of 'natural selection' also exists within human society, which is characterised by the principle of the survival of the fittest. Society is an arena where there is a continuous struggle for survival among individuals. Those who are best suited rise and survive and prosper, while those who are less fit fall to the bottom and sink. Hence inequality and poverty are natural and inevitable and the government should not interfere with it. Any effort to help the poor or disadvantaged is against the law of nature itself. Such a justification of individualism is completely opposed to the idea of social welfare and claims; that individuals will be encouraged to become lazy and will lose self respect if the state provides free education, health care, old age pension, subsidies, etc.

(d) Practical : The practical argument in favour of minimum state activity claims that state interference is actually associated with inefficiency and corruption: Actual experience, it is claimed, proves that private enterprise is more efficient, dynamic and profit oriented than government departments which are characterised by indifference, delay and wasteful habits. Hence, the activities of the state should be reduced to the minimum.

Criticism

The development of individualism was closely linked to the decline of the absolutist state and the emergence of industrial capitalism in the nineteenth century.

Consequently, along with the growing forces on individual's freedom there was unprecedented expansion of production and trade. But, the drawbacks of individualism gradually led to its decline in the twentieth century. Let us discuss some of its major drawbacks.

Free market economy not only generated huge amount of wealth, it also created large inequalities in income, social status and power. Freedom of contract actually meant freedom of factory owners to recruit and remove their workers in order to maximise profit. Subjected to ruthless exploitation and job insecurity the industrial working class came to be disadvantaged by low pay, unemployment and inhuman living and working conditions. Total absence of state regulation on business and industry brought disastrous consequences for the whole society. Poverty, slums, child labour and disease became more visible than ever. Such developments made it extremely difficult to believe that the arrival of industrial capitalism had brought with it general prosperity and liberty for all. The individualistic axiom that the unrestrained pursuit of self interest produced a just society came to be challenged by new realities. The minimal states proved to be incapable of rectifying social inequalities and injustices.

The individualist condemnation of the state as an evil is not proved by actual experiences. Such a negative conception of the state, in fact, made it incapable of defending vulnerable groups like workers, peasants, artisans, consumers and children from the exploitative nature of the free market economy. The biological argument in support of a minimal state is an extreme example of cruelty towards weaker sections of society. Government with minimum functions failed to produce maximum freedom. Consequently individualism came under attack and liberals were forced to rethink their position on the state.

WELFARE STATE

Background and Meaning

The foregoing critical evaluation provides the background for the emergence of the idea of welfare state. We have seen that condemnation of all forms of government intervention was at the heart of early liberalism of the nineteenth century. But in the late nineteenth century there emerged a form of social liberalism which was more favourable to welfare reform and economic intervention. It advocated a positive notion of liberty which allowed the state to perform wide ranging functions. The great

depression experienced by the industrialised economies of the western countries during the 1930s gave a serious jolt to the free market ideology of individualism. To counter the impact of depression, the U.S.A. government launched its 'New Deal' programme which led to the evolution of social security measures. In the U.K. the Beveridge report became the basis of welfare activities. In India welfare state became a core ideal of its constitution as it prepared itself after independence to combat the problems of backwardness and poverty. The Indian practice of welfarism was also partly inspired by the experience of planned economy in socialist countries.

A welfare state performs positive functions in order to provide its citizens a wide range of social services and to assure them a minimum standard of living. It has been defined in the Oxford Dictionary of Politics as a system in which the government undertakes the main responsibility for providing for the social and economic security of the states population by means of pensions, social security benefits, free health care, and so forth." The welfare state, it must be remembered, is not opposed to capitalism or its inequalities. It only tries to protect individuals from its evil effects. Hence, it regulates the market through economic planning, thereby bringing into existence a public or state sector along with the private sector. The welfare state is also a democratic state guaranteeing to its citizens not only political but also a wide range of economic and social rights.

Justification

A major justification of welfare state emanates from the idea of social liberalism. Influenced by the ideas of J.S. Mill, new liberals like T.H. Green, L.T. Hobhouse and J.A. Hobson advocated a broader, 'Positive' view of freedom. According to these thinkers, freedom does not mean just being left alone. Rather, it is linked to personal development, that is, the ability of the individual to gain fulfilment and self realisation. This is not possible if the state does not step in to create conducive conditions by effective intervention in terms of economic management and social regulation.

The idea of welfare state is based on the assumption that such state intervention can expand liberty by safeguarding individuals from social evils that damage individual existence. The Beveridge report of 1942 had identified such social evils as the 'five giants': want, ignorance, idleness, squalor and disease. In order to undo these evils, the state had to expand its activity beyond police functions.

J.M. Keynes argued that the Laissez faire policy that established a rigid separation between government and the economy was responsible for instability and

unemployment. He rejected the idea of a self-regulating market. According to him, growth and prosperity could only be maintained through a system of managed or regulated capitalism, with key economic responsibilities entrusted to the state.

The case for a welfare state looks stronger in poor countries like India where large sections of the population depend on state assistance for food security, literacy, shelter, health facilities, employment, etc.

Criticism

The idea of welfare state symbolising state intervention came to replace the *laissez faire* system. The power of state expanded at the expense of market and the former assumed a wide variety of responsibilities. However, it came to be criticised for its weaknesses. Let us look at some of those

- (1) Welfare state led to creation of a large bureaucracy as government departments and agencies kept multiplying. This causes delay and inefficiency and involves huge expenditure. Vast expansion of welfare activities of state also causes decline of voluntary associations.
- (2) Increased welfare spending means higher taxes and, therefore, lower investment in industry.
- (3) It has also been pointed out by critics that welfare state creates a dependency culture among people, thereby discouraging initiative and the spirit of enterprise.
- (4) Policy of full employment pursued by welfare states and artificial increase in wages under trade union pressures, it is argued, cannot be sustained economically.

In spite of the attack on welfare state made by its critics, it cannot be denied that people in general and disadvantaged groups in particular have immensely benefitted from it. The concept of welfare state successfully removed the opposition between individual freedom and state power.

Compulsory and Optional Functions of a Modern State

Expansion in the sphere of state activity has meant a huge increase in its functions. These functions have been classified as compulsory and optional. Compulsory functions include maintenance of law and order, administration of justice,

protection of property, determination of contractual rights, ensuring civil and political rights, provision of external security and establishment of external relations.

Optional functions involve all matters of economic regulation affecting agriculture, banking, industry, markets, employment, wage, insurance, planning etc. These also include wide ranging social and cultural interventions including social security provisions, educational activities and promotion of art and science. However, such a classification of functions need not be considered as rigid and unalterable.

GLOBALISATION

Background and Meaning

The term 'globalisation' has been subjected to a variety of interpretations. Though it may simply mean global interconnectedness, it includes a number of interlinked and complex economic, technological, cultural, environmental and political processes. However, our attempt in this part of the book will be to limit ourselves to those aspects of globalisation which have a bearing on the nature of state activity.

The concept of globalisation is closely connected to recent changes in the world economy. The entire industrialised world was hit by an economic crisis in the 1970s. Profits fell sharply and capitalist companies were forced to expand the international nature of their production and trade. In the 1980s and 1990s capitalist corporations of rich countries have sought to increase their share of the world market by moving capital from country to country. Multinational Companies (MNCs), controlled the world market from developed countries but doing business throughout the world and, are the dominant actors in the world economy. These MNCs are so rich that in terms of resources they rival the state & rules of international trade as well as domestic economic policies of countries throughout the world have been dramatically changed to meet the needs of free flow of capital, technology and profit across national boundaries.

The international economy has been substantially restructured to remove restrictions on such free flow. International economic and trade organisations like the World Bank, the International Monetary Fund and the World Trade Organisation are advocating and controlling this process of restructuring and the politics of the states are modified to meet the requirements of these organisations. The thinking, in these institutions is greatly influenced by 'neoliberal' ideas. Such ideas had gained

popularity in countries like U.K. and U.S.A. in the 1980s and came to replace the ideas of welfare state. Neoliberalism can be interpreted as a new version of individualism. During the process of globalisation neoliberal policies are being implemented in the underdeveloped countries.

Impact on Functions of State

Neoliberalism developed in the writings of free market economists such as Friedrich Hayek and Milton Friedman. The cores of Neoliberalism are the market and the individual. Its goal is to 'roll back the frontiers of the state'. The development of welfare state had led to a huge expansion of state activity. The attempt now during Neoliberalism is to reverse the process and keep the market free from the control of the state. It is believed that unregulated market capitalism will deliver efficiency, growth and prosperity. State regulation kills initiative and discourages enterprise. It argues that economic institutions of civil society are more effective in creating order and distributing resources than the state. For neoliberals human potential is best realised, not through the power of the state, but by the promotion of a free economy.

Hence, the process of globalisation has been accompanied by liberalisation or deregulation of economy as well as a process of privatisation. Private enterprise is preferred to the public sector and there is continuous attempt to privatise the public sector. State is gradually withdrawing from economic and social activities. The welfare state, according to the neoliberal argument, had created a culture of dependency and undermined freedom of the market. Now there is a shift to self help, individual responsibility and enterprise. Individuals can no more expect the state to provide social security and basic services. The state is supposed to perform bare minimum functions and to ensure that the market mechanism freely operates. There is a great pressure on the state to reduce its activities and programmes which was meant to support weaker sections of the society.

Justification

The foregoing description contains arguments in favour of reduction in the functions of state under globalisation. The market mechanism, freed from the control of state, is supposed to ensure more efficient utilisation of resources, increased production and overall social prosperity. Besides, such changes in domestic economic policies (through liberalisation and privatisation) makes it easy for a state to get integrated with the international economy and such close integration is claimed to be helpful for the underdeveloped countries of the world.

Criticism

Globalisation has become a sensitive subject, especially in underdeveloped countries like India. It has been subjected to criticism on various grounds. We shall look at it from the point of view of state activity.

Domination of the world economy by MNCs based in developed countries has led to the decline of powers of state in economic matters. The state has also been brought under pressure to implement policies determined by powerful international organisations and rich countries. Critics point out that it has led to the erosion of economic sovereignty of the state.

Loss of the power of the state to intervene in the operation of the market mechanism causes greater inequalities and adversely affects wage, employment opportunities and job security of the working class. In fact, the process of privatisation of existing public sector enterprises has accentuated this problem. Privatisation also implies transfer of control over resources of state to private capitalists who are supposed to pursue their private interests rather than social good.

As the state gradually withdraws from welfare activities, every individual is forced to look after herself or himself. Essential services like education and health becomes more expensive and beyond the reach of the poor. Decline in social security measures adversely affects the needy. Consequently, vulnerable social groups tend to become helpless.

Conclusion

Individualism had flourished during the nineteenth century. In the twentieth century it was discarded and was replaced by welfare state. Late twentieth century has witnessed the re-emergence of an updated form of individualism under the cloak of globalisation. However, the choice today is between welfare state and the neoliberal state under globalisation.

POINTS TO REMEMBER

- Individualism, welfare state and globalisation represent three different views on the nature of state activity. These views are associated with different phases of the modern liberal state.
- Individualism believes in the supreme importance of the individual. It asserts

that individual's freedom can be maximum if state activity is minimum. The state is considered to be a necessary evil.

- Laissez faire means 'leave alone'. It implies non intervention by the state in economic activities.
- The idea of welfare state emerged as a consequence of the exploitative and inhuman nature of free market economy.
- 'Welfare state' is based on a positive concept of individual freedom which sees no distinction between individual freedom and expansion of state activity. The welfare state takes the responsibility regulating economic activities and providing for social and economic security.
- Globalisation is associated with gradual decline of the welfare state and reappearance of a free market economy leading to greatly reduced state activity.
- Loss of the power of the state to intervene in the operation of the market mechanism causes greater inequality in the society and the resources of state are transferred to the hands of private capitalists.

MODEL QUESTIONS

(Group - A)

1. Correct (errors if any) of the following sentences

- (a) 'Laissez faire' means let everybody be free.
- (b) Individualism believes individual is the means to achieve the end.
- (c) India is not a welfare state.
- (d) Maintaining law and order is an optional function of welfare state.
- (e) USA is opposed to globalisation.

2. Fill in the Blanks

- (a) Laissez faire theory is otherwise known as _____ theory.
- (b) _____ theory considers the State as a necessary evil.
- (c) _____ is the chief exponent of individualism.
- (d) _____ state fulfils the basic minimum needs of people.
- (e) A welfare state works to promote the _____ of the people.

3. Multiple choice questions

- (a) The state, according to the individualistic theory is
- | | |
|---------------------------|--------------------------|
| (i) A natural institution | (ii) An evil institution |
| (iii) A necessary evil | (iv) A necessary good |
- (b) In which century did the theory of welfare state originate?
- | | |
|--------------------------------|--|
| (i) 18 th century | (ii) towards the close of 19 th century |
| (iii) 20 th century | (iv) 16 th century |
- (c) Which part of the Indian constitution provides for the welfare state?
- | | |
|--------------|--------------|
| (i) Part III | (ii) Part IV |
| (iii) Part V | (iv) Part VI |
- (d) The welfare state provides
- | | |
|-------------------------|-----------------------|
| (i) Social justice | (ii) Economic justice |
| (iii) Political justice | (iv) All the above |
- (e) Which state fulfils the basic minimum of the people
- | | |
|-------------------------|----------------------------|
| (i) Welfare state | (ii) Individualistic state |
| (iii) Socialistic state | (iv) Marxist state |
- (f) Globalisation seeks to make the world
- | | |
|-----------------------|-----------------------|
| (i) Global village | (ii) One society |
| (iii) One world state | (iv) One nation state |
- (g) Globalisation means
- | | |
|--------------------------------|---------------------------|
| (i) Economic Liberalisation | (ii) Trade Liberalisation |
| (iii) Free movement of capital | (iv) All the above |
- (h) Globalisation started in India in
- | | |
|------------|-----------|
| (i) 1990 | (ii) 1991 |
| (iii) 1994 | (iv) 2000 |

4. Very short answer Questions

- (a) What is Individualism?
- (b) What is Laissez faire theory?

- (c) Why is state regarded as an evil by individualism?
- (d) Who were the leading exponents of individualism?
- (e) What type of government is supported by individualism?
- (f) What is welfare state?
- (g) Why are the modern states called the welfare state?
- (h) Who were the main advocates of welfare state?
- (i) What are the obligatory function of welfare state?
- (j) What is Globalisation?
- (k) What is a constitution?

5. Short answer Questions

- (a) Define Individualism?
- (b) Give some arguments against Individualism.
- (c) Give some arguments in favour of Individualism.
- (d) What is a welfare state?
- (e) Discuss the compulsory functions of a state.
- (f) What is Globalisation?

(Group - B)

Essay Type Questions

1. What is Individualism?
2. Define Individualism. Give arguments against Individualism.
3. Critically examine the Individualistic theory of the state activity.
4. Define welfare state. How does it differ from the police state?
5. What is welfare state? Discuss its compulsory functions.
6. Discuss the functions of a modern welfare state.
7. Discuss the main arguments for and against the welfare state.



CHAPTER - 4

LIBERTY

- **Introduction & Meaning**
 - **Types of Liberty**
 - **Safeguards of Liberty**
 - **Law and Liberty**
 - **Points to Remember**
-
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Liberty is a magic concept which has inspired millions to revolt and the history of mankind is nothing but the story of liberty. The celebrated French philosopher Rousseau on the eve of the French Revolution of 1789 made a historic declaration “Man is born free but is everywhere in chains”. It is a concept with magical touch for which people still prefer to die. Being obsessed by the blood bath of French Revolution Romaine (Madam) Roland went to the statue of Liberty and said “Liberty, how many crimes are committed in thy name”. The fight of the Americans against British imperialism, the French Revolution of 1789 against the Bourbon king, the Proletarian Revolution of 1917 against the Tsarist regime, India’s freedom struggle and Dr. Nelson Mandela’s ceaseless fight against the White Regime etc. are the few instances to highlight the craze for liberty.

The English word ‘liberty’ is derived from the Latin word ‘Liber’ which means free. Thus, the etymological or the literal meaning of liberty is ‘doing what one desires’. But this fails to satisfy the spirit of this concept. From time to time this concept has been variously interpreted to give it varied meanings. Liberty can be enjoyed only in

a society and there would be no liberty if there is no society. Alexander Selkirk, the sailor who was banished in a lonely island, was denied of liberty as there was no human society. Thus, liberty can be enjoyed in a congenial social atmosphere. The Greeks viewed liberty as the subjugation of the individual to the dictates of law or rule of law. Rousseau is of the opinion that liberty of an individual is to be completely identified with the General will or the will of the sovereign. Hobbes holds the view that liberty means absence of restraint. T.H. Green takes liberty as the positive power or capacity of doing or enjoying something worth doing or enjoying. J.S. Mill, the leading exponent of liberty, defines it as “being left to oneself” and to him “all restraint qua restraint is an evil”. A Marxist can see liberty only in the withering away of the state and the establishment of a classless and stateless society, an anarchist can find liberty only in the absence of state by advocating ‘nihilism’, a pluralist can see liberty in the working of various associations, a democrat discovers liberty only in the decentralisation of authority etc. To find out the true meaning of the term ‘liberty’ some standard definitions need citation and elaboration.

Meaning

According to McKenzie “Freedom is not the absence of all restraints, but rather the substitution of rational one’s for the irrational”.

To Gettel “Liberty is the positive power of doing and enjoying those things which are worthy of enjoyment and work”.

According to Prof. H.J. Laski Liberty is “the eager maintenance of that atmosphere in which men have opportunity to be their best selves”.

To Seeley “Liberty is the opposite of over-government”.

M.K. Gandhi writes “Liberty does not mean the absence of restraint but it lies in development of personality”.

John Locke, the social contractualist maintains that “where there is no law, there is no freedom”.

The French Declaration of the Rights of man (1789) says “Liberty consists in the power to do everything that does not injure another.”

The above definitions point out two aspects of liberty- negative and positive. When liberty implies the absence of restraints it means the negative aspect of liberty. It guarantees absolute freedom to the individuals. John Stuart Mill, advocates for

absolute freedom in the matter of self-regarding actions and denies state interference.’ In the positive aspect of liberty free and full opportunity is provided by law to every individual for the development of his personality. Prof. Laski supports the positive aspect of liberty. All the modern democratic states accept and recognise the positive aspect of liberty as against the negative aspect of liberty, as absolute and unrestrained freedom will degenerate into licence. Prof. Barker believes all actions of the individual are social-actions as they affect society.

Broadly, liberty implies the following things.

- (1) Liberty does not mean the absence of all restraints.
- (2) Liberty means the absence of unjust and tyrannical restrictions.
- (3) Liberty means legal, moral and reasonable restrictions on the functions the individuals.
- (4) Liberty is an essential condition for the development of individual personality.
- (5) It means the rights of the individual to do things which are not harmful to others.
- (6) Liberty is to be provided to every individual equally by the state without discrimination.

Types of Liberty

R.M. MacIver observes in his book “The Modern State” that ‘Liberty itself is not one but manifold’. Thus, Liberty can be divided into five kinds.

- (a) **Natural Liberty** : The concept of natural liberty was highlighted by the contractualists like Hobbes, Locke and Rousseau. According to them, the concept of liberty is natural to man and therefore it is in born with man. Rousseau writes “ Man is born free”. It implies that liberty is natural in whose absence an organised political community can never come into existence.
- (b) **Civil Liberty** : The civil liberty is enjoyed in the capacity of a man or an individual. The absence of civil liberty will reduce the man to the status of stud animals. This liberty is granted by the state to its people in the form of rights, like the right to life, liberty, property, freedom of expression, freedom of religion etc.

- (c) **Political Liberty** : Political liberty is enjoyed by a person in the capacity of a citizen. This liberty enables a person to associate himself in the affairs of the state. It includes the right to vote, right to hold public office, right to canvass, right to petition etc. Prof. Laski writes for the enjoyment of this liberty two conditions are necessary- (1) widespread education, (2) supply of honest and straightforward, information.
- (d) **Economic Liberty** : A person enjoys economic liberty in the capacity of a worker. This liberty was highlighted by Karl Marx who propounded for an exploitation free society. It implies the absence of unemployment, exploitation, unfair wages, insecurity, substandard living etc.
- (e) **National Liberty** : National liberty implies ‘self-rule’ of the people. Every nation has a right to rule over themselves. It means the absence of imperialism and colonialism. Thus when a state is born, it is born with a right to be independent and sovereign. The nation should be independent of foreign domination as it will lead to slavery, exploitation and racial discrimination.

Besides the five liberties, with the passage of time, the concept of internationalism and International liberty has emerged and the entire world is viewed as one family of nations. The international liberty implies renunciation of war, abandonment of the use of force and peaceful settlement of all international disputes, limitation on the production of mass destructive weapons, coexistence of nation-states, international cooperation and peaceful world order.

Safeguards of Liberty

Liberty is the most precious thing for an individual and effective steps are needed for its safeguards. From time immemorial there is tussle between the authority of the state and the liberties of the people. An individual enjoys more liberties if the authority of the state is curtailed. Byron says “Eternal vigilance is the price of liberty”. Liberty cannot exist in a dictatorial state. Prof. Laski points out certain steps for safeguarding liberty, Firstly “Freedom will not be achieved for the mass of men pave under special guarantees” and it cannot “exist in the presence of privilege”. Secondly, “special privilege is incompatible with freedom”, Thirdly, “liberty cannot be realised in a state in which the rights of some depend upon the pleasures of others”, Fourthly, “state action is necessary for safeguarding liberty”.

The following are some of the safeguards of liberty.

(1) Urge for liberty & vigilance : The people in a state must have the urge for liberty and must be very vigilant to retain it. Its said eternal vigilance is the price of liberty.

(2) Democratic form of Government : Democracy is form of government where everybody has a share in administration. Only democratic governments can provide congenial atmosphere for the development of human personality. It is conducive for the full enjoyment of liberty.

(3) Separation of Powers : Lord Acton opines that “Power corrupts and absolute power corrupts absolutely.” Power has a inner trend for misuse and power should act as a check to power, The three branches of government : Executive, legislature and judiciary are to be separated although to Dr. Garner “absolute separation is neither possible nor desirable”.

(4) List of fundamental Rights : There must be a clear and unambiguous list of fundamental rights in the Constitution. The people must be conversant with their rights and the government must be aware of the limitation of powers. These rights are justiciable and any act that contravenes the provisions of the Constitution can be declared ultra vires.

(5) Independent Judiciary: There must be an independent and impartial judiciary for the protection and preservation of individual liberty. The judiciary must be independent of executive and legislative control.

(6) Rule of Law : The concept of Rule of law means all persons are equal before law. Law makes no distinction between the rich and poor, the high and low on the ground of caste, sex, language, religion or place of birth.

(7) Public opinion and free press : Healthy public opinion and free press can do a lot to protect liberty. Free press can mobilise public opinion and will make people conscious and vigilant.

(8) Responsible Government : A government formed by the representatives of the people is bound to be responsible. Any mistake on the part of the government will sound its death knell and the opposition party will capitalise on it. A bi-party system with a strong opposition will ensure necessary safeguard for liberty.

(9) De-centralisation of Powers : The powers of the government particularly its executive branch should be distributed among a number of organisations and

these should be located in local, regional and national levels. A centralised power structure can limit liberties of people; because power corrupts and absolute power corrupts absolutely.

(10) Political Education of citizens : People should be politically educated and aware of their rights and liberties and the means available for safeguarding their liberty. Eternal vigilance is the price of liberty.

(11) Economic Equality : Without equitable and fair distribution of income wealth and resources in the society, there can be no real enjoyment of liberty. Political liberty is meaningless without economic liberty.

(12) Organised Interest group : Organised Interest groups and voluntary social service organisation can fight all violations of liberty in any society.

Thus there is important need to secure protect and guarantee liberties through these safeguards.

Relation of Liberty with Law

The relationship between law and liberty is very much controversial in nature and unanimous of opinion is never reached on this vital question. Some philosophers like John Locke opines that law creates a condition, a congenial atmosphere for the enjoyment of liberty. But the contrary view is held by a galaxy of philosophers and eminent scholars like Hobbes, Spencer, Prof. A. V. Dicey etc. To Prof. A. V. Dicey “the more there is one the less there is the other”. Anarchist philosophers like Proudhon, Goodnow, Bakunin, Kropotkin etc. have gone to the extent of propounding for the abolition of state in order to attain greater freedom. Therefore, the truth lies somewhere in between the two extreme views. The relationship between them can be studied in the context of a particular form of government. If in a dictatorial form of government law is the command of the dictator and does not reflect the public opinion, in a democratic system it is an essential condition for the full enjoyment of individual liberty. Since the days of the Sophists to the exponents of Laissez Faire theory, enactment of law was treated as a curtailment over individual liberty. The anarchists pleaded for the abolition of the state for the sake of complete freedom of the individual. Thus, the relationship between law and liberty is dependent on the political system in which they operate.

Thus, the real relationship between law and liberty lies in the reconciliation of the opposite views. Liberty without law will degenerate into a licence. Law without liberty is only oppressive in nature and protects the interests of the law-giver. Law

creates a helpful condition, a congenial atmosphere where an individual gets the opportunity for the fuller development of his inner potentiality. Where law ends, tyranny begins and without a disciplined life liberty has no meaning. Therefore, it brings the conclusion that law without liberty will not bring order but anarchy. As order and anarchy are contradictory, so law and liberty are complementary to each other. Thus, law is a condition for liberty. Both are close and intimate. Law is the protector of liberty as it punishes those persons who transgress laws. Sometimes the laws are the upholder of individual liberty as the enactment of labour laws provides adequate wages to the workers, fixing of a working hour, guarantee pension benefits and compensation in the event of an accident to the workers. Thus, such type of laws safeguards the workers interests against the evil designs of the selfish employer.

But all laws are not the conditions for liberty. A law made by a dictator in complete disregard of the public opinion is only contradictory to liberty. Therefore, in certain political systems law and liberty are contradictory and antithetical.

At the end it can be concluded that absolute freedom is no freedom as it is a licence. Liberty is only a restricted freedom and this restriction is a reasonable restriction imposed by law alone. Thus, liberty is less than absolute freedom to exercise one's will. It is regulated freedom of all.

POINTS TO REMEMBER

- Liberty is an important concept of, Political Science and it is a magic word which has inspired millions to revolt. It is derived from the Latin Word 'liber' which means free. Liberty can be enjoyed in a society where there is congenial atmosphere. Where there is no society there is no liberty.
- A galaxy of philosophers and writers given their views on liberty. Liberty has two aspects negative and positive. When liberty means absence of restraints it implies negative aspect of liberty. When liberty provides full opportunity for the development of individual personality, it is called the positive aspect of liberty. Liberty is less than absolute freedom to exercise one's will. J.S. Mill divides human action into self-regarding and other regarding. Self-regarding action affects the self and therefore denies state interference. But the other-regarding action affects the society and therefore justifies state intervention. But according to Barker all actions are social actions.

Liberty, thus, implies the following things.

- Liberty does not mean the absence of restraints.
- Liberty means the absence of unjust and tyrannical restrictions.
- Liberty means legal, moral and reasonable restrictions on the functions of the individuals.
- It is an essential condition for the development of individual personality.
- It means to do things which are not harmful to others.
- State should provide liberty without discrimination to any individual.
- There are different types of liberty such as Natural Liberty, Civil Liberty, Political Liberty, Economic Liberty, National Liberty and International Liberty.
- Liberty needs to be safeguarded against any kind of state interference. In this direction people's urge for liberty and vigilance, democratic form of government, separation of powers, list of fundamental rights, independent judiciary, rule of law, by party system strong opposition, free press and public opinion and responsible government are most essential.
- Liberty is closely linked up with law as law is a condition for liberty. Liberty without Law will degenerate into licence. Law and liberty are not contradictory but complimentary. Liberty is less than absolute freedom to exercise one's will. So Law is a condition of liberty and an individual can enjoy liberty only within the frame-work of law.

MODEL QUESTIONS

(Group -A)

1. What is meant by freedom? Is there a relationship between freedom for the individual and freedom for the nation?
2. What is the difference between the negative and positive conception of liberty?
3. What is meant by social constraints? Are constraints of any kind necessary for enjoying freedom?
4. What is the role of the state in upholding freedom of its citizens?
5. What is meant by freedom of expression? What in your view would be a reasonable restriction on this freedom? Give examples.

(Group -B)**1. Correct (errors if any) of the following sentences**

- (a) Liberty is the absence of restraint.
- (b) Liberty and equality are opposed to each other.

2. Fill in the Blanks of the following sentences

- (a) Eternal vigilance is the _____ of Liberty.
- (b) _____ do not enjoy political Liberty.
- (c) Liberty is derived from the Latin word _____.

3. Answer in one word/sentence

Liberty is derived from which Latin word?

4. Questions needing very short answer

- (a) What is Liberty?
- (b) What is Negative Liberty?
- (c) What is Positive Liberty?
- (d) What is Political Liberty?
- (e) What is Natural Liberty?
- (f) What is Natural Liberty?
- (g) What is Civil Liberty?
- (h) What is Economic Liberty?
- (i) What is the best safeguard of Liberty?

5. Short Questions (to be answered in 3/4 sentences)

- (a) What is positive Liberty?
- (b) What is negative Liberty?

(Group - C)**Questions with Essay Type Answers :**

- 1. Define Liberty. Discuss its nature.
- 2. What is Liberty? Discuss its relation with law.



CHAPTER - 5

EQUALITY

- **Introduction and Meaning**
 - **Types of Equality**
 - **Equality and Liberty**
 - **Points to Remember**
-
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Introduction

Like liberty, equality is also an important concept of Political Science. Equality is a democratic ideal and in this age of democracy, it is the sine qua non of a democratic govt. The history of mankind is the history of equality and liberty. Throughout the nook and corner of the world the march of equality is received with cheers. Whether it is the fight of Dr. Nelson Mandela against, racial discrimination in South Africa or Sue Kyi's fight against the military regime in Myanmar Republic (Burma), we notice and hear the voice of equality. As no two men are equal in their physical appearances, temperaments and capacities the question of equality assumes greater importance. We talk of equality because people are unequal. The American Declaration of Independence (1776) proclaims that "all men are created equal" and the French Declaration of Rights of Man (1789) says "Men are born and always continue to be free and equal in respect of their rights. Therefore, equality is the cherished aim of every individual in this world. It is the soul of Democracy.

Meaning

Equality literally means a levelling process whereby the difference between the rich and the poor can be minimised. To Prof. Laski it "implies fundamentally a

levelling process. It means that no man shall be placed in society that he can overreach his neighbour to the extent which constitutes a denial of the latter's citizenship". It is essential for social justice. As no two men are equal and as inequality is a naked truth of our very existence, the term 'equality' is given much more importance.

Equality to Prof. Barker is a derivative value. It is derived from the supreme value of the development of personality- in each alike and equally but each along its own different line and of its own separate motion.

According to Prof. H.J .Laski the term equality has a threefold implication.

- (a) It means the absence of special privilege.
- (b) It means not equal opportunity but adequate opportunity for all individuals to develop their inner potentialities.
- (c) It also means that the minimum and urgent claims of all must be met before we can meet the particular claim of some.

Thus, Laski is of the opinion that special privilege is the negation of equality and adequate opportunity is to be provided to all individuals. Identity of treatment does not convey the true meaning of equality. Adequate opportunity means that the right man must get the right opportunity and not equal distribution of paternal property among the successors. It gives priority to the urgent claims of all as against the particular claim of some. An example is given to clarify this point. Providing for drinking water is the urgent claim of all. Provision for providing a Television set to a club by the government is the particular claim of some. If we are to choose between provision for drinking water and provision for T.V. set, our priority must be fixed on the first one.

To G. Sartori "equality has so many facets and so many implications that after we have examined it from all angles we are left with a feeling of not having really mastered it." Thus, as a whole equality does not mean absolute equality in all spheres and to every person. It does not aim at identity of treatment as intellectual and physical capacity varies. It opposes discriminatory treatment. It means complete and absolute equality at the bottom most level and then equal opportunity to develop one's inner potentiality. Equality is a levelling process.

Types of Equality

Equality is of different types. From the beginning of human civilization and the quest for knowledge, the political philosophers have tried to analyse this concept.

Plato, Aristotle etc. have advocated for the principle of natural inequality which implies that nature has made men unequal in capacity and temperament as a result some are superiors to others. But on the contrary Hobbes etc. have talked of natural equality. Nature has made men equal as a weak man can kill a strong man through secret machination and confederacy. But it is Prof. Laski and Prof. Barker who have elaborately discussed on different kinds of equality.

Prof. H.J. Laski, in his book “Grammar of politics”, talked about Economic equality and Political equality. Prof. Barker talks of Legal equality and Social equality. Lord Bryce writes about four types of equality namely (1) civil equality (2) political equality (3) social equality and (4) natural equality. The different types of equality are discussed below.

(A) Legal Equality or Civil Equality : It means that all are equal in the eyes of law and there is rule of law. It also means equal opportunity must be provided by law to all without any discrimination. All persons must be subjected to same civil law and without this democracy will be a theoretical absurdity.

(B) Social Equality : It means that all citizens in a society must be treated at par with each other and there will be no discriminatory treatment on the ground of race, sex, religion, education, caste etc. The Preamble of our Constitution aims at social equality and the directive principles of state policy further strengthens our cherished ambition. The division of society by ‘Mandal’ and ‘Mandir’ is not in conformity with the goal set by the makers of the constitution. They are used by nasty politicians to create vote banks for them and to gain cheap popularity at the cost of national interest.

(C) Political Equality : Political equality is the nerve-centre of a democratic polity. Democracy emerged and thrives on this principle. It means that all the people must be provided with equal right in the field of voting, contesting and holding public offices. The highest office of the land is within the reach of a common man in the street. To form political party, to canvass and to mobilise public opinion in favour of a particular political party comes within the scope of political equality as in political sphere discriminatory treatment is dispensed with. Political equality prohibits all discriminations on the ground of caste, sex, language and place of birth.

(D) Economic Equality : It means that wealth should be enjoyed by all equally. It was Karl Marx who opined that without economic equality, political equality is meaningless. “He who plays the Piper orders the tune” is the acceptable principle of

the society. He who holds the economic lever holds the political lever too. To Lord Bryce it means “the attempt to expunge all differences in wealth, allotting to every man and woman an equal share of worldly goods”. It does not mean equality of income but it definitely means right of an individual to be provided with equal opportunity in the matter of public employment. Everybody should be provided with the basic needs of life. That is food, shelter & clothing.

(E) Natural Equality : It is said that all men are born equal. But a close look will reveal that it is not true. Nature has not endowed same ability to every individual. We should have to understand the term ‘natural equality’ in proper spirit. It means that artificial or man-made inequality must be respected and equality before law with adequate opportunity must be the rightful claim of every individual.

(F) National Equality : National equality means that all the nations of the world are equal. With the growth of international outlook the idea of ‘one world one state’ has been put forth by some writers to save this world from atomic warfare. The concepts of ‘International Law’ and ‘Family of Nations’ have emerged. All nations are equal in the eyes of international law while dealing with other nations of the world.

Thus, to conclude, equality is an abstract concept with a magical touch that has inspired timid millions to revolt in the past. Political philosophers and revolutionaries have used this concept profusely to win over the hearts of the common man. Thus, democracy as a form of government and a way of life can succeed only when there is equality in general and political equality in particular.

Relationship between Equality and Liberty

Equality is a multi-dimensional concept. Diverse opinions are put forth in locating the exact relationship between these two concepts. Writers like De Tocqueville and Lord Acton hold the view that liberty and equality are opposed to each other as they are antagonistic. The desire to have equality destroys the possibility of having full liberty. Achievement of equality demands positive state action. Equality needs a ‘positive state’ and liberty needs a ‘Negative State’. The Elite theory of Democracy is against the principle of equality. But on the other hand writers like Maitland, Rousseau, Barker, Laski etc. hold the view that they are complementary to each other. Liberty and equality have a common end, the promotion of the value of the personality and the free development of its capacities. R.H. Tawney rightly remarks that “a large measure of equality, so far being inimical to liberty, is essential to it”. No one of these can be enjoyed in isolation.

L. T. Hobhouse opined that liberty without equality is a high-sounding phrase with squalid results. Liberty lies in equality. Liberty without equality degenerates into licence and equality without liberty lapses into uniformity.

Liberty is superior to equality because equality serves under liberty. To Prof. Barker “Equality in all its forms, must always be subject and instrumental to the free development of capacity; but if it be pressed to the length of uniformity; if uniformity be made to thwart the free development of capacity, the subject becomes the master, and the world is turned topsy-turvy.”

The development of a variety of personalities requires a large measure of liberty and forbids all attempts to impose a dead level of social and economic equality. Liberty unites men but equality criticises the social hierarchy and contributes towards the stability of the community. Therefore liberty would be hollow without some measure of equality and equality would be meaningless without liberty. In this age of democracy where voting is a powerful weapon in the hands of the electorate economic equality is most essential condition because the economically powerful person will use his economic resources to gain political power. Political equality will be a mockery in the absence of economic equality. All the democratic constitutions of the world have incorporated liberty and equality in their constitutions because both of them have a common aim- the development of human personality and to make life worth-living. Therefore, it is said liberty without equality is narrow and equality without liberty is monotonous. Both of them are the essential conditions of human existence.

POINTS TO REMEMBER

- Equality is an important concept of political science. As no two men are equal in their physical appearances, capacities etc. the concept of equality assumes greater importance.
- Equality literally means a levelling process where the differences between the rich and poor are ironed out. Equality to Barker is a derivative value and it is derived from the supreme value of the development of personality.
- To Prof. H.J. Laski equality has a threefold implications. (a) It means the absence of special privilege. (b) It means adequate opportunity for all and (c) It means that the urgent claims of all must be met before we can meet the particular claim of some.

- Equality is of different types. Prof. Barker mentions about Legal Equality and Social Equality. Prof. Laski talks about Economic Equality and Political Equality. Lord Bryce mentions about Natural Equality. But in this age of internationalism National Equality is advocated by some jurists as it secures equality for all nations of the world.
- Equality and liberty are two important concepts. To De Tocqueville and Lord Acton, equality and liberty are antithetical. But to Maitland, Barker, Laski etc. they are complementary to each other. Liberty without equality is narrow and equality without liberty is monotonous.

MODEL QUESTIONS

(Group -A)

1. Some people argue that inequality is natural while others maintain that it is equality which is natural and the inequalities which we notice around us are created by society. Which view do you support? Give reasons.
2. There is a view that absolute economic equality is neither possible nor desirable. It is argued that the most a society can do is to try and reduce the gaps between the richest and poorest members of society.
Do you agree?
3. **Match the following concepts with appropriate instances:**

(a) Affirmative action	(i) Every adult citizen has a right to vote
(b) Equality of opportunity	(ii) Banks offer higher rate of interest to senior citizen
(c) Equal Rights.	(iii) Every child should get free education
4. A government report on farmers' problems says that small and marginal farmers cannot get good prices from the market. It recommends that the government should intervene to ensure a better price but only for small and marginal farmers. Is this recommendation consistent with the principle of equality?
5. Which of the following violate the principles of equality? And why?
 - (a) Every child in class will read the text of the play by turn.
 - (b) There is a separate railway reservation counter for the senior citizens.
 - (c) Access to some forest areas is reserved for certain tribal communities.

6. Here are some arguments in favour of the right to vote for women. Which of these are consistent with the idea of equality? Give reasons.
- (a) Women are our mothers. We shall not disrespect our mothers by denying them the right to vote.
 - (b) Decisions of the government affect women as well as men, therefore they also should have a say in choosing the rulers.
 - (c) Not granting women the right to vote will cause disharmony in the family.
 - (d) Women constitute half of humanity. You cannot subjugate them for long by denying them the right to vote.

(Group - B)

1. **Correct (errors if any) of the following sentences**
 - (a) Marxists lay emphasis on political equality.
 - (b) Social equality is equality of all to participate in the democratic process.
2. **Fill in the Blanks of the following sentences**
 - (a) Equality implies absence _____ of .
 - (b) One man one vote is based on _____ equality.
3. **Questions needing very short answer**
 - (a) Define Equality?
 - (b) What is social Equality?
 - (c) What is Political Equality?
 - (d) What is Civil Equality?
 - (e) Define Legal Equality?
4. **Short Questions (to be answered in 3/4 sentences)**
 - (a) What is Equality?
 - (b) What is meant by Economic Equality and political Equality?
 - (c) What is meant by legal Equality?

(Group - C)

Essay Type Questions

1. Define Equality. Discuss its features.



CHAPTER - 6

JUSTICE

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- **Meaning**
 - **Development of the meaning of Justice**
 - **Dimensions of justice / Types of Justice**
 - **Contemporary theories of Justice**
 - **Points to Remember**
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The concept of justice is closely related to the concepts of liberty and equality. In everyday life justice is seen as an attribute of law. But if we think closely we shall realise that all laws are not always just. So for numerous people it has a different connotation. For a man of law justice means the judgement pronounced by a judge, for man of religion, justice means a set of morals and values to be followed, for a poor man, justice means abolition of poverty. The list is endless. What it means is, justice depends on our view of society and our type of society.

Meaning

The word justice is derived from the Latin word 'jungere' (to bind, to tie together) and 'jus' (a bond a tie). As a bonding or joining idea, justice serves to organise people together into a right or fair order of relationship by distributing to each person his or her due share of rights and duties, reward and punishments.

Development of the meaning of Justice

It is difficult to provide a precise meaning or definition to the term 'justice'. Yet all through the history of mankind the notion of justice has prevailed and in fact some kind of justice administered to the people.

The earliest conception of justice is found in the writings of Pythagoreans in Greece. Justice was equated with harmony of proportion. A state is just if it is composed of equal parts. The idea was accepted by Plato. Platonic conception of justice is ethical rather than legal. Each individual in his ideal state has a moral obligation to perform the function and fill the station of life for which he is by nature best suited. Thus justice is doing one's duty and not to meddle with the sphere of others.

Aristotle spoke of two types of justice 'distributive' and 'corrective'. 'Distributive justice' assigns each person his due in shape of a share of wealth, honour, public office in proportion to his contribution to the society. A more worthy and virtuous person will have the greater power and greater share of the social resources and rewards. Corrective justice refers to the redress provided to a person for a wrong done to him. It provides relief to an affected person. It provides safeguard against the arbitrary and wrong actions of other individuals and groups.

The conformity of positive law to the higher law was considered as a part of perfect justice by Roman lawyers. St Augustine linked the idea of justice with religion and divinity. Justice consisted in the right relationship between man and God.

David Hume rejected the conception of natural justice and rights and replaced it by the principle of utility. Bentham maintained the principle of 'greatest happiness of the greatest number' as the measure of right and wrong.

In the 19th century, Marxists viewed the concept of justice in terms of the 'economic system' and 'mode of production' of society. Marx and Engels in their analysis of economic relation allowed no place for justice. For them, it was a work for the exploitation of the working class by the capitalists. Justice would be available to the working class with the end of capitalist mode of production.

Thus we find that the concept of justice has not been static. It has been changing with the change of time and circumstances. Two meanings of justice which emerged from the above account are, one broad and other narrow. The broad meaning of justice is associated with the social system as a whole and is understood as righteousness and virtue. Justice is infallible and unchangeable. The narrow meaning of justice is associated with the legal system and legal process in the society. It is concerned with the protection and maintenance of rights and obligations of individuals, groups and public authorities by a legitimate legal process and an independent and impartial judicial system. It is primarily identified with the legal aspect of justice.

Dimensions of justice / Types of Justice

There are four important dimensions/types of justice - legal, political, social and economic.

(1) Legal Justice : Justice, realised through the legal and judicial system is known as legal justice. It has two broad elements: (1) Laws should be reasonable, fair and proper. (2) Every individual should get justice according to the rule of law as opposed to the arbitrary will of men.

Laws should be reasonable and fair. They should be equal for all and not be discriminatory. This implies equality before law. A democratically constituted legislature is likely to make rational and just laws. Legal justice also ensures that everyone should be able to obtain impartial justice from the judicial system. It means that everyone is entitled to equal protection of laws. To realise this, the court of law should be independent and impartial in interpreting laws to deliver justice. In fact the independence of judiciary is now an universally accepted principle of modern justice. The judiciary is regarded as the watch dog of the constitution and protector of the rights of the people.

(2) Political Justice : The essence of the political dimension of justice is 'political equality' within the state. It means equal participation of all in the affairs and power structure of the state. While the legal dimension of justice is concerned with the formal rules, the political justice is concerned with the actual policies through which the political process realises the norms of justice.

The roots of political justice relate to the relationship between the individual and the authority i.e the state. Political equality means that all citizens have the same political rights, equal voice in governments and equal access to all offices of authority, provided the necessary qualifications are fulfilled. As a matter of fact through political rights, democracy can actually be realised.

However, political justice does not mean absolute political equality. That is neither possible nor desirable. Enjoyment of political rights is subject to certain conditions. For instance minimum age for the right to vote, or contest in the election cannot be called discriminatory. Above all, it is the 'political will' of the ruling class which can ensure the enjoyment of political justice.

(3) Social Justice : Social justice means social equality. Positively it means availability of equal social opportunities to all for the development of personality; it implies giving every one his due in society. Negatively it means absence of any discrimination on grounds of caste, colour, creed, race, class or sex. There exists no unnecessary social restraint which retards the growth of an individual and the realisation of a good and happy life. The policy of racial discrimination followed in south Africa is a negation of the principle of social equality or social justice. Social

justice aims at removing exploitation, oppression and discrimination in society. It stands for special protection of the weaker sections in the society. Social justice has been accepted as the guiding principle of welfare states. In India the basic elements of social justice have been incorporated in certain Fundamental rights and Directive principles of state policy of the Constitution.

Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. But the state can make special provision for women, children and people of backward classes. Art 16 provides for equality of opportunity in matters of public employment. Art 17 deals with abolition of untouchability. Art 23 prohibits traffic in human beings and forced labour. Under the Directive Principles of state policy, Art 38 enjoins upon the state to secure a social order for the promotion of welfare of the people. Art 42 provides for just and human conditions of work and maternity relief. Art 46 also deals with the protection of weaker sections of the people from all forms of exploitation.

However, social justice cannot be forced upon the people by the Constitution and the laws of the state. The need is the cultivation of sentiment of equality and a change of our social habits and social institutions.

(4) Economic Justice : Just as the idea of social justice is the offshoot of social equality, economic justice cannot exist without economic equality. Economic equality involves sufficiency for all to satisfy their primary needs. Any society which allows some people to starve and others to have abundance denies economic justice. If we want a society of social equals, we can hope to build it only on a foundation of economic justice. The state should therefore guarantee to all citizens access to the means of satisfying their primary economic needs.

Economic justice has been looked at from two different points of view-The Liberals and Marxists. The liberals consider the state as an agency to provide socio-economic justice and they believe the ends of economic justice would be met if the state could fulfil the economic needs of the people, disparities of income are reduced in society, and equal opportunity is provided to all. On the other hand, the Marxists believe that a just socio-economic order could be established only when all modes of exploitation over working class is ended after a successful revolution. A society divided into rich and poor; haves and have-nots is incapable of providing economic justice to the people. A real economic justice can be realised in a classless Communist society.

While it cannot be denied that socio-economic justice is a panacea for our political and social ills, it has not been attained in any society.

Contemporary theories of Justice

The notion of justice has developed over the ages. It has evolved in its nature from Plato's ethical to Aristotle's distributive justice, then it moved to religious, utilitarian to socialist and finally to the libertarians. F.A. Hayek (*The Constitution of Liberty* 1960) J. Rawls (*A Theory of Justice*, 1972) Robert Nozick (*Anarchy, State and Utopia*, 1974).

For F.A. Hayek, justice seeks to attain individual good rather than the social good. According to him, justice is freedom, all freedom for the individual, all that he/she wants to obtain for his/her good. His theory of justice is procedural justice. Justice must be sought in a rule of law, treating individuals equally.

John Rawls' Justice : His interest in the liberal state and in the concept of justice has led him to formulate and reformulate his theory of justice for about four decades. In his book of 1970s, 'Justice' for Rawls is fairness and today his concept of justice deals with:

- (i) The maximisation of liberty subject to such constraints as is essential for protection of liberty.
- (ii) Equality for all both in the basic liberties of social life and also in the distribution of all forms of social goods, subject to the greatest possible benefit for those least well off in a given scheme of inequality.
- (iii) Fair equality of opportunity and elimination of all inequalities of opportunity based on birth and wealth.

Nozick's theory of Justice : It stands opposite to that of Rawls; where as in Rawls theory, justice is seen as a particular pattern of social arrangement, Nozick does not believe in this. He believes individuals have rights and these rights be respected at all costs and in all circumstances. He views, rights are so fundamental for justice and any constraints upon others actions is wrong. One can justify a minimal state which means minimum laws and maximum liberties and rights of individuals.

Thus there can be no uniform or universally acceptable definition of justice. Our understanding of justice would depend on our understanding of the world around us.

POINTS TO REMEMBER

- The word justice is derived from the Latin word 'jungere'
- In Greece, Justice was equated with harmony of proportion.
- There are four important dimensions/types of justice - legal, political, social and economic.

- F.A. Hayek, justice seeks to attain individual good rather than the social good.
- Justice for Rawls is fairness
- Nozick: rights are so fundamental for justice and any constraints upon others actions are wrong.

MODEL QUESTIONS

(Group - A)

1. Does the principle of considering the special needs of people conflict with the principle of equal treatment for all?
2. Which of the following arguments could be used to justify state action to provide basic minimum conditions of life to all citizens?
 - (a) Providing free services to the poor and needy can be justified as an act of charity.
 - (b) Providing all citizens with a basic minimum standard of living is one way of ensuring equality of opportunity.
 - (c) Some people are naturally lazy and we should be kind to them.
 - (d) Ensuring a basic facilities and a minimum standard of living to all is a recognition of our shared humanity and a human right.

(Group - B)

1. **Questions needing very short answer**
 - (a) What is justice?
 - (b) What is Legal justice?
 - (c) How can justice be secured?
3. **Short Questions (to be answered in 3/4 sentences)**
 - (a) What is social justice?
 - (b) What are the features of justice?

(Group - C)

Questions with Essay Type answers

1. What is justice? Discuss its types.
2. Define social justice. What is its nature?



CHAPTER - 7

RIGHTS

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- **Introduction and Meaning**
 - **Types of Rights**
 - **Rights and Duties**
 - **Human Rights**
 - **Points to Remember**
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Prof. H.J. Laski rightly remarked that, “a state is known by the rights it maintains”. In an authoritarian state, the individuals virtually enjoy no liberty. But in a democratic state people enjoy a number of liberties. The individual has right not as an isolated being but as a member of the society and state. Rights have no meaning unless they are recognised and upheld by the state. The right of one individual becomes the duty of another. Rights prevail only in a state and it gives values to the concept of liberty and equality.

Meaning

The citizens of a state enjoy a number of privileges or rights. A right may be defined as a claim or power of an individual against others which are recognised and enforced by the state. Prof. Laski defines rights as “those conditions of social life without which no man can seek, in general, to be himself at his best”. To T.H. Green “Right is a power claimed and recognised as contributory to common good.”

Thus, right means some opportunities and privileges that are granted by the state to its people for the development of their inner potentialities. A right has to satisfy five conditions.

- (1) The rights are claims of citizens from the state.
- (2) It aims at the development or enrichment of the personality.
- (3) It promotes social good.
- (4) It must be recognised by the state.
- (5) They are regulated by the state in the interest of the community.

With regard to rights there are broadly three theories (a) The theory of Natural Rights and Natural Law which states that natural law confers some natural rights on the individuals. These rights are not created by the state but are protected and maintained by the state, (b) The Legal school of thought which states that, the sovereignty of the state is the source of all authority and all the rights, (c) The Economic theory states that, rights are the reflection of economic conditions of the state.

Types of Rights

The rights are broadly classified into two categories- Moral Rights and Legal Rights. Moral rights are based on our ethical awareness and on a sense of morality and justice. As these rights are not normally enforced by the court of law but by the customary provisions, its breach may not amount to punishment by the state. But on the other hand, legal rights are recognised by the state and; are enforced by the court of law. Therefore, its violation will lead to punishment. The legal right can be further sub-divided into two categories- Civil Rights and Political Rights. The Civil Rights are essential to the free development of individual self. Right to life, liberty and property are included in this category in the absence of which no civilised life is possible. But the rights of the people to participate in the affairs of the state such as taking part in election, associating with the government of the state etc. are known as political rights: These rights are enjoyed by the people not in their personal or private capacity but in the capacity of being the citizens of that particular state. In recent years one more right namely economic right has been added to the category of legal rights. Some of the important rights are given below.

- (1) **Moral Rights :** As moral rights are not guaranteed by the state these are to be asserted by the citizen. Right to resist the state is a moral right. Green advocated resistance to the unjust state and Gandhi through Satyagraha- a kind of peaceful resistance got rid of many unjust laws. But this right is to be used only in extreme cases as it is likely to incur far-reaching consequences.

- (2) **Legal Rights :** These rights are recognised by the state and are also enforced by the state. In the event of any breach of such rights and privileges one can take shelter in the court of law. Therefore, these rights are enforceable in a court of law. The legal rights are of three kinds such as Civil Rights, Political Rights and Economic Rights. Some of these rights are given below:
- (3) **Civil Rights :** These rights consist of those privileges in the absence of which no body can attain his best self. Some of the civil rights are as follows:
- (i) **Right to Life:** A citizen has the right to life and the right to protect his body. It is fundamental to human existence.
 - (ii) **Right to Liberty:** It means that a citizen is entitled to enjoy privileges freely for the development of his inner self without hindrances: Prof. Gilchrist opines that “Mere life without movement would be meaningless and without the exercise of human faculties it would not rise above the level of that animals”. The freedom from arbitrary arrest and detention enables a citizen to seek redressal in a court of law.
 - (iii) **Right to Property:** The institution of property, prior to the advent of Marxism, was viewed as an ally of civilised life. Locke was the greatest exponent of the institution of private property. It creates a sense of possession, responsibility and interest to work. The state can restrict this right for the larger interest of the community.
 - (iv) **Right to Equality:** That all are born equal and are to be treated equally is the essence of this right. It is the first principle of democracy and it also prescribes for some punishment for the offenders who commit the same offence under the similar circumstances.
 - (v) **Right to Contract:** The citizens can enter into contracts with their fellow beings on the basis of equality.
 - (vi) **Right to Family:** This is another important civil right enjoyed by the citizens.
 - (vii) **Right to form Union & Association:** As human beings are destined to live in groups, this right is enjoyed by every citizen.
 - (viii) **Right to Freedom of Religion and Conscience:** This was treated by some as a right and the individuals were given the option to choose their

own religion. The state, however, is entitled to impose restrictions on this right on the ground of morality, maintenance of law and order and decency;

- (ix) **Right to Freedom of Speech and Expression:** The freedom of thought and the freedom of speech and expression are the cornerstone of democracy. Prof. Laski is of the opinion that “To allow a man to say what he thinks is to give his personality the only ultimate channel of free expression and his citizenship, the only means of moral adequacy”.
 - (x) **Right to Language and culture:** The right of every citizen to preserve, protect and develop his own language and culture is an important civil right.
 - (xi) **Right to Freedom of Movement:** To move freely through out the territory of a state, is a civil right enjoyed by the citizen of that state.
 - (xii) **Right to Education:** The right to education aims at minimum intellectual level and training that form a part of his civil rights.
 - (xiii) **Right to Freedom of Assembly:** The right to freedom of assembly in a peaceful manner without arms is also an important civil right.
- (4) **Political Rights:** The opportunity granted to the citizens to take part in the administration of the state is known as political rights. Some of the important political rights are as follows:
- (i) **Right to Vote:** It is an important political right and it is also known as right to franchise. Every adult citizen has the right to cast his vote freely without fear and it confers the right against discriminatory treatment in this regard.
 - (ii) **Right to be Elected:** The right to contest election and the right to be elected are closely connected with the right to vote. As democracy rests not on the principle of heredity but on the principle of election, this is an important political right.
 - (iii) **Right to hold Public Office :** The right to hold public office in accordance with the established procedure and without any discrimination is also an important political right.

- (iv) **Right to Petition** : The democratic government operates efficiently if the citizens enjoy the right to petition thereby ventilating their grievances. The people can submit petition against their own government or any of its institution.
 - (v) **Right to Discuss Public Policy**: The people enjoy the right to discuss public policy either to appreciate or to criticise it. This keeps the government on the right track.
 - (vi) **Right to Residence**: A citizen has the right to reside and settle in any part of the state. As voting rights are connected with residence, so it is an important political right.
 - (vii) **Right to Protection while Staying Abroad**: When a citizen goes to a foreign state or stays abroad he gets all kinds of protection from his native state.
 - (viii) **Right to Public Meeting** : To J.S. Mill, “The entire world has no right to silence a fool”. A citizen enjoys freedom to transmit his views in a public meeting without any fear.
- (5) **Economic Rights** : Rights like, right to work, right to rest and leisure etc. are some of the important economic rights in the absence of which civilised living become impossible. In the socialist states these rights are paid much importance.

Relationship between Rights and Duties

A citizen cannot enjoy rights in isolation because the rights of some are the duties of others. Therefore, the rights and duties are correlated. Aristotle, the father of political science writes “A good citizen makes a good state” and Mahatma Gandhi opines that “If we all discharge our duties, rights will not be far to seek”.

Allegiance to the state, obedience to law, payment of taxes, honest exercise of franchise, willingness to hold public office, duties towards humanity and internationalism, eternal vigilance etc. are some of the important duties of the citizens. The Constitution of India in Part IV (A) consisting of Art 51 (A) enumerates ten Fundamental Duties to be performed by the citizens.

Therefore, rights and duties are related to each other. Prof. L. T. Hobhouse writes that rights are “what we may expect from others and all genuine rights are conditions of social welfare they are conditioned by, co-relative to his social

responsibility”. Thus, it is the duty of everybody not to take any action which is likely to affect the rights of others. Every right has a corresponding duty and Prof. Laski prescribes a fourfold relation between rights and duties.

- (a) one’s right implies the other’s duty.
- (b) one’s right implies one’s duty to recognise similar rights of others.
- (c) one should exercise his rights for the promotion of social good.
- (d) As the state guarantees and protects the rights of everybody, one has the duty to support the state.

Nature of Human Rights

Human Rights are generally defined as the rights which every human being is entitled to enjoy and to have protected. All societies and cultures have in the past developed some conception of rights and principles that should be respected and some of these rights and principles have been considered universal, social in nature. The struggle for the recognition of human rights and the struggle against political, economic, social and cultural oppression, against injustice and inequalities, have been an integral part of the history of all human societies. The conception of the rights which every human being is entitled to enjoy by virtue of being a member of the human species has evolved through history in the course of these struggles.

According to Maurice Cranston Human rights are distinguished from other moral rights in possessing the following inherent characteristics:

1. **Universality:** Maurice Cranston asserts that human rights differ from other moral rights in being the rights of all people at all times and in all situations.
2. **Individuality:** Human rights are the rights of individuals, to meet the needs and purposes of individuals. The concept of rights is grounded in and derives much of its support and colouring from the acceptance of man as a free individual a being of dignity and worth, endowed with reason and conscience and capable of moral choice and free activity.
3. **Paramountcy:** Human rights are something of which no one can be deprived of without a grave offence, not to do certain deeds which should never be done, certain freedoms which should never be invaded

something's which are supremely sacred. It would be wrong for a government to deny human rights, simply on the ground that the exercise of the right is not in the public interest or is contrary to the majority will. Individuals if necessary are entitled to exercise them in spite of law to the contrary.

4. **Practicability:** One cannot have a right to the impossible human rights claims are never made to what is physically impossible (to live forever) or to what must necessarily be restricted to a very small minority (to have one's own personal and exclusive private physician), nor are they made in terms of what now enjoyable by only a small minority of the world's population, for example the poor of the Third World claim the right to an adequate livelihood not the right to live as well as the average man of the western world.
5. **Enforceability:** The issue of international enforceability of human rights is much more complex than it appears. International courts are not capable of carrying out the role, which an enthusiastic human right activist would assign to them. There is no way in which human rights violations can be redressed by an international court against a state party determined to accept no interference.

Human Rights constitute the foundation for men and women to lead a civilized life. Democracies all over the world have guaranteed a variety of rights so that their citizens lead a healthy life. Generally rights are defined as claims of the individuals recognised by the society and enforced by the state. Without rights individual cannot develop his personality. But 'human rights' are inherent in human nature, which are absolutely essential for living as human beings. These are the very basis of human life dignity and worth. The concept of human rights is of a recent, post-second world war origin.

The concept of human rights was evolved originally by the domestic legislation of some states in the form of natural-law-documents like the Magna Carta in England, the Bill of Rights in the U.S.A. and the Declaration of Rights of man in France. After the Second World War, all the civilised nations of the world being abhorred by the brutality of nuclear war decided to adopt a Universal Declaration of Human Rights. The U.N. Commission on Human Rights formulated a Draft Declaration of Human Rights on June 10, 1948 which was accepted by the General Assembly as the Universal

Declaration of Human Rights on December 10, 1948 without a dissenting vote. Art 1 of the Declaration proclaims that “all human beings are born free and equal in dignity and rights”. The Declaration from Art 2 to Art 21 provides civil and political rights such as right to life, liberty, freedom of religion, freedom of thought and expression etc. From Art 22 to Art 27 it provides social and economic rights such as right to work leisure, equal pay for equal work etc.

While adopting the universal Declaration of Human Rights, it was clearly stated that in no way this declaration interferes with the domestic jurisdiction of each state. Basically the declaration has more moral than legal basis and to give legal basis to the rights and freedoms proclaimed in the Universal Declaration of Human Rights, two covenants on Civil and Political Rights as well as Economic and cultural Rights were formulated. These covenants came into force in 1976.

In Indian Constitution both the Fundamental Rights in Part III and Directive principles of state Policies in Part IV seek to bring into practice the principles of human rights assuming to each individual a life of dignity.

Violation of Human Rights & Redressal

Human rights are violated in different ways like (1) Repressive Laws of the state (2) Terrorism (3) Caste, Sex, Religion and regional discrimination (4) Social and economic exploitation (5) Colonialism and Imperialism (6) Evil Social Customs (7) Misuse of Police Power (8) Corruption (9) Ignorance and indolence (10) Economic disparity.

During the last six decades, the Indian Government has set up several special institutions to give effect to the constitutional provisions of human rights of all persons including the disadvantaged and weaker sections of the society. They are

1. The National Human Rights Commission.
2. The National Commission for Scheduled Castes and Scheduled Tribes.
3. The National Commission for Minorities.
4. The National commission for women
5. The National Commission for Backward Classes.

Thus protection of human rights and freedoms has emerged as the common universal concern of the whole human kind.

POINTS TO REMEMBER

- Prof. Laski remarks that a state is known by the rights it maintains. The rights are the privileges and opportunities granted by the state to its people for the development of their inner potentialities. There are three theories of rights such as (a) the theory of Natural Rights (b) The Legal School of thought and (c) The Economic theory of state.
- The rights are broadly classified into Moral Rights and Legal Rights. Legal rights can be sub-divided into civil rights, political rights and economic rights.
- Rights and duties are two faces of the same coin because the rights of some are the duties of others.
- After the Second World War the concept of Family of Nations has “assumed great importance because people of the world detest war as a means to settle all disputes. This paved the way for the adoption of Universal Declaration of Human Rights on 10th December, 1948, by the General Assembly, without a dissenting vote. The problem of people of a particular state is not the internal problem of that state but the problem of the entire world. The whole humanity comes forward with helping hands to sort out the problems of a particular state.

MODEL QUESTIONS

(Group - A)

1. What are rights and why are they important? What are the bases on which claims to rights can be made?
2. On what grounds are some rights considered to be universal in nature? Identify three rights which you consider universal. Give reasons.
3. Discuss briefly some of the new rights claims which are being put forward in our country today — for example the rights of tribal peoples to protect their habitat and way of life, or the rights of children against bonded labour.
4. Differentiate between political, economic and cultural rights. Give examples of each kind of right.
5. Rights place some limits on the authority of the state. Explain with examples.

(Group - B)**1. Correct (errors if any) of the following sentences**

- (a) The right to rest and leisure is a social right.
- (b) The right to freedom of religion is a political right.
- (c) Terrorism does not violate Human right.

2. Fill in the Blanks of the following sentences

- (a) Political rights are enjoyed only by _____ of a state.
- (b) Right to life is a _____ right.
- (c) Universal declaration of human Rights is adopted in _____ year.
- (d) _____ day is observed as Human Rights Day.

3. Answer in one word/sentence

- (a) Who does not enjoy political rights?
- (b) What is the minimum age to enjoy the right to vote in India?

4. Multiple choice questions

- (a) What right is the right to vote?
 - (i) Social
 - (ii) Political
 - (iii) Economic
 - (iv) Legal
- (b) The Universal Declaration of Human rights was made on
 - (i) 10th Dec 1948
 - (ii) 10th Dec 1950
 - (iii) 30th Dec 1948
 - (iv) 24th Oct 1945
- (c) National Human Rights Commission of India was constituted in
 - (i) 1990
 - (ii) 1991
 - (iii) 1994
 - (iv) 1995

5. Questions with very short answer

- (a) Define Rights?
- (b) What is a duty?

- (c) What are Political Rights?
- (d) How rights and duties are related?

6. Short Questions (to be answered in 3/4 sentences)

- (a) Define Rights.
- (b) What are Human Rights?
- (c) What are Civil Rights?
- (d) Explain the duties of a citizen.
- (e) Discuss the political Rights of a citizen in a democratic state.

(Group - C)

Essay Type Questions

1. Define Rights and discuss its types.
2. What are Human Rights? How they are protected?



CHAPTER - 8

SECULARISM

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-
- **Its Meaning**
 - **Western and Indian approaches to Secularism**
-
-

Secularism is necessary to strengthen nationalism in a pluralistic society. It abandons the idea of one-culture-one state. Also Secularism becomes necessary to consider ways by which different cultures and communities can survive and flourish within a country. It is in pursuit of this goal that many democratic societies today have introduced measures for recognising and protecting the identity of cultural minority communities living within their territory. The Indian constitution has an elaborate set of provisions for the protection of religious, linguistic and cultural minorities. When different cultures and communities exist within the same country, how should a democratic state ensure equality for each of them? The world we live in is one that is deeply conscious of the importance of giving recognition to identities. Today we witness many struggles for the recognition of group identities, many of which employ language, culture and religion as parameters of recognition of their respective identity. In this chapter we will try and see how the concept of secularism may be applied to answer that concern.

In India, the idea of secularism is ever present in public debates and discussions, yet there is something very perplexing about the state of secularism in India. On the one hand, almost every politician swears by it; every political party professes to be secular. On the other hand, all kinds of anxieties and doubts beset secularism in India. Secularism is challenged not only by clerics and religious nationalists but by some politicians, social activists and even academics.

Over the last three decades, Secular States virtually everywhere, have come under strain. The doctrine of ‘Secularism’, which was defending those, has also been subjected to severe criticism. To begin with, it is worth mentioning here that the secular states and their ideology ‘Political Secularism’ are really under siege everywhere. Secularism was severely jolted with the establishment of the modern theocracy in 1979 in Iran. By the late 1980s, Islamic political movements had emerged in Egypt, Sudan, Algeria, Tunisia, Ethiopia, Nigeria, Senegal, Turkey, Afghanistan, Pakistan and Bangladesh.

Movements challenging Secular States were hardly restricted to Muslim Societies. Protestant movements decrying Secularism emerged in Kenya, Guatemala and Philippines. Protestants became a force in American Politics, Sinhalese Buddhist nationalists in Sri Lanka, Hindu nationalists in India and Sikh nationalists in Punjab. In Canada and Britain also people began to question on separation of State and Religion. Thus, it is clear that the western ideas of political secularism do not appear to be acceptable to all. These ideas have come under strain even in Europe.

It is generally accepted that modern democracies have to be secular. But, there is some ethnocentric problem, Secularism and Secularization has raised so much of controversy both conceptually and in reality. Secular, Secularism and Secularization—these three words often are used interchangeably in social science. The word secularism, itself lacks any precise definitions. In its dictionary meaning the term secular relates to something worldly and is ‘opposed to sacred things’ or ‘things not related to religion’. Secularism relates to a doctrine that rejects religion or to an attitude that religion has no place in civic affairs. It precisely stands for ‘things not spiritual’, ‘not ecclesiastical’ and for ‘things not connected or concerned with religion’.

The word “Secularism” was first coined by George Jacob Holyoake (1817-1906) in the mid-19th century. Many believe that secular is derived from Latin word “saecularis” which means “of a generation, belonging to an age”. The more likely origin of the word “secular” as we understand it today is Latin “laicus” (French ‘laïcité’). In English usage “laic” means “things not connected or concerned with religion”. According to Wikipedia, Laic is a concept denoting the absence of religious involvement in government affairs as well as absence of government participation in religious affairs. It has evolved to mean equal treatment of all religions. It is the principle of separation between religion and the state. In France, it means the freedom of public institutions, especially schools from the influence of the Catholic Church

or religion. The French state secularism is based on respect for freedom of thought and freedom of religion. Thus, the absence of a state religion, and the separation of the state and Church, is considered to be a qualification for such freedom of thought. It relies on this separation, this way each individual appears as a simple citizen equal to other citizens, irrespective of ethnic, religious or any other aspects. Based on this concept, the government must refrain from taking positions on religious principles and only consider religious subjects for their practical consequences on people's lives. It is meant to protect the government from any possible interference from religious organizations, and to protect the religious organization from political quarrels and controversies. Secular, on the other hand, means having no religious affinities. It does not concern with or relates to religion. Religion is not involved with politics. The people are free from all the religious rules and teachings. There is no influence of religion on the decisions taken by the government for the people. The main difference between secular and laic is that in secularism, the government completely ignores the religion, whereas in laic, there is a separation of religion and government. That is to say that "laic" is more likely the etymological source of the word secularism as we understand it today in India.

Definitions :

The word "Secularism" seems to possess different meanings and connotations and has been differently treated by different people. The word secular further suggests that the state, moral, education . . . etc should be independent of religion.

Collin's National Dictionary defines "Secularism" as an ethical doctrine, which advocates a moral code independent of religious beliefs and considerations.

According to 20th century Webster's Dictionary, Secularism is the belief that religious and ecclesiastical affairs should not enter into the affairs of the state and public education.

Black Shield defines, Secularism as "religious freedom, tolerance and respect for ideas of rationalism, materialism and humanism".

In the new English Dictionary Secularity denotes the absence of connection with religion. It is something not spiritual, but "temporal", "worldly" or "mundane".

D.E Smith observes that a democratic secular state is a pragmatic solution to the problem of religious diversity, from the point of view of maintaining social stability and harmony.

S.P. Aiyar says that on secularism depends the stability of India, the integration of the people of sub-continent who are divided by religion, race, language and caste.

Dr. S. Radhakrishnan once wrote in 1947 that “Secularism is the chief weakness of our age”. He observed that the religious impartiality of the Indian state is not to be confused with secularism or atheism. Secularism is here defined in accordance with the ancient religious tradition of India, (LOKA SAMASTA SUKHINO BHAWANTU- Let all be happy)

David Martin says, “A secular man is no more directed by faith or sentiment but by logical thinking. It enhances a social life based on scientific outlook and scoffs at anything religious”.

In the opinion of Jawaharlal Nehru “The Government of a country like India with many religions that have secured great and devoted traditions for generations can never function satisfactorily in the modern age except on a secular basis. From the point of view of national unity and stability, the principle of secular state represents a sound practical approach. Any other approach would tend to alienate the religious minorities and impede the progress of national integration.

The above definitions suggest that the essence of secularism rests on two basic principles:

- (a) Separation of religion from politics.
- (b) Acceptance of religion as purely and strictly a personal affair of the individual having least attachment with the state.

The provisions of the Indian constitution denote the meaning of Secularism as:

1. Religious neutrality or religious impartiality.
2. It may require the individual's status to be above religion.
3. It thus conceives of a state which has no religion. Hence, it stands for separation of state and religion.

Secularism is thus “neither religious, nor irreligious, nor anti-religious but divorced from all religious dogmas”. Rather, it signifies, “equal respect for all religions” or “religion-friendly” or “SARVA DHARMA SAMAH BHABA”. Secularism thus neither affirms nor denies the truth of religion”.

According to Holyoake, in its political aspect, secularism is to be studied at the backdrop of the historical struggle between the state and the church, a struggle between temporal and spiritual authorities. In its social dimension, secularism is a revolt against the arbitrary influence of religion on the individual's life. Gradually people resented to the all-pervasive effect of religion on human life. Scientific outlook and reason or conscience gave birth to secularism. There are three types of arguments in favour of secularism:

- (a) That religion and secularism are mutually exclusive but not hostile.
- (b) That secularism is hostile to religion; hence one of the two, and not both, should survive.
- (c) That both secularism and religion can live together with mutual-understanding among the communities.

Inter-religious Domination:

In our own country, the Constitution declares that every Indian citizen has a right to live with freedom and dignity in any part of the country. Yet in reality, many forms of exclusion and discrimination continue to persist. Consider three most stark examples:

- More than 2,700 Sikhs were massacred in Delhi and many other parts of the country in 1984. The families of the victims feel that the guilty were not punished.
- Several thousands of Hindu Kashmiri pandits have been forced to leave their homes in the Kashmir valley; they have not been able to return to their homes for more than two decades.
- More than 1,000 persons, mostly Muslims, were massacred during the post-Godhra riots in Gujarat in 2002. The surviving members of many of these families could not go back to the villages in which they lived.

What do these examples have in common? They all have to do with discrimination in one form or the other. In each case members of one community are targeted and victimised on account of their religious identity. In other words, basic freedoms of a set of citizens are denied. Some might even say that these incidents are instances of religious persecution and they reflect inter-religious domination. Secular means non-religious but in Indian context, it is interpreted to mean the equality and co-existence of all religions, while the constitution guarantees a secular polity and

provides safeguards for the minorities, actual implementation is not easy in the face of isolation by the Muslims, especially in the aftermath of the traumatic incidents of the death of more than 2700 Sikhs in Delhi, Kashmir Pundits who lost their homes, Rama Janma Bhumi issue of Ayodhya and the massacre of Muslims at Godhra. The political parties have been responsible for exploiting communal passions for political gains. The religious heads are also equally responsible for the same. All these factors have contributed to the growing communalization of Indian polity. The destruction of Babri Masjid has given a severe blow to the avowed secularism of our country. Unless an attempt is made to contain these forces of communalism the very unity of India is in danger. India can survive only on the foundations of secularism.

Secularism is first and foremost a doctrine that opposes all such forms of inter-religious domination. This is however only one crucial aspect of the concept of secularism. An equally important dimension of secularism is its opposition to intra-religious domination. Let us get deeper into this issue.

Intra-religious Domination:

Some people believe that religion is merely the “opium of the masses” and that one day when the basic needs of the people are fulfilled and they lead a happy life, religion will disappear. This is an exaggerated view. We may be able to prolong our life but never be immortal. Disease can never be totally eliminated nor can we get rid of an element of accident and luck from our lives. Pain and gain are endemic to human life. Maximum sufferings, which are man-made, can be eliminable. There are some other sufferings which are not man-made but are the responses of religion, art and philosophy.

Sometimes religion is responsible for certain problems. For example, one can hardly think of a religion that treats both men and women equally. In Hinduism there is persistent discrimination. In some parts of our country, the dalits have been denied from entering temples. Even, women cannot enter temples. During religious functions a conservative few control and manage everything. All such practices are often opposed by some other groups. Religious fundamentalism in parts of us has become a major problem and endangers peace both within and without. Hence, many religions divide into sects which ultimately leads to sectarian violence.

Thus, religious domination can be identified both with inter-religious domination and intra-religious domination. Secularism opposes all such forms of institutionalized

religious domination. A secular society promotes freedom within religions, and equality between or among all the religions.

Secular State

Perhaps, one way of preventing religious domination is to live and work together for mutual development with love and affection. Education is the best media to change the mindset of the people. Individual examples of sharing and mutual help can reduce prejudice and suspicion between communities. Stories of Hindus saving Muslims on Muslims saving Hindus during communal riots may inspire the youth mass positively. But it is not sufficient to eliminate religious discrimination. In modern days, states enjoy vast powers. How they function, is a big question? They should function in such a manner, where inter-community conflict and religious discrimination find no place.

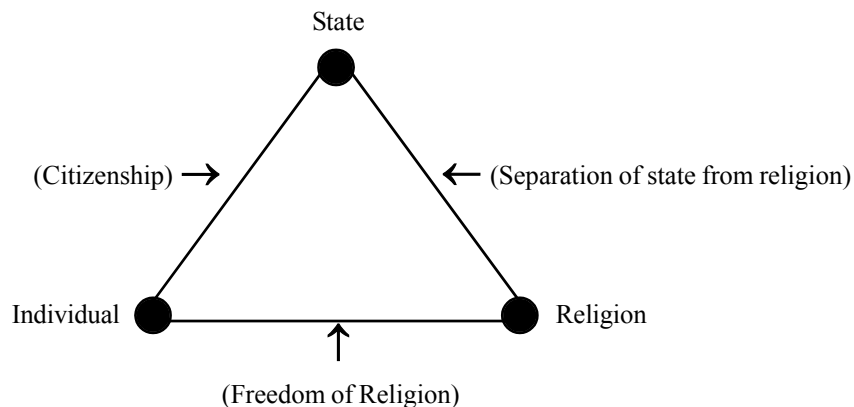
How should a state prevent domination by any religious group ? to start with, it must not be run by a religious head. A state directly ruled by a priestly order is called theocratic. For example papal states of Europe during medieval period or at present the Taliban-controlled state, where there is no separation between religious and political institutions. These states are known for their oppressions and denial of freedom of religion to members of other religious groups. To value peace, freedom and equality, religious institutions must be separated from state institutions.

Mere separation of state and religion is not sufficient for a secular state. There are some non-theocratic states but they have a close link with a particular religion. For example, England during 16th Century was not run by a priestly class but clearly favoured the Anglican-church. England had an established Anglican official religion. Today, Pakistan has an official state religion known as “Sunni Islam” such regimes have little or no scope for religious equality.

Thus, a true secular state must not only be theocratic but also have no formal, legal alliance with any religion. A secular state must be committed to the principles and goals like peace, religious freedom, social harmony, inter-religious and intra-religious equality. According to D.E. Smith, the concept of a secular state involves three distinct, yet closely inter-related and co-existing sets of relationship, concerning state, religion and individual, such as:

- (a) Religion and Individual - Freedom of religion
- (b) State and Individual - Citizenship
- (c) State and Religion - Separation of state from Religion

Its diagrammatic representation is:



Western Model

The main concern of western model of secularism is that it is a universal doctrine demanding the strict separation of church/religion and the state for the sake of moral or ethical values. Here, we have two models (1) The French model and (2) The American model.

The French conception says that state must be separated from religion but the state retains the power to interfere in religion. However, religion is divested of any power to intervene in matters of state. Thus, here separation means one-sided exclusion. The state may interfere in religious matters to hinder or suppress or even to help it. Religion becomes an object of law and public policy but only in terms of the state. This conception arose in response to the excessive domination of the church, encourages an active disrespect for religion.

The American model interprets; "Separation" means mutual exclusion. Neither the state nor the religion is meant to interfere in the domain of one another. This mutual exclusion is necessary to resolve conflicts between different Christian denominations to grant some measure of equality between them, but mostly to provide individuals the freedom to setup and maintain their own religious associations. Mutual exclusions is necessary for religious liberty.

It further says that the state cannot aid any religious institution. It cannot provide financial help to any educational institution run by religious communities. Nor it can hinder the activities of religious communities, if they are within the law of the land. Thus, religion is a private matter. It is not a matter of state policy or law. “Liberty” means it is the liberty of individual and “Equality” means equality between/among the individuals. The community has no liberty and equality. There is no place for state-supported religious reforms. The relationship between state and church/religion is mutual exclusion.

Secularism in India

India is a vast country of geographical, cultural, ethnic, religious and linguistic diversity with a variety of customs, ideas, values and aspirations. But there is also a tremendous impression of unity.

The concept of secularism being purely western was brought to Indian social life by the British Utilitarian during the period of Lord William Bentinck with the spread of education and development in communication facilities, social mobility became easier. It received further impetus during the Second World War and Mahatma Gandhi’s Civil Disobedience Movement. With India becoming independent in 1947 there was growing urgency to widen the base of secularism to suit the needs of new India. This was given official recognition when the founding fathers of our constitution solemnly declared India as a Secular State.

Secularism in Indian Context

The constitution of India has recognized secularism. The term “Secular” finds a place in the preamble, which describes Indian Republic as “Secular”. The words “Liberty of thought, expression, faith, belief and worship” signify the guarantee of Right to Freedom of religion to all its citizens.

Part 3rd of the Indian Constitution reflects secular principles as:

- (a) The right of the individual to equal treatment by the state irrespective of religion, race, caste, creed, sex, place of birth or any of them.
- (b) The right of the individual to freedom of religion. (Arts 25 to 28)
- (c) There are certain rights to religious groups to establish, manage and maintain constitutions for religious and charitable purpose.
- (d) The principle that state funds may not be utilized to promote any religion.

In view of the above it is seen that Indian constitution provides opportunity for the management and administration of Hindu Trusts, Muslim Trusts and also of Sikh Gurudwaras. Secular state in India supports all religious communities and even subsidizes and regulates their activities. The Indian Secular State is not like a communist totalitarian state. It is not anti-religious. Secularism stands for two different things, Policy and an Ideology. It is a policy or strategy of a modern state in a multi-religious society. It requires that the Government will treat all citizens alike, govern them under the same laws without favouring any one or discriminating against him or her on the ground of religious identity. In other words, the state will be equidistant from all the religious communities.

Further, Right to Equality (Art 14 to 17) and Cultural and Educational Rights (Arts 29 & 30) have adequately recognized the concept of secularism as well as protection of cultural and educational rights of the minority groups in India. This kind of “Humanistic Secularism” is only found in India.

Thus, India being a liberal-democratic secular state follows these essential principles of Secularism; such as:

- (a) Principle of Liberty, which means to practice any religion.
- (b) Principle of Equality, which means the state doesn't adhere to any particular religion and treats all religions alike.
- (c) Principle of Neutrality, which means the state chooses to remain away from participation in affairs of any religious beliefs, faiths, organizations, groups or sects.

The practice of Universal Adult Suffrage also promotes Secularism in India. The People's Representation Act (PRA) 1951, in Section 123(3) provides that inducing a voter in any Election to vote or not to vote on caste and religion lines is an offence under law and hence punishable. Thus, in India Secularity of State and Individual's religious liberty go together.

The Indian model of secularism is the unique outcome of peculiar socio-cultural foundations and circumstances in which it is difficult to separate secularity from religion in an individual's life in a dual role, first as a citizen and second as an individual in his or her private life.

In a nutshell, Secularism in India involves mainly three basic elements, such as:

- (1) Rejection of a Theocratic State and affirmation of a Secular, Liberal Democratic Policy.
- (2) A declaration that religion is purely a private affair and the State has no role in it.
- (3) Guaranteeing fraternity of the people along with national unity and integrity and equality among all citizens irrespective of their caste, creed, colour, faith, belief, race and religion.

India's unique type of secular polity shows a "peaceful and respectful indifference" to all religions and keeps a vigilant and equi-distance from the nasty politics of "fundamentalism" and "religious communalism". Thus, in India "Secularism" is treated both as an "ideal" and a "reality" and the national awareness firmly supports true realization of secularism as an operative principle of reality in the context of National Politics.

Now it is clear that Indian Secularism believes in "equal respect for all religions", "peaceful co-existence of all the religions" or "inter-religious toleration". This is also not sufficient because Secularism speaks something more. Sometimes, Indian Secularism allows for principled intervention in all religions if they violate, betray or disrespect the unity and integrity of the Nation. Thus, a Secular State does not mean that it will respect every aspect of every religion equally.

Criticisms:

Indian Secularism has been subjected to severe criticisms, such as:

- I. It is often said that Secularism is anti-religious. But, it is not true. Secularism is against institutionalized religious domination, which is not anti-religious.
- II. It has been argued that Secularism threatens religious identity. As mentioned earlier, Secularism promotes religious freedom and equality. It protects religious identity than threatens it.
- III. Another criticism is that, it is linked with Christianity and hence it is western and unsuited to Indian conditions. Our parliamentary democracy has its origin in the west. Secularism has both western and non-western origins. In the west, it was the Church-State separation, which was central

but in India the idea of peaceful co-existence of different religious communities is very important.

- IV. Another criticism is that it is coercive and it hinders the religious freedom of the communities. This is not true. Indian secularism rejects the idea of non-interference in religious matters but permits state-supported religious reforms. It follows the concept of principled distance that means non-interference to certain extent. Interference does not mean coercive intervention.
- V. There is one argument that secularism encourages the politics of vote banks. No doubt, to some extent it is true. In democracy politicians are bound to seek-votes. This is a part of their job. Not, the real question is whether the policy of motivation to secure the votes is fair or unfair? If secular politicians, who sought the votes of minorities and also fulfil their demands, then it is in favour of secularism and there is no wrong. If with this, the interests of the majority are undermined, then the problem arises. Secular parties utilize vote banks is not troublesome. All parties do so in relation to some social group.
- VI. The last criticism is that, Secularism cannot work because it tries to do too much. People with deep religious differences cannot live together in peace and harmony. This is a false claim. The history of Indian civilization and Ottoman Empire had already proved that, this kind of living together is possible.

Hence, let the different religions exist, let them flourish. Respect the differences between the religions and recognize them as valid as long as they do not extinguish the flame of unity. This is the Indian experiment with secularism which other Nations try to imbue.

POINTS TO REMEMBER

- The doctrine of secularism practised today has been subject to severe criticism.
- The western ideas of political secularism are not accepted by all.
- The term secular relates to something 'worldly' and is 'opposed to sacred things' or 'things not related to religion'.

- Secular means non-religious, but in the Indian context it means equality and coexistence of all religion.
- Religious domination can be identified both with inter- religious domination and intra- religious domination. Secularism opposes institutionalised religious domination.
- Religious domination can be prevented by living and working together for mutual development with love and consideration.
- A true secular state must not be ruled by any religious head. Mere separation of state and religion is not sufficient for a secular state.
- The Western model speaks about two models: (1) The French Model, which believes in one-sided exclusion, that is, the state can interfere in religious matters during the time of need; (2) the American Model, which says about mutual exclusion of state and religion
- Indian Secularism believes in “equal respect for all religions”, peaceful coexistence of all religions or inter-religious toleration.

MODEL QUESTIONS

(Group - A)

1. Which of the following do you feel are compatible with the idea of secularism? Give reasons.
 - (a) Absence of domination of one religious group by another.
 - (b) Recognition of a state religion.
 - (c) Equal state support to all religions.
 - (d) Mandatory prayers in schools.
 - (e) Allowing separate educational institutions for any minority community.
 - (f) Appointment of temple management bodies by the government.
 - (g) Intervention of state to ensure entry of Dalits in temples.
2. Some of the key characteristics of western and Indian model of secularism have got mixed up. Separate them and make a new table.

Western Secularism	Indian Secularism
Strict non-interference of religion and state in each other’s affairs	State supported religious reforms allowed
Equality between different religious groups is a key concern	Equality between different sects of a religion is emphasised
Attention to minority rights	Less attention to community based rights
Individual and his rights at the centre	Rights of both individual and religious community are protected.

3. What do you understand by secularism? Can it be equated with religious tolerance?
4. Do you agree with the following statements? Give reasons for supporting or opposing any of them.
 - (a) Secularism does not allow us to have a religious identity.
 - (b) Secularism is against inequality within a religious group or between different religious groups.
 - (c) Secularism has a western-Christian origin. It is not suitable for India.
5. Indian secularism focuses on more than the religion-state separation. Explain.
6. Explain the concept of principled distance.

(Group - B)

1. **Select the correct answer from the alternatives given below**
 - (a) Which Articles of our Constitution deals with “Right to Freedom of Religion”?

(i) Art- 14 to 18	(ii) Art- 25 to 28
(iii) Art- 30 to 32	(iv) Art- 19 to 22
 - (b) The official state religion of Pakistan is

(i) Hinduism	(ii) Islam
(iii) Buddhism	(iv) Christianity

2. Questions with very short answer

- (a) What do you mean by Secularism?
- (b) What does secular mean in Indian context?
- (c) How can religious domination be identified?
- (d) What do you mean by a secular state?
- (e) How religious domination be prevented?

3. Short Questions (to be answered in 3/4 sentences)

- (a) Inter- religious domination
- (b) Intra- religious domination
- (c) Western Models of Secularism
- (d) Secularism in India

(Group - C)**Essay Type Questions**

- 1. Define Secularism and discuss its present problems.
- 2. What is Secularism? Discuss Inter- religious and Intra- religious domination.
- 3. Indian Secularism emphasises on separation of religion from the state. Explain.
- 4. Indian Secularism has been severely criticised- Explain.



CHAPTER - 9

DEVELOPMENT

- Introduction
 - Meaning
 - Evolution of the idea of development
 - Models of development
 1. Capitalist model
 2. Socialist model
 - Sustainable development
 - Points to remember
-
-

Introduction

Development is a positive phenomenon. It means 'progress' or 'growth'. Though development is commonly equated with economic growth, it is more than that in a broader sense. Development is a comprehensive term and multidimensional in nature that covers polity, society and the economy as a whole. So development brings change. This change could be conceived as a transition from simple to complex form, from less efficient to more efficient form, or from ordinary to better forms. Development is studied both as a process (pace of change) and as a condition (or level).

Development as economic growth: When used in a narrow sense, development refers to more limited goals such as increasing the rate of economic growth or per capita income and the fundamental changes in the economy to facilitate and generate that growth. Commonly these include industrialization, modernisation of agriculture,

mechanization, division of labour, steady increase in investment and finally a move towards a service oriented economy.

Development as human development: It has been gradually realised that development is something more than mere economic growth and economic growth is meaningless without human development. So quality of life of mankind is now being given due importance. It is measured with socio-economic indicators such as GDP/ Per capita estimate, life expectancy, infant mortality & maternal mortality, levels of literacy, equity through equal political and economic opportunities, empowerment wherein people participate fully in decisions and processes that mould their lives, level of scientific spirit of inquiry, gender equality etc. in the year 1995, the Human Development Report innovated the idea of gender-related development index (GDI). For example amongst the 1.3 billion poor people of the world around 70% are women (UN Report).

Meaning

It is very difficult to define the term development. It is defined in various ways by sociologists, economists and Political scientists. So, it lacks a common definition acceptable to all.

J.H. Mittleman has tried to define development in his famous book “Out from Under-development: Prospects for Third World” (1988) as “the increasing capacity to make rational use of natural and human resources for social ends”. Similarly, Paul Baran has described development “as a far reaching transformation of society’s economic, social and political structure, of the dominant organisation of production, distribution and consumption”.

Evolution

Until the beginning of 18th century, most of Countries of the world were basically agrarian economies. As such development as a concept had not gained much currency till then. However European nations began to experience rapid economic growth with the advent of Industrial Revolution in the 18th century. Rapid industrialisation of west in the next 200 years brought to the fore the vices of capitalist economies as exemplified by the poverty and miseries of industrial workers in European societies. Such growing disparities in the society gave birth to anti-capitalist forces such as the Bolshevik revolution and the subsequent growth of communism. The Western societies

suffered from this dichotomy till the end of the World War II. With the end of World War II a large number of colonies got free from colonial subjugation and became independent nations. These nations which had suffered from poverty and backwardness over hundred of years due to colonial exploitation having low-level of socio-economic growth have been termed as the developing nations.

While the term development gained currency after 2nd World War, the early indications of this idea are reflected in the social thought of 19th century and the early 20th century. It was largely expressed in the theory of social change. The term became very popular and catchy in 1950s' and 60s' when most of the Afro-Asian and Latin American countries (which are called Third world countries) achieved independence from colonial rule. The task before them was to solve the pressing problems of poverty, unemployment, illiteracy, malnourishment & the lack of basic amenities that the majority of their population faced. Instead of joining any Super power blocks (Eastern & Western) and military alliances, these countries preferred an independent course of action to development. So, after independence, these third world countries could organise their resources in the best possible way to serve their national interest. They undertook development projects to realise their goals. In short, the concept development is specifically addressed to the developing countries.

The concept of development has undergone a sea change over the years. In the initial years, developing countries adopted goals like faster economic growth through industrialisation and modernisation of agriculture etc. Many countries of the world undertook development projects with the help of loans and aids from the developed nations and international financial institutions. The financial costs of the same have been enormous, putting many countries into long term debts. A large number of people have been displaced from their homes due to construction of big dams, industrial activities etc. Displacement resulted in loss of livelihood and increased impoverishment. Development has indeed caused a high degree of environmental degradation in many countries and not just the displaced people but the entire global population is now beginning to feel the consequences.

The exponents of dependency theory like Gunder Frank argue that the developing countries (South) are dependent on the developed countries (North) especially Western Europe and North America for capital, technology and market. The exposure of the developing countries to the economic influence of the capitalist countries has contributed to their dependency on the latter.

Models of Development

Different schools of thought recommended different models of development. Attempt has been made to study two important models. 1. Capitalist model 2. Socialist model

Capitalist Model of Development

It is also called market-society model of development. The exponents of this model are W.W. Rostow, James S. Coleman, A.F.K. Organski. This model is characterised by provision of private ownership of property and means of production, minimum State control on economic enterprises, and a free economy regulated by competition. It equates development with modernisation and projects Western society as a model of modern society. They suggest that the developing countries should follow the footsteps of capitalist countries in order to secure their own development. The means to be followed are liberalisation and privatisation. A modern society is characterised by a relatively high degree of commercialisation and industrialisation of economy, urbanisation, and extensive literacy and by the widespread participation and involvement of the people in the social and economic process. Thus, modernisation of developing countries would finally result in westernisation. In political sphere it calls for liberal democracy, in economic sphere it encourages competitive market structure and in social sphere it promotes equality of opportunity and respect for merit.

Exponents of capitalist model treat economic growth as a necessary condition of development. W.W. Rostow in the *Stages of Economic Growth* (1960) indicates the universal stages of economic development that all societies pass through before they became fully modernised. These are: (i) traditional agricultural societies (ii) Transitional stage, involving pre-conditions for take off based on technological advances (iii) take off stage or self-sustaining economic growth (iv) sustained economic growth (v) the mature high mass-consumption society representing the completion of social evolution.

This model of development is not compatible with the spirit of communitarianism which is one of the important characteristics of developing societies. The people of these society may be poor & backward but always adhere to certain moral values that act as adhesive to bind all the members. It strengthens social unity and integrity which Robert D.Putnam (an eminent Sociologist) calls

“social capital”. On the contrary, market society is motivated by the spirit of competition where self-interest takes precedence over every other consideration. If the developing societies adopt this model, it would weaken the bonds of their social-fabric. Again in this model “maximisation of profit” is the main goal. Even education, art and culture are geared to fulfil market needs. So this society lacks basic human values. Adoption of capitalist model of development by the developing countries may increase material welfare but at the expense of their moral strength.

Socialist Model of Development

The Socialist model of development may be divided into two broad streams i) Revolutionary Socialism ii) Evolutionary Socialism.

- (i) ***Revolutionary Socialism*** : Revolutionary Socialism was established in the erstwhile USSR after the Bolshevik revolution of 1917. Gradually other East European countries (Romania, Hungary, Poland, East-Germany, Czechoslovakia), China, North Korea and Cuba followed it. This type of model is based on the teachings of Karl Marx, Engels and V.I Lenin. It believes in class struggle, revolutionary method and full scale State ownership of the major means of production. Revolutionary socialism protects the interests of workers, make provisions for social and economic rights, provides universal employment, education and health care. But it hardly guarantees civil and political rights to citizens. But with the disintegration of the USSR and unification of Germany after the fall of Berlin wall, the World saw death of communism (1989-1991). Now almost all the democratic East European countries are following Capitalist model of development. Such type of model still works in some of the countries of the world like China and North Korea though its popularity has plummeted. In China, the politics is based on Marxism but the red economy is capitalist.
- (ii) ***Evolutionary Socialism*** : It is otherwise called as democratic socialism. This model of development seeks to achieve the objectives of socialism through democratic means. India along with some other developing and developed countries of the world follows this model. It believes that development is possible only with the judicious opinion and active participation of the people. It gives precedence to civil liberties and

political rights over socio-economic rights. India adopted multipronged strategy for economic growth, hoping that the emerging prosperity, would gradually 'trickle down' to the poorest of poor and help to reduce inequality. But this never happened. Besides, the increasing population, bureaucratic inefficiency and rampant corruption etc. resulting from a centralized planning structure also acted as obstacles in the path of development. As a result of this, the popularity of the model declined. So the countries including India have now embraced Liberalisation, privatization & Globalization (LPG).

Sustainable Development

'Sustainable development' is the buzz word of Environmentalists and Green Brigade that work to protect natural resources and ecosystem. Soon this word drew global attention with the publication of famous Brundtland Report, entitled "Our Common Future", published in the year 1987. Of course this idea was floated earlier during the Earth Summit at Stockholm in 1972. This summit expressed a serious concern at the rapid depletion of the exhaustible natural resources.

Sustainable development has been defined in many ways. But the most acceptable definition as provided by the Brundtland Report is: "It is development that meets the needs of the present without compromising the ability of future generation to meet their own needs". It contains within it two important concepts:

- The concept of needs, in particular the essential needs of the World's poor, to which over-riding priority should be given.
- The idea of limitation imposed by the state of technology and social organization on the environment's ability to make present and future needs.

In short Brundtland Report reflects a concern to eradicate poverty and meet basic needs of the vast humanity.

When the society was simple, human needs were minimum. The stock of natural resources was vast & their use was limited. So nobody ever could anticipate any shortage of these resources in the future. But with the passage of time human population multiplied. The society moved from a simple form to a complex one and People's level of consumption started increasing. New technologies came up to fulfil

their increasing demands. The greed of man to meet the increasing demands of time led to a large scale exploitation of natural resources. So, the stock seemed to be depleting. Again different developmental activities such as construction of roads, buildings, dams, airports, irrigation projects, power plants and industries have some negative repercussions on the environment in which man lives. Thus, these developmental activities are unsustainable for global eco-system. But the whole thing is that we cannot stop these activities. So, what is needed is environmental management and sustainable development.

The concept of sustainable development focussed attention on finding a strategy to promote economic and social development without causing environmental degradation, over-exploitation of natural resources or pollution. No way has it proposed to halt economic growth which is necessary to meet man's material needs, while conserving scarce natural resources and protecting both the internal and external environment. So, sustainable development is highly essential for improvement of both the quality of the environment and the quality of human life.

Sustainable development can be achieved broadly through four different policy options

- (i) ***The Treadmill Approach*** : It hinges on the belief that if human ingenuity is given the freedom to innovate new technology, it can successfully manipulate the environmental system.
- (ii) ***Weak Sustainable Development*** : It tries to integrate capitalist growth with environmental concerns. It accepts sustainable development through economic growth by taking into consideration environmental costs.
- (iii) ***Strong Sustainable Development***: It emphasizes environmental protection as an essential pre condition of economic development.
- (iv) ***The Ideal Model***: It offers a vision at structural changes in society, the economy and the political system by radically altering the attitude of mankind towards nature, It measures overall growth not in quantitative terms meaning Standard of living but in qualitative sense, namely the quality of life which can be achieved by radically altering the nature of economic activity.

Here it would be pertinent to mention E.F. Schumacher's famous book "Small is beautiful" published in 1973 which speaks volumes about how the modern industrial

society digs its own grave by overexploiting natural resources. It has caused global warming, uncertain weather, ozone depletion, green house effect etc. Again there are certain natural resources which cannot be regenerated or increased. He recommends that the existing system of large scale production should be reduced to one at human scale. Small communities with a moderate level of consumption and organised at smaller scale represent the model world of environmentalists. That is precisely the idea behind Schumacher's famous dictum 'small is beautiful'. Last but not the least sustainable development is compatible with Gandhian model of development.

It appeals to the rich countries to restrict their level of consumption. In this way over exploitation of nature can be prevented and valuable resources can be saved not only for the present generation but also for the generations to come.

Conclusion

Development is the cherished dream of every State. It is unstoppable. Development does not mean mere physical development characterised by economic growth and infrastructure development. It means inclusive growth and development in the quality of life of people with social equity and justice which is possible only in a democracy. It should take place without causing environmental degradation.

POINTS TO REMEMBER

- Development is a positive phenomenon. It means 'progress' or 'growth'.
- In a narrow sense development is equated with economic growth. But in a broader sense it means both physical and human development.
- Development is a multi-dimensional concept. It affects polity, society and the economy as a whole. In political sphere it calls for liberal democracy, in economic sphere it encourages competitive market structure and in social sphere it promotes equality of opportunity.
- The term 'Development' gained currency after the industrial revolution, acquired prominence after the 2nd world war & became very popular and catchy in the 1950s' and 60s'.
- There are various models of development and the two most important models are capitalist & socialist model of development.

- The concept 'sustainable development' focussed attention on finding strategy to promote social and economic development without causing environmental degradation, over exploitation or pollution. It is compatible with Gandhian model of development.

MODEL QUESTIONS

(Group - A)

1. What do you understand by the term development? Would all sections of society benefit from such a definition of development?
2. Discuss some of the social and ecological costs of the kind of development which has been pursued in most countries.
3. What are some of the new claims for rights which the process of development has generated?
4. What would be the advantages of democracy over other forms of government for ensuring that decisions regarding development are made to promote the common good?
5. In your view how successful have popular struggles like been in making the state responsive to the social and environmental costs of development? Discuss with examples.

(Group - B)

1. Multiple choice questions

- (i) India is a
 - (a) colonial state
 - (b) developing state
 - (c) developed state
 - (d) socialist state
- (ii) Capitalist model of development advocates
 - (a) private ownership of property
 - (b) gross domestic product
 - (c) per capita income
 - (d) all the above

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- (iii) Sustainable development means securing of
 - (a) Claims of present generation
 - (b) Claims of future generation
 - (c) balanced development without limiting the future development
 - (d) slow and steady development
 - (iv) Socialist models of development advocates
 - (a) private ownership
 - (b) privatisation of means of production, social justice and equality
 - (c) social good and increase in per capita income
 - (d) none of the above
 - (v) Sustainable Development refers to
 - (a) Natural resources
 - (b) Progress
 - (c) Change
 - (d) None of the above
 - (vi) Western model of development stands for
 - (a) Centralised Economy
 - (b) Equality
 - (c) Welfare state
 - (d) Liberalisation of society, Economy and polity.
 - (vii) Marxian model of Development advocates
 - (a) Common Economic system
 - (b) End of capitalism
 - (c) Social justice and Equality
 - (d) All the above
 - (viii) Gandhian Model of development is
 - (a) Socialist model
 - (b) Moralistic model
 - (c) Capitalist model
 - (d) Welfare model

- (ix) Developments means
 - (a) Individual Development
 - (b) Social development
 - (c) Sustainable Development
 - (d) Industrialisation and modernisation
- (x) Sustainable Development means
 - (a) Economic sustainability
 - (b) Social sustainability
 - (c) Environmental sustainability
 - (d) All the above
- (xi) Who has written the book “Small is Beautiful”?
 - (a) E M Schumacher
 - (b) Karl Marx
 - (c) Aristotle
 - (d) Mahatma Gandhi

2. Questions with very short answer

- (i) What is Development?
- (ii) Define Capitalist Model of Development.
- (iii) What is the Socialist Model of Development?
- (iv) What is the main theme of sustainable Development?
- (v) What do you mean by Sustainable Development?
- (vi) What is Economic Development?
- (vii) What is the model of development prevailing in India

(Group - C)

Essay Type Questions

1. Write an essay on Development
2. What is Development? Discuss the various models of development.
3. Write a note on Sustainable Development



CHAPTER - 10

PHILOSOPHY OF THE CONSTITUTION

Introduction

Meaning and Importance

Constitution is a set of written rules that are accepted by all the people living together in a state. It lays down rules regarding the organisation, power and functions of government. It also defines the basic features of the state and the relation between the citizens and the state.

According to Gilchrist, “the constitution of a state is that body of rules or laws, written or unwritten, which determine the organisation of government, the distribution of power to various organs of the government and the general principles on which these powers are to be exercised.”

Wodsey defines the constitution as “the collection of principles according to which the powers of the government, the rights of the governed and the relation between the two are adjusted.”

Bryce says “the constitution of a state consist of those of its rules of laws which determine the form of its government and the respective rights and duties of it towards the citizens and of the citizens towards the government.

The constitution is required for the following reasons:

- (i) It develops a mutual trust and coordination which is necessary for different kinds of people to live harmoniously.

- (ii) It highlights the structure of government, their composition, and specially division of powers.
- (iii) It clearly specifies the limits on the power of government.
- (iv) It clearly specifies the rights of the people guaranteed.
- (v) It expresses the aspirations of the people about creating a good society.

WHY DO WE NEED A CONSTITUTION

The constitution of a country is the fundamental law of governance. It is needed because of the following reasons:

1. Constitution allows coordination and assurance

Countries like India have diverse groups and ways of living. There is diversity of faith, profession, ability, equality, property. People adopt different professions. Some are rich and some are poor. There are other variations which exist in society. In spite of these diversities, the group has to live together. They depend upon each other and need the cooperation of each other.

But the problem of diversity can be solved only if these people live on the basis of some rationally agreed rules. The basic rules would clarify the rights and claims of individuals so that there are no conflicts. These basic rules' are publicly promulgated to achieve a minimal degree of coordination. Further these rules are also enforceable. It gives an assurance to everyone to follow these rules. Thus the constitution provides a basic set of rules to provide minimum coordination and assurance among the member of the society.

2. Clarifies power of decision making

The constitution is a set of basic principles according to which a state is governed. It clarifies the type of government and establishes a clear line of powers based on delegation and decentralisation. It vests the power of making laws. In a monarchical constitution such a power may rest with the King, while in a communist constitution this power is in the hands of a single party as in the erstwhile Soviet Union. In modern democracies, this power is vested in the people's representatives who are elected legislators. The power of legislation is given to the Legislature. In India the Legislature is bestowed with the power and authority to enact laws. It even

delineates the authority of the executive which is responsible to the Parliament. Likewise the powers of an independent and impartial judiciary are specified to protect the people's rights. The way of choosing the people's representatives, clear-cut demarcation of powers between the legislature, executive and judiciary at the centre and between the centre and the state is clearly specified by the constitution.

3. Limitation on the powers of government

The constitution of a country puts a limit on the powers of the government (to impose restriction on its citizens). These limits are fundamental in the governance of the country as the government can never trespass them.

In the absence of such limit the government may enact laws which prohibits people's freedom of religion, speech and expression, right to property; may resort to arbitrary arrest, discrimination on the basis of colour, race and sex etc., since the government would enjoy absolute power, these unjust laws would come into existence.

It is the constitution which puts a limit on the powers of the government. The most common way of protecting people is by guaranteeing them fundamental rights which no government can violate. The constitution even specifies the exigencies or circumstances under which these rights can be withdrawn.

4. Aspiration and goal of a society

The constitution of a country enables the government to fulfil the aspiration of the people and lay foundation of a just society.

Modern societies are entrenched with several inequalities; their aim is not only to place restraint on powers of government but also to empower government to initiate emancipation of downtrodden to reduce inequality. The constitution empowers the government to take positive steps for the people which were made legally enforceable. The Indian constitution, the character of fundamental rights and the provision of directive principle of state policy have enabled the government to realise the expectation of the people.

5. Fundamental Identity of the people

The constitution of India gives a collective identity to the people by agreeing to a set of norms on how one should be governed and who should govern. Before the creation of a constitution, we had many sets of identities. But the agreement on certain

basic norms and principles gives us a political identity. Constitutional norm provides the framework in which an individual can realise his goal, freedom and aspirations. The constitution delineates the fundamental limits which an individual cannot evade. Therefore, the constitution gives an ethical identity to the people. It lays down basic political and moral values which are now shared across different constitutional traditions.

Do you know? A constitution is not a mere document regulating powers of the government. It even provides provisions to promote collective good of the society.

Authority of a constitution

Authority of a constitution is known from the answer to the following questions:

- (a) What is a constitution?
- (b) How effective is a constitution?
- (c) Is a constitution just?

We have already discussed the meaning in the introduction. We turn our attention to the other two questions. A constitution may exist only on paper. The crucial question is: how effective is a constitution? What makes it effective? What ensures that it has a real impact on the lives of people? Making a constitution effective depends upon many factors.

- (d) Mode of promulgation

Mode of promulgation refers to the way of a constitution came into being. In many countries the constitution was crafted by absolute military dictator or unpopular leaders who could not get the support of the people for the constitution. The most successful constitution of recent times, like those of India, U.S.A and South Africa were based on the aftermath of a popular liberation struggle. The constitution of India drew upon a long cherished goal of national movement to take a long different section of society together. Further, it was drawn by people who were men of immense public reputation and commanded the respect of masses cutting across the narrow lines. Likewise the framers were able to convince people that the constitutional document was not meant for political mendicancy or aggrandisement of their political power. It influenced the broad national consensus of that time. Thus the Indian constitution was based on consensus supported by popular leadership. And the draft was adopted as peoples own document who assured to abide by its provisions. Thus

the authority of the people in promulgation of a constitution helps in determining the political success of a constitution.

Substantive provision of a constitution

The successful hallmark of a constitution is that everyone in society should be obliged to respect it. A constitution which allows majority to oppress minorities is unjust. Likewise, if a constitution gives systematic privilege to some members at the cost of others, that would be unfair too. And if a group feels that its identity, position and status under a constitution is being stifled, it has every reason not to abide by such a constitution. There is no doubt the fact that a constitution cannot be absolutely perfect. But it must be able to convince its people that it is just. It should preserve the liberty and equality of all the members. Such a constitution is likely to succeed more than others as people would owe allegiance to it. Indian constitution is based on the principle of liberty, equality and justice

Balanced Institutional Design

Any constitution to be operational successfully needs to be well balanced. Modern constitutions are based on the theory of separation of power and a system of checks and balance. Power has been fragmented across different institutions like, the legislature, executive, judiciary and other autonomous bodies like the Election commission. Thus even if one institution wants to submit the constitution, others can keep a check on it. This would lead to a balanced constitution.

Further the design of the constitution must strike balance between certain norms and procedures which are rigid while allowing flexibility in its operation to adjust according to changing circumstances. If a constitution is too rigid it would break under the weight of change, while if it is too flexible it would be unpredictable. Indian constitution is a blend of rigidity and flexibility and division of power ensure that no section or group would subvert the constitution.

THE CONSTITUENT ASSEMBLY

The drafting of the document called the constitution was done by an assembly of elected representatives called the constituent assembly. After independence, members who were in the areas which went to Pakistan ceased to be members of the constituent assembly. Its strength was reduced to 299 out of which 284 were actually present and signed the draft on November 26th, 1949. The partition of India had seen

worst form of bloodshed .But the credit goes to drafters of the constitution that they kept in mind the lesson learnt from the partition and created new concept of citizenship where religious and ethnic minorities were safe.

Though the members of the constituent assembly were not elected on the basis of universal adult franchise, attempts were made to make it a representative body. The assembly got proportionate representation from members of all communities. Likewise, the assembly had 26members from the schedule classes. In terms of political dominance, congress occupied 82%seats, but it was such a diversified group that it amalgamated all shades of opinion within it.

Framing of Indian constitution

The framers of Indian constitution did not have to create consensus about independent Indian Constitution. Much of this consensus had evolved during the National movement itself .As early 1928, Motilal Nehru had tried to draft a constitution for India in the Nehru report. ¹In 1931 ,at Karachi session of Indian National Congress, there were some basic values which were to be included in any Indian constitution.

These include commitment to universal adult franchise, right to freedom, equality and protection of rights of minorities. Thus Indian leaders had accepted certain basic values much before the setting up of the constitution .The British had introduced limited government and limited voting rights for Indians in 1937.The election held in 1937 to provincial legislatures and ministers thus elected proved useful for Indians. Many colonial laws like, Government of India Act 1935,were also helpful in this regard. Our leaders also took help from constitutions of other countries as well to develop our constitution. In addition to Parliamentary democracy of Britain, the makers of Indian constitution were influenced by the Bill of Rights from the U.S.A , French revolutionary ,ideals of liberty ,equality and fraternity, Directive principles from Ireland, socialistic planning from Russia and federation from Canada.

The constitution of India was drafted by an indirectly elected constituent assembly, which had started working on December 6,196.The cabinet mission plan1946 had provided for the constituent assembly to be elected indirectly by a system of restricted franchise ,consisting of 20 to 40 percent of adult population.

Cabinet Mission Plan and Composition of Constituent Assembly of India

The cabinet mission plan declared that a constituent assembly shall be established for preparing the constitution of India. It was consist of 389 seats out of

which 292 seats were allotted to British Indian Provinces, 4 seats to chief commissioner provinces, and 93 seats to the Indian princely states. Out of 292 seats allotted to British Indian Provinces, 210 seats were to be general electorate seats, 78 seats as Muslim electorate seats and 4 seats were allotted to Sikhs.

Election of the Constituent Assembly of India

The election for the constituent assembly was held in July 1946. Out of 210 general seats, the Congress captured 199 seats, and out of 78 Muslim seats the Muslim League got 73 seats. Majority of seats were captured by the Congress and Congress-backed candidates. The Muslim League decided to boycott the constituent assembly.

Role of the Constituent Assembly

The constituent assembly held its first meeting on 9th December under the temporary chairmanship of its oldest member Dr. Sachidanand Sinha. Because of the Muslim League's decision to boycott the constituent assembly, only 211 members attended the first meeting. The meeting of the constituent assembly included all the eminent members. On the 11th December 1946 the constituent assembly elected Dr. Rajendra Prasad as its President and Sh. V. T. Krishnamachari and Sri H. C. Mookherjee as its two Vice-Presidents.

Status of the constituent assembly

(i) Status before 15th August 1947 : At the time of its establishment, the Constituent Assembly was not a sovereign body. It was organised on the basis of the Cabinet Mission plan. Its powers were derived from the sovereign authority of the British Parliament. However, Sardar Patel and Pt. Nehru believed that it was a sovereign body. The assembly resolved this issue by adopting a resolution which stated: "The Assembly should not be dissolved except by a resolution assented to by 2/3rd of the whole number of members of the assembly. Once constituted it could not be dissolved even by Britain. By adopting this resolution, the constituent assembly asserted its independence and a sovereign position as the duly elected and representative body of the people of India.

(ii) Status after Indian Independence on 15th August 1947 : When on 15th August 1947 India became independent, the Constituent Assembly became a fully sovereign body and remained as so till the inauguration of the constitution of India

.During this period, it acted in a dual capacity (a) as the Constituent Assembly engaged in the framing of the constitution of India and (b) as the legislature of India, exercising the law making power for the whole of India.

Passing of Objectives Resolution

The Constituent Assembly began its work by passing the *objectives resolution* which was to guide it in the process of framing the constitution.

The Constituent Assembly felt it imperative to define the objectives before the assembly. For this purpose on 13th December 1946 Pt Jawaharlal Nehru introduced the objective resolution in the assembly. After a full session discussion and debate, the Constituent Assembly passed the objective resolution on 22nd January 1947. This resolution declared the resolve of the people of India a sovereign independent republic to serve to all citizens fundamental rights, justice, secularism and welfare state, and to preserve the unity and dignity of the nation.

Committees of the Constituent Assembly

The constituent assembly constituted several committees for its work in a systematic and efficient manner. Some of the committees were, committees on procedural matters, while others were committees on substantive matters. In the first category came roles of procedural committees, Finance and Staff committee, Credential committee, Steering committee, Hindi translation committee, Orders of business committee, committee on independent Act. The substantive matters committee included: union powers committee, Union constitution committee, Provincial constitution committee, Advisory committee on minorities and fundamental rights and committee on financial rights between the union and the states.

Drafting Committee of the Constituent Assembly

The drafting committee played important role in the making of the constitution. This committee was constituted on 29th August 1947 with B.R. Ambedkar as its chairman. Other legal luminaries were B.L.Mitra, N. Gopaldaswami Ayyanger, Alladi Krishnaswami Ayyar, K.M. Munsi, Sayed Mohd Suaadulla and N. Madhav Rao etc.

Enactment and adoption of the constitution

The drafting committee submitted its report to the constituent assembly on 21st August 1948 and the constituent assembly held debates on it several round of thorough

discussion took place on the draft constitution, clauses by clauses. More than two thousand amendments were considered from 14th November 1949 to 26th November 1949, the final debate was held on the draft constitution of India. The constitution was finally adopted and enacted and the constitution was signed by the President of constituent assembly.

Final session of the constituent assembly and inauguration of the constitution of India

The final session of the constituent assembly was held on the 24th January 1950. It unanimously elected Dr. Rajendra Prasad as the first president of the republic of India. The constitution was inaugurated after two days i.e. on 26th January 1950.

This is a brief account of the making of the constitution of India by the Constituent Assembly. It took two years 11 months and 17 days to accomplish the task of the making of the constitution. The constitution of India is indeed the highest and most valuable contribution of the Constituent Assembly to the Indian political system.

INSTITUTIONAL DESIGN: PHILOSOPHY OF THE CONSTITUTION

The philosophy of the Indian constitution is embedded in the Preamble of the Indian constitution. It guides the salient features of the Indian constitution. A constitution begins with a brief statement of its basic values. This is termed as the Preamble of the constitution. We have taken inspirations from the American constitution to begin with the Preamble.

Preamble of the Indian Constitution

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

JUSTICE, social, economic and political;

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

EQUALITY of status and opportunity;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this 26th day of November,

1949, do HERE BY ADOPT , ENACT AND GIVE OURSELVES THIS CONSTITUTION.

The preamble of the Indian constitution has the following attributes:

1. WE the people of India: it means that Indian constitution has been enacted and drafted by the Indian people through their representatives. It has not been enforced from outside.
2. SOVERIGN: It means that country is free to take its internal and external decisions. No one can dictate it.
3. SOCIALISTIC: Wealth is generated socially and should be shared equally by society. Government should regulate the ownership of land and to industry to reduce socio-economic inequalities.
4. SECULAR: Citizens enjoy full religious freedom. There is no state religion and the government does not discriminate between people in the name of religions.
5. DEMOCRATIC: It is a form of government where people enjoy equal political rights and the government is elected by the people and is responsible to it.
6. REPUBLIC: The head of the state ;i.e. The President of India is elected and not hereditary.
7. JUSTICE: Discrimination between citizens on the basis of caste, colour, creed, religion is banned. Social inequalities have to be reduced. Government should work for the welfare of all, especially for the disadvantaged groups.
8. LIBERTY: People enjoy freedom to think , express and ventilate their grievances. There are no unreasonable restrictions on the citizens.
9. EQUALITY: We have rule of law. All people enjoy equality before law and equal opportunity for all has been provided.
10. FRATERNITY: The constitution promotes Indians as member of same family and no one is treated as superior or inferior.

The preamble of Indian constitution is the soul of Indian democracy. It is the edifice on which the entire constitution has been built.

Meaning of the Preamble

Reading through the Preamble, one can see the purpose that it serves, namely, the declaration of (1) the source of the constitution, (2) a statement of its objectives and (3) the date of its adoption.

The opening words of the Preamble ('we the people of India') emphasise the ultimate authority of the people from whose will the constitution emerges. Since the Constituent Assembly enacted and adopted the constitution in the name of the people of India, the question has been asked whether the Assembly was really representative of the people of India. This question was raised both within and outside the Assembly. The circumstances under which the Constituent Assembly came into being shows that it was impracticable to constitute such a body in 1946 with adult suffrage as its basis. No part of the country had the experience of adult suffrage. To prepare an electoral roll on the basis of adult suffrage for the country and to hold elections on that basis would have certainly taken a number of years. It was rightly thought unwise to postpone the task of constitution making until such an election was held. This was the main justification for accepting the Cabinet Mission Plan for constituting the Assembly through indirect election. Everyone will definitely agree with what Dr. Ambedkar said in the floor of the Constituent Assembly in 1949, "I say that the Preamble embodies what is the desire of every members of the House, that the constitution should have its root, its authority, its sovereignty from the people that it has".

The Preamble proclaims the solemn resolution of the people of India to constitute India into a 'Sovereign socialist, secular democratic republic'. The words 'socialist' and 'secular' were introduced into the preamble in 1976 by the 42nd Amendment of the Constitution.

India is 'Sovereign', in as much as it is free from, any external control and having independent power and authority. Sovereignty of India does not come in the way of its remaining a member of the Commonwealth of Nations. Though the Queen of the UK is its symbolic head, it is a voluntary association and so does not violate India's sovereign status.

India is 'democratic', as it has chosen a representative and responsible system of government under which those who administer the affairs of the state are elected by the electorate and accountable to them. The term "republic" implies an elected head of the state. By declaring to become a republic, India has chosen the system of electing one of its citizens as its President - the head of the state at regular intervals.

Socialism in India has been accepted in the meaning of 'Democratic Socialism'. The main aim of the expression was to bring about a balance in the existing economic disparities. India is 'secular,' because it maintains perfect neutrality in religious matters. It does not have anything as state-religion and the people are free to accept or reject any religion of their choice.

The Preamble proceeds further to define the objectives of the Indian Republic. These objectives are four in number: 'Justice', 'Liberty', 'Equality' and 'Fraternity'. The essence of justice is the attainment of the common good. It embraces the entire social, economic and political spheres of human activity.

The term 'liberty' used in the Preamble is not merely a negative, but a positive concept. It signifies not only the absence of any arbitrary restraint on the freedom of individual action but also the creation of conditions which are essential for the development of the personality of the individual. 'Liberty' and 'Equality' are complementary. Equality does not mean that all human beings are equal mentally and physically. It signifies equality of status, the status of free individuals and availability of opportunity to everyone to develop his potential capacities.

Finally, it is the spirit of brotherhood that is emphasised by the use of the term "fraternity" in the Preamble. India being a multilingual and multi-religious state, the unity and integrity of the nation can be preserved only through a spirit of brotherhood that pervades the entire country, among all its citizens, irrespective of their differences.

The Preamble of the Constitution of India is one of the best of its kind ever drafted. Both in ideas and expression it is an unique one. It embodies the spirit of the constitution to build up an independent nation which will ensure the triumph of justice, liberty, equality and fraternity. One of the members of the Constituent Assembly (Pandit Thakur Das Bhargav) rose to poetic heights when he said, "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."

Is Preamble a part of the Constitution?

This has been a controversial point. Even the Supreme court of India has changed its position. Thus, in 1960 it held that the preamble was not a part of the Constitution. But thirteen years later, in Kesavananda Bharati case it accepted the Preamble as part of the Constitution because it contains the basic structure of the Constitution.

INSTITUTIONAL DESIGN

A constitution is not merely a statement of the values and philosophy. A constitution is mainly about imbibing these values into institutional arrangements. Much of the document called constitution of India is about these arrangements. The basic principle is that India is a democracy committed to establishment a welfare state. The constituent assembly debated quite long to strike the right balance between the various institutions like, the Legislature, Executive, and judiciary. It led to the adoption of a Parliamentary system of government. Likewise, federation was adopted with distribution of power between state and the Centre. Our framers struck a balance by learning from the experiments and experiences of other countries. The framers of the constitution borrowed a number of provisions from the constitutions of other countries.

The constitution of India is a very long and detailed document. Therefore it needs to be amended quite regularly to keep it up to dated. Those who drafted the Indian constitution felt that it has to be in accordance with people's aspirations and changes in society. They did not see it as a sacred static and unalterable law. So they made provisions to incorporate changes from time to time. These changes are called constitutional amendments India was lucky that the members of constituent assembly, instead of being narrow and parochial in their outlook, drew the best available everywhere in the world and made it their own.

The provisions borrowed from other constitutions of different countries

British Constitution : System of representation, parliamentary system of government, Rule of laws, Institution of Speaker, Law-making procedures

Americans Constitution : Charter of fundamental Rights, Power of judicial review, Independence of judiciary.

Canadian constitution : Quasi federal form of government with a strong Centre and the Idea of judicial review.

French constitution : Principle of liberty, Equality and fraternity.

Irish constitution : Directive principles of state policy.

SALIENT FEATURES OF THE CONSTITUTION

The Constitution of India has some distinct and unique features as compared to other constitutions to the world. As Dr. B.R. Ambedkar the Chairman of the Drafting Committee puts it, the framers had tried to accumulate and accommodate the best features of other constitutions keeping in view the peculiar problems and needs of our country.

The following are the salient features of the Constitution of India.

(1) Longest written constitution

Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. There are various factors responsible for the long size of the constitution. One major factor was that the framers of the constitution borrowed provisions from several sources and several other constitutions of the world. They have followed and reproduced the Government of India Act 1935 in providing matters of administrative detail. Secondly it was necessary to make provisions for peculiar problems of India like scheduled castes, scheduled tribes and backward regions. Thirdly, provisions were made for elaborate centre-state relations in all aspects of their administrative and other activities. Fourthly, the size of the constitution became bulky as provisions regarding the state administration were also included. Further, a detail list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen, Thus, the Constitution of India became, an exhaustive and lengthy one.

(2) Partly Rigid and Partly Flexible

The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some Parts of the Constitution can be amended by the ordinary law-making process by Parliament. Certain provisions can be amended only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and by a majority of not less than two-third of the members of that house present and voting. Then there are certain other provisions which can be amended by the second method described above and is ratified by the legislatures of not less than one-half of the states before being

presented to the President for his assent. It must also be noted that the power to initiate bills for amendment lies in Parliament alone, and not in the state legislatures.

Pandit Nehru expressed in the Constituent Assembly, “While we want the Constitution to be as solid and permanent as we can make it, there is no permanence in Constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nations growth, the growth of a living, vital organic people.”

(3) A Democratic Republic

India is a democratic republic. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. The President of India, the highest official of the state is elected for a fixed term. Although, India is a sovereign republic, yet it continues to be a member of the Commonwealth of Nations with the British Monarch as its head. Her membership of the Commonwealth does not compromise her position as a sovereign republic. The commonwealth is an association of free and independent nations. The British Monarch is only a symbolic head of that association.

(4) Parliamentary System of Government

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

(5) A Federation

Article 1 of the Constitution of India says: - “India, that is Bharat shall be a Union of States.” Though the word ‘federation’ is not used, the government is federal. A state is federal when (a) there are two sets of governments and there is distribution of powers between the two, (b) there is a written constitution, which is the supreme law of the land and (c) there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in

India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land. At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

But in spite of all these essential features of a federation, Indian Constitution has an unmistakable unitary tendency. While other federations like U.S.A. provide for dual citizenship, the India Constitution provides for single citizenship. There is also a single integrated judiciary for the whole country. The provision of All India Services, like the Indian Administrative Service, the Indian Police Service, and Indian Forest Service prove another unitary feature. Members of these services are recruited by the Union Public Service Commission on an All-India basis. Because these services are controlled by Union Government, to some extent this constitutes a constraint on the autonomy of states. A significant unitary feature is the Emergency provisions in the Indian constitution. During the time of emergency, the Union Government becomes most powerful and the Union Parliament acquires the power of making laws for the states. The Governor placed as the constitutional head of the state, acts as the agent of the centre and is intended to safeguard the interests of the centre. These provisions reveal the centralising tendency of our federation.

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

(6) Fundamental Rights

“A state is known by the rights it maintains”, remarked Prof. H.J. Laski. The constitution of India’ affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights. Originally there were seven categories of rights, but now they are six in number. They are (i) Right to equality, (ii) Right to freedom, (iii) Right against exploitation, (iv) Right to freedom of Religion, (v) Cultural and Educational rights and (vi) Right to constitutional remedies. Right to property (Article-

31) originally a fundamental right has been omitted by the 44th Amendment Act, 1978. It is now a legal right.

These fundamental rights are justiciable and the individual can move the higher judiciary, that is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move to the supreme Court straight for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable restrictions can be imposed keeping in view the security requirements of the state.

(7) Directive Principles of State Policy

A novel feature of the Constitution is that it contains a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

It embodies important principles like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to be subservient to the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organisation of village Panchayats, special care to the economically back ward sections of the people etc. Most of these principles could help in making India a welfare state. Though not justiciable, these principles have been stated as “fundamental in the governance of the country”.

(8) Fundamental Duties

A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundamental duties. These duties are:

- (i) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (ii) to cherish and follow the noble ideals, which inspired our national struggle for freedom;
- (iii) to uphold and protect the sovereignty, unity and integrity of India;

- (iv) to defend the country and render national service when called upon to do so;
- (v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman;
- (vi) to value and preserve the rich heritage of our composite culture;
- (vii) to protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures;
- (viii) to develop scientific temper, humanism and the spirit of inquiry and reform;
- (ix) to safeguard public property and to abjure violence;
- (x) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly uses to higher levels of endeavour and achievement.

The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

(9) Secular State

A secular state is neither religious nor irreligious, or anti-religious. Rather it is quite neutral in matters of religion. India being a land of many religions, the founding fathers of the Constitution thought it proper to make it a secular state. India is a 'secular state, because it makes no discrimination between individuals on the basis of religion. Neither it encourages nor discourages any religion. On the contrary, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to profess, practise or propagate any religion they like.

(10) An Independent Judiciary

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes the provisions

of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other.

(11) Single Citizenship

The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation.

AMENDMENT OF THE CONSTITUTION

The procedure of amendment makes the Constitution of India neither totally rigid nor totally flexible, rather a curious mixture of both. Some provisions can be easily changed and for some others, special procedures are to be followed. Despite the fact that India is a federal state, the proposal for amending the constitution can be initiated only in the House of the Union Legislature and the State Legislatures have no such power. In case of ordinary legislation, if both houses of the Parliament disagree, a joint session is convened. But in case of amendment of bills, unless both the houses agree, it cannot materialise, as in such cases there is no provision for convening the joint session of both the Houses of the Parliament.

Procedure of Amendment

In fact, there are three methods of amending the Constitution. But Article 368 of the constitution which lays down the procedure for amendment mentions two methods.

- (1) An amendment of the constitution may be initiated only by the introduction of a Bill for the purpose in either house of Parliament and when a bill is passed in each house
 - (i) by a majority of total membership of that house
 - (ii) by a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the President who shall give his assent to the Bill and there upon the Constitution shall stand amended in accordance with the term of the Bill.

Most of the provisions of the constitution can be amended by this procedure.

- (2) For amending certain provisions a special procedure to be followed. (i) a Bill for the purpose must be passed in each house of Parliament by a majority of total membership of the house, (ii) by a majority of not less than two-thirds of the members of that house present and voting and (iii) it should be notified by the legislatures of not less than one-half of the states before the Bill is presented to the President for assent.

The provisions requiring this special procedure to be followed include- (a) manner of the election of the President. (b) matters relating to the executive power of the union and of the state. (c) representation of the states in Parliament (d) matters relating to the Union Judiciary and High Courts in the states (e) distribution of legislative powers between the union and the states (f) any of the list in the seventh schedule (g) provisions of Article 368 relating to the procedure for amendment of the constitution etc.

- (3) There are certain provisions which require simple majority for amendments. They can be amended by the ordinary law making process. They include (a) formation of new states and alteration of areas, boundaries or names of existing ones (b) creation or abolition of Legislative Councils in the states (c) administration and control of scheduled areas and scheduled Tribes (d) the salaries and allowances of the Supreme Court and High Court Judges (e) laws regarding citizenship etc.

It is significant that the laws passed by Parliament to change the above provisions would not be deemed to be amendments of the Constitution for the purpose of Article 368.

POINTS TO REMEMBER

- Indian Constitution has a preamble which spells out the objectives and philosophy of the Constitution. The judiciary in its pronouncement made it a part of the Constitution.
- Indian Constitution is the largest written constitution of the world.
- It has accepted Parliamentary system of governance within a federal set up.
- The fundamental rights, fundamental duties as well as the Directive principles of State Policy are its important features. It makes India a democratic and secular republic. It is partly rigid and partly flexible. An independent and impartial judiciary is the hallmark of the Indian constitutional system.

- The amendments procedure is rigid as well as flexible. Some portions can be amended by the simple majority in Parliament, whereas some others require two-thirds majority. Ratification by at least half of the states is needed to amend certain other provisions.

MODEL QUESTIONS

(Group - A)

1. **Which of these is not a function of the constitution?**
 - (a) It gives a guarantee of the rights of the citizen.
 - (b) It marks out different spheres of power for different branches of government.
 - (c) It ensures that good people come to power.
 - (d) It gives expression to some shared values.
2. **Which of the following is a good reason to conclude that the authority of the constitution is higher than that of the parliament?**
 - (a) The constitution was framed before the parliament came into being.
 - (b) The constitution makers were more eminent leaders than the members of the parliament.
 - (c) The constitution specifies how parliament is to be formed and what are its powers.
 - (d) The constitution cannot be amended by the parliament.
3. **State whether the following statements about a constitution are True or False.**
 - (a) Constitutions are written documents about formation and power of the government.
 - (b) Constitutions exist and are required only in democratic countries.
 - (c) Constitution is a legal document that does not deal with ideals and values.
 - (d) A constitution gives its citizens a new identity.
4. **State whether the following inferences about the making of the Indian Constitution are Correct or Incorrect. Give reasons to support your answer.**

- (a) The Constituent Assembly did not represent the Indian people since it was not elected by all citizens.
 - (b) Constitution making did not involve any major decision since there was a general consensus among the leaders at that time about its basic framework.
 - (c) There was little originality in the Constitution, for much of it was borrowed from other countries.
5. **Give two examples each to support the following conclusions about the Indian Constitution :**
- (a) The Constitution was made by credible leaders who commanded peoples' respect.
 - (b) The Constitution has distributed power in such a way as to make it difficult to subvert it.
 - (c) The Constitution is the locus of people's hopes and aspirations.
6. Why is it necessary for a country to have a clear demarcation of powers and responsibilities in the constitution? What would happen in the absence of such a demarcation?
7. Why is it necessary for a constitution to place limitations on the rulers? Can there be a constitution that gives no power at all to the citizens?
8. The Japanese Constitution was made when the US occupation army was still in control of Japan after its defeat in the Second World War. The Japanese constitution could not have had any provision that the US government did not like. Do you see any problem in 2015-16(20/01/2015)
9. Rajat asked his teacher this question: "The constitution is a fifty year old and therefore outdated book. No one took my consent for implementing it. It is written in such tough language that I cannot understand it. Tell me why should I obey this document?" If you were the teacher, how would you answer Rajat?
10. In a discussion on the experience of the working of our Constitution, three speakers took three different positions:
- (a) Hari: The Indian Constitution has succeeded in giving us a framework of democratic government.
 - (b) Sneha: The Constitution made solemn promises of ensuring liberty, equality and fraternity. Since this has not happened, the Constitution has failed.

- (c) Nazima: The Constitution has not failed us. We have failed the Constitution.
Do you agree with any of these positions? If yes, why? If not, what is your own position?

(Group - B)

1. Correct (errors if any) of the following sentences

- (i) Mahatma Gandhi is called the father of Indian Constitution.
(ii) The Amendment procedure is stated in Art 352.

2. Fill in the blanks of the following sentences

- (i) Constitution is regarded as _____ law of the state.
(ii) The main objectives of the constitution of India have been stated in the _____ .
(iii) _____ was the president of the drafting committee of the constitution of India.
(iv) The voting age in India was reduced from 21 to 18 as a result of _____ Amendment.

3. Answer in one word/sentence

- (i) Who is regarded as the father of Indian constitution?
(ii) Who prepared the constitution of India?
(iii) Which article of the Indian constitution deals with the Amendment procedure?
(iv) Who has the power to amend the constitution of India?

4. Multiple choice questions

- (i) The constitution means
(a) General law (b) Supreme law of the land
(c) Administrative Law (d) Legal Law
- (ii) India's constitution was formulated by
(a) Indian Parliament (b) Dr. B.R. Ambedkar
(c) Constituent Assembly (d) President of India
- (iii) How many schedules are there in India's constitution?
(a) 9 (b) 12
(c) 10 (d) 22

- (iv) The objectives of India's constitution is found in
(a) Article 19 (b) Article 352
(c) Preamble (d) Article 368
- (v) When did the Constitution of India come into force?
(a) 15th Aug 1947 (b) 26th Jan 1949
(c) 26th Jan 1950 (d) 26th Nov 1949
- (vi) Which constitutional amendment introduced the word 'secularism' in the preamble of India's Constitution?
(a) 42nd Amendment (b) 44th Amendment
(c) 73rd Amendment (d) 86th Amendment

5. Questions (very short answer)

- (i) What are the objectives of Indian constitution as laid down in the preamble?
(ii) When was the constitution adopted by the constituent Assembly?
(iii) Why India is called a secular state?
(iv) Why India is called a democratic state?
(v) Why India is called a republic?
(vi) Why the constitution of India is called the largest written constitution of the world?

6. Short Questions (to be answered in 3/4 sentences)

- (i) What is constitution?
(ii) What is an unwritten constitution?
(iii) Discuss the importance of constitution?
(iv) What is a rigid constitution?
(v) Write the five basic features of the Indian constitution.
(vi) State the objectives of the constitution as found in preamble.

(Group - C)

Essay Type Questions

1. Discuss the features of preamble of the constitution of India.
2. Describe the salient features of the constitution of India.
3. India is a Sovereign, Socialist, Secular, Democratic Republic - Discuss.



CHAPTER - 11

THE FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES THE DIRECTIVE PRINCIPLES

Fundamental Rights in India are the supporting pillars of democracy as a form of government and a way of life. Without these rights, democracy will have no meaning. In fact, democracy and inviolable fundamental rights go together. Dr. Ambedkar emphasized the two-fold object of the fundamental rights : “First, that every citizen must be in a position to claim those rights; secondly, they must be binding on every authority... upon every authority which has got either the power to make laws or the power to have discretion vested in it.”

Accordingly, a comprehensive list of fundamental rights is included in

Part-III of the Indian Constitution. These rights were grouped under seven categories. (1) Right to Equality (2) Right to freedom (3) Right against exploitation (4) Right to Freedom of religion (5) Cultural and Educational rights (6) Right to property (7) Right to constitutional remedies. Of these the Right to Property has been eliminated by the 44th Constitutional Amendment Act (1978) so that only six rights now remain as fundamental rights.

GENERAL NATURE

1. The fundamental rights in India are most elaborately written rights consisting of 24 Articles (12 to 35). Every right is defined in detail, with a set of limitations and reservations included in it. Thus, fundamental rights in India are not

- conducted in absolute terms. They have been directly restricted by the constitution, and they can further be restricted by constitutional amendments.
2. The constitution draws a distinction between citizens and aliens in the matter of enjoyment of these rights. While such rights as equality before law, freedom of religion can be enjoyed by both citizens and aliens, rights such as freedom of speech, assembly and cultural and educational rights are available only to citizens. This distinction can easily be noticed by the use of the terms 'citizens' and 'persons' at appropriate places.
 3. Some rights enumerated in the constitution are negative in character, while others are positive. Thus Article 18, forbidding the state from awarding any title, not being a military or academic distinction, does not confer any right at all. It only imposes a restriction on the Executive and the Legislative Power. Similarly Article 17 which abolishes untouchability is essentially negative in shape. Article 19 relating to the freedom of speech and expression is positive in nature.
 4. Fundamental rights in India are justiciable. The constitution is not satisfied by a mere enumeration of a series of fundamental rights but has also made the right to constitutional remedies itself a fundamental right. It means, if any of the fundamental rights is violated one can move to the Supreme Court directly under Article 32 or the High Court under Article 226 for relief.
 5. Fundamental rights are applicable throughout the country. As far as their enjoyment by all citizens is concerned, the whole country is to be treated as one unit. Thus, they emphasise the unity of India.
 6. The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the constitution.

The most striking feature of the provisions of the Part III of our constitution is that "they seek to strike a balance between a written guarantee of individual rights and the collective interests of the community. (D.D. Basu)

FUNDAMENTAL RIGHTS ENUMERATED IN THE INDIAN CONSTITUTION

1. Right to Equality

The right to equality includes the following.

(i) Equality before law : Article 14 provides that the state shall not deny to any person equality before law or the equal protection of the laws within the territory of India. But this does not mean that the government cannot make any fair discrimination. The government can make a distinction between the rich and the poor and tax the rich and exempt the poor. Similarly, the guarantee to equal protection of laws forbids class legislation, but it does not forbid classification which rests on reasonable grounds of distinction. It merely means that all persons subject to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and liabilities imposed.

(ii) Prohibition against discrimination : Article 15 provides that the state shall not discriminate against any citizen on grounds of religion, race, sex, place of birth or any of them. However, the state may make any special provision on women and children and also for the advancement of any socially or educationally backward class of citizens or for scheduled castes or scheduled tribes.

(iii) Equality of opportunity : Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. However, the state may make any provision for the reservation of appointment or post for any backward class of citizens, which in the opinion of state are not adequately represented in the service under the state.

(iv) Abolition of Untouchability: Article 17 provides that untouchability is abolished and its practice in any form is forbidden. Untouchability is an offence punishable in accordance with law.

(v) Abolition of titles : Article 18 provides that 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.

2. Right to Freedom

- (A) Article 19 provides that all citizens shall have the right
- (i) to freedom of speech and expression,
 - (ii) to assemble peaceably and without arms,
 - (iii) to form associations and unions,
 - (iv) to move freely throughout the territory of India,
 - (v) to reside and settle in any part of India,

(vi) to practice any profession or to carry on any occupation, trade or business,

(B) Protection in respect of conviction for offences

Article 20 provides that

- (i) No person shall be convicted of an offence except for violation of law.
- (ii) No person shall be prosecuted and punished for the same offence more than once.
- (iii) No person accused of any offence shall be compelled to be a witness against himself.

(C) Protection of life and liberty

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

(C-i) Article 21 A - Right to Education. The 86th constitutional Amendment Act 2002 has made free and compulsory primary education a fundamental right of all children between the age of 6 to 14 years.

(D) Protection against arrest and detention

According to Article 22

- (i) No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall be denied the right to be defended by a legal practitioner of his choice.
- (ii) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours, and no person shall be detained in custody without the authority of a magistrate.

3. Right against exploitation (Article 23, 24)

It includes the following :

- (i) Traffic in human beings is prohibited
- (ii) 'Begar' and other similar forms of forced labour are prohibited. Any contravention of this provision is punishable in accordance with law.

- (iii) No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment.

4. Right to Freedom of Religion (Article 25 to 28)

Subject to public order, morality and health

- (i) All persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.
- (ii) Every religious denomination or section thereof has the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.
- (iii) No person shall be compelled to pay any taxes, the proceeds of which are meant for any particular religion.
- (iv) No religious instruction shall be provided in any educational institution wholly maintained out of state funds.

5. Cultural and Educational Rights (Article 29, 30)

It includes the following:

- (i) Any section of the people of India having its own language, script or culture shall have a right to conserve the same.
- (ii) All minorities whether based on religion or language have the right to establish and administer educational institutions of their choice.

6. Right to Constitutional Remedies (Article 32)

This right is the most important as it provides key to the enforcement of other fundamental right, Dr. Ambedkar has rightly described it as “the heart and soul” of the constitution. It includes the following:

- (i) The right to move the Supreme Court by appropriate procedures for the enforcement of the rights is guaranteed.
- (ii) The Supreme Court has the power to issue directions or orders or writs for the enforcement of any right. The important writs are : Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warranto.

A CRITICAL ESTIMATE

The chapter on Fundamental Rights in the constitution has not been free from criticism. According to some, many positive rights such as the right to work, the right to education and medical care, etc., which ought to have found a place in the chapter have been ignored.

The critics also allege that, as the fundamental rights are hedged in with so many restrictions and exceptions the constitution does not embody fundamental rights in reality, but only an apology for them. What has been given by one hand has been taken away by the other.

Article 33 provides that Parliament by law determines as to what extent any of the fundamental rights shall, in their application to the members of the armed forces or forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them.

During the period of emergency also the President has the power to suspend the fundamental rights, including the right to move any court for the enforcement of such rights.

Another line of criticism is that the fundamental rights are couched in difficult language, and that they are beyond the comprehension of an ordinary reader. Without the help of a lawyer, it will not be as easy task for any citizen to defend his right, if violated. This difficulty has therefore, led the British writer Ivor Jennings to opine that it is a “Lawyers’ Paradise”.

Finally, if the state enacts a law to give effect to the Directive Principles of state Policy, it cannot be deemed to be void on the ground that it is inconsistent with or violative of the fundamental rights. It means that the Directive Principles have supremacy over the Fundamental Rights.

But even with these criticisms, the chapter on Fundamental Rights as Dr. M.V. Pylee aptly remarks, “remains of formidable bulwark of individual liberty, a code of public conduct and a strong and sustaining basis of Indian democracy”.

FUNDAMENTAL DUTIES

The Forty-second Amendment Act, 1976 has added a chapter (chapter IV A) on Fundamental duties to the Indian constitution. The duties enumerated in the constitution (Article 51-A) are as follows:

1. To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers and the wild life and to have compassion for living creatures.
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.
11. Duty of parents to provide education to children. 86th Constitutional Amendment has incorporated Right to Education as a fundamental right for the children. This amendment has made it a fundamental duty of parents to send their children to schools.

The duties prescribed, embody some of the highest ideals preached by our great saints, philosophers, social reformers and political leaders. It reminds the citizens that the rights cannot exist without duties. Just as the Directive Principle of State Policy lay down guidelines for the various governments, similarly the fundamental duties are calculated to draw the attention of the citizens towards the duties they owe to the nation and to one another. On the faithful fulfilment of duties by every citizen depends the future prosperity, peace, harmony and progress of the country. But the constitution does not provide for the enforcement of the duties.

POINTS TO REMEMBER

Fundamental Rights

General nature

Fundamental rights in India are most elaborately written. Some rights can be enjoyed by both citizens and aliens while certain rights are available to citizens only. The rights are both positive and negative in character. Fundamental rights are justiciable. They are applicable throughout the country. They can be amended but not abrogated.

Specific rights

1. Right to Equality
It includes equality before law, prohibition against discrimination, equality of opportunity in matters of public employment, abolition of untouchability and abolition of titles.
2. Right to Freedom
Freedom of speech and expression, freedom of assembly and association, freedom of movement and residence and freedom of profession, protection in respect of conviction for offences, protection of life and property, protection against arbitrary arrest and detentions.
3. Right against Exploitation
Traffic in human beings 'begar' and employment of children below the age of 14 years in hazardous jobs are prohibited.
4. Right to Freedom of Religion
Freedom of conscience and worship. Nobody can be compelled to pay religious taxes. No religious education on institutions wholly maintained by the State Funds.
5. Cultural and Educational Rights
It includes the right of minorities etc. to conserve their language and script and to establish and administer educational institutions.
6. Right to constitutional Remedies
It protects our rights.

Critical estimate

Many positive and economic rights are omitted. These rights are restrictive in nature. During period of emergency rights can be suspended. They are couched in difficult language. There is supremacy of directive principles.

FUNDAMENTAL DUTIES

To abide by the constitution and to respect the National Flag and Anthem, to cherish the noble ideals of national struggle, to defend the country, to promote harmony, to preserve rich cultural heritage, to protect national environment, to develop scientific temper, to safeguard public property and to strive towards excellence.

The 42nd amendment 1976 has added a chapter on Fundamental Duties (Part IV A). But the constitution does not provide for the enforcement of the duties.

THE DIRECTIVE PRINCIPLES OF STATE POLICY**Nature and Purpose**

Part IV of the constitution (Article 36-51) provides the 'Directive Principle of State Policy'. Dr. Ambedkar described these principle as a "novel feature" of the constitution of India. These Directive Principles are in the nature of general directions or instructions to the state. They embody the objectives and ideals which Union and State Governments must bear in mind while formulating policy and making laws. The framers of the constitution, in this respect, were influenced by the constitution of Ireland, which embodies a chapter on "Directive Principles of State Policy". The Irish themselves had, however, taken the idea from the Constitution of Republican Spain which was the first ever to incorporate such principles as part of constitution.

These principles in our constitution constitute a sort of moral supplement to the Fundamental Rights. If the fundamental rights of citizens declared in Part III of the constitution lay the foundations of political democracy in India, the Directive Principles aim at the establishment of social and economic democracy in the country.

Directive Principles of State Policy are not legally enforceable by any court and the state cannot be compelled through the courts to implement them. Nevertheless, the constitution declares that they are fundamental in the governance of the country and that it shall be the duty of the state to apply these principles in making laws.

The Directives are, thus, the life-giving provisions of the constitution. They inscribe the objectives of a modern “Welfare State” as distinguished from a mere “Police state”

DIRECTIVE PRINCIPLES

In order to understand the comprehensiveness of the Directive Principles, we may broadly classify them into two categories: Those relating to internal policy on economic, social and cultural matters and those relating to external policy.

A. Principles on Internal Policy of the state

1. Economic principles

- (i) The state will take into consideration the right of all citizens to have an adequate means of livelihood.
- (ii) The state will regulate the ownership and control of the means of production and distribution in the interest of the common good.
- (iii) The economic policy of the state should be such that the means of wealth-accumulation with regard to the benefits of the people should be clear.
- (iv) There shall be equal pay for both men and women for equal work.
- (v) It will be the duty of the state to see that their condition of service will not be harmful to the female, male and juvenile labourers and they will not be exploited owing to their economic condition.
- (vi) The state will make sufficient and effective management within its means for the attainment of the right of the people to work and education and providing for public help to them in emergency.
- (vii) The state will make laws for the work and sufficient wages for standard of living to the labourers working in fields and factories and other workers. It will encourage development of cottage and village industries in natural areas on individual and co-operative basis.
- (viii) It will also strive for the development on modern scientific lines of agriculture and animal husbandry and for improvement in the cattle-breeding.

2. *Social and Cultural Principles*

- (i) To ensure equal justice and free legal aid to the poor.
- (ii) To organise village-panchayat as units of village self-government.
- (iii) To secure to all workers wage for living, decent conditions of work and social and cultural opportunities.
- (iv) To secure for the citizens a unified civil code throughout the country.
- (v) To provide free and compulsory education for all children under fourteen years of age.
- (vi) To promote educational interests of the Scheduled Castes and Scheduled Tribes.
- (vii) To protect and improve the environment and safeguards forests and wild life.
- (viii) To protect the monuments and places and objects of national importance.
- (ix) To raise the standard of nutritious, living and to improve public health.

B. Principles for International Policy

There are directive principles relating to international peace and security. Article 51 declares that the state shall endeavour to

- (i) promote international peace and security.
- (ii) maintain just and honourable relations between nations.
- (iii) and the settlement of international disputes by arbitration.

Criticism of Directive Principles

When the constitution was being framed the Directive Principles of State Policy were subjected to severe criticism by the members of the Constituent Assembly. They have since been criticised on the following grounds.

- (1) Critics say that since these principles have no legal sanction behind them, they are no more than “pious wishes”, “moral precepts” and in the words

of K.T.Shah, “a cheque - the payment of which has been left on the wishes of the bank, “ Another critic said, “they are like a cow which dose not give any milk.”

- (2) These principles, according to some critics, lack coherence and are illogical. They are neither properly classified nor logically arranged. Moreover, how can a state give direction to itself? These directions might lead to conflicts between the various branches of the government both at the centre and in the states.

There might be some amount of truth in these criticisms, but it cannot be said that these principles have no significance. Lack of legal sanction behind them does not make them useless. They have their importance.

UTILITY OF DIRECTIVE PRINCIPLES

1. The Directive Principles constitute the “conscience” of our constitution. They were intended as moral precepts for the authorities of the state and have an educative value. They are a reminder to those in power for bringing democracy without a non-violent socio-economic revolution in the country.
2. The real importance of the Directive Principles is that they contain the positive obligation of the state towards its citizens. No one can say that these obligations are insignificant. The state is no more considered a “police state”. Now it is considered to be the duty of the state to interfere positively in the life of the society with a view to promoting the economic, social and cultural welfare of the citizens. The Directive Principles of the State Policy aim at giving effect to those modern social and political ideals.
3. True, the directive principles have no legal sanction behind them. People cannot move to the court, if they are violated or disobeyed by the state. But the real sanction behind them is the public opinion. The agents of the state may not be answerable to a court of law for breach of these principles, but they have to certainly answer in more powerful court, that is public court, when the next election comes. So no popular government can afford to ignore these principles.
4. The working of the constitution during the last few years has demonstrated the utility of the Directives even in the courts. Though not enforceable by the courts, of late the Supreme Court is issuing directives in certain cases, enforcing the

Government to perform their positive duties to achieve the goals envisaged by the directives.

5. The constitution itself has been amended successively (e:g: First, Fourth, Seventeenth, Twenty Fifth, Forty second and Forty fourth Amendments) to modify those ‘fundamental rights’, whose existence have created difficulty for the state in effecting some economic and social reforms which are envisaged by the Directive Principles.

In the light of these considerations, we cannot disregard the directive principles as a mere moral homily. The real importance of these directives is that they are like the ‘Instruments of Instructions’ to the various governments to be followed as fundamental in the governance of the country.

Directive Principles and Fundamental Rights

The Directive Principles differ from the Fundamental Rights in the following respects:

1. While the Fundamental Rights constitute limitations upon state action, the Directive Principles constitute the positive directions to the state to do certain things and to achieve certain ends by their actions.
2. While Fundamental Rights are enforceable in court of law, the Directive Principles are not enforceable in the court in case of their violation.
3. While Fundamental Rights aim at establishing political democracy, by guaranteeing equality, liberty and other essential rights to the citizens, the aim of Directive Principles of the State Policy is to attain social and economic democracy in the country through proper legislation by the state.

Broadly speaking, one may say that Part III of the constitution deals with the area of individual freedom and the extent to which the state can restrain the freedom and Part IV deals with the positive duties cast upon the state to attain the ideals set out in the Preamble to the constitution.

A large number of Supreme Court decisions is related with the question of priority between directive principles and fundamental rights. The 42nd amendment has provided superior position to the directive principles. It stated that no law passed to give effect to all or any of the Directive Principles of State Policy could be challenged

in any court. Of late the Supreme Court also in many cases has not only supported the need for speedy implementation of the Directive Principles, but has itself taken the initiative for the same.

RIGHT TO INFORMATION

Introduction

Indian Constitution has established a Democratic Republican form of government. In Democracy it is necessary to keep the people informed as the information is important for transparency on governance. Transparency can keep corruption in administration under control, as a result, the government and its institutions will remain responsible to the people. There is a trend worldwide to have increased openness in the system of governance through information to the people. Moreover in the Age of information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the simplest and fastest form possible. This is important because every developmental process depends on the availability of information. Right to know is also closely linked with other basic rights such as right to freedom of speech and expression and right to education provided to the people as fundamental rights in our constitution. Thus due to the changing socio-economic system and increased awareness of people about their rights, a demand for greater transparency in governmental functioning led to the passing of Right to Information Act.

The Right to Information Act is a law enacted by the Indian Parliament on 15 June 2005, and came into force on 13 October 2005. This empowers citizens to question the government, inspect their files, take copies of government documents and also to inspect government works. Right to Information Act has been designed to ensure secure transparency in administration and accountability of the public authorities towards the people. It has the potential to transform the process of governance into a process of good, effective and responsible governance.

Contents in the Right to Information Act 2005:

The Act extends to the whole of India except the state of Jammu and Kashmir.

All citizens possess the Right to Information. Information included any mode of information in any form of record, document, e-mail circular, press release, contract, sample or electronic data etc.

Right to information covers inspection of work, document, record and its certified copy and information in form of diskettes, floppies, tapes, video cassettes in any electronic mode or stored information in computers etc.

Information can be obtained within 30 days from the date of request in normal case.

If the information is a matter of life or liberty of a person, it can be obtained within 48 hours from the time of request.

Every public authority is under obligation to provide information on written request or request by electronic means.

Certain information are prohibited.

Restrictions made for third party information.

Appeal against the decision of Central Information Commission or State Information Commission can be made to an officer who is senior in rank.

Penalty for refusal to receive an application for information or for not providing information is Rs. 250 per day but the total amount of penalty should not exceed Rs 25.000.

Central information Commission and State Information Commission are to be constituted by the central government and respective state governments.

No court can entertain any suit, application or other proceedings in respect of an order made under the Act.

Objectives of the Right to Information Act

The basic objective of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the government, contain corruption and make our democracy work for the people in real sense.

It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. It is felt that this Act is a big step towards making the citizens informed about the activities of the government.

The Right to information Law of 2005 is thus a radical shift in our administrative culture and impacts all agencies of state.

The effective implementation of this law depends on fundamental shifts from the prevailing culture of secrecy to a new culture of openness, from despotism to accountability, from centralised decision making to participatory decision making.

However, only making the law, will not do justice to the information seekers until it is implemented with strong conviction. The law itself cannot create a climate for democratic way of life. What is needed is, such progressive laws must be backed by people's active involvement and through exercising Right to freedom of speech and expression and through Right to education, we can establish a true democracy.

POINTS TO REMEMBER

Nature & Purpose

The Directive Principles are in the nature of general instructions or directions to the state. They are the life giving provisions of the constitution.

Classifications

There are broadly two categories of directives - those relating to internal policy on economic, social and cultural matters and those relating to external policy like promoting international peace and security.

Criticism

The directives are no more than "pious wishes", as they have no legal sanction. They also lack coherence and are illogical.

Utility

They are a sort of moral supplement to Fundamental Rights. They contain the positive obligation of the state towards its citizens. The real sanction behind these directives is the public opinion. Of late the Supreme Court is taking initiative for speedy implementation of the directives. The constitution itself has been amended successively for the purpose.

Directive Principles and Fundamental Rights

1. Fundamental Rights are limitations upon the state actions, while the Directive Principles are positive directions to the state.

2. Fundamental Rights are justiciable, while Directive Principles are not.
3. Fundamental Rights aim at political democracy, Directive Principles aim at securing social and economic democracy.

Right to Information

The Right to Information Act, a law enacted by the Indian parliament on 15 June 2005 and came into force in 13 Oct 2005. This empowers Indian citizens to question the government, inspect their files and also to inspect government works.

MODEL QUESTIONS

(Group - A)

1. Write true or false against each of these statements:
 - (a) A Bill of Rights lays down the rights enjoyed by the people of a country.
 - (b) A Bill of Rights protects the liberties of an individual.
 - (c) Every country of the world has a Bill of Rights.
 - (d) The Constitution guarantees remedy against violation of Rights.
2. Which of the following is the best description of Fundamental Rights?
 - (a) All the rights an individual should have.
 - (b) All the rights given to citizens by law.
 - (c) The rights given and protected by the Constitution.
 - (d) The rights given by the Constitution that cannot ever be restricted.
3. Read the following situations. Which Fundamental Right is being used or violated in each case and how?
 - (a) Overweight male cabin crew are allowed to get promotion in the national airlines but their women colleagues who gain weight are penalised.
 - (b) A director makes a documentary film that criticises the policies of the government.
 - (c) People displaced by a big dam take out a rally demanding rehabilitation.
 - (d) Andhra society runs Telugu medium schools outside Andhra Pradesh.

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4. Which of the following is a correct interpretation of the Cultural and Educational Rights?
 - (a) Only children belonging to the minority group that has opened educational institution can study there.
 - (b) Government schools must ensure that children of the minority group will be introduced to their belief and culture.
 - (c) Linguistic and religious minorities can open schools for their children and keep it reserved for them.
 - (d) Linguistic and religious minorities can demand that their children must not study in any educational institution except those managed by their own community.
 5. Which of the following is a violation of Fundamental Rights and why?
 - (a) Not paying minimum wages
 - (b) Banning of a book
 - (c) Banning of loudspeakers after 9 pm.
 - (d) Making a speech
 6. An activist working among the poor says that the poor don't need Fundamental Rights. What they need are Directive Principles to be made legally binding. Do you agree with this? Give your reasons.
 7. Several reports show that caste groups previously associated with scavenging are forced to continue in this job. Those in positions of authority refuse to give them any other job. Their children are discouraged from pursuing education. Which of their Fundamental Rights are being violated in this instance?
 8. A petition by a human rights group drew attention of the court to the condition of starvation and hunger in the country. Over five crore tonnes of food grains was stored in the godowns of the Food Corporation of India. Research shows that a large number of ration cardholders do not know about the quantity of food grains they can purchase from fair price shops. It requested the court to order the government to improve its public distribution system.
 - (a) Which different rights does this case involve? How are these rights interlinked?
 - (b) Should these rights form part of the right to life?

9. Which of the Fundamental Rights is in your opinion the most important right? Summarise its provisions and give arguments to show why it is most important.

(Group - B)

1. Fill in the Blanks of the following sentences

- (i) Part _____ of the Constitution enumerates fundamental rights.
- (ii) Part _____ of the Constitution enumerates Directive principles of state policy.
- (iii) The present Constitution contains _____ categories of fundamental rights.
- (iv) _____ has power to amend the provisions of fundamental rights.
- (v) Art 32 grants the _____.
- (vi) Freedom of press stands included in the right to _____.
- (vii) Right to information is a _____.
- (viii) Art 21A relates to _____.
- (ix) _____ is regarded as the protector of fundamental rights.
- (x) Directive Principles of state policy are _____ in nature.
- (xi) The idea of DPSP is borrowed from _____ constitution.
- (xii) There are _____ fundamental duties of citizens.
- (xiii) The chapter on fundamental duties was added in the constitution by _____ Amendment Act.

2. Multiple choice questions

- (i) Fundamental Rights are contained in which part of the constitution of India :

(a) Part IV	(b) Part III
(c) Part II	(d) Part V
- (ii) Which is not a fundamental Right?

(a) Right to freedom	(b) Right to property
(c) Right to Equality	(d) Cultural and Educational Right
- (iii) Fundamental Rights can be amended by

(a) Judiciary	(b) Executive
(c) Bureaucracy	(d) Parliament

- (iv) Who acts as the guardian fundamental Rights ?
- (a) Parliament (b) Judiciary
(c) Executive (d) Police
- (v) Right to Equality is defined in Art :
- (a) 14-18 (b) 19-22
(c) 23-24 (d) 31-32
- (vi) Which part of the Constitution deals with Directive principles of state policy ?
- (a) Part II (b) Part III
(c) Part IV (d) Part V
- (vii) The Directive Principles state policy are.
- (a) Positive Directions (b) Non-Justiciable
(c) Socio-economic principles (d) All the above.
- (viii) Which of the following is not a Directive Principles ?
- (a) Right to Freedom of speech
(b) Separation of Executive and judiciary
(c) Uniform Civil code
(d) Protection of weaker sections of society
- (ix) Directive Principles have been described in Articles :
- (a) 36-50 (b) 1-11
(c) 19-27 (d) 12-35
- (x) Fundamental Duties are contained in :
- (a) Part IV Art 51 (b) Part V Art 52
(c) Part IV Art 51 A (d) Part I Art 1
- (xi) How many Fundamental Duties stand incorporated in the Constitution ?
- (a) 6 (b) 9
(c) 10 (d) 11

3. Short Questions (to be answered in 3/4 sentences)

- (i) What is equality before law?
- (ii) Name the Fundamental rights of the Indian citizen.

- (iii) What is the right to religious freedom?
- (iv) What is Art 32 of the Constitution?
- (v) Why limitations on fundamental rights are considered justified?
- (vi) How does the declaration of national emergency impact on fundamental rights?
- (vii) Which fundamental right is the protector of fundamental rights?
- (viii) What is the meaning of writ?
- (ix) What is Habeas corpus?
- (x) What is mandamus?
- (xi) What is Quo warranto?
- (xii) Can the directive principles of state policy be enforced in courts?
- (xiii) What is part IV of the Indian constitution?
- (xiv) How Directive principles are related to fundamental rights?
- (xv) What is the utility of Directive principles of state policy?
- (xvi) Write five important fundamental duties as mentioned in the constitution?
- (xvii) What is Right to Information?

(Group - C)

Essay Type Questions

1. What are the key features of part III of the Indian Constitution?
2. Briefly discuss the fundamental rights of Indian citizens.
3. Fundamental rights are 'neither fundamental nor rights' - comment.
4. Discuss the directive principles of state policy.
5. Analyse the role of right to information for the working of democracy in India.



CHAPTER - 12

ELECTION AND REPRESENTATION

Election and Democracy

Almost all the countries of the world today have democratic government. Simply speaking democracy is the rule of the people. Abraham Lincoln, the former President of America had opined that Democracy is a government of the people, by the people and for the people. Ancient Greece, for the first time was practicing democracy. It was a form of direct democracy. But today that form of direct democracy is not possible. In the present day the states are very large and the size of the population is big. Hence it is not possible on the part of the people to directly participate in the process of administration. They cannot directly decide the policies for them. It was possible in ancient Greek city states as they were small in size and population size was small. Today almost all the democratic states have adopted representative form of democracy. In representative democracy people choose their representatives through election and those representatives participate in the process of governance and frame policies for the people. Hence in present day democracy the importance of election has increased. Democracy and election are linked intimately together. Free and their election is very much necessary for successful democracy. Through periodic elections people of a democratic state exert their rights to form a popular government that can protect their interest. Each and every democratic state attempts to keep the electoral process clean and corruption free in order to ensure good governance.

Who can vote in the election?

In representative democracy elections are held periodically. But all the people of the state do not vote in the election. A question, automatically come as to who are

qualified to vote. Those who exercise their right to vote and elect the representatives are comparatively a small portion of the total population. The entire body of such voter is called electorate. Gilchrist defines an electorate as 'the people who are qualified by law of the state to elect the members of the legislature'. Usually the minors are excluded from the electorate. Also aliens and persons of unsound mind are deprived from this right to vote. Some states deny this right to women. Also many countries impose property and educational qualification. Electorate which consist of voters plays a very vital role in democracy. A vigilant, alert and conscious electorate is the prerequisite of a successful democracy.

Theories of Franchise

It is difficult to decide the basis of election in a democracy. Various theories of franchise have been extended by many scholars. One school of thought considers this right to vote as a natural intrinsic right. The offer school of thought considers that this is a right which is ordained by State. During the eighteenth Century the doctrine of popular sovereign and natural equality of men were the favourite themes of the political thinkers. They consider that ultimate sovereignty resided with the people. Democracy is based on the Principle of equality of men and this equality can be ensured only when all men are granted right to vote. The thinkers who believe in this doctrine of natural equality of men favour universal franchise and argue that through universal franchise the interest of all can be safeguarded.

But Philosophers like John Stuart Mill, Lecky, Bluntschli and Sir Henry Maine held that right to vote is not an inherent right of man. It was a right conferred by state on its citizens. And every citizen should not enjoy this right. These thinkers oppose universal suffrage. They argue that state can confer this right only to the qualified citizen. To extend this right to the ignorant masses means to invite dark days of democracy. Hence state can impose qualifications to enjoy this right to participate in elections.

Universal Adult Suffrage

Among all the theories of franchise the doctrine of Universal Adult suffrage is the most popular doctrine as this advocates for indent possible extension of suffrage. Hence almost all the democracies of the world are adopting this principle of Universal Adult suffrage. This principle can be summed up as 'one man one vote' principle. This is universal because all the adult citizens of a state enjoy this right to vote

irrespective of sex, religion, language, caste, property and educational qualification. The state by law can deny the minors, idiots, lunatics, bankrupts, aliens and criminal the right to vote. The modern position of universal Adult suffrage has been rightly described by Garner. He states, “The view which practically all writers on political science adopt today in regard to the nature of the suffrage is that it is an office or function which is conferred by the state upon only such persons as are believed to be most capable of exercising it for public good, and not a natural right which belongs without distinction to all citizen of the state”.

The minimum age at which a person is entitled to vote varies from country to country. At present in India, Britain, USA, Russia the minimum age is 18. In France the minimum age is 21. The age qualification is insisted upon as certain mental and physical maturity is required for right to vote. Mental and moral disqualifications deprive the lunatics and criminal of this right. Aliens are not granted this right as citizens alone are loyal to the state. However this doctrine of Universal Adult Franchise is the most popular democratic doctrine. But there are arguments in favour of and against this doctrine.

Arguments in favour of Universal Adult suffrage:

1. In democracy ultimate power lies with people and they control government. Universal Adult suffrage gives every adult citizen right to participate in the process of governance. Hence this principle is consistent with democratic norms.
2. This doctrine is based on the principle of political equality of the citizens which is the cornerstone of democracy. Universal Adult suffrage provides equal opportunity and equal share in government.
3. In a democracy the legislature must protect the interest of all groups and individuals. The Universal Adult suffrage provides the scope to all the individual and groups in a society to be represented in the legislature. It is rightly said that ‘which touches all must be decided by all. The doctrine of universal suffrage never deprives any group or individual of the right to vote.
4. The right to vote gives an individual a sense of involvement in the process of governance. This makes a citizen more conscious and alert. It enhances one’s self-esteem and helps in the process of political acculturation and political socialization.

5. In a democracy the legislature being the law-making body is supposed to be truly representative. The universal Adult suffrage makes the legislature a truly representative body by providing representation to all the shades of opinion in the society.

Arguments against Universal Adult Suffrage

1. This Principle of Universal Adult suffrage assumes that all the adult citizens of a state are eligible voters and capable of making right decision. But this is not a fact. The masses in general are not capable of making the right political decision. They may not be able to elect their right representative. Hence scholars like Henry Maine, Macaulay and Lecky were critical about this doctrine. They consider it to be unwise and dangerous.
2. The effectiveness of the principle of universal adult suffrage depends on certain condition. For example J.S. Mill had observed that universal education must precede universal enfranchisement. He had said “I regard it as wholly inadmissible that any person should participate in suffrage without being able to read, write and perform the common operations on arithmetic”. Education enhances the mental ability of a voter and educated voter can take mature decision. Hence in the opinion of many scholars because of this principle of universe suffrage democracy leads to the administration my dull mediocrity.
3. Scholars who defend property qualification for right to vote also denounce universal adult suffrage. Mill once said “Those who pay no taxes, disposing by their vote other people’s money, have every motive to be lavish and none to economise. The Principle of universal suffrage may fail in ensuring responsible voters.
4. Those who extend arguments in favour of not giving right to vote to women oppose universal adult suffrage. Because this doctrine extends right to vote equally to women section of the society. Equal political right to women gives them scope for participation in public affairs. In this process the home and family front in neglected, which creates in the long run an imbalance and lopsidedness in the society and the normal order is vitiated. Critics of universal suffrage find it to be responsible for the disorder and indiscipline in the society.
5. This Principle of Universal Adult Suffrage creates huge electorate and makes the process of election more complicated and expensive, and dilutes the quality of representation in democracy.

In spite of the arguments against it, the doctrine of Universal Adult Suffrage continues to be the most popular and acceptable principle in the democratic countries of the world. The arguments in favour of this principle are more logical and convincing. It protect and safeguards the interests of all sections of the society. It ensures political equality and gives equal opportunity in the sphere of administration. It never discriminates on the ground of sex, religion, caste and creed. It protects the interests of the minority community. It protects human dignity and upholds democratic values.

In many countries the Adult Suffrage had extended the right to vote only to the male members in the beginning. Even countries like USA and Britain had this practice. In USA this right to vote was granted to women only in 1920. The Representation of people Act 1918 allowed only a limited system of female suffrage and extended this right in 1928 of course now the women enjoy equal right to vote with men. In Switzerland, the country of direct democracy allowed the right to vote to its women in 1970. At present the feminist movements have spread political consciousness and almost all the democratic countries have granted this political right to vote to their women citizens.

Arguments in favour of women suffrage:

1. Few scholars maintain that right to vote is an intellectual and moral right which should be extended to all irrespective of their sex. Since physical strength is not its basis, women cannot be deprived of this right. Scholars like Sidgwick, J.S. Mill and Esmein defended women suffrage on these grounds.
2. Human society is more or less patriarchal where there is more of male dominance. Women require this right to vote for their defence and protection against male tyranny. J.S. Mill observed "If there be any difference women require it more than men, since being physically weaker they are more dependent on law and society for protection".
3. Women prove their efficiency and capability in many fields. They own property, enter into gainful occupations. In many areas women have gone ahead of men. Their social role has been enhanced. So feminist leaders argue that they should be politically enfranchised.
4. A well-known principle of democracy is no taxation without representation. Since women are property owners and taxpayers they have a right to be represented in the legislature. Hence women suffrage is very much justified.

5. Democracy is a government of the people and it is run with the consent of people. Both men and women contribute the people living in a definite territory of state. Denial of right to vote to women is the very negation of democracy.
6. Participation of women in public life would elevate the quality of public life. Right to vote increases their civic sense which finally can have an enriching impact on the home front.

Arguments against women suffrage:

1. In the opinion of advocates who argue against women suffrage the political right to vote will encourage participation of women in public affair this may spoil the women-like qualities. Home is the natural habitat for women. If they spend more time outside home, the home and children will be neglected. Their qualities as mothers and home makers shall be destroyed.
2. If the women get entangled in political controversies, they lose dignity and honour.
3. If husband and wife have different political ideologies, peace in home shall be destroyed.
4. Many are of opinion that generally women are swayed by emotions. Their decisions are less based on reason than on emotion. Hence the decisions are likely to be less mature which will contribute to an unhealthy political trend. Hence they are not fit enough to participate in the process of public policy making.
5. Some argue that since women are less physically capable and are not fit for jobs like military jobs and other strenuous jobs, they should not be given the right to participate in public affairs. Hence these scholars favour women disenfranchisement.

Thus these are some of the arguments in favour of and against women suffrage. But women disenfranchisement is based on old prejudices. Feminist leaders strongly raise their voice against this trend. They argue that men and women are equal in all respects. Sometimes women excel in certain fields. If we deprive them of the right to vote and right to participate in public affair then it amounts to negation of democracy. In the modern time when we think in terms of women empowerment it is extremely unjustified to deprive them of this right to vote.

Kinds of Election

There are two kinds of elections namely direct election and indirect election.

Direct Election

If the voters directly participate in the election and elect their representatives it is called direct election. In this method, the voter goes to the polling booth and exercises his vote in favour of the candidate of his choice. The candidate who secures the highest number of votes is declared elected. This method of election is very simple and usually adopted by many democratic countries. This method of election is also known as the **First Past The Post** system because whoever first reaches the highest number of votes, is declared elected. In our country this method is adopted in electing members of Lok Sabha and State Legislative Assemblies. Also the members of House of Commons in England and the members of the House of Representative in USA are elected through direct election.

Merits :

- (1) This method of election is most democratic. People exercise their choice directly without any intermediary body.
- (2) In this method direct contact between the voter and his representative is established.
- (3) This method makes the voters politically more conscious and responsible. It spreads political education and the citizens realize the importance of voting.
- (4) The voters develop acquaintance with various issues and problems of democracy.

Demerits :

This method of direct election has also many demerits.

- (1) Many voters are illiterate and ignorant. So even if opportunity is given they are unable to find out their right representative.
- (2) In this election the professional politicians and demagogues take advantage. Direct election often results in popular passion. Hence rational voting becomes sometimes impossible.

- (3) Because of nasty politics sometimes the wise and able people do not contest election. Hence the nation is deprived of their service.
- (4) The size of the constituencies and the voter strength has gone up. So direct contact between the representative and the voter is not possible. Hence the very purpose of direct election is lost.
- (5) Direct elections are highly expensive and become a burden on the state exchequer.
- (6) The influence of money power and criminalization has spoilt the sanctity of such election.

Indirect Election

In indirect election the voters do not participate in the election of their representatives. They vote only to choose and constitute an intermediary body who participates in the final election to choose representative. Hence in this process two elections are involved. The mass of voters in the first round elect a small body of voters. This small body elect members of the legislature. This intermediary body is usually called the Electoral College. This indirect method of election is adopted for electing Indian president and also members of Rajya Sabha in India. American President is also elected through indirect election. In France the members of the upper chamber are indirectly elected and in former USSR the deputies of Soviet of Nationalities were elected in this manner.

Merits :

- (1) In direct election, the many of the voters are swayed by passion and likely to fail in electing right representative. As the members of the intermediary body are more qualified and conscious, they can elect the right representative.
- (2) Indirect election reduces the evils of party politics. Election campaign in direct election sometime take ugly form. Professional politicians can mislead the mass voters. This does not happen with the electoral college as its members are more matured.
- (3) For underdeveloped and developing countries, indirect election is more suitable as the level of literacy and political consciousness of masses of voters is low.

- (4) It is further argued that the indirect election “introduces an element of delay in election and acts as a sort of sieve through which election fever passes” Emotions subside and reason plays its role.

Demerits :

In spite of some merits this method of indirect election does not find much favour. It is pointed out that it has more of demerits. These demerits are:

- (1) This method is highly undemocratic and deprives the mass voters of their right to choose their representatives.
- (2) The Primary voters become callous as they know that they have no role in electing finally the representatives. They lose interest.
- (3) It is wrong to think that indirect election reduces the evils of party politics. The members of the electoral college become mere puppets in the hands of the party leaders.
- (4) Where the party system is highly organized and disciplined the method of indirect election is reduced to a mere formality.
- (5) This method also tends to be expensive as it involves two stages of election and burdens the public exchequer.
- (6) The evil influence of money power and criminalization may be more in this system as the members of the electoral college are few in number. It is easier to capture them through bribery and corruption.

Method of voting

There are various methods of voting. They are – Public (open) voting, secret voting, limited vote plan, cumulative vote system, postal voting proxy voting, plural voting etc.

- (1) **Public Open Voting :** In this open system the voters openly vote for the candidate of his choice. Thinkers like J.S. Mill, Montesquieu had supported this system. This practice was prevalent in earlier times in Prussia, Denmark, and Soviet Union etc. In this system bribery and corruption is less. But as there is a possibility of coercion and hindrance to free and fair exercise of choice by the voter, the modern democratic states have stopped this practice.

- (2) **Secret voting :** Now almost all the democratic states have adopted the method of secret voting. Voters' choice is kept secret. Hence in this system the voter feels free to cast his vote as the element of coercion can be avoided. There is no scope for bitterness. The voter is more likely to be guided by conscience.
- (3) **Plural Voting system :** Even though 'one man one vote' system is accepted more or less universally, in certain cases plural voting system is adopted. Under this system some individuals enjoy more than one vote. This system is also known as differential voting or weighted voting. The argument in favour of this system is mainly based on the idea that in choice of public representative the qualified few should have a greater weight over the few. The principle here is that vote must be weighted not counted. Before 1948 this system was prevalent in England. The property holders and university Degree holders got extra weight for their votes. But now this practice is abolished.
- (4) **Limited voting system :** This system is mostly adopted to ensure representation of minorities and is applied in multi member constituency. The voter is not allowed to give more than one vote to any single candidate and he can cast less number of votes than the number of seats to be filled. Previously this system was prevalent in Britain, Japan, and Italy. But now this system is no more existent.
- (5) **Cumulative voting system :** This system is also meant for multi-member constituencies. The voter can cast as many votes as there are representatives to be chosen in constituency. For example, if four representatives are to be elected from a constituency, each voter is entitled to cast four votes. This system also helps in representation of minorities.
- (6) **Postal Voting System :** The personnel engaged in polling stations during election time cannot go to their own polling booths to cast their votes. This postal voting system helps them to cast their vote through post.
- (7) **Proxy Voting :** Sometimes the blind, old and physically challenged persons are not able to cast their votes for themselves. In that case another person recommended by him can cast vote on his behalf only in his presence.

Representation of Minorities

In practice Democracy means the government by the majority. But the interests of the minorities are also safeguard. Democracy must be representative of classes of

opinion and interest in a society. John Stuart Mill once said “In a really equal democracy, every and any section would be represented not disproportionately, but proportionately. A majority of electors would always have a majority of representatives; but a minority of the electors would always have a minority of representatives..” Adequate representation of minorities therefore is the most important question which confronts representative democracy. The word ‘minority’ may be used in a variety of senses. There may be racial, linguistic and religious minorities. The system of election, commonly adopted is based on ‘one man one vote’ principle and plurality of votes. The candidate securing largest number of votes in a single member constituency is declared elected. There are not sufficient provisions for minority representation in this system. Various offer methods have been suggested to remove the defects of ordinary electoral systems where there is no provision of minority representation. Some of the methods of minority representation are discussed here.

(1) Proportional Representation

Proportional Representation is that method by which percentage of seats in a legislature captured by one party is proportionate to its share of the popular vote. This system is meant for multi-member constituency where more than one candidate is declared elected. This is also most suitable method for giving due representation to minorities. The aim of proportional representation is to give representation to all sections of opinion and interests and no vote should be lost. There are two varieties of proportional Representation – a) The Hare system of proportional Representation with single transferable vote and The List system.

(a) The Hare System : This system is named after Thomas Hare, who formulated it in 1857 and elaborated upon it in his book ‘The Machinery of Representation. Some are of opinion that the idea of this system appeared in the French National Convention in 1793, much before Hare. Mathematician Gergonne in 1820, Victor Considerant in Switzerland had also worked on this Principle. But Thomas Hare has elaborated and popularized the system. This system presupposes large multi-member constituencies with each constituency returning at least three representatives. The voter in this system is to indicate his choices. Hence sometimes it is called preferential voting system. The number of choice of a voter is equal to the number of vacancies to be filled. For example if there are five contestants and three seats are to be filled up, the voter gets three choices which he exercises in preferences i.e., 1st, 2nd, and 3rd preference. For getting elected a contestant must achieve the required quota of votes.

The quota is to be fixed as per a formula according to Hare Quota

$$= \frac{\text{Total number of valid votes}}{\text{Number of seats} + 1} + 1$$

If number of seats to be filled is three and total number of valid votes cast is 32000 then the quota = $\frac{32000}{3+1} + 1 = 8001$.

In the counting to votes only the first preference votes are counted in the first round and if a contestant gets the required quota he is declared elected. His surplus votes, if any shall be passed on to the contestant not yet elected, in order of preference. This process of transferring surplus vote continues down the list until the necessary number of representatives is elected. This method of proportional representation with single transferable vote is adopted for electing members of Rajya Sabha in India. Our President and Vice-President are elected by the method of single transferable vote, not strictly by proportional representation as these are not multi member constituency. Only one candidate is to be elected. This method is also used in Republic of Ireland and South Africa for senatorial elections. This system is a complex system and unintelligible for ordinary voter. As it conceives of multi-member constituency undue advantage would be taken by party knots and sectarian combinations.

2. List System :

Another method of proportional representation List system. This is also meant for multi-member constituencies. In this system all the candidate are grouped in lists according to their party labels, and every party give a list of its candidate. The number of candidates equals the number of seats to be filled. The voter is to elect for the party and there by vote for the list provided by that party. Usually the list is a 'bound list'. The voter cannot change the order of the names of the candidates given by the party. In some countries, as an improvement the system of 'Free List' is introduced where the voter is given a choice to indicate his preference among the candidates of a party, for which the voter has decided to vote. The quota to secure a candidate's selection is determined as in Hare system. After the election seats are allotted to the parties in proportion to the percentage of votes secured the party. If the quota is 2000 and a party secures 6000 votes, then the first three candidates in the list of that party shall be elected. If all the seats are not filled up the party having the largest fractional

surplus gets the remaining seat. This list system is exceedingly simple. There are no independent candidates. The electorate has nothing to choose and decide. This system is adopted with some variations in countries like France, Belgium, Switzerland, Sweden and Italy.

Merits of Proportional Representation

- (1) This method removes the deficiencies and anomalies present in the election meant for single-member constituencies.
- (2) This method of election makes the legislature a true reflection of all the shades of opinion and interests of the society. All the political parties get represented in proportion of the votes secured by them.
- (3) Advocates of this method praise it for its mathematical accuracy in reflecting popular opinion.
- (4) This method protects the interest of the minorities.
- (5) No vote is wasted as there is a preferential voting system with single transferable vote.
- (6) This is a democratic and just method of election. Lord Acton has observed that the method of proportional Representation “is profoundly democratic, for it increases the influence of thousands who would otherwise have no voice in the governments and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into parliament a member of his won”.
- (7) It possesses the merit of getting rid of difficulties so as to the size and structure of constituencies.
- (8) Proportional Representation recognizes the nature of modern political parties as based not altogether on sectional divisions but on social and economic problems of national scope.
- (9) Voters become more politically conscious and exercise vote cautiously.

Demerits of Proportional Representation

In spite of its merits the political efficiency of proportional representation is seriously questioned. Scholars have pointed on to many demerits of this system.

- (1) This system is sufficiently complicated and beyond the comprehension of an ordinary voter. In big democracies where many voters are not adequately educated and conscious, this system may not yield result.
- (2) Under this system the counting and recounting of vote is a complex and cumbersome procedure. It places voters at the mercy of counting authorities.
- (3) In the List system there is an additional danger of corruption. Prospective candidate are tempted to use unfair means to get their names included in the party list.
- (4) It results in the return of many small parties. This encourages divisive force.
- (5) In this system there is more of probability of formation of coalition governments. Under such circumstances the stability of government is jeopardized.
- (6) The voters have no contact with the candidates.
- (7) The candidates have to depend upon their parties for financing and campaigning.
- (8) The system encourages 'minority thinking' in both the party leaders and voters. It creates a legislature based on narrow sectional interest which will not be conducive to general interest of the nation.
- (9) By-elections are not possible under this system. Hence casual vacancies cannot be filled up.

Scholars like Herman Finer, Harold J Laski, Prof Esmein and Sidgewick are strong critics of this system. Prof Esmein had condemned this system outright. He remarked "To establish the system of proportional representation is to convert the remedy supplied by the bicameral system into a veritable poison; it is to organize disorder and emasculate the legislative power; it is to render cabinets unstable, destroy their homogeneity make parliamentary government impossible".

Territorial Representation

This territorial representation is most commonly accepted form of representation. Most of the countries have adopted it. Under this system the whole of the territory of a country is divided into constituencies. From each constituency the representative are elected to the legislature. The population is divided into units of approximately equal strength on the basis of geographical territory they reside. Boundaries of the constituencies are periodically redrawn keeping the growth and variation of population.

Merits :

- (1) This type of territorial representation is most convenient.
- (2) This type of arrangement promotes intimate contact between the voters and their representatives.
- (3) This system is economical.
- (4) This helps in establishing stable government.

Demerits:

- (1) This type of representation develops parochial attitude among the representatives. They only look to the local interest. Regional interests override the national interest.
- (2) In this system the voters' choice gets limited. The list of the contestants becomes narrow. Even though more capable candidates are available outside the constituencies, they may not find a place in the list of the candidates as they are non-locals.
- (3) The practice of gerrymandering shall be encouraged. 'Gerrymandering' is an American practice of redrawing the boundaries of the constituencies. Boundaries of the constituencies are manipulated by the party in power to win elections.
- (4) It may lead to anomalous election results. A person having less votes may win election.
- (5) Professional and occupational interests are not safeguarded.

Functional Representation

Functional Representation is a protest against territorial or geographical representation. It is also known as occupational representation. The theory of functional representation is primarily associated with G.D.H Cole. He said that in place of an omniscient representative body there should be in society as many separately elected groups of representative as there are district groups of functions to be performed. Thinkers like Mirabeau and Sieyes emphasized the need of functional representation Duguit maintained – “All the great forces of the national life ought to be represented – industry, property, commerce, manufacturing professions, and even science and religion. Two divergent groups advocate occupational representation from

different stand-points. The communists support it as it centres the voter's attention upon his work relationship and force him to think in proletarian terms. The non-communists support it because they are disgusted with the present system of territorial representation. In the opinion of Scholars like Graham Wallas, whose there is bicameral (Two-chambered) Legislature; the election to lower-chamber should be a representative body of various functions and interests. This system of functional representation is also known as Soviet System as the system of representation in Soviet Russia was based on the principle of vocation, i.e. workers, farmer etc. Mussolini introduced this system in Italy. The Weimar Constitution of Germany introduces this system by creation a National Economic Council in 1919 representing the interest of labour, capital and consumers.

Demerits of Functional Representation:

- (1) By Protecting the particular interest and function it endangers national interest.
- (2) Prof Esmien comments that it is an illusion and a false principle which would lead to struggle, confusion and even anarchy.
- (3) The legislators do not belong to the nation, nor even to the individual voter in the constituencies. They only belong to their separate function. They talk and argue only in occupational direction which hampers greatly nation-building activities.
- (4) It is difficult to define and interpret various occupations and there is no standard parameter with which their relative importance can be measured.
- (5) Multiplicity of interests and related lobby renders government unstable.
- (6) It is maintain by some scholars that functional representation is inconsistent with the principle of national sovereignty. It forces the citizens to consider first their particular interest and ignore national interest.
- (7) Vocational interest does not solve the problems of minority representation

Most of the thinkers and statesmen favour the continuation of the system of territorial representation not the functional representation

Communal Representation

Sometimes there are provisions of representation for various religious groups. This is known as communal representation. Under this system the parties are not

divided on political or economic issues but on religious issues. During British regime in India there was communal representation. Every religious community secured a separate representation. This was done in two ways. Firstly separate electorate were created where voters of each religious community voted separately for candidate of their own community. The second method was the reservation of seats under a system of joint electorate. The system of communal representation was introduced by the British to divide India and destroy national solidarity. After independence this system was abolished in India.

Electoral Process

In a country, election is a gigantic phenomenon and it get through various stage. If we observe the electoral process of our country we can know about the various stages of this process.

- (1) ***Delimitation of Constituencies:*** The whole country is divided into various constituencies. In our country different constituencies are delimited both for Lok Sabha and state Assembly elections. This job is done by Delimitation Commission.
- (2) ***Preparation of Voter List:*** After every census and periodically the voters list is prepared for every constituency and also necessary change are made in the list to make it up-to-date. The list contains the name of all eligible adult voters.
- (3) ***Declaration of election calendar:*** Before any general election the president of India gives direction to Election Commission to conduct the election. The Election Commission in consultation with the Union and state government, announce the electoral calendar. In this calendar the dates of nomination, scrutiny, and withdrawal of nomination, election, and declaration of results are mentioned.
- (4) ***Filing of nomination:*** The contestants file nomination within the date stipulated by Election commission. In the specified nomination form the candidate gives his consent to contest which must be proposed and seconded by his supporters. The candidate must meet the requirements laid down in the constitution. The party candidates are to contest with their party symbol. The independent candidates are to contest with the symbols allotted to them by Election commission.

- (5) **Scrutiny of nomination:** After the date of filing of nomination on the stipulated date the returning officer scrutinise the nomination papers in the presence of the candidates and come out with a list of valid nominations.
- (6) **Withdrawal of nomination:** The Election commission also fixes a date for withdrawal of nominations a candidate can withdraw his nomination within that date. After that date a final list of valid nomination is prepared and declared.
- (7) **Election campaign:** After the final list of candidates is declared, the candidates start campaigning. The political parties repair their election manifesto. During the campaign the political parties and the candidates are expected to abide by the model code of conduct issued by Election Commission. This helps in maintaining a peaceful and healthy atmosphere for election. The parties and candidates also make use of newspapers, Radio and Television for their election campaign besides meetings and rallies. Election campaigns must e closed before forty eight hours of the polling.
- (8) **Polling:** Polling starts on the date and time as declared by the election commission. In every constituency there are many polling booths. There is one presiding officer and many polling officers to assist him. There is secret voting system. Now-a-days in most of the booths electronic voting Machines (EVM) are used for the purpose of voting.
- (9) **Counting of votes:** The Election commission also fixed the dates for the counting of votes. On the day of counting, the agents of the candidates must be present. The invalid votes are not taken into counting. After the counting is over the candidate securing highest number of votes is declared elected. His name is announced by the returning officer.
- (10) **Election Controversies:** If any controversy arises over the result of the election the matter is to be settled by High Court of the state. Appeal can be made against the decision of High Court before the Supreme Court of India.

On the whole this is how election is conducted in our country. Many rules have been framed to conduct elections in a free and fair way. The Election Commission of India plays a vital role in conducting elections in e country.

Challenges to Free and Fair Elections

Elections are indispensable for democracy. It is only through elections the people participate in the process of governance. Even if in every democratic state rules are

framed to ensure free and fair election, many problems come in its way. There are a lot many challenges before the Election authorities. Especially in big and developing democratic countries problems are mounting high. We can come to know about these problems if we study our elections and electoral process. These challenges more or less all the democracies are facing

- (1) Criminalization of politics is the greatest challenge. Through their muscle power they make an unhealthy entrance into politics. The persons with criminal background manage to get party tickets to contest election. Many politicians had criminal supporters and they manage to get votes by intimidating the voters. This is one of the biggest challenges to free and fair election.
- (2) Another challenge comes from money power. Many scholars are of opinion that many candidates take advantage of the ignorance and poverty of the voters. Through bribery they are able to galvanize support in their favour. This trend deters the process of free and fair election as voters are not in a position to express their opinion.
- (3) In many cases particular families exert their undue influence in politics. This influence of family rule vitiates the process of free election.
- (4) People occupying various political offices misuse their power. They do it in connivance with dishonest public officer. During the time of election the politician- officer nexus creates big problems.
- (5) Major political parties are founded by industrial organizations and business houses for their election campaign. They have a vested interest. If these parties come to power funding organization put undue influence on them to protect their interest. They make the entire electoral process corrupt. This also creates problems for candidates supported by small parties and independent candidates.
- (6) There are also electoral irregularities like rigging, booth capturing and proxy voting. Defective voters list poses problems.
- (7) Many scholars observe that many major political parties are more or less similar in their policies and programme. Hence there is little choice for voters during election.
- (8) Too many elections create election fatigue among voters.
- (9) Monitoring electoral malpractices in Naxal and Maoist hit area have become big challenge on the part of the Election authorities.

10) Caste and religion plays undue role in electoral politics

These are few challenges in the way of conducting free and fair elections. Times have come that every democratic state must rise to the occasion and meet these challenges.

Conclusion

Elections play a very vital role in democracy. Through this electoral process public opinion is expressed. The success of democracy depends solely on the flawless electoral process and healthy method of representation. The organization involved in conducting the election should be impartial, honest and free from corruption. An alert and vigilant electorate has also a significant role in ensuring free & fair election.

POINTS TO REMEMBER

- Now almost all the countries of the world are democratic and there are representative forms of democracy. In those countries periodically elections are held and people choose their representative.
- In the election all the people of a state do not vote. The electorate, consisting of eligible voters is decided by the law of the land.
- There are many theories of representation. The universal adult suffrage is the most popular method of election. Minors, lunatics, aliens are deprived from voting. The laws of the land determine the minimum voting age.
- Many years ago women were deprived of the right to vote. But now all the democratic countries are in favour of women suffrage. Both men and Women enjoy equal right.
- There can be direct election and indirect election. In direct election voters participate in election directly. In indirect election there is an intermediary body between the primary voters and their representatives.
- There are many methods of election. For example open voting, secret voting, plural voting, limited voting, cumulative voting, postal voting and proxy voting.
- There are provisions for minority representation. There are two types of minority representation. The Hare system and the list system. These are meant mostly for multi-member constituencies.

- Representation can be geographical & territorial representation and functional representation. Mostly territorial representation is an accepted method.
- Election in a democratic country goes through various stages. They are delimitation of constituencies, preparation of voter list, Declaration of election calendar, filing of nomination, scrutiny of nomination, withdrawal of nomination, election campaign, polling, counting of votes and declaration of election results etc.
- There are many challenges to free and fair election. Criminalization of politics, misuse of unaccounted money, the nexus between politician and dishonest officials, booth capturing, rigging pose problems. In the Naxal and Maoist affected areas the election authorities face a lot of problems in conducting election. Ignorance and apathy on the part of the voters and irresponsible candidates reduce the importance of election.
- All the democratic governments must be ready to face these challenges and attempt to make the elections free and fair. Free and fair election along can strengthen democracy.

ELECTION COMMISSION OF INDIA

Introduction

The Election Commission of India is an autonomous quasi-judicial and a constitutional body established for the purpose of conducting fair and free elections to representative institutions of our country. Set up on January 25, 1950 under Art 324 of the Constitution the Election Commission may rightly be described as one of the pillars of our democratic polity.

Composition

The Election Commission until 1989 was a one - person Institution, who was called the Chief Election Commissioner. In 1989 two additional members, called Election Commissioners, were appointed making the Election Commission, a three member commission. In 1991 the Parliament passed a law which says, the Election Commission consists of the Chief Election Commissioner and such other members as the President of India may fix. At present the Election commission consists of Chief Election commissioner and two commissioners.

The President of India appoints the Chief Election Commissioner and other Election Commissioners, for a term of six years or upto the age of 65 for the Chief Election Commissioner and 62 years for Election Commissioners which ever is earlier. The Election Commissioners status is equivalent to that of a judge of the Supreme Court. The Chief Election Commissioner can be removed through impeachment like a judge of the Supreme Court and other Election Commissioners may be removed on the recommendations of the Chief Election Commissioner.

Powers and functions

Arts 324 to 328 of the constitution define the powers and functions of the Election Commission of India. Its functions can be summed up as under :

1. Conduct of elections to Parliament.
2. Conduct of elections to the State Legislatures including the Union Territories.
3. Conduct of elections to offices of President and Vice-President.

It also does the work connected with the following functions like

- (a) The preparation of electoral rolls.
 - (b) Fixing the dates of elections.
 - (c) Supervising the elections.
 - (d) Arranging for the counting of votes and declaring the results and advising the President at India in regard to disputes like whether a member of parliament or a state legislature has become subject to any disqualification or not.
4. Demarcation of constituencies.
 5. Recognition of political parties and allotment of election symbols.
 6. Scrutiny of election expenses of candidates.

Thus the responsibility of conducting the elections is vested with the Election Commission. In India till now the Election Commission has performed its task in the most efficient and honest manner which is a testimony of our successful experiment with democracy. The true democracy depends mainly on the independent functioning of the Election Commission. We feel proud that our election machinery working under the Election Commission has done its job remarkably well.

ELECTORAL REFORMS

Introduction

Like every Representative Democracy, the Indian Political System provides for election of the representatives for a limited term by the people of India. Since 1950, the election system has been serving well to the needs of the Indian Political System.

However, due to several limitations/defects of the election system, a demand for suitable electoral reforms has been made by scholars and constitutional experts.

Defects of the Indian election system

- (1) **Majority vote victory system:** The simple majority vote victory system, is the greatest defect as a candidate polling a minority of votes declared elected as the representative of the people by virtue of getting more votes than all other candidates taken individually. This has been criticised because, he has not secured majority votes to get elected as the representative of people.
- (2) **Imbalance:** Our Electoral system tends to create imbalance by preventing representation of certain parties, especially the minority parties for which they fail to get adequate representation in the Parliament (Legislature).
- (3) **Low voters Turn-out :** The electoral imbalances in the Indian elections, besides being intimately related to the system of majority vote victory system is also defective because of low elector turn out. The low elector turn-out helps the candidates to win by small majorities of votes and it becomes a determining factor in bringing a political party to power whom the majority of electorate may not be really willing to approve as the ruling party.
- (4) **Defects in the electoral process**
 - (i) The method of preparing and revising the electoral rolls is not satisfactory. Bogus registration and multiple registrations are in practice.
 - (ii) The contesting candidates individually organise the election campaign. This makes the campaign disorderly and unsystematic. The absence of common platform and public means for campaigning makes the election contest a very costly, noisy, and disturbing affair that confuses the process of election.

- (iii) The undesirable and unhealthy role of money in elections has been a big drawback of the system. The high cost involved has made the contest a privilege of the rich and well to do.
- (iv) The Indian election system has been witnessing the entry of criminals and anti-social elements in the electoral process.
- (v) The provision for the adjudication of election disputes by the High Courts too has been a delaying, expensive and harmful system.
- (vi) The illiteracy among the vast majority of people is the greatest source of limitation in the election system, as the voters are unaware of the process of electoral system.

Electoral Reforms :

- I. *Steps to check the Imbalance*** - For this proportional representation (List system) can be taken into consideration. The Tarkunde Committee also favoured this system List-system gives all political parties their due depending on the percentage of votes polled by them in the election. The successful operation of proportional representation system in other countries like Germany, France, Italy etc is cited as examples for adoption. The List system with suitable modifications can be effectively used for preventing big electoral imbalances in India.
- 2. *Suggestion for improving Voter Turn-out-***
 - (i) The introduction of compulsory voting
 - (ii) The grant of the right to cast a negative vote.
 - (iii) To improve the voter turnout, spread of political education is necessary.
 - (iv) The mass media can be used for encouraging the voters to cast their votes.
- 3. *Issue of Identity cards to the voters*** - As majority of voters in India have voter identity card, we are hopeful that it can curb fake voting.
- 4. *Updating the electoral rolls*** - The system of revising and updating the electoral rolls need immediate attention and reforms. There is a need to keep the electoral rolls up to date for use at a short notice.

5. **Remedies for reducing poll expense** - For securing a reduction in the poll expenses by the candidates and parties the system of providing public campaign facilities should be improved and construction of public platforms can be undertaken. A healthy election campaign can be encouraged. By a strict enforcement of the election code of conduct, the CEC of India, has been in a position to secure a reduction in poll expenses.
 6. **Checking criminals** from getting elected candidates contesting parliamentary and assembly elections will have to disclose the fact whether they have been charged with offenses punishable by imprisonment for two years or more. Once elected, they are also expected to declare their assets to the presiding officers. The recent Supreme Court judgement on these lines is a welcome step.
 7. **Steps for checking disinterested candidates:** Steps are needed to check frivolous candidates from contesting the elections just for personal satisfaction. The independents who keep their options open for joining any party, particularly the ruling party after the elections, should not be allowed to contest elections.
 8. **Creation of a National poll fund:** The role of black money in Indian politics has been harmful. With a view to monitor the financial funds by political parties as donations a law was proposed by the government. The Election and other related Laws (Amendment) Bill 2003. It proposed legitimisation of financial contribution by private companies and individuals to political parties.
 9. **Special Courts for settling election disputes:** The problems connected with the election petitions can be solved by adopting the system of establishing special courts after every general election to the Lok Sabha or to State Legislative Assemblies. It should be made obligatory for the court to decide the election petition within a maximum time limit of three months or less.
 10. **Steps for limiting the scope of Defection :** Each candidate contesting in the election should have a running mate like French practice. In case of political defection or resignation due to ill-health the elected representative will lose his seat and his/her running mate will take over his seat in the legislature as representative of the people of his constituency. By this device political defection can be checked and the scope of bye - elections can be reduced.
- II. Besides the major structural reforms, several specific reforms can also be considered-

1. No candidate should be permitted to contest from more than one constituency in any election.
2. Role of money power and muscle power should be checked through preventive measures.
3. With a view to increase the role of women who constitute 50% of the electorate. 33% reservation of seats for women should be provided in the elections for Parliament and State Legislatures. Each political party should field at least 33% women candidates in the elections.
4. Voter awareness campaign must be made continuously.
5. Election campaign should be closely monitored for keeping a healthy competition.
6. Punishment for violations of code of conduct must be enforced.
7. Steps must be taken to prevent frivolous candidates from fielding their candidatures.

Thus to conclude, Indian election system needs reforms for making election free and fair.

MODEL QUESTIONS

(Group - A)

1. Which of the following resembles most a direct democracy?
 - (a) Discussions in a family meeting
 - (b) Election of the class monitor
 - (c) Choice of a candidate by a political party
 - (d) Decisions taken by the Gram Sabha
 - (e) Opinion polls conducted by the media
2. Which of the following tasks are not performed by the Election Commission?
 - (a) Preparing the Electoral Rolls
 - (b) Nominating the candidates
 - (c) Setting up polling booths
 - (d) Implementing the model code of conduct
 - (e) Supervising the Panchayat elections

3. In the First Past the Post system, that candidate is declared winner who
 - (a) Secures the largest number of postal ballots
 - (b) Belongs to the party that has highest number of votes in the country
 - (c) Has more votes than any other candidate in the constituency
 - (d) Attains first position by securing more than 50% votes
4. What is the difference between the system of reservation of constituencies and the system of separate electorate? Why did the Constitution makers reject the latter?
5. Which of the following statements are incorrect? Identify and correct them by substituting, adding or rearranging only one word or phrase.
 - (a) Election Commission does not supervise Panchayat and Municipal elections.
 - (b) President of India cannot remove an Election Commissioner.
 - (c) Appointment of more than one Election Commissioners in the Election Commission is mandatory.
6. Indian electoral system aims at ensuring representation of socially disadvantaged sections. However we are yet to have even 10 per cent women members in our legislatures. What measures would you suggest to improve the situation?
7. Here are some wishes expressed in a conference to discuss a constitution for a new country. Write against each of these whether First Past The Post or Proportional Representation system is more suited to meet each of these wishes.
 - (a) People should clearly know who their representative is so that they can hold him or her personally accountable.
 - (b) We have small linguistic minorities who are spread all over the country; we should ensure fair representation to them.
 - (c) There should be no discrepancy between votes and seats for different parties.
 - (d) People should be able to elect a good candidate even if they do not like his or her political party.
8. A former Chief Election Commissioner joined a political party and contested elections. There are various views on this issue. One view is that a former Election Commissioner is an independent citizen and has a right to join any political party and to contest election. According to the other view, leaving this

possibility open can affect the impartiality of the Election Commission. So, former Election Commissioners must not be allowed to contest any elections. Which position do you agree with and why?

9. “Indian democracy is now ready to shift from a crude First Past the Post system to a system of Proportional Representation”. Do you agree with this statement? Give your reasons for or against this statement.

(Group - B)

1. Fill in the Blanks of the following sentences
 - (i) The provision of Election commission in India is found in Art _____.
 - (ii) Chief Election commissioner is appointed by _____ .
 - (iii) _____ is the minimum age of voters in India.
 - (iv) Hare System is a method of _____ representation.
 - (v) The members of Lok Sabha are elected through _____ election.
 - (vi) The polling personnel can vote through _____ ballot.
 - (vii) Our President is elected by _____ election.
2. Short Questions (to be answered in 3/4 sentences)
 - (i) What is indirect election?
 - (ii) What are the qualifications of a voter?
 - (iii) What is public voting?
 - (iv) What is Hare System?
 - (v) What is territorial representation?

(Group - C)

Essay Type Questions

1. What is election? Discuss the merits and demerits of direct election.
2. What is representation of minorities? Describe various methods of representation of minorities.
3. Discuss the electoral process.
4. Write an essay on types of voting.
5. Elaborate on the challenges to free and fair election.



CHAPTER - 13

LEGISLATURES IN INDIA

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- **Parliament**
 - **The Council of States: composition, the Presiding Officer, Function.**
 - **The House of People: composition, Presiding officer, Functions of Parliament**
 - **Legislative and Financial Procedures**
 - **Points to Remember**
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Parliament

Article 79 of the constitution of India provides for a bicameral legislature for the Indian Union known as Parliament. It lays down that “There shall be a parliament for the Union which shall consist of the President and the two Houses to be known respectively as the Council of States and the House of the people”. These two house are formally known as the Rajya Sabha (Upper House) and the Lok Sabha (Lower House) The President of India although is not a member of either house, is an integral part of the parliament. He summons and prorogues the parliament, inaugurates the session of parliament every year and may send messages to the Houses. He can issue ordinance when the parliament is not in session. He puts his signature to authenticate the bills passed by the parliament. All these functions of the President make him part and parcel of the Union Parliament.

The Council of States (Rajya Sabha)

The Upper House of the Union Parliament is popularly known as the Rajya Sabha. It consists of not more than 250 members of which 12 members are nominated by the President of India, having special knowledge or practical experience in literature science, art and social service. Rest of the 238 members are indirectly elected by the elected members of the state legislatures in accordance with the system of proportional representation by means of single transferable vote. The representatives of the Union Territories are indirectly elected by members of an electoral college for the territory according to same system. The Rajya Sabha is supposed to reflect federal character since it represents the Units of the federation. However there is a difference between the second chamber in India and the second chamber of U.S.A. Under American constitution the states enjoy equality of status irrespective of their size and population. They elect two representatives each to the Senate. In case of India the members are elected to Rajya Sabha on the basis of the population of each state. Therefore the number of members varies from state to state.

The Peoples' Representation Act has laid down definite qualifications to become a member of Rajya Sabha: A person in order to be elected to the Rajya Sabha must (a) be a citizen of India, (b) be 30 years of age or more, (c) not be holding any office of profit under the central or state Government or local body and (d) possess all other qualifications prescribed by the act of parliament from time to time.

The Rajya Sabha is a permanent House not subject to dissolution, unlike Lok Sabha. Its members are elected for a period of six years. One-third of them retire every two years. A member can resign his seat before his tenure expires. The chairman of the House can declare a member disqualified if he fails to attend the sessions of the House for more than sixty days without taking his prior permission.

The Presiding Officer

The Vice President of India acts as the ex-officio Chairman of Rajya Sabha. He gets his salary as Chairman of Rajya Sabha not as Vice President of India. He presides over the deliberations in the House and maintains the decorum and dignity of the house. All members in the House communicate between themselves through the Chairman, whose decision in all matters in the conduct of the proceeding of the House is final. The Chairman does not participate in the deliberations. Because he has a neutral role to play. He is expected to protect the interest of all the parties as

well as the members. He does not participate in the voting process in the House. However he only gives vote in case of a tie, when there are equal number of votes for or against a particular motion. The members of the House hold him in high esteem and pay him their best respect in the tradition of Parliamentary Democracy. His functions are similar to those of the Speaker in the House of People except that the Speaker can certify a Money Bill or preside over a joint sitting of the two Houses.

However the members of the House elect a Deputy Chairman from among themselves to preside over the deliberations of the House in the absence of the Chairman. The Deputy Chairman may be removed from his office by a resolution passed by a majority of members of Rajya Sabha. He is entitled to a regular salary. The chairman of the House can be impeached by a resolution initiated by the Rajya Sabha and accepted by both the Houses of the Parliament.

Powers of Rajya Sabha

So far as powers of Rajya Sabha are concerned it enjoys co-equal power with the Lok Sabha in respect of all bills other than money bill. Ordinarily bills can be initiated in either House of Parliament but it must be approved by both the chambers before it is submitted to the President of India for his consent. If however there is a difference between the two chambers over a particular bill, the fate of the bill is decided by a majority of votes in the joint session of both the chambers summoned by the President of India and presided over by the Speaker of Lok Sabha.

In case of Money Bills Rajya Sabha has no powers. Money Bills can only be introduced in the Lok Sabha. When it comes to the Rajya Sabha after being passed by the Lok Sabha, the former can-keep it maximum for a period of 14 days only after which it is deemed to be passed. It is the exclusive right of the Lok Sabha to vote on demands for grants. Limited powers of Rajya Sabha in respect of financial matters put the Lok Sabha on a higher footing. The Council of Ministers is collectively responsible only to the House of People. The Rajya Sabha has no substantial control over the Council of Ministers. It cannot bring about the downfall of a ministry by negative voting but on the other hand if a vote of no-confidence is passed against the ministry in the Lok Sabha it is bound to resign. However the Rajya Sabha can exercise some control over the Council of Ministers. It can ask questions to Ministers; raise debates and discussions on important matters, highlight the lapses of the government. In case of other matters it enjoys almost equal powers with the Lok Sabha.

Exclusive Functions of Rajya Sabha

Under the Constitution, the Rajya Sabha is granted some powers exclusively. The Lok Sabha has nothing to do with that. The Rajya Sabha, under, Article 249, may by a special majority of two-thirds votes adopt a resolution asking the Parliament to make laws on subjects of the State list, in the national interest. This resolution gets due attention from the Parliament. The resolution remains valid for one year only, which however can be extended further in terms of another one year. Secondly, Under article 312, Rajya Sabha can take steps to create one or more All India Services by adopting resolutions supported by not less than two-third, of the members present and voting in the national interest. Thirdly, Rajya Sabha has the exclusive right to initiate a resolution for the removal of the Vice President. This becomes the exclusive right of the Rajya Sabha because the Vice-President happens to be its Chairman and draws his salary as such.

It is very often criticized that Rajya Sabha has no special functions to justify its retention. The unnecessary duplication of work delays the process of legislation. Further the distribution of seats on the basis of population is also criticised as giving over-riding importance to the most populous state and affecting the prospects of federating units as equals. Critics also point out that the indirect election allows unsuccessful and retired politicians to enter the Council of State through back-door. Many others have also said that maintaining Rajya Sabha has become a costly luxury.

In spite of these criticisms its protagonists justify its continuance. Late Prime Minister Pt. Nehru once remarked that both the Houses must cooperate with each other as neither of these two Houses by itself constitutes the Parliament. The Second chamber may not have the power to reject the bills passed by the Lower House but certainly it can revise and examine the bills with a view to finding out the lapses in it. It can also initiate bills on its part and reduce the burden on the popular chamber. Sir Henry Maine believes that, “almost any Second Chamber is better than none”.

A careful study of the function of Rajya Sabha suggests that since 1950 Rajya Sabha has played an important role in the field of law making and deliberations. It has not tended to compete with Lok Sabha for powers nor created any hindrance on its way. It has not made its floor a battle ground between the Centre and State. On the whole it has lived almost up to the expectations of the makers of the Constitution with slight deviation here and there.

The House of People (Lok Sabha)

Lok Sabha represents the popular chamber of Indian Parliament. It is the Lower House of the Indian Parliament consisting of the directly elected representatives of the people. The members of Parliament are directly elected by the people for a period of five years. Each State is allotted seats on the basis of its population who in turn create constituencies on the same basis to elect the representatives to the Lower House on the basis of adult suffrage. Members representing the Union Territories and tribal areas are chosen in such a manner as the Parliament provides by its Act.

The present membership of Lok Sabha is fixed at 545 by the 31st Constitution Amendment Act 1973. Of these 525 members are elected directly by the people from various states, 20 members are chosen from Union Territories. If the President feels that the Anglo-Indian Community has not been adequately represented in the Lok Sabha he can nominate two members from that community.

The qualification fixed for election to the Lok Sabha are plain and simple such as a candidate a) must be an Indian citizen, b) of 25 years of age or more and, c) must satisfy other qualifications as determined by Parliament.

The tenure of Lok Sabha is five years. The life of Lok Sabha begins from the date of its First Session. However it may be dissolved before the expiry of its term for political reasons. Its life can also be extended in case of grave emergency. One-tenth of the membership constitutes the quorum to carry on the proceedings of the House.

The Presiding Officer

The Speaker: Immediately after the election, during the first Session of Lok Sabha the members elect a Presiding and Deputy Presiding Officer from among themselves known as the Speaker and the Deputy Speaker. The Speaker happens to be the most dignified and prestigious authority of Lok Sabha who is primarily meant to take care of the decorum and decency of deliberations in the House. The Speaker after his election gets rid of party activities and becomes politically neutral. An impartial and non-partisan Speaker can only receive the loyalty of all its members irrespective of party affiliation.

In the absence of the Speaker the Deputy Speaker discharges his responsibility. There is a list of names earlier agreed upon by the members of Lok Sabha to preside over the deliberations in the absence of the Speaker and the Deputy Speaker.

The Speaker may be removed by a resolution passed by a majority of members of the House. At least 14 days notice has to be served before taking up the formal proposal for the removal of the Speaker. During the deliberations on the issue of removal the Speaker does not preside. But he can take part in the deliberation to defend himself.

The powers and functions of the Speaker emanate both from the provisions of the Constitution and the position he occupies as Head of the Lok Sabha Secretariat. He presides over the meetings. He regulates the business and interprets the rules of the House. His ruling in all matters is final. He maintains order in the House and can reprimand members for their un-parliamentary language and unruly behaviour. He can suspend members for bad manners. He permits the members to express - their views or to put questions to ministers. In case of dispute whether or not a bill is a Money Bill, his decision is final. In consultation with the Leader of the House and Leader of the Opposition he decides the schedule of the House. The admissibility of motions, resolutions or questions is determined by him. He can suspend the business of the House. He regulates the entry of officials and outsiders to the premises of the Lok Sabha during its Session. He is the guardian of the privileges of the members of the House and the channel of communication between the President and the members of the House.

The Speaker does not take part in the deliberations of the House or gives his opinion on any matter unless and otherwise required. He does not take part in voting. But in case of equality of votes on any issue, he exercises a casting vote to break the tie. The absence of vote in the first instance makes the position of the Speaker impartial as in England, and the casting vote given to him only solves a deadlock.

Neutrality on the part of the Speaker is regarded as an indispensable condition for the office. In May 2014 Sumitra Mahajan of BJP and M. Thambidurai of AIDMK were elected as the speaker and Deputy speaker of the 16th Lok Sabha respectively.

Functions of Parliament

Our constitution has adopted a Parliamentary System of Government. Under such a system there is a curious mixture of the legislative and executive organs of the state. While discussing the functions of Parliament this aspect should always be borne in mind. To begin with the Parliament provides the Council of Ministers to run the administration of the State and holds it responsible; the members of the Council of Ministers is drawn from the two chambers of the Parliament.

Controls the Executive: A very significant function of Parliament is to exercise its control over the Council of Ministers by way of holding it responsible for its acts of omissions and commissions. Article 75(3) expressly states that the Council of Ministers remains in office, so long as it enjoys the confidence of the Lok Sabha. Parliament exercises the control by asking question to the ministers through its members, by raising adjournment motions, cut motions, censure motions or debates. More importantly the Lok Sabha can pass a vote of no confidence against the Council of Ministers which compels it to resign collectively. Thus the parliament holds the ministers responsible individually and collectively. This critical function of the Parliament ensures a responsive and responsible government.

Law Making: Law making is the primary function of any legislature. The Parliament of India makes laws on all matters included in the Union list and concurrent list. Of course, the state legislatures share with the parliament the power to make law from the concurrent list with its prior permission.

However under certain special circumstances, the Parliament can make law for the states also. For examples the special circumstances are a) Promulgation of Emergency, b) A resolution passed by Rajya Sabha with special majority asking to make law for the states in the national interest which can remain valid for one year, c) A resolution by two or three states urging upon the Parliament to make law for them on certain items of the State list, d) If there is any International treaty or agreement to be executed.

An ordinary bill is initiated in either House of Parliament. When it is passed by both the Houses of Parliament it becomes law after getting the assent of the President. In case of disagreement, between two houses of Parliament over an ordinary bill, the President of India summons a joint session of both the houses presided over by the Speaker of Lok Sabha which decides the fate of the bill.

Controls the Finance: The Parliament, particularly, the Lok Sabha exercises substantial functions in the domain of finance. The legislature of any responsible system of Government has to ensure that public funds are raised and spent with its consent and control. The Constitution of India has armed the union Parliament more particularly the Lok Sabha to exercise greater control over the national-finance. The executive or the Government of the nation has no authority to spend money on its own without the approval of the Parliament. Every financial year, the budget prepared by the Finance Minister is presented in the Lok Sabha for its approval. Any proposal

for levying new taxes or any proposal for expenditure needs the sanction of the Parliament. There are also two very important Committee of the Parliament known as Public Accounts Committee and the Public Estimates Committee, and Comptroller and Auditor General, a Constitutional authority appointed by the President who examines the legality of expenditure and place a report for discussion in the Parliament. However it may be noted that Lok Sabha enjoys the exclusive power to control the national finances. The Rajya Sabha has no role to play in such a field. A Money Bill can only be introduced in the Lok Sabha. After it is passed there it is sent to the Rajya Sabha who has to return the Bill within fourteen days with or without its recommendations. However these recommendations may or may not be accepted by the Lok Sabha. If the bill is not returned within the specified time of 14 days it is deemed to be approved by the Rajya Sabha.

Deliberations: As an organ of information the Parliament has a formidable role to play. All the important administrative policies are discussed on the floors of the Parliament. So that not only the Cabinet gets the advice of the Parliament and learns about its lapses but the nation as a whole is enlightened about serious matters of public importance. This undoubtedly contributes to the growth of political consciousness on the part of the people.

Constituent Functions: Parliament is the only body, under the constitution, to initiate any proposal for amendment of the constitution. A proposal for amendment can be initiated in either House of Parliament. The bulk of such proposal are approved finally when passed by both the chambers with special majority of two-thirds of its members: However some provisions require the approval of at least half of the states after they are passed by the Parliament with required majority.

Electoral Functions: The Parliament has some electoral functions to perform. It takes part in the election of the President and the Vice-President of India. It also elects various members to its committees, and the presiding officers and Deputy presiding officers.

Judicial Functions: The judicial functions of the Parliament are no less significant. It has the power to impeach the President, the Vice-President, the judges of the Supreme Court and the High Court. The Chairman and members of the Union Public Service Commission of the Union and the States as well, the Comptroller and Auditor General. Impeachment is a judicial trial of the legislature to remove high Constitutional authorities after such a proposal is passed with required majority. It

can also punish its members and officials for its contempt. This power is not subject to review of the court.

A Comparison

An analysis of the powers of the both the chambers of Indian Parliament bring out the marked superiority of the Lok Sabha over the powers of the Rajya Sabha. Particularly in the field of controlling the finance, making the laws and controlling the executive the Lok Sabha has an edge over the Rajya Sabha.

In the field of finance, the Rajya Sabha has no powers at all as Lok Sabha does not take into consideration the approval or views of the other chamber. Besides, the Upper chamber has no powers to initiate money bills.

In matters of law making, although both the chambers of parliament has coequal powers the superiority of Lok Sabha is clearly established because of its numerical superiority. In case of disagreements over an ordinary bill the matter is referred to the Joint session of parliament. The fate of the bill is decided by majorities of votes after discussion. The membership, being more than double the member of the Rajya Sabha, the Lok Sabha is placed on an advantageous footing.

Similarly in matters of controlling the executive, it is clearly stated in the Constitution [Art 75 (3)] that the Council of Ministers shall remain responsible to the Lok Sabha. The Lok Sabha being the House of the people exercises the ultimate control over the Council of Ministers. As it enjoys the power to pass a vote of no confidence which compels the Council of Ministers to resign, if such a resolution is accepted in the Lok Sabha. But if on the other hand, such a proposal is passed in the Rajya Sabha it has no effect on the Government. In spite of the fact that the Lok Sabha enjoys greater power compared to the Rajya Sabha, it should not be viewed that Rajya Sabha is a superfluous body. It has certain exclusive functions not granted to the Lok Sabha. Parliament cannot ignore its request to make law for the states from the State list in the greater interest of the nation. Besides, Rajya Sabha through its proposals can take steps to create all India services to bring about uniformity in administration between the Centre and the States. Rajya Sabha alone can initiate the impeachment motion of the Vice-President of India. Besides the delaying power of Rajya Sabha while giving its consent to the bills passed in the Lok Sabha has great significance. Thereby, it checks the passage of legislations taken up in haste and in the process educates and moulds the public opinion. Therefore Rajya Sabha has been

created to assist and enlighten the Lok Sabha. It is not created to compete with Lok Sabha and thus obstruct the functioning of the legislative body. On more than one occasion in the past, Rajya Sabha has made its presence felt.

The Legislative Procedure

Articles 107 to 122, of the Constitution of India, deals with the provisions relating to passage of bills in the Parliament. A bill moves through various stages to become an Act. The proposed law which is presented to the Parliament is known as a bill. Bills are of two types, Ordinary Bills and Money Bills. Separate procedures are followed to pass these two types of bills.

An ordinary bill can be initiated in either House of the Parliament. But a Money Bill can only be introduced in the Lok Sabha. The ordinary bill in order to become an Act has to be passed in both the chambers of the Parliament. In case of any difference between the two chambers over the bill, the matter is referred to the joint sitting of both the chambers of the Parliament. Such a session of the Parliament is summoned by the President of India where the bill is put to vote and approved by majority votes. The President of India extends his assent to the bill passed by the Parliament after which it becomes an Act. The consent of the President is not automatic. He may sometimes return the bill back to the originating chamber with or without his observation, to reconsider the bill. In that case the parliament may pass the bill again with or without considering the views of the President. When it is submitted to the President for the second time the President is bound to give his assent to make it an Act.

Every bill has to move through three stages of readings in both the chambers of Parliament before it is finally passed. These stages are known as First Reading Stage, Second Reading Stage and Third Reading Stage.

The first reading stage is a formal one allowing an ordinary bill to be introduced in any House of the Parliament. A bill may be introduced either by a minister or by a Private Member. In case of the later, he has to give one month notice and ask for the permission of the House to introduce it. At first the bill is submitted in the concerned Secretariat where it is introduced. The speaker includes the bill in the agenda and fixes up a date for introduction of the bill. On the specified day the mover moves the motion for leave to introduce the bill and only reads out the title. Usually at this stage there is no objection raised and the speaker allows the motion. But in case opposition

is raised to introduce the bill, the speaker allows the mover to make his points in favour of the bill at the end of which the motion is put to vote. If the majority favour the bill the same is considered to be introduced in the House and is immediately sent for publication in the Gazette of India.

The Second Reading Stage is really important. The mover of the bill may propose three alternatives either to a) take the Bill into consideration immediately or b) to refer the bill to a select committee or a Joint Select Committee of both the Houses or c) to circulate it for the purpose of eliciting public opinion. Normally the bill is sent to a committee appointed by the Speaker or the Chairman as the case may be for detailed consideration. However before it is sent to the committee the underlying principles behind the bill and the general provisions of it are discussed. This practice saves the time of the House besides providing proper atmosphere to delink politics from discussion. The committee usually consists of interested members of various political parties in the House. The assistance of officials and technical persons is taken to consider the different aspects of the bill. The committee examines the bill in all its aspects and submits a report to the speaker along with its suggestions. The report of the committee and the suggestions are discussed in the House and necessary amendments if any, are taken up clause by clause. The clauses are incorporated in the bill after getting majority support.

The Third reading stage is a formal stage like the first reading stage. Here no discussion of the bill takes place. Only minor technical errors if any, are looked in to. The entire bill is put to vote and is deemed to be accepted if it receives the majority support in the House.

The Financial Procedure

The Parliament under any responsible system of Government has to ensure that public funds are raised and spent with its consent. The basic principles of the financial provisions are that there shall be no taxation or expenditure without the authority of the Parliament and the executive alone can place demands for taxation and expenditure. No private member can initiate such proposals. In matters of finance the Lok Sabha is supreme to the extent that even the President cannot withhold his assent from a Money Bill passed by Parliament.

Under Article 112 of the Constitution of India a detailed financial procedure is laid down. Every year the budget is placed by the finance minister. It shows the

estimated receipts and expenditure for that financial year. Normally on the day of presentation of the budget no discussion takes place.

The expenditure part of the budget consists of two parts; the expenditure charged upon the Consolidated Fund of India, which are non-votable and the sums required to meet the other expenditure from the Consolidated Fund of India which are votable. The salary and allowances of the President of India, the Presiding Officers of both the chambers of Parliament, the judges of the Supreme Court and High Courts of India, the Comptroller and Auditor General of India and certain other matters come under the scope of non-votable items. But discussion on the matter can always take place. So far as votable items are concerned, they are presented in form of demands for grants to the House of People. The House has the powers to either grant or reduce or reject these demands, but it cannot increase the demands.

Procedurally separate demands are made ministry-wise over which detailed discussions take place. At the end of the discussion by the members of various political parties, the Finance Minister makes a statement to meet the observations made by members earlier. Before voting the members have a right to move cut motions, through which they express their resentment against the government. A cut motion has the effect of throwing the government out of power, if passed.

After voting on demands two financial legislations, the Appropriation Act and the Finance Act are passed. The Appropriation Act sanctions the amount which can be drawn from the Consolidated Fund of India, for meeting the expenditure against each grant and the Finance Act authorises the raising of Funds through taxation.

POINTS TO REMEMBER

- The Indian Parliament is bicameral consisting of the Lok Sabha (Lower Chamber) and the Rajya Sabha (Upper Chamber).
- The Council of States consists of 238 indirectly elected members by State Legislatures and Union Territories and 12 nominated members by the President of India.
- The Lok Sabha consists of 545 members elected directly by the people of different States as determined by Parliament.
- The Vice-President of India is the ex-officio Chairman of Rajya Sabha.

- The members of Lok Sabha elect a member from among themselves as the speaker to preside over the deliberations.
- The functions of Parliament can be classified as : (a) Providing a Council of Minister b) Controlling the Government, c) Law making, d) Controlling the national finance, e) Acting as an organ of deliberations, f) Constituent functions, g) Judicial functions, h) Electoral functions.
- In the exercise of most of these powers like law making, controlling the government and controlling the finance the Lok Sabha enjoys a superior position. However the Rajya Sabha has some exclusive powers of asking the Parliament to make law for the state; it can also take steps to create All India Service besides it alone can initiate a proposal to remove the Vice-President of India.
- Articles 107 to 122 deal with the provisions of law making in the Parliament.
- Ordinary bills are introduced in both the chambers and has to be passed by both the chambers so as to become an Act with the consent of the President of India.
- Every bill passes through three stages of first Reading Stage, Second Reading Stage and the Third Reading Stage to become Acts.
- The money bills are introduced in the Lok Sabha only Rajya Sabha has no control over Money Bills. At best it may cause a delay of 14 days.

THE STATE LEGISLATURES

- **Introduction**
- **Functions of the State Legislature**
- **Vidhan Parishad (Legislative Council)**
- **Vidhan Sabha (Legislative Assembly)**
- **The Speaker**
- **Points to Remember**

The organisations of State Legislature in Indian States are not the same. In some states they are bicameral while in most others they are unicameral. In view of

lack of financial resources in some states the makers of the constitution have made it optional on the part of the states to decide for themselves the type of legislature they would like to have.

A very simple mechanism in Article 169 has been provided in the Constitution to all the states to take steps either to abolish their second chambers (in case they have a bicameral legislature) or to create a second chamber (in case they have a unicameral legislature) as the case may be. This does not amount to an amendment of the Constitution. Since the inauguration of the Constitution many States have added second chambers to their legislatures whereas some others have abolished their second chambers for political reasons. Presently in the states of Bihar, Maharashtra, Mysore, Punjab, Uttar Pradesh and Jammu and Kashmir the state legislatures consist of two Houses. In all other states the legislatures are Unicameral. The popularly elected House is known as Legislative Assembly (Vidhan Sabha) and the other House is known as the Legislative Council (Vidhan Parishad). According to Article 168, the Legislature of every state shall consist of the Governor and the legislative house or houses of the state.

Functions of the State Legislature

The powers and functions of the State Legislatures are more or less the same with that of the Union Parliament. The primary function of the state Legislature is to make law for the administration of the state. Theoretically it can make law on all matters included in the state list and the concurrent list. But in practice the legislative power of the legislature is highly restricted. The constitutional provisions extend a wide scope to the Union Parliament to interfere in the law making jurisdiction of the state. For example, the Union legislature can make law for the states during the promulgation of emergency. Even during normal period the parliament can make law for the states on the basis of a resolution passed by a special majority of two-thirds of its members by the council of states. Besides this, the parliament also can make law for the states for implementation of any treaty or agreement with any foreign country. The Governor of the state also enjoys the discretionary powers to reserve certain bills, as he deems fit, for the consideration of the President. The President of India is not bound to give his approval to such bills even if they are passed in the legislature for the second time. So far as the concurrent list is concerned the powers of the State Legislature to make law from this list is not independent. It has to make law quite compatible with the law made by the Parliament. Or else it will be declared

void to the extent it antagonises the union law. All this indicate that the law making power of the state legislature is restricted.

Like the Parliament of India, it enjoys the power to control the state executive in more than one ways. The Council of Ministers remains responsible to the legislative Assembly for all its action. It remains in office during the pleasure of the Assembly. The Assembly can raise debates, put questions to the Ministers, move adjournment motions to keep the government under control. It can withdraw confidence from the government by passing vote of no confidence, and bring about the downfall of the Government.

The legislature also controls the finances of the state. The budget is prepared by the executive to secure the approval of the Assembly to run the administration of the state. Without the sanction of the Assembly the executive cannot spend any amount however meagre it may be. All money bills originate in the Assembly. The legislature also has electoral functions. The members of the State Legislative Assembly are part of the Electoral College constituted to elect the President of India. The State Assembly also elects members to the Rajya Sabha.

For the amendment of the Federal Provisions of the Constitution, the concurrence of Parliament and half of the Legislative Assemblies is required.

The legislature can punish anybody for its contempt. It considers the reports of the Public Service Commission and the Accountant General. The Assembly performs deliberative functions. The members present the problems of their areas from where they have been elected.

THE LEGISLATIVE COUNCIL (VIDHAN PARISHAD)

The Legislative Council or the Vidhan Parishad is the Upper Chamber of the State Legislature. Union Parliament has the power “to create or abolish the Legislative Council in various states on the basis of resolutions adopted by special majority in the Assemblies. As mentioned in the constitution, the total membership of the Legislative Council shall not be less than forty and more than one third of the total number of members of the Legislative Assembly of the concerned state.

All the members of the Legislative Council are either indirectly elected or nominated by the Governor. Let us take a look at the way the Legislative Council is constituted.

- (a) One-third of the members of this House are elected by the Legislative Assembly from amongst persons who are not its members.
- (b) One-third of its members are elected by the local bodies like Municipalities or District Boards or any other local authority as specified by the law of the Parliament.
- (c) One-twelfth of the members are elected by graduates of at least three years standing.
- (d) One-twelfth of the members are elected by teachers of secondary schools having at least three years experience.
- (e) About one-sixth of the members are nominated by the Governor from among persons possessing, special knowledge and experience in the field of art, science, literature, social service and cooperative movement.

Very simple qualifications are prescribed for membership in the Vidhan Parishad. Any Indian citizen who is 30 years of age or more having such other qualifications as prescribed by the Parliament can become a member of the Vidhan Parishad. Of course a person cannot simultaneously be a member of Parliament and State Legislature. The Legislative Council like the Council of States is a permanent chamber not subject to dissolution. The members are elected for a period of six years and like Rajya Sabha one-third of members retire every second year. The Legislative Council elects its Chairman and Deputy Chairman from amongst its members.

Theoretically the powers of the Legislative Council are coequal with the Assembly. Ordinary bills can originate in any chamber of the legislature. A bill in order to become an Act must be approved by both the chambers and receive the assent of the Governor. The Governor may give his assent or return the bill back to legislature with his observations. The legislature while reconsidering the bill may or may not take note of the views of the Governor on the bill. The Governor is bound to give his assent to the bill when it is presented to him for the second time. If the Legislative Council disagrees with a bill passed by the Legislative Assembly, then the bill must have a second journey, from the Assembly to the Council. But ultimately the views of the Assembly shall prevail. The Council has no powers to revise a bill passed in the Assembly. It can only delay the passage of the bill for 3 months in the first instance and for one month in the second. There is no provision of joint sitting as in case of disagreement in Parliament over ordinary bills. In the ultimate analysis the

Legislative Council is a dilatory chamber so far as ordinary legislation is concerned. It can delay the passage of the bill maximum for a period of four months.

In the domain of finance it has almost no powers. Like the Council of States, it enjoys a subordinate position in financial matters. Money Bills originate only in Assembly. After they are passed in the Assembly it is sent to the Council. The Council can keep it maximum for a period of 14 days. If it does not pass it within that period, it is deemed to have received the approval of that House.

The Council can control the executive by way of putting questions to ministers, by raising debates and adjournment motions to highlight the lapses of the government but it cannot throw a government out of power. The Legislative Assembly in addition, to the powers discussed above enjoys the power to move vote of no confidence which can force the government to resign. In case of controlling the executive the final say lies with the Legislative Assembly.

The makers of the Constitution have deliberately given a secondary position to the Council of States -so that both the chambers in the state do not compete with each other for supremacy. The purpose was to accommodate various professional interests in the Legislative Council, who through their experience can act as the friend, philosopher and guide of the Legislative Assembly.

ODISHA LEGISLATIVE ASSEMBLY (VIDHAN SABHA)

The Legislative Assembly is the lower chamber of the state legislature. It is popularly known as Vidhan Sabha. The members of this House are directly elected on the basis of adult suffrage from the territorial constituencies. The constitution fixes the maximum and minimum number of members to be elected to the Assembly which is 500 and 60 respectively. All constituencies are proportionately equal in population.

Odisha became a separate province on 1st April 1936 by the Government of India (Constitution of Odisha) order 1936. It comprised certain portions of the Bihar and Odisha province, Madras presidency and the central Provinces.

Under the Government of India Act 1935 the strength of the legislative Assembly of Orissa province was fixed at 60 including four nominated members. On 1st January 1948, 25 princely states merged in the province of Odisha. In pursuance of the provisions of the Administration of Orissa order, an Assembly for Orissa states called

‘Orissa State Assembly’ consisting of 36 members was constituted. These included 31 members appointed by the provincial Government from the merged states, and five ex-officio members viz the Prime Minister of Orissa, three members of the Executive Council and the chief Administrative and special commissioner.

After final merger of princely states with Orissa in 1949, the total number of seats in the Orissa Legislative Assembly was revised to 91 to represent the people of the merged states or groups of states.

Subsequent to the delimitation of parliamentary and Assembly constituencies in 1951 the strength of the Odisha legislative Assembly went up to 140. The first Assembly was constituted on 20th February 1952. The strength of the Assembly was later increased to 147 with effect from the sixth legislative Assembly (1974). Out of 147 seats 23 seats are reserved for scheduled castes and 33 seats for scheduled tribes.

The structure of the state legislature is unicameral. The term of the Assembly is five years unless sooner dissolved. The term of five years can be extended in case of a proclamation of emergency.

Any Indian citizen who is 25 years of age or more, hold no office of profit and posses such other qualifications as determined by the Peoples Representation Act can become a member of the State Legislative Assembly.

Odisha being an agricultural state most of the members of Odisha Vidhan Sabha are from agricultural back ground. Now, lawyers, teachers, retired government servants also successfully participate in the electoral politics of our state. Presently, many younger representatives are active in the Legislative process.

In the Odisha Legislative Assembly Biju Janata Dal is the majority party while the Congress, BJP and others are in the opposition bench. The leader of the ruling BJD party is Sri Naveen Patnaik while the leader of the opposition is Sri Narasingha Mishra from the Congress party.

Functions of the Odisha Legislative Assembly

The powers and functions of the state legislature extends to making laws on the subjects enumerated in the state list and the concurrent list. There is some kind of similarity between the powers of Lok Sabha and state legislature.

Our state legislature works through its committees in the same manner as the parliament does. In Odisha Assembly, 30 committees are currently working.

The Speaker

Soon after the constitution of the new Assembly after the election the members of the House elects one of the members from among themselves as Speaker and another as Deputy Speaker, to work in his absence. The office of the Speaker is held with utmost respect and dignity in the tradition of parliamentary democracy. As the head of the House and the presiding officer he maintains decorum. His function is to run the session as per rule with the active cooperation of all the members of the House and the political parties in the Assembly however small or big they are. His rulings in the House are final. He decides whether a bill is a Money Bill or not. He decides the Rules of Business in consultation with the Chief Minister and the Leader of Opposition. He appoints the Chairman of different House Committees. As per tradition if the Deputy Speaker happens to be a member of any committee, he automatically becomes the chairman of the committee.

The Speaker of the Legislative Assembly is comparable with the Speaker of Lok Sabha in all matters of power, authority, dignity, importance, privileges and immunities.

POINTS TO REMEMBER

- The State Legislatures are organised in the same pattern of the Union Legislatures and enjoy almost similar powers.
- The states were allowed the independence to decide for themselves whether to have Unicameral or Bicameral legislatures. For this purpose they were provided with a simple constitutional device. A resolution passed with special majority in the Legislative Assembly of a State and concurred by the Parliament can enable a state to either create or abolish a second chamber.
- Legislative Council is the Upper Chamber and is otherwise known as Vidhan Parishad. Legislative Assembly is the Lower Chamber and is known as Vidhan Sabha.
- Both the Houses of State Legislature enjoy powers like the chambers of Parliament with little difference here and there. The Legislative Assembly being the popular chamber retains with it all the important powers. The Legislative Council is essentially a deliberative body and is expected to behave like a friend, philosopher and the guide of the Legislative Assembly.

- Odisha Legislative Assembly is consisting of 147 members, out of which 23 seats and 33 seats are reserve for SC and ST candidates respectively. The structure of state Legislature is unicameral.
- The Speaker of the Legislative Assembly is elected by the members of the House. He presides over the sessions of the House as a neutral member. The Speaker of the Assembly is comparable with the Speaker of Lok Sabha in matters of power, authority, dignity, importance, privileges and immunities.

MODEL QUESTIONS

(Group - A)

1. Asok thinks that a country needs an efficient government that looks after the welfare of the people. So, if we simply elected our Prime Minister and Ministers and left to them the task of government, we will not need a legislature. Do you agree? Give reasons for your answer.
2. A class was debating the merits of a bicameral system. The following points were made during the discussion. Read the arguments and say if you agree or disagree with each of them, giving reasons.
Smita said that bicameral legislature does not serve any purpose.
Roopa argued that experts should be nominated in the second chamber.
Trinath said that if a country is not a federation, then there is no need to have a second chamber.
3. Why can the Lok Sabha control the executive more effectively than the Rajya Sabha can?
4. Rather than effective control of the executive, the Lok Sabha is a platform for the expression of popular sentiments and people's expectations. Do you agree? Give reasons.
5. The following are some proposals for making the Parliament more effective. State if you agree or disagree with each of them and give your reasons. Explain what would be the effect if these suggestions were accepted.

“ Parliament should work for longer period.

“ Attendance should be made compulsory for members of Parliament.

“ Speakers should be empowered to penalise members for interrupting the proceedings of the House.

6. Sammi wanted to know that if ministers propose most of the important bills and if the majority party often gets the government bills passed, what is the role of the Parliament in the law making process? What answer would you give him?

(Group - B)

1. Correct (errors if any) of the following sentences

- (i) Odisha is having a bi-cameral legislature.
- (ii) The term of Lok Sabha is 6 years.
- (iii) The minimum age to become a member of Rajya Sabha is 21 years.
- (iv) There are 150 members in Odisha Vidhan Sabha.

2. Fill in the Blanks of the following sentences

- (i) Odisha is having a _____ legislature.
- (ii) The Budget is introduced in _____ House in the legislature.
- (iii) Indian parliament consists of Lok Sabha, Rajya Sabha and _____ .
- (iv) The tenure of Lok Sabha is normally _____ years.
- (v) _____ House represents the states in India.
- (vi) The members of Rajya Sabha are elected by the _____ .
- (vii) The popular chamber of parliament is called _____ .
- (viii) _____ presides over Rajya Sabha.
- (ix) _____ convenes the joint sitting of parliament.
- (x) _____ certifies a money bill.
- (xi) The president can dissolve the _____.
- (xii) The president nominates _____ members to Rajya Sabha.
- (xiii) The Rajya Sabha has to pass the money bill within _____ days.
- (xiv) The speaker of Lok Sabha is elected by the members of _____.

- (xv) To become a member of Rajya Sabha one must be _____ years old at the minimum.
- (xvi) There are _____ members in the Odisha legislative Assembly.
- (xvii) In Odisha Vidhan Sabha _____ seats are reserved for scheduled Tribes.

3. Answer in one word/sentence

- (i) Name the popular house of Indian parliament?
- (ii) Who is the presiding officer of Lok Sabha?
- (iii) Who presides over Rajya Sabha?
- (iv) Who certifies a money Bill?
- (v) What is the term for vice-president of India?
- (vi) How many members are nominated to Lok Sabha?
- (vii) What is the maximum strength of Lok Sabha?
- (viii) What is the term for a member of Rajya Sabha?
- (ix) For how many months a non-money bill can be delayed in Rajya Sabha?
- (x) What is the tenure of state Legislative Assembly?
- (xi) What is the strength of Odisha Vidhan Sabha?

4. Multiple choice questions

- (i) The maximum strength of Rajya Sabha is
- (a) 238 (b) 250
- (c) 252 (d) 545
- (ii) The Money Bill can be introduced
- (a) Only in the Lok Sabha (b) Only in the Rajya Sabha
- (c) In both Rajya Sabha and Lok Sabha
- (iii) What is the maximum strength of Lok Sabha?
- (a) 540 (b) 545
- (c) 600 (d) 250
- (iv) Who can create new All India services?
- (a) Parliament of India (b) Lok Sabha
- (c) Rajya Sabha (d) Prime Minister

- (v) Who certifies money Bill?
(a) President of India (b) Lok Sabha
(c) Speaker (d) Chairman of Rajya Sabha
- (vi) For how many days Rajya Sabha can delay the money Bill?
(a) 13 days (b) 15 days
(c) 30 days (d) 90 days
- (vii) The council of ministers at the centre are responsible to
(a) Lok Sabha (b) Rajya Sabha
(c) Parliament (d) Prime Minister
- (viii) How many members does Odisha send to Rajya Sabha?
(a) 10 (b) 12
(c) 11 (d) 15
- (ix) Who presides over the joint sitting of union parliament?
(a) President (b) Prime Minister
(c) Speaker (d) Vice - President
- (x) What is the tenure of a member of Rajya Sabha?
(a) 6 years (b) 5 years
(c) 4 years (d) Life long
- (xi) State Legislature can be dissolved by
(a) The Governor on the advice of the Chief Minister (b) Governor
(c) Chief Minister (d) President
- (xii) State Legislature can make law on subjects of
(a) Union list (b) State list
(c) Concurrent list (d) State list and concurrent list

5. Questions with very short answer

- (i) What is the composition of Indian parliament?
(ii) What are the tenure of Lok Sabha and Rajya Sabha?
(iii) Who presides over the meetings of Lok Sabha?
(iv) Who presides over the meetings of Rajya Sabha?
(v) Who convenes the joint sitting of parliament?
(vi) What are the special powers of Rajya Sabha?

- (vii) Why Rajya Sabha is called the second chamber?
- (viii) Who elects the members of Rajya Sabha from a state?
- (ix) What is method of election of the Lok Sabha M.P.s?
- (x) Who certifies a money bill?
- (xi) What is a bill?
- (xii) What is Quorum?
- (xiii) What is zero hour?
- (xiv) What is session?
- (xv) Which states in India have bi-cameral Legislatures?
- (xvi) Which are the two houses of a state bicameral legislature?
- (xvii) Who controls the finances of the state?
- (xviii) What is the tenure of state legislative council?
- (xix) What is the minimum strength of Vidhan Parishad?

6. Short Questions (to be answered in 3/4 sentences)

- (i) How is Lok Sabha elected?
- (ii) How the Lok Sabha controls the executive?
- (iii) Explain the special powers of Rajya Sabha
- (iv) What is the composition of state Legislative Assembly?
- (v) Discuss the composition of a state Legislature.

(Group - C)

Essay Type Questions

1. Explain the composition and powers of Rajya Sabha.
2. Discuss the composition and powers of Lok Sabha.
3. Discuss the powers and role of the Lok Sabha speaker.
4. Discuss the composition and powers of state Legislature.
5. Discuss the powers and role of Odisha Legislative Assembly.
6. Discuss the organisation and powers of the state Legislative Council.



CHAPTER - 14

EXECUTIVE IN INDIA

- **President**
 - **Prime Minister, Council of Ministers**
 - **Governor**
 - **Chief Minister**
-
-

PRESIDENT

The union executive consists of the President and the Council of Ministers with the Prime Ministers as its head. The members of the Constituent Assembly after a lot of deliberations decided in favour of the British model of cabinet system of Government or Parliamentary form of government for India. Under this system the President of India is a nominal head of the executive and the Prime Minister is the real head. Despite the fact that the President of India is nominal head of the executive he plays a very significant role in the constitutional set up of the country.

The majority of members in the Constituent Assembly after a great deal of debate decided in favour of an indirectly elected President. The factors that influenced their decision were a) his little effective powers in the constitutional set up of the country. b) The large size of the Indian electorate; c) the financial burden on the exchequer to elect a non-functional head of the state and d) the aspirations of an elected President for more powers.

Art 54 constitution of India lays down that the President shall be elected by an electoral college consisting of a) the elected members of the Parliament and b) the

elected members of the state legislative assemblies. The significance of including Legislative Assemblies in the Electoral College is to ensure a non-partisan election of the President. If only the Parliament elects the President it may be possible that the party having a comfortable majority can get its candidate elected easily. But when the Legislative Assemblies join the Electoral College the position might be different in view of the party positions in different Assemblies.

The constitution of India lays down very simple qualification for the august office. He should be a citizen of India, who has completed the age of thirty five years and is qualified to be elected as a member of the House of the People. He should not hold any office of profit under any government or local authority. The President cannot be a Member of Parliament or a state legislature simultaneously. If such a member is elected President he has to resign his seat before assuming office. Along with these qualifications the Presidential Election Act 1994 provides that each candidate shall deposit a security of Rs. 15,000 along with his/her nomination paper which are to be proposed by fifty and seconded by fifty other members of the electoral college.

Election

The President of India is elected according to secret ballot by the system of proportional representation through single transferable vote. An attempt is made to secure the uniformity of representation of the different states, according to population and the total number of elected members of Legislative Assembly of each state so that parity may be maintained between the state as a whole and the union. This has been done to ensure that the votes of the states shall be equal to that of population of the country. This makes the representation of the President broad based.

In the election of the President the weightage system is used to bring about a parity between the votes of the members of Parliament and the members of the Assemblies are determined by a definite formula, by dividing the population of the concerned state by the total number of elected members of the Assembly which is further divided by one thousand. If the remainder is less than to 500 it should not be taken into account. If it is more than 500 the member should be increased by one.

For example According 1991 census the population of Orissa was 31,659, 736 and the member of elected members of the legislative assembly was 147. The formula to determine the value of vote is

$$\frac{\text{Population of the state}}{\text{Number of elected M.L.A.s in the state}} \div 1000$$

Similarly the value of the votes of the members of Parliament is also worked out by a formula by dividing the total number of votes assigned to all the M.L.A.s of the country by the number of elected members of Parliament. If the remainder is more than one half, one more vote is added and if it is less than one half, then it is ignored.

$$\text{Value of votes of each M.P.} = \frac{\text{Total no. votes assigned to all the M.L.A.s}}{\text{Total no. of elected M.P.s}}$$

Taking a hypothetical example we may assume the weight of the votes of all the elected M.L.A.s is 554459 and the total strength of the elected MPs of Parliament is 783. In this assumption the weight of votes of each M.P. is 708. The fraction of 1 in this case has been ignored.

During the election of the President of India the members of the electoral college are allowed to exercise their preferences for the candidates in order of their choice. Each voter is allowed to exercise as many preferences as candidates are there. The voter indicates his order of preferences on the ballot paper. A candidate in order to be elected must secure his quota of votes which is 50% of valid votes +1. If no candidate secures the quota or the number of votes required to win, subsequent rounds of counting shall be taken up. The counting will continue till a candidate gets the quota of votes required to win. In 2012 Dr Pranab Mukharjee was elected as 13th President of India

Whenever the presidential office falls vacant on account of his death, resignation or impeachment the Vice-President succeeds him for a period of six months. The election of the President must be conducted within six months from the date of vacancy. In case of resignation, the President hands over the letter of resignation to the vice-President of India.

Impeachment: The President of India can be removed from the office for violation of the Constitution by impeachment. Such a motion of impeachment can be initiated by any House of Parliament. In such a case one fourth of the members, of the house, intending to move such a motion have to serve a fourteen days notice in writing. After the completion of the stipulated period the motion is discussed and put to vote. If two-thirds of the members support the motion then it is passed for

consideration of the other House. The other House on receiving the motion investigates the charges. The President is allowed the opportunity of present his defence either in person or through his nominee. If the House despite the defence supports the motion by two-thirds majority the President stands impeached and he is disqualified to hold any office under the constitution.

Salary

He is entitled to a rent free official accommodation in Rashtrapati Bhawan. His salary, allowances and privileges are determined by the Parliament from time to time. Presently his/her monthly salary is Rs. 1500000/- (one lakh fifty thousand) which cannot be reduced during his term of office. After retirement the president gets a monthly pension of Rs. 75000 as well as an allowance, free accommodation and medical aid.

The President of India is entitled to certain legal immunity during his tenure. He is not answerable to any court of law while discharging his responsibilities. He cannot be arrested or imprisoned in connection with any civil or criminal case. However civil suits may be instituted against him by serving at least two months notice.

The Power and Functions

The powers and functions that have been vested in the President of India may be classified under the following heads. The Executive powers, Legislative powers, Military powers, Diplomatic powers, Judicial powers, Financial powers and Emergency powers.

(1) The Executive Powers

Art 53 of the Constitution lays down that the executive power of the union shall be vested in the President. Thus making him the head of the state. All executive actions of the union must be expressed to be taken in the name of the President and as such he shall have a right to be informed of the affairs of the union. The executive power includes the power to appoint and remove the high constitutional authorities of the country. Under this power he appoints the Prime Minister and other members of the Council of Ministers and distributes portfolios among them. He also appoints the judges of the Supreme Court and the High Courts in the states, the Governor of

the states, the Attorney General and the Comptroller and Auditor General of India, the Chief Commissioner and other members of the Election Commission, the Chairman and members of the Union Public Service Commission, the Finance Commission. Besides he also gives appointments to many other statutory Commissions, like Language Commission and Commission on Scheduled Castes and Scheduled Tribes etc. He also enjoys the power to remove the Prime Minister and other ministers and all of those whom he gives appointment on an address of the Parliament.

(2) Legislative powers

The President of India is an integral part of the Union Parliament. The Parliament can not function without involving him, because he alone can summon and prorogue the Houses of Parliament. If there is a deadlock in the process of legislation between both the House of Parliament, the President has the power to summon a joint-session to do away with the impasse. He addresses both the Houses on the inaugural session after each general election and presents the agenda of the government. Apart from this he can send messages to either House of Parliament on any important matter of national, constitutional or public interest. The constitution requires the prior sanction of the President for introducing certain legislations for example a bill which seeks to create a new state or change the boundary of an existing state or change the name of a state or dealing with certain matters relating to Fundamental Rights. Money bills also require the previous sanction of the President before its introduction in the Lower House; besides all bills after they are passed in the Parliament need his consent to become Acts. The President can also promulgate ordinances during the recess of the Parliament. Ordinance is an emergent legislation. If legislation is warranted at a time when the legislature is not in session, the President on the request of the executive can issue an ordinance having the force and effect of an Act. However every such ordinance must be laid before both the House of Parliament and shall cease to operate, on the expiry of six weeks from the date of its reassemble, unless approved by the Parliament. The ordinance also becomes inoperative if before the expiry of six weeks a resolution is passed by Parliament against it. The ordinance may be withdrawn by the President at any time. Over and above the President of India has the power to constitute the Parliament partially by virtue of his powers to nominate members to both the Houses of the Parliament. He can nominate two members from Anglo-Indian Community to the Lok Sabha, if he is satisfied that the Community is not adequately

represented in the House. Besides, he can nominate twelve members to the Rajya Sabha from among persons having special knowledge and practical experience of science, art, literature and social service. Further he causes some important reports to be submitted on the floor for the Lok Sabha. The reports of Comptroller and Auditor General, Finance Commission, Union Public Service Commission, Language Commission are some of the many reports caused by the President to be laid before the Parliament.

(3) Military Powers

The Constitution vests the Supreme Command of the Defence Forces in the President of India. As such he makes all important appointments in the Defence Forces including the Chief of the three wings of the Armed Force, the Air Force and the Naval Force. He grants all military honours and titles for acts of bravery and commendable service to the nation during peace and war.

(4) Diplomatic Powers

The President enjoys wide diplomatic powers or powers over foreign or external affairs. For the purpose of maintaining ties with the other countries he appoints diplomatic representatives like Ambassadors or the High Commissioners to those countries. The diplomatic representatives of other foreign countries also present their credentials to him before taking up their assignments in this country. He also takes up the task of negotiating treaties and agreements with other countries subject to ratification by Parliament. As head of the state he represents India in International affairs and conferences.

(5) Judicial Powers

The President of India as head of the executive enjoys some judicial powers like most other heads of democratic countries the world over. The purpose of granting such powers to the President is to rectify the possible judicial errors. No human system of judicial administration can ever be foolproof. The President of India can grant pardons, reprieves or respites or remission of punishment. He can suspend, remit or commute the sentence of any person convicted of any offence in cases where the punishment is by a court martial or death sentence.

Also the judges of the Supreme Court and the High Courts are appointed by him. He is also empowered to transfer the judges of the High Courts or can remove any judge of Supreme Court or High Courts on an address by the Parliament. A very significant power with the President is that he can seek the opinion of the Supreme Court on any matter of legal or constitutional importance involving the interest of the State and the People. However it is up to the Supreme Court whether to render any advice to the President and on the other hand it is for the President either to accept or reject such advice if rendered.

(6) Financial Powers

With regard to his powers in the field of finance the Constitution provides that all money bills will need his consent to be initiated in the Lower House of Parliament. He causes the budget to be laid on the floor of Lok Sabha every financial year. He is empowered to order for the presentation of the report of the Auditor General of India relating to the accounts of the Government of India. The Finance Commission submits its report containing its recommendations and actions taken for his placement in the legislature. The Contingency Fund of India is at his disposal. He can make advances out of it to meet the unforeseen expenditure.

The powers discussed above are discharged by the President during normal period. But normalcy may not be a permanent feature in the life of a nation. Sometimes some awkward situations may demand very tough action on the part of the chief executive. The President of India has been given some extraordinary powers to deal with such emergent situation, known as **EMERGENCY POWERS**.

The makers of the Indian Constitution were influenced by the relevant provisions of the Government of India Act, 1935 and the Constitution of Weimer Republic of Germany where such provisions had been incorporated. In the Constitution of India three kinds of emergencies have been envisaged such as National Emergency, State Emergency and Financial Emergency.

National Emergency

The emergency provisions in part XVIII of the Constitution have been considerably amended by the 42nd (1976) and 44th (1978) amendment. The President of India under Article 352 can declare emergency at any time when he is satisfied that the security of India or any part thereof has been threatened by war, external aggression

or armed rebellion. It may be declared even before such eventuality takes place. Such a proclamation, known as National emergency, is issued on the recommendation of the cabinet headed by Prime Minister, in writing to the President. This must be approved by resolutions of both houses of Parliament within one month from the date of its issue. If the Lok Sabha stands dissolved at the time of the declaration of emergency then Rajya Sabha must approve of this and then within thirty days must be approved by the reconstituted Lok Sabha. If approved by both the Houses of the Parliament the proclamation of emergency continues for a period of six months. It may continue for indefinite period till normalcy is restored but it must be extended every six months through Parliamentary resolutions. All such resolutions must be passed by a majority of two thirds of members in both the Houses. The President can revoke it any time.

National emergency may be declared in respect of the whole of India and the declaration of National Emergency brings about a lot of changes in the constitutional set up of the country. The immediate effect of such a declaration, is that the federal structure of the country is transformed to a unitary one for purposes of uniformity of administration. The law making powers of Parliament is extended to the items in the state list. The President of India can issue directions or instructions to any state indicating the manner in which their executive power is to be exercised. He is also empowered to rearrange the distribution of revenues between the union and the states to ensure availability of sufficient funds to the central government. The fundamental rights guaranteed to the citizens can be reasonably, restricted in the greater interest of the country. However such restrictions are withdrawn immediately after the revocation of emergency. The life of the Parliament may be extended by a year.

Such an emergency under article 352 has been invoked thrice. In October 1962 at the time of Chinese aggression this emergency was proclaimed for the first time and continued till January 1968. For the second time it was declared in December 1971 at the time of Indo-Pak war. For the third time, the President declared it in June 1975 on account of internal political crises and continued till March 1977.

President's Rule (State Emergency)

President's Rule is also known as political emergency, President's Rule. This kind of emergency arises when the constitutional machinery in any state becomes in-operative. Art 356 provides that if the President of India on receipt of report from the

Governor of a state or otherwise is satisfied that a situation has arisen in which the government of a state cannot be carried out in accordance with the provisions of the Constitution he may declare such an emergency. Such a proclamation may be made by the President when any state has failed to implement any central directive. Any dislocation in state administration might just affect the national integrity. This provision has been incorporated as a safeguard against that.

The Parliament must approve of the proclamation within two months. Such an emergency can continue for a period of six months at a stretch and can be extended up to a maximum period of three years. However every six months the proclamation should be renewed by the Parliament.

The declaration of this emergency has its effects on the administration of the state. The immediate effect is that the President of India takes over the administration of the state, except the powers of the High Court. This is why it is called President's Rule. He authorizes the Governor of the state to run its administration on his behalf. He may appoint advisors to assist the Governor in the discharge of his functions during this period. The Legislative Assembly of the state is either dissolved or kept suspended depending upon the situation. The powers of the State Legislature in that case are exercised by the Parliament. The Parliament may also delegate these powers to the President.

This type of emergency has been invoked on several occasions since 1951. The 44th Constitutional Amendment Act has provided that such a proclamation can be challenged by a court of law to check its misuse.

Financial Emergency

If the President of India feels satisfied that the financial stability of India or any of its part is seriously affected he may proclaim financial emergency under Art 360. The duration of such a proclamation ordinarily remains in force for a period of two months. Of course within that period it has to be approved by resolutions of both the chambers of the Parliament. If the Lok Sabha is dissolved within that period of two months, the proclamation has to be approved within thirty days of the newly constituted Lok Sabha. It can continue for indefinite period till it is revoked by the President.

The effects of Financial emergency are significant. The President can direct State Governments, to observe economy measures in public expenditure. All Money

Bills may be reserved for the consideration of the President. Salaries and perks of Govt. servants and high constitutional dignitaries may be drastically reduced including the judges of higher courts. The President of India may reconsider the allocation of revenues between the centre and the states.

Financial emergency has not been put to test so far since inception of the constitution. The President of India exercises these powers discussed above under constitutional limitations. The President exercises these powers under the advice of the Council of Ministers. The 44th amendment has made it clear that except in certain marginal cases, the President shall have no power to act in his discretion. His refusal to abide by the advice of the Council of Minister may lead to his impeachment on grounds of violation of Constitution. The powers of the President are actually exercised by the Council of Ministers in the tradition of Parliamentary democracy. Under such a system of government the President has a very formal position and nominal role to play under the Constitution. However he can always influence the decisions of the Council of Ministers by his advice and guide the Parliament through his speech and messages if he has a nonpartisan image, clarity of thinking, integrity of character and above all charismatic personality.

POINTS TO REMEMBER

- The union executive consists of the President of India and the Council of Ministers with the Prime Minister at the head. He functions under the advice of the Council of Ministers.
- The President of India is indirectly elected by an electoral college consisting of the elected members of the Parliament (both Houses) and the State Legislative Assemblies.
- The method adopted in the election is Proportional Representation by means of Single Transferable Vote.
- He can be removed from office by Impeachment motion passed by the Parliament for violation of constitution.
- He enjoys Executive powers, Legislative powers, Military powers, Diplomatic powers, Judicial powers, Financial powers and Emergency powers.

THE VICE-PRESIDENT

- (i) Powers
- (ii) Points to Remember

Art 63 of the Constitution of India provides for the office of the Vice-President. However his role in the Government is comparatively insignificant. This office is sometimes compared with the office of the American Vice-President who is addressed as “His Superfluous Highness” for his meaningless presence in the administrative and constitutional set up. On the other hand the office provides for a responsible and experienced person to work as President temporarily when the latter is not in a position to function because of certain contingencies like resignation, death, impeachment, long absence etc.

The Vice-President is elected indirectly by an electoral college consisting of the members of both the Houses of Parliament. The election is held in accordance with the system of proportional representation by means of a single transferable vote by secret ballot. All disputes regarding the election of the Vice-President are settled by the Supreme Court.

Qualifications

A candidate for the office of the Vice-President must be an Indian citizen. He should be thirty five years of age or more. He must be qualified for election to Rajya Sabha. The members of the Parliament or State Legislative Assembly cannot be Vice-President of India. If a member of either Parliament or any State Legislative is elected to the august office he has to resign his membership before assuming the office.

The Vice President holds office for five years from the date on which he enters upon his office, of course, if he does not resign earlier. The resolution to impeach the Vice-President can only be initiated in the Rajya Sabha. Such a motion must be passed by the majority members of Rajya Sabha and agreed upon by the majority members in the Lok Sabha. The Rajya Sabha has to serve a notice to the Vice-President of India 14 days before moving such a resolution. Rajya Sabha has been given this exclusive power to initiate the motion of impeachment of the Vice-President who happens to be its presiding officer or chairman. He receives his salary as chairman of Rajya Sabha not as Vice-President. At present the vice-president gets a salary of

Rs. 1,25,000/- per month. He also enjoys other facilities like free residence, free medical aid and other perks.

The vice-President is known as the President in-waiting, because he takes over the office of the President for a period of six months at best whenever the office falls vacant by reason of his death, resignation or impeachment. Election to the office must be conducted within six months from the date of vacancy. When he acts as the President, he enjoys all the Powers, privileges and immunities of the President. He also receives the salary and allowance as determined for the President of India.

The Vice President of India

1. Dr. S. Radhakrishnan.
2. Dr. Zakir Hussain.
3. Dr. V Venkat Giri.
4. Hon'ble Sri B. D. Jatti.
5. Justice Md. Hidayatullah Khan.
6. Hon'ble Sri R. Venkatraman.
7. Dr. Shankar Dayal Sharma.
8. Hon'ble Sri K. R. Narayanan
9. Hon'ble Sri Krishna Kant.
10. Hon'ble Sri B.S. Shekhawat.
11. Hon'ble Hameed Ansari

Besides acting as the President of India in his absence, another important function of the Vice-President is to act as the Chairman of the Council of States and as such he is comparable with the speaker of Lok Sabha, enjoying the same honour and the powers. He may travel to foreign countries as the representative of the President to represent India on any matter of external relations.

The office of the Vice-President of India has been one of great honour and prestige. Eminent persons of great stature have been occupying this second highest office of the country since independence. Usually the incumbents of this office are elevated to the office of the President, though not as a matter of Principle. Dr. Hameed

Ansari is the vice-president of India from 2007 - 2012 and he was re-elected again as the vice-president in 2012.

POINTS TO REMEMBER

- The Vice-President is elected indirectly by an electoral college consisting of both the House of Parliament.
- His main function is to function as President of India whenever the office falls vacant due to the resignation, removal, death or long absence of the President. He also works as the Ex-officio Chairman of Rajya Sabha when he does not function as the President of India.
- As Vice-President of India and Chairman of Rajya Sabha he holds a post of great honour and dignity.

THE COUNCIL OF MINISTERS

The Constitution of India provides for a Parliamentary form of Government. While the President is the nominal executive, the real executive is the Council of Ministers. Art 74 (i) lays down that, there shall be a Council of ministers with the Prime-Minister at the head, to aid and advise the President in the discharge of his functions. Art 75(i) says that “The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister”. The President of India has no choice but to accept the advice of the Council of Ministers as it remains responsible for all the actions on his behalf to the Lower House of the Indian Parliament. This makes the Council of Ministers, the real executive.

As a matter of Parliamentary practice the President appoints, the leader of the majority party or any person enjoying the support of the majority of members in the Lok Sabha as Prime Minister for five years. The President appoints the ministers and distributes portfolios among them on the advice of the Prime-Minister. On his advice the President can appoint an outsider, not a member of Parliament a minister. However such a person has to be elected to either House of Parliament within six months from the date of his appointment. On his recommendation the President can dismiss any minister from the Council of Ministers. Virtually the President has no say in these matters as these constitute the prerogatives of the Prime Minister.

There is no formal rule regarding the size and composition of the Council of Ministers. The decision lies with the Prime Minister. But under the new law the strength of the Council of Ministers cannot be more than 15% of the total strength of Lok Sabha.

The members of the Council of Ministers belong to different ranks. Normally there are three categories of ministers appointed by the President. The senior and experienced leaders of the party are appointed as cabinet ministers. They handle their portfolios independently with the assistance of the other kinds of ministers. The next category is Minister of State who are fairly senior and experienced, good enough to assist the cabinet ministers. Sometimes the Ministers of state are given independent charge of the ministries also. Like cabinet ministers they freely handle the affairs of these ministries and get assistance from the junior ministers. The only justification of giving independent charge of ministries to some ministers of state and denying this to other minister of this rank is the prerogative of the Prime Minister. Lastly are Deputy Minister and Parliamentary Secretaries who are fairly younger with almost no experience. They are inducted into the cabinet to acquire experience by assisting their senior ministers to discharge their functions well. No qualification or age limit is laid down for these different categories of ministers. The political wisdom as well as the compulsions of the Prime Minister decide which minister will belong to which category and handle which portfolio. The Council of Ministers is collectively responsible to the Lower House of the Parliament. The ministers are also individually responsible for acts done on behalf the President.

The Council of Ministers hardly meets as a body. It is the cabinet, an inner body within the Council which assumes all authority and shapes the policy of the Government. Cabinet is the highest policy making body, consulted by the Prime Minister frequently while taking important policy decisions in matters of administration. Only the cabinet ministers attend the cabinet meetings as they constitute the core group of the Prime Minister. The other categories of Ministers, unless specially invited do not attend the cabinet meetings. That is why a distinction is always made between the council of ministers and the cabinet. The former is a larger body comprising of all categories of ministers, but the later is a smaller body of important ministers. Thus all members of the cabinet are members of the council of minister while all members of the council of ministers are not the members of the cabinet.

The Functions of Council of Ministers

Executive Functions : The Council of Ministers is the real executive and in the exercise of executive powers, the cabinet formulates the policies. These policies are submitted to the Parliament for approval. Approved policies are executed in the form of foreign policy and domestic policy of our country. For all its policies and decisions, the Council of Ministers is collectively responsible to the Lok Sabha.

The Council of Ministers are responsible for maintaining law and order in the country and in the exercise of the Emergency Powers, the President takes the advice of the Council of Ministers, particularly the Prime Minister. The real responsibility to meet an emergency rests with the cabinet.

The President makes all the higher appointments like Governors, Ambassadors, Judges etc. in accordance with the advice of the cabinet. All treaties and agreements are discussed and signed by the Ministers on behalf of the President of India.

Legislative Functions : The Council of Ministers are the executive heads as well as members of the parliament, hence they take active part in the legislative process in the Parliament. Most of the bills are introduced by the Ministers. Bills not supported by the ministers cannot get passed in the Parliament.

The President summons, prorogues or dissolves the Parliament in accordance with the advice of the cabinet. The Council of Ministers is collectively responsible to the Lok Sabha, and the latter can remove them by passing a no-confidence motion. But such a situation arises when the cabinet loses the majority support. It is normally the cabinet which controls the Parliament.

Financial Functions : Constitutionally the Parliament is the custodian of national finance, however, in reality, cabinet is the player. The financial policies are laid down by the cabinet. The budget is prepared by the cabinet, and the financial administration of the country is controlled by the Ministry. Money Bills can be introduced in the Lok Sabha by the Ministers and all proposals for taxation come from the Council of Ministers. Thus the Council of Ministers takes charge of financial management.

Since the Council of Ministers does not meet as a body, the cabinet being a smaller structure of senior and experienced ministers becomes the highest advisory body to the President of India. The Prime Minister discusses all matters relating to

administration with his colleagues in the cabinet and decides the policies to be adopted. Once the policy is formulated the entire Council of Ministers remain collectively responsible to that. Over and above the cabinet looks after the execution of the policy. There is an experienced and well trained professional body of civil servants to assist the Prime Minister and the other ministers in the implementation of the Policies. The cabinet settles all inter-departmental and inter-ministerial differences for smooth functioning of the government. Coordinating the functions of various Cabinet Committees is perhaps the most important function of the Cabinet. The Cabinet Committees formulate policy proposals of the government. These issues are examined in detail by the Cabinet. On the whole the moral and political responsibility of the entire administration belongs to the cabinet in spite of the fact that there is a large and extended civil service to carry out the actual administration. In a cabinet-government the cabinet as a body exercises the real executive powers of the state.

POINTS TO REMEMBER

- The Council of Ministers consists of the political associates of the Prime Minister, who help him to run the state.
- The members of this body are appointed by the President of India on the advice of the Prime Minister. They are collectively responsible to the Lok Sabha.
- There are three categories of ministers in the council of minister such as Cabinet Minister, Minister of state and 1sDeputy Ministers.
- Cabinet is an offshoot of the Council of Ministers. The ministers of cabinet along with the Prime Minister constitute the cabinet. Other categories of ministers do not attend this meetings.
- Cabinet is the highest policy making body, which besides formulating administrative policies look to its implementation and coordination.

THE PRIME MINISTER

The Prime Minister of India occupies a privileged position in the country as head of the Council of Ministers. In reality the powers vested in the President of India are exercised under the direction and supervision of the Prime Minister. That is why he is accepted as the de facto head of the executive, and the office of the Prime Minister is the real centre of power. The constitution says the Prime Minister is

appointed by the President of India. However the details of the manner of appointment have not been discussed in the Constitution except that the President shall appoint the Prime Minister and the other ministers on his advice. However as a convention of the Parliamentary system the President appoints the leader of the majority party or a leader supported by majority of members in the Lok Sabha as Prime Minister. The President may sometimes use his discretion to appoint a Prime Minister when no single party enjoys majority in the Lok Sabha. In such a situation the President has to decide keeping the interest of the nation in mind. In May 2004 the President appointed the leader of the Congress-led UPA Government, Dr. Manmohan Singh as the Prime Minister. Further the Constitution provides that any person who is not a member of either House of Parliament can become a minister and he can remain as minister for six months within which he has to get the membership of either House. This principle also applies to the Prime Minister. This implies the qualifications essential for the membership of the parliament are applicable for Prime Minister of India. There is also no law which says the Prime Minister has to be a member of Lok Sabha. Hence he can be a member of either House of Parliament. Dr. Manmohan Singh was the Prime Minister from May 2004 - May 2009 and for the second term from May 2009 to May 2014 even though he was a member of Rajya Sabha.

The Prime Minister does not have a fixed tenure. He holds office during the pleasure of the President, which means he can remain in office as long as he enjoys the confidence of majority in Lok Sabha. If a vote of no-confidence is passed against him in Lok Sabha, the Prime Minister is bound to submit his resignation to the President or he can be dismissed by the President.

Strangely the Constitution does not throw much light on the powers of the Prime Minister. Art 78 makes him a channel of communication between the Council of Ministers and the President. As per this article the Prime Minister has to communicate all decisions of the Council of the Ministers to the President; provide information relating to administration as and when the President desires and on the request of the President place a matter in the agenda of the cabinet, on which a minister has taken a decision without consulting the cabinet. This is all that the Prime Minister is expected to do as per the Constitution.

But in reality the Prime Minister exercises much more powers than this which naturally follows from his authority as the head of the Council of ministers.

Functions

1. Formation of Council of Ministers : The Prime Minister is responsible to constitute the Council of the Ministers although it is a formal function of the President, who works according to the suggestion of the Prime Minister. He cannot work otherwise. Harold J.Laski says that the Prime Minister is central to formation, central to growth and central to the death of the Council of Ministers. All decisions regarding the formation of Council of Minister, like the number of persons to be included in the council, the portfolio to be distributed among them, the persons to assist him as minister and their rank in the council, are solely decided by him. If the Prime Minister resigns or dies in office his Council of Ministers automatically goes out of office. The Prime Minister can demand resignation from any minister at any time or if minister does not resign the Prime Minister can either get him dismissed by the President or can submit his own resignation.

2. Chairman of the Cabinet : He decides the dates and agenda of the meetings of the cabinet. He presides over the meetings of the cabinet and seeks the views of his cabinet colleagues to take all decisions. Efficient working of the cabinet, largely depends on the ability, skill and leadership of the Prime Minister. Any minister who disagrees with the views of the Prime Minister on the cabinet has to resign to respect the principle of collective responsibility. All ministers must agree to the policies of administration as decided in the cabinet.

The Cabinet largely functions through its committees, which study and make indepth report to the cabinet on policy matters. The Prime Minister as the chairman of most of these committees initiate the policy issues in the committees. Thus he plays the role of architect of all policies in administration.

3. Link between the President and the cabinet : The Prime Minister is a connecting link between the cabinet and the president. It is his responsibility to inform the President of the decisions taken in the cabinet. Thereby the President is kept informed of all the developments in the administration. On the other hand when the President seeks some information on matters of administration, on his own, the Prime Minister provides him with such information on behalf of the government.

4. Leader of the Parliament : He is also the leader of the House of People. As leader he presents the views of government on all important matters in the House. He meets all queries made by members on important aspects of administration and makes

important policy announcement in the House. The speaker while deciding upon the rules of business of the House consults the Prime Minister.

5. Power to get the Parliament Dissolved : The Prime Minister has the power to ask for a dissolution of the Lok Sabha. It is a weapon which he can use as a threat for smooth functioning of the Lok Sabha.

6. Control of Foreign Policies : As the head of the government the Prime Minister plays a key role in deciding Indian foreign policy and its relations with other countries. He is responsible for India's prestige and power to influence international relations.

7. Leader of the Nation : The Prime Minister is the leader of the party and also the leader of the nation. General Elections are held in his name, which is in fact the election to choose the Prime Minister. The personality and charisma play a great role in sweeping the votes in his/her favour. He leads the nation in times of peace, war or any natural calamities. During the time of emergency, all decisions are taken by the Prime Minister, though in the name of President.

All these powers and functions of the Prime Minister clearly prove that he holds the most powerful office in the Indian Political system. He represents the nation in all important international conventions where his views are taken as the views of the state. His personality, capability, charisma and above all his leadership, determine the relationship with other countries of the world. The charismatic personality and leadership, of late Prime Minister Pandit Nehru earned for him the respect of the international community.

Position of the Prime Minister

Dr. B.R. Ambedkar the father of the Constitution, opines that the Prime Minister is the real architect of the policies of the government. He is also described as the 'key stone of the Cabinet Arch'. The views of Ramsay Muir in assessing the position of the Prime Minister as 'Primus inter pares', 'first among equals' is not tenable in the present circumstances. In view of his formidable powers with regard to the formation of Council of Ministers and distribution of portfolios among his colleagues and presiding over the cabinet meetings and exercising control over administration it is misleading to make him only the first among equals. Rightly Pandit Nehru described him in the Constituent Assembly as the linchpin of the government. Laski observed

that the Prime Minister is the pivot round whom the entire machinery of the government moves. He is described variously as “a moon among lesser stars, a sun round which other planets revolve”. The Prime Minister enjoys a great position of dignity and authority. The real position of the Prime Minister depends on his character, personality, integrity and competence. The office of the Prime Minister is what the holder necessarily choose to make it. However, inspite of so much power he can neither be a dictator nor he can behave like a dictator because being a democratic office, his own party, his own ministerial colleagues, leaders of the opposition parties, the President, the Parliament and above all the people act as limitation upon him.

THE PRIME MINISTERS OF INDIA

Sl.No.	Names of P.M.s	From	To
1.	Pt. Jawaharlal Nehru	15th August 1947	27th August 1964
2.	Sri Guljarilal Nanda	27th May 1964	9th June 1964 (Acting)
3.	Sri Lal Bahadur Shastri	9th June 1964	11th January 1966
4.	Guljarilal Nanda	11th January 1966	24th January 1966
5.	Smt. Indira Gandhi	24th January 1966	24th March 1977
6.	Sri Morarji Desai	24th March 1977	28th July 1979
7.	Sri Charan Singh	28th July 1979	14th January 1980
8.	Smt. Indira Gandhi	15th January 1980	31st October 1984
9.	Sri Rajiv Gandhi	31st October 1984	1st December 1989
10.	Sri V.P. Singh	2nd December 1989	10th November 1990
11.	Sri Chandrasekhar	10th Nov. 1990	20th June 1991
12.	Sri P. V. Narasimha Rao	21st June 1991	14th May 1996
13.	Sri A.B. Bajpayee	15th May 1996	31st May 1996
14.	Sri H.D. Devegowda	1st June 1996	20th April 1997
15.	Sri I. K. Gujral	21st April 1997	18th March 1998
16.	Sri A. B. Bajpayee	19th March 1998	12th October 1999
17.	Sri A. B. Bajpayee	13th October 1999	20th May 2004
18.	Dr. Man Mohan Singh	May 2004	May 2009
19.	Dr. Man Mohan Singh	May 2009	May 2014
20.	Sri Narendra Modi	May 2014	Continuing

POINTS TO REMEMBER

- Under a Parliamentary form of Govt. The Prime Minister is the defacto head of the executive.
- The Prime Minister is appointed by the President for 5 years. The Constitution is silent about his appointment and the powers except making him a channel of communication to the President of India.
- In reality the Prime Minister exercises the functions of the President. The compulsions of a welfare state bestow on him formidable powers. His important functions relate to (a) Formation, growth and death of the Council of Ministers, (b) Presiding over meetings of Cabinet and Committees, (c) Maintaining Links with cabinet and President d) Leading the Parliament, (e) Leading the nation.

STATE EXECUTIVE IN INDIA

THE GOVERNOR

The Constitution of India provides for a federal structure, with two sets of Government one for the centre and the other for the states. The provisions for administration in all the states are uniform except the state of Jammu and Kashmir which has a separate Constitution.

The State Governments are organised more or less on the pattern of Parliamentary system like the Union with little difference here and there. The Governor is the counterpart of the President of India in the state. The head of the state, the Governor, is a nominal ruler. He acts on the aid and advice of the Council of Ministers, which is responsible to the State Legislature. Although the Governor is bound by the advice of the Council of Ministers, there is also scope for him to act in his discretion. Thus his position is slightly better than the President of India.

All executive actions in the state are taken in his name as the Constitution vests the executive powers in him. The main difference between the President and the Governor is that the former is elected indirectly where as the later is appointed by the President. Normally a Governor is appointed for one state but sometimes he may be appointed for two or more states simultaneously. The Governor holds office during the pleasure of the President. A tradition in respect of the appointment of the Governor is that a person shall not be appointed as Governor in the state to which he belongs.

In other words a person cannot be appointed as a Governor in his home state. Secondly the President consults the concerned Chief Minister before appointing a Governor in his state.

Although the office of the Governor is not elective still specific qualifications are laid down in the Constitution for his appointment. Any citizen of India who is more than 35 years of age, holding no office of profit can be appointed as a Governor. A person cannot become a member of state legislature or a member of parliament and a Governor of state simultaneously. If such a member of either State or Union legislature is appointed as Governor, he must resign his seat in the legislature before taking oath of office. The Governor is appointed for five years but he may be removed by the President earlier. Constitution does not specify any reasons for which he may be removed. President is the right authority to decide upon the issue of removal. Further even after the expiry of 5 years, he remains in office till a new Governor arrives.

Every Governor and person discharging the functions of the Governor has to take the oath of his office in the presence of the Chief Justice of the state High Court.

A governor gets a monthly salary of Rs. 1,20,000/-. He is entitled to official residence, Raj Bhawan, free of cost. He also gets other allowances and privileges which cannot be reduced normally during his term of office.

Powers and Functions

The powers of the Governors may be broadly classified as Executive, Legislative, Financial and Judicial.

Executive Powers : Governor is the head of the State. Like the President, the Governor also makes all high appointments in the State. He appoints the Chief Minister and other ministers and distributes portfolios among them on the recommendation of the Chief Minister. Virtually he has no role to play in this matter. The Governor can remove the Chief Minister in case he feels that his government does not enjoy confidence of the majority or is not working according to the provisions of the constitution. The Advocate General, the Chairman and members of State Public Service Commission are appointed by him. He can remove the Advocate General but not the Chairman and members of P.S.C. They can be removed by the President on the report of the Supreme Court. He can nominate one member of Anglo-Indian Community to the State Assembly if he feels that the community has no adequate

representation in the Assembly. He can also nominate one sixth of the members having special knowledge in the field of art, science, literature, social service and cooperative movement to the Legislative Councils in state where the legislature is bicameral.

The Governors of Odisha, Bihar, M.P. have a special responsibility to see that a minister remains in charge of Tribal Affairs. Being the head of the executive he has a right to be informed about the administration. He can call for any information regarding administration from the Chief Minister. Normally the Governor exercises all his executive powers in accordance with the advice of the state Council of Ministers and the Chief Minister.

Legislative Powers : Like the President, the Governor is very much an integral part of the State Legislature, though he is not a member of the State Legislature. The legislature cannot meet and function unless summoned by him. He delivers the inaugural address at the commencement of the first session of the legislature. He can address either or both the Houses of the legislature in case of a bicameral legislature and may send messages. The bills passed in the state legislature become Acts only after his consent. The process of giving assent to the bills are the same as with the President of India. There are certain important bills affecting the federal provisions or national administration, which can be reserved for Presidential assent by the Governor. The President is not bound to give his assent to the bill even if the same bill is sent to him for his consent time and again. He can also promulgate ordinances in the event of the recess of the legislature. Such ordinance issued by the Governor remains valid up to six weeks after the meeting of the Assembly. If however the ordinance is not passed in the legislature in the stipulated time it lapses automatically. The Governor issues ordinance only on the advice of the state Council of Ministers.

Financial Power : Budget is a very important tool of administration. It is the annual financial statement of income and expenditure prepared by the executive. It makes demands for grants by the legislature. Under the orders of the Governor the annual budget proposals are placed in the Assembly. The Money Bills need his prior approval for introduction in the Assembly. There is a Contingency Fund at his disposal. All unforeseen expenditures are met from this fund with his approval pending the sanction of the state legislature. In reality these powers are exercised by him under the advice of state Council of Ministers.

Judicial Powers : The judicial authority of the Governor is restricted to laws within the executive power of the state government. The Governor can extend pardon

to persons committing crime and convicted by the Court of law. He can commute or remit sentences of the accused. He is consulted in the appointment of the Chief Justice and Judges of the High Court. He can influence the appointments, postings and promotions of the district judges and other judicial officials. He enjoys personal immunity from civil and criminal proceedings during his tenure.

Miscellaneous Functions : He has many other functions like acting as the Ex-officio Chancellor of the state universities. He appoints the vice-chancellors of these universities. All policy matters of the universities are referred to him. He ensures the progress and stability in university administration. He takes active interest in the organisation of Red Cross and other philanthropic activities. The Governors of Odisha in the past have taken interest in the eradication of leprosy activities in the State. Another very important function of the Governor is to send fortnightly report relating to state administration to President. Through these reports the President of India gets authentic report about what is happening in states around him. That is why the Governors are described as the “Eyes and Ears” of the President of India.

Discretionary Powers of the Governor : The Constitution grants some discretionary powers and special responsibilities which are exercised by him without the advice of the state Council of Ministers. The Governor of Assam sends reports to the President regarding the administration of scheduled territories of the state. The Governor of Sikkim has the additional responsibility for the socio-economic development of the various sections of the society and in respect of the maintenance of peace and order in the state.

Generally the discretionary powers can be exercised under following situations.

- 1) When no single party secures majority in the State Legislative Assembly, the Governor can play an active role in the appointment of the Chief Minister.
- 2) The Governor can dismiss a ministry when the party in power loses majority or is likely to lose majority in the state Legislative Assembly due to party split.
- 3) The Governor can refuse to accept the advice of the Chief Minister for dissolving the state assembly in case the Governor feels that an alternative government can be formed in the state.

- 4) The Governor in his discretion can advise the President for the promulgation of emergency in the state, in case of a break-down of constitutional machinery in the state.

Position

The Governor enjoys a position of great authority and dignity. Of course he is a constitutional ruler, a titular head of the state administration, but he has exchanged power for influence. As a representative of the President he yields enough influence. The Chief Minister and other members have to respect his views and comply with his requests on state administration. This is how the Governor expedites the central directives in the state. The report of the Governor to the president plays a vital role in deciding central assistance on various projects which is a pillar of strength to the state administration. Of course the Governor does not play active part in state politics of formulation of policies of administration but he acts as the guardian of State Government. The Governor acts as the link between the center and the state, as the nominal head of the state in the normal times and becomes real head of the state during emergency. Because of his dual role as the head of the state and central agent, at times the Governor becomes a controversial person. In India, several reports of the committees constituted to define the exact role of the Governor, for example, Sarkaria Commission Report suggested some steps for guiding his exercise of powers, yet the office continues as before. In fact if he is a man with clarity of thought, wisdom, benevolent attitude and integrity of character he could act as the watch dog of constitutional propriety in the state and maintain the Centre-State relationship, to the satisfaction of both.

POINTS TO REMEMBER

- The state executive consists of the Governor of the State and the Council of Ministers with the Chief Minister as the head.
- The Governor functions under the advice of the Council of Ministers of the State.
- He is appointed by the President normally for a period of five years. Although he can be transferred or removed before that period.
- He can be removed from office by the President of India.
- He enjoys Executive, Legislative, Financial and Judicial powers.

- Despite being the titular head of State the Governor can immensely influence the state administration if he has clarity of thought, dynamic personality and true statesmanship.

THE COUNCIL OF MINISTERS IN THE STATE

The states under the Indian Constitution are organised on the pattern of the Centre; the basis of organisation being Parliamentary form of government. Although Constitution vests the executive power of the state in the Governor, in practice these powers are exercised by the state Council of Ministers with the Chief Minister at the head. The Council of Ministers in the state is an exact replica of the Council of Ministers at the Centre. They resemble in formation, functions and role in the administration of the Council of Ministers at the centre.

The process of formation of the Council of Ministers begins with the appointment of the Chief Minister. The Governor first appoints the Chief Minister and then the other ministers on his advice. The distribution of portfolios among the ministers is also done by the Governor on the recommendation of the Chief Minister.

The shape and size of the Council of Ministers solely depends on the Chief Minister. There are usually four kinds of ministers. They are Cabinet ministers, minister of state, deputy ministers and secretaries. Senior and experienced leaders of the party are appointed as Cabinet ministers. They handle the administrative departments under their Portfolio independently. They together constitute the Cabinet which works under the guidance of the Chief Minister. The mid level party leaders are chosen as ministers of state to assist the Cabinet Ministers in the discharge of their duties. Sometimes apart from helping the senior ministers, the Chief Minister allows some ministers of state independent charge of the portfolios. There is no rule to justify such an arrangement.

Including the ministers in the Council of Ministers and distributing portfolios among them depends purely on the Chief Minister. The junior and fresh members of the party are usually inducted as Deputy ministers and Parliamentary Secretaries. These categories of ministers earn experience while assisting the senior ministers. Except the cabinet ministers the other ministers do not attend the Cabinet meeting unless specially invited to do so.

Sometimes a distinction is made between the Council of Ministers and the Cabinet. Cabinet is the smaller version of the Council of Ministers, consisting of

only the cabinet ministers. But the Council of Minister includes the four categories of ministers appointed by Governor. The Council of Ministers does not meet as a body except on rare occasions. Instead the Cabinet performs all the functions. Therefore the functions of the Cabinet are described as the functions of the Council of Ministers.

The basis of functioning of the Council of Ministers is collective and individual responsibility to the Legislative Assembly. They function till they enjoy the support of the majority in the Assembly. All the ministers are collectively and individually responsible before the Assembly for their acts. No. minister can ever differ from the decisions taken by the Chief Minister or the Council of Ministers. If any minister does not agree with any principle decided by the Council he has to resign first then he can oppose the principle. Therefore all the differences must be sorted out before a policy is spelt out and once it is made public all ministers must agree to that, because for the fault of a single minister the entire Council of Minister has to own the responsibility and may have to resign also.

The Cabinet exercises the real executive powers of the State. It is the highest policy making body of the State. Besides policy formulation all important decisions relating to administration are taken in the Cabinet. The interdepartmental squabbles are sorted out in the cabinet meetings. The Chief Minister presides over the Cabinet meetings and takes stock of the administration of all the departments. Any differences among the ministers are sorted out in this meeting. Though the budget is prepared by the finance minister the Cabinet determines the principles of budget in consultation with the finance minister. The views of the Chief Minister are taken as final in the Cabinet.

POINTS TO REMEMBER

- Like the organisation of the Union Executive the State Executive is organised.
- There is a Council of Ministers with the Chief Minister at the head which remains responsible to the Vidhan Sabha for its actions.
- The Governor appoints the members of the Council of Ministers on the recommendation of the Chief Minister.
- Formation of the Council of Ministers completely depends on the Chief Minister.
- There are three categories of ministers in the Council. They are (a) The Cabinet, (b) The minister of state, (c) The Deputy Minister.

- Cabinet Minister constitute the Cabinet, which is known in the state as the highest policy making body which decides all the policies of administration and further which supervises and controls the entire administration.
- All the members of Council of Ministers are not the members of Cabinet whereas all the members of Cabinet are members of Council of Ministers.

THE CHIEF MINISTER

The Chief Minister occupies a very important place in state administration as the leader of the state Council of Ministers. His powers, position and authority are more or less similar to those of the Prime Minister of the country. He is the most powerful functionary of the state Government.

The Chief Minister is appointed by the Governor of the State. Though the Constitution is silent about the manner of selection of Chief Minister the Governor appoints the leader of the majority party in the Legislative Assembly as the Chief Minister. The Governor does so according to political convenience and traditions of parliamentary democracy. In case no party commands comfortable majority in the Assembly the Governor allows sometime to the political parties to settle between themselves the possibility of forming the government. If they reach some sort of agreement to form a government in alliance, he appoints its leader as the Chief Minister. If the parties fail to reach an understanding he either recommends for President's Rule or keeps the Assembly suspended to further explore the possibilities of forming a government. After appointing the Chief Minister the Governor gives formal approval to the list of ministers to be included in the Council of Ministers.

The Council of Minister functions during the pleasure of the State legislature (Assembly). The Council continues in office as long as the lower chamber of the State Legislature retains confidence in it. The Council of Ministers is collectively responsible to the Legislative Assembly for its acts of omission and commission. The state Assembly can remove it by passing a vote of no-confidence against it.

Functions

The powers and functions of the Chief Minister are comparable with that of the Prime Minister. He is responsible to form the Council of Ministers. The Governor appoints his nominees as ministers and also distributes portfolios among the ministers on the recommendation of the Chief Minister. The Chief Minister is the Chief architect

of all policies relating to state administration. These policies are determined on the basis of Cabinet decisions. As a matter of principle all the ministers must agree to the decisions of the Cabinet. The Principle of collective responsibility demands this.

Sometimes serious differences may occur between the ministers or administrative departments owing to complex nature of administration. In such a case the Chief Minister has to settle the differences and maintain harmony and understanding between the departments and his colleague.

He meets the Governor of the state from time to time to inform him about the decisions taken in the cabinet and the developments in administration. Since the Governor is the reporting authority to the President of India the Chief Minister provides him with necessary information and advice on behalf of the Council of Ministers.

The Chief Minister also functions as the leader of the Legislative Assembly by virtue of being head of the majority party. All important policy announcements are made by him. He replies to all important debates and motions in the Vidhan Sabha trying to make the stand of the Government clear on controversial issues. His views are held as the views of the government. All the major appointments and promotions are made by the Governor on the advice of the Chief Minister. He can also advise the Governor to dissolve the Assembly, incase he finds the government cannot be carried out in accordance with the provisions of the Constitution or in case he is likely to lose the majority. Such advice is given on the basis of political considerations.

The speaker consults him during the session's of Assembly, to determine the agenda and rules of business of the House.

The Chief Minister is accepted as the leader of the state also. He brings the problems of the state to the notice of the central leaders including the Prime Minister. He represents the state in all important national conventions to present the views of the state government. He always negotiates on important matters with the central leadership.

Position

The Chief Minister undoubtedly enjoys an enviable status in the Constitutional set up of the government. But his real position depends on factors like his personal qualities of head and heart, leadership, capability and charisma. His position in the party largely determines his position as Chief Minister. If he is accepted by all sections

of party members, he can become a very successful Chief Minister. Besides he must have the qualities of leadership to steer, clear the party in the period of crisis and bring success in the elections. His proximity to the party High Command also determines his position as Chief Minister. Besides these factors the real position depends on the nature of relationship between the centre and the state, the role and influence of the Governor of the state, the extent of majority his party enjoys in the state Assembly and the level of public support behind him.

POINTS TO REMEMBER

- The Chief Minister is appointed by the Governor of the state.
- He happens to be the leader of the majority in the State Legislative Assembly and de facto head of the state administration.
- In reality the Chief Minister exercises the functions of the Governor. Like the Prime Minister, the Chief Minister enjoys formidable authority in state administration.
- His position in the state administration depends on his capability, leadership, proximity to the central high command in the party and his charisma.

MODEL QUESTIONS

(Group - A)

1. **A parliamentary executive means:**
 - (a) Executive where there is a parliament
 - (b) Executive elected by the parliament
 - (c) Where the parliament functions as the Executive
 - (d) Executive that is dependent on support of the majority in the parliament
2. **Read this dialogue. Which argument do you agree with? Why?**

Amit: Looking at the constitutional provisions, it seems that the President is only a rubber stamp.

Sharmila: The President appoints the Prime Minister. So, he must have the powers to remove the Prime Minister as well.

Rajesh: We don't need a President. After the election, the Parliament can meet and elect a leader to be the Prime Minister.

3. While appointing the Prime Minister, the President selects

- (a) Leader of the largest party in the Lok Sabha
- (b) Leader of the largest party in the alliance which secures a majority in the Lok Sabha
- (c) The leader of the largest party in the Rajya Sabha
- (d) Leader of the alliance or party that has the support of the majority in Lok Sabha

4. Read this discussion and say which of these statements applies most to India.

Alok: Prime Minister is like a king, he decides everything in our country.

Shekhar: Prime Minister is only 'first among equals', he does not have any special powers. All ministers and the PM have similar powers.

Bobby: Prime Minister has to consider the expectations of the party members and other supporters of the government. But after all, the Prime Minister has a greater say in policy making and in choosing the ministers.

5. Why do you think is the advice of the Council of Ministers binding on the President? Give your answer in not more than 100 words.

(Group - B)

1. Correct (errors if any) of the following sentences

- (i) The president of India is directly elected by majority voting system.
- (ii) The Governor is appointed by the parliament.
- (iii) The Chief Minister is the agent of the centre in the state.
- (iv) All the members of the Council of Ministers attend the cabinet meeting.

2. Fill in the Blanks of the following sentences

- (i) _____ branch of the government implements the law.
- (ii) A nominal executive exists in a _____ form of government.
- (iii) _____ is the head of the state in India.

- (iv) Article _____ states the procedure of impeachments against the president of India.
- (v) _____ is the supreme commander of India's military.
- (vi) The president is elected indirectly by _____ .
- (vii) The president of India takes oath before _____ .
- (viii) Article _____ states the President's Rule.
- (ix) The Governor of a state is dismissed by _____ .
- (x) _____ presides over the meetings of cabinet at the centre.
- (xi) The salary of president of India is drawn from _____ fund of India.
- (xii) _____ is the presiding officer of Rajya Sabha.
- (xiii) _____ is the Chancellor of universities of the state.
- (xiv) _____ is the head of the government in Odisha.

3. Answer in one word/sentence

- (i) Which article of the Indian constitution deals with Financial Emergency?
- (ii) Which house of Indian parliament cannot be dissolved by the president?
- (iii) Who is the chief link between the president and council of ministers?
- (iv) Who promulgates ordinance in the country?
- (v) Who is called the supreme commander of Armed Forces?
- (vi) Who enjoys the right to grant pardon in India?
- (vii) Who is the constitutional head of the state?
- (viii) The Governor is appointed and removed by whom?
- (ix) Who appoints the chief minister?

4. Multiple choice questions

- (i) The Prime Minister of India is
 - (a) Head of state
 - (b) Head of government
 - (c) Both Head of state and Head of government
- (ii) On whose advice the president declares National Emergency?
 - (a) Council of Ministers
 - (b) Vice-president
 - (c) Parliament
 - (d) Prime Minister

- (iii) President can be removed by
(a) Supreme court (b) Cabinet
(c) Union parliament (d) Lok Sabha
- (iv) Who is the leader of the nation?
(a) President (b) Prime Minister
(c) Vice president (d) Governor
- (v) Governor of a state is appointed by
(a) Prime Minister (b) President
(c) Speaker (d) Chief Minister
- (vi) Chief Minister is responsible to
(a) Governor (b) State Legislative Assembly
(c) Prime Minister (d) His own political party
- (vii) Who is the nominal head of state administration?
(a) Chief Minister (b) Speaker
(c) Governor (d) Chief secretary
- (viii) State Council of Ministers can be removed by
(a) State legislative Assembly (b) Governor
(c) State Legislative council (d) High court
- (ix) The tenure of the Chief Minister is
(a) 5 years
(b) As long as governor wants
(c) As long as the chief Minister enjoys the majority support in the Legislative Assembly
(d) As long as prime Minister wants

5. Questions needing very short answer

- (i) What is the method of election of the president of India?
(ii) What is the composition of the presidential Electoral College?
(iii) Where can an MP and an MLA cast vote in a presidential election?
(iv) Who administers the oath of office to the President of India?
(v) What is the tenure of the President?
(vi) How can the President of India be removed from his office?

- (vii) Who has the executive powers of the union?
- (viii) How many MPs, the President can nominate to the parliament?
- (ix) What are the three types of emergencies which the President can declare?
- (x) How the Governor of the state is appointed?
- (xi) What is the tenure of the Governor?
- (xii) The state Council of Ministers is responsible to whom?
- (xiii) How is the Chief Minister appointed?

6. Short Questions (to be answered in 3/4 sentences)

- i. What are the emergency powers of the president?
- ii. What is the relationship between Prime Minister and Cabinet?
- iii. Explain the difference between council of ministers and cabinet.
- iv. What is the position of the Chief Minister in his state?

(Group - C)

Essay Type Questions

- 1. Discuss the method of election of the President of India.
- 2. Explain the powers and position of the President of India.
- 3. Discuss the organisation of Council of Ministers. What are its powers and functions?
- 4. Explain the powers and role of Prime Minister of India.
- 5. Discuss the powers and position of Governor of a state.
- 6. How is the state Chief Minister appointed? What are his functions and position?
- 7. Explain the organisation and functions of the state council of ministers.



CHAPTER - 15

JUDICIARY IN INDIA

The existence of an independent and impartial judiciary is an essential prerequisite of a federal form of government. It holds the balance between the central government and the governments of the federating units. It acts as the custodian of democracy and the guardian of the rights and liberties of the people.

Provisions in regard to the judiciary in India are contained in chapters V and VI of the Constitution. Article 124 of the constitution of India provides “There shall be a Supreme Court of India”. It enjoys supreme judicial authority in India. Unlike other federal systems, we do not have separate hierarchies of federal and state courts. For the entire Republic of India, there is one unified judicial system - one hierarchy of courts - with the Supreme Court as the highest or the apex court. Then there are High Courts at the state level and subordinate courts below them.

THE SUPREME COURT

The Supreme Court of India consists of the Chief Justice and 30 other judges, appointed by the president. The Parliament has the power to prescribe the number of judges and no formal amendment of the constitution is required for this purpose. The constitution provides for the appointment of ad hoc judges, if at any time the number of judges available is not sufficient.

Qualifications and salary

For appointment as a judge of the Supreme Court a person must be a citizen of India and must have at least for five years served as judge of High Court or of two or more such courts in succession for at least ten years or he must be in the opinion of

the President a distinguished jurist. Provision has also been made for the appointment of a judge of a High Court as *ad hoc* judge of the Supreme Court and retired judges of the Supreme Court or of High Court to sit and act as judge of the Supreme Court. The constitution debars a retired judge of Supreme Court from practising in any court of law or before any other authority in India. The salary of the judges is charged upon the Consolidated Fund of India and are not subject to parliament's vote. The salaries cannot be reduced in normal times except during financial emergency under Art 360. The Chief Justice of India and every other judge draws a monthly salary Rs. 1,00,000 and Rs. 90,000 respectively. Besides the salary, every judge draws several other allowances and after retirement is entitled to a pension.

Method of appointment

The Chief Justice of India and other Judges of the Supreme Court are appointed by the President on the recommendation of a **Collegium**. It is a body of (five) senior most Supreme Court Judges headed by the Chief Justice of India. It prepares with due diligence, a panel of names of suitable candidates and recommends for appointment as judges of the Supreme Court. The same Collegium of the apex court identifies serving judges and Chief Justices of High Courts for elevation to the Supreme Court. It is a practice of about two decades emanating from the rulings of Supreme Court.

A judge of the Supreme Court holds office until he attains the age of sixty five years.

Removal

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

Oath

Every person appointed as a judge of the Supreme Court before he enters upon his office, takes an oath before the President or some person appointed in that behalf by him in the form prescribed in the Constitution. The Constitution prohibits a person who has hold office as a judge of the Supreme Court from practising law before any

court in the territory of India (Art 124 (6) and (7)). The Supreme Court sits in Delhi, however it can meet in any other place with the approval of the President.

Jurisdiction and Functions

The Supreme Court has original, appellate and advisory jurisdictions.

1. Original jurisdiction: Original jurisdiction means the power to hear and determine a dispute in the first instance. Its exclusive original jurisdiction deals with disputes (1) between the Government of India and one or more states, (2) between the Government of India and any state or states on the one side and one or more states on the other, or (3) between two or more states *inter se* if and in so far as the dispute involves any question on which the existence or extent of a legal right depends. However, disputes arising out of the provisions of treaties with the former Indian states or to which any such states is a party are excluded from the original jurisdiction of the Supreme Court. Only legal disputes and no political disputes can go to the Supreme Court.

2. The Appellate jurisdiction: The Supreme Court is the highest court of appeal. The Supreme Court covers three types of cases : The supreme Court is the highest court of appeal in India for (1) Constitutional, (2) Civil, and (3) Criminal cases. In Constitutional matters, an appeal lies to the Supreme Court from the decision of a High Court whether in civil or criminal proceedings, if the High Court certifies that the case involves a substantial point of law as to the interpretation of the Constitution. In Civil cases, an appeal lies to the Supreme Court from the judgement, decree or final order of a High Court; if the High Court certifies that the appeal involves a substantial question of law. In Criminal cases appeal lies to the Supreme Court from the decision of a High Court if the High Court (a) has on appeal reversed the order of acquittal of an accused person and sentenced him to death, (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or (c) certifies that the case is fit for an appeal to the Supreme Court. The Supreme Court can itself give special leave to appeal from the judgement of any court or tribunal in the territory of India under Art 136. Parliament can, by law extend the appellate jurisdiction of the Supreme Court.

3. Advisory jurisdiction : The Constitution has also given the Supreme Court certain Advisory functions. The President under Art 143 of the Constitution can refer

to it any question of law or fact which is considerable public importance for its opinion. Under this jurisdiction even those disputes which involve an interpretation of the treaties and agreements of the former Indian states can be referred to the Supreme Court for its opinion. It is obligatory on the part of the Supreme Court to give its opinion on all such questions referred to it by the President. The judgements and opinions of the Supreme Court must be declared in open court. The advice given by the Supreme Court, however is not binding upon the President.

4. Guardian of the Constitution : An important function of the Supreme Court is to act as the guardian of the Constitution. The Constitution has clearly defined the functions of each organ of the government, each organ has to function according to the provisions of the Constitution. Every law enacted by Parliament or a state legislature should be in consonance with the provisions of the Constitution. To check this Supreme Court has the power of judicial review. Under this power it can examine the legislative enactments and their constitutionality. If any law violates the Constitution the Supreme Court can declare that law invalid. Thus, the Supreme Court can examine the validity of any order of the executive or any law of the legislature. It is in this sense that it has been described as the guardian of the constitution.

5. Protector of Fundamental Rights : The Supreme Court has been empowered by the Constitution to act as the guardian of the fundamental rights enjoyed by the citizens. If any law passed by any state Legislature or the Union Parliament, violates the fundamental rights, the Supreme Court can declare it as unconstitutional or ultra vires. On the same ground it can also nullify any executive order. For this purpose the Supreme Court has concurrent jurisdiction with the High Courts. The Supreme Court can issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto*, and *certiorari* and the like for the enforcement of fundamental rights. The Supreme Court has been empowered to review laws passed by the legislature and declare them unconstitutional, if they contravene any provision of the Constitution. It is for the Supreme Court to declare what the provisions of the Constitution mean. The Supreme Court has power to review any judgements or order made by it earlier. In other words, the Supreme Court is the custodian of the Constitution and highest forum for its interpretation.

6. Power to Review its own judgement : The Supreme Court has the power to review its own decisions. In the *Golak Nath* case (1967) it reversed its earlier decision

in the Sankari Prasad case and in Kesavanda Bharati case, the judgement in Golaknath case was reversed.

7. Court of Record : Article 129 provides that the Supreme Court shall function as a court of record and shall have all the powers of such a court. Being the highest court, its decisions and judicial proceedings may be presented before any court for the purpose of evidence. They are cited as precedents. They cannot be questioned for their authenticity in any court. Court of record also means that it can punish for its own contempt. But this power is used sparingly and under pressing circumstances, because fair and reasonable criticism of a judicial act in the interest of public good does not constitute contempt.

8. For the purpose of giving effect to the directions and decisions of the Supreme Court, all authorities, civil and judicial in the territory of India, have been made subordinate to the authority of the Supreme Court. The Supreme Court may, from time to time and with the approval of the President, make rules for regulating generally the practice and procedure of the court.

9. Miscellaneous Powers and Functions :

- (i) All disputes concerning the election of the President and Vice President are heard directly by the Supreme Court.
- (ii) The Supreme Court with the approval of the President, can lay down the conditions of service of its employees.
- (iii) The Chief Justice can appoint arbitrator for deciding cases relating to the excess costs incurred by a state government in carrying out the directions of the union government.
- (iv) When the office of the President falls vacant due to some reason (vacancy resignation or death), and the vice-President is not available, the Chief Justice of India takes over as the acting president, till the vacancy is filled up.
- (v) Any sitting judge of the supreme court can be appointed as chairman to any commission of inquiry for inquiring a case or scandal.

All the above powers and functions are vested on the Supreme Court.

THE HIGH COURT

The High Court is at the apex of the judicial administration of the state. Art 214 of the Constitution provides that there shall be a High Court for each state of the Indian union. But the Indian Parliament is empowered to establish a common High Court for two or more states and to extend the jurisdiction of a High Court to a union territory. Similarly, Parliament can also reduce the area of jurisdiction of a High Court.

The High Court consists of a Chief Justice and some other Judges. The number of judges is to be determined by the President of India from time to time. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of the Supreme Court and the Governor of the state concerned. The procedure for appointing other judges is the same except that the Chief Justice of the High Court concerned is also consulted.

Qualifications

A person shall be qualified for appointment as a judge of the High Court if (a) he is a citizen of India, (b) has for at least ten years held a judicial office in the territory of India, or (c) has for at least ten years been an advocate of a High Court, or of two or more such courts in succession.

Every judge of High Court before entering upon his office shall make and subscribe before the Governor of the state, an oath of affirmation in the form prescribed by the Constitution.

Removal of judges

A judge of the High Court shall hold office until he attains the age of 62 years. A judge may resign from his office by writing under his hand to the President of India. He can also be removed by the President of India on the ground of proved misbehaviour or inefficiency if a resolution to that effect is passed by both the Houses of Parliament by a two-thirds majority of the total members present and voting, supported by a majority of the total membership of each House.

Salary

The Chief Justice and the judges draw attractive salaries, apart from various other allowances. The Chief Justice of a High Court gets a salary of Rs. 90,000/- per

month and other judges Rs. 80,000/- per month. The service conditions of the judges cannot be altered to their disadvantages during the course of their service except in the case of Financial Emergency. Like the judges of Supreme Court the judges of the High Court have been complete security of service. A High Court Judge may be transferred from one High Court to another by the President after consultation with the Chief Justice of India.

Jurisdiction and Function

1. A High Court has both *original* and *appellate* jurisdiction : The High Court has Original jurisdiction in such matters as writs and Appellate jurisdiction over all subordinate courts in their jurisdiction. Every High Court has the power to issue to any person or authority including any government within its jurisdiction, direction, or orders including writs which are in the nature of *habeas corpus*, *mandamus*, prohibition, *qua-warranto* and *certiorari* or any of them for enforcement of fundamental rights conferred by part III of the constitution and for any other purpose. It has original jurisdiction in cases relating to divorce, will, admiralty and contempt of court.

Election petitions: challenging the elections of Members of Parliament or members of State Legislative Assembly or other local bodies can be filed in the concerned High Court.

2. Appellate jurisdiction : The High Courts have Appellate jurisdiction in both civil and criminal cases against the decisions of lower courts. They can decide revenue cases also. Appeal can be filed against the decision of a session judge if the accused has been sentenced to imprisonment for 4 years or more. Capital punishment given by session judge is not executed unless it is confirmed by the High Court.

In a civil case appeal to the High Court lies from the decision of a district court. An appeal can be made from lower courts directly if the dispute involves a value higher than Rs. 5000/- or on question of law.

3. A court of Record : The High Court is empowered to call for the records of any court to satisfy itself about the correctness of the legality of the orders passed. This power may be exercised on the petition of the interested party or it can suo muto call for the records and pass necessary orders.

The High Court may withdraw a case from a lower Court if it is satisfied that the case involves a substantial question of law as to the interpretation of the

Constitution, the determination of which is necessary for the disposal of the case. The High Court can after delivering judgement send back the case to the court of hearing which proceeds on the lines of the judgement of the High Court.

All Courts excepting tribunals dealing with the Armed forces, are under the supervision of the High Court. This power is enjoyed under Art 227 of the Constitution. Thus administration of the state's judiciary is the essential function of the High Court. It is consulted while appointments are made to the lower courts. It forms rules and regulations regarding the working of the subordinate courts in the state. It also determines the number of cases to be dealt with by each of the lower courts during a period of time.

Every High Court is a court of record. Subordinate Courts are bound to follow the decision of the High Courts. Its proceedings and decisions are referred to in all future cases. It has the power to punish for contempt of court.

Like the Supreme Court, each High Court also enjoys the power of judicial review. It has the power to declare any law or ordinance ultra vires if it is against the Constitution or if it contravenes any provision of the Constitution.

In most cases decided by a High Court an appeal can go to the Supreme Court only when it is certified by the High Court that such an appeal can be made.

Miscellaneous Powers

- (i) The High Court has the power to control and supervise all the courts subordinate to it. It ensures proper working of these courts.
- (ii) It can issue general rules regulating the working of subordinate courts.
- (iii) It can appoint its own administrative staff and determine their salaries and other service conditions.
- (iv) The appointment, promotions and posting of the district judges is made by the Governor in consultation with the High Courts.

Thus High Courts enjoy full autonomy in their working and function in accordance with the provisions of the Constitution. The High Court of Odisha is situated at Cuttack.

Judicial Review

A Constitution may embody the institution of judicial review either explicitly or implicitly. In the U.S., the principle of judicial review is inherent in judicial powers, leading to the development of judicial supremacy. In India, the Constitution is supreme and all the governments operate under the authority of the Constitution. Therefore if any institution transgresses the limits set by the Constitution, the courts would have the power to examine such acts. Any action either by the legislature or by the executive in contravention of the provisions of the chapter on fundamental rights can be declared void. The scope of judicial review in India is, however, limited. The Supreme Court of India while interpreting a law, will not itself legislate. It will not question the reasonableness of any law except where the Constitution has expressly authorised the court to exercise the power. Normally, it works according to procedure established by law.

No doctrine of judicial review has been subjected to serious criticism. It tends to elevate the judiciary to the rank of super-legislature or the “third chamber” of the legislature. It sometimes leads to a hostile confrontation between the executive and judicial departments. Strangely, the Supreme Court of the United States sometimes, through a simple majority of four to five judges, sets aside a major law passed by an overwhelming majority of the elected representatives of the people. The Supreme Court has also obstructed the passage of progressive social legislation in the US.

Viewed differently, judicial review looks like an essential instrument in the hands of the judges to work as the protectors of a democratic system. It is by virtue of this power that the judiciary can save the people from the onslaughts of the executive and legislative despotism. In a federal system, judiciary keeps both the national and state governments within their constitutional spheres, and tries to resolve conflicts between them and settle disputes.

Judicial Review in India

The Supreme Court has been empowered to declare a law passed by Parliament as unconstitutional or *ultra vires* on the ground that it contravenes the provisions of the Constitution. Thus the court functions as the guardian of the Constitution and protector of fundamental rights of the citizens. When compared with the power of judicial review of the American Supreme Court, the Indian Supreme Court enjoys limited powers of judicial review. The scope of Judicial review has been limited

because the Constitution makes an exhaustive enumeration of the powers of the union and the states.

Judicial Activism

Judicial Activism is usually described as a pro-active role played by the Judiciary. It means a pro-active approach of the Judiciary towards prevailing socio-economic, political and administrative conditions in the country. Justice J.S. Verma says that judicial activism means “the active process of implementation of the rule of law, essential for the preservation of a functional democracy”. It is aimed at securing a due implementation of laws, policies and programmes by the executive. It constitutes a bold attempt on the part of the judiciary to act as the effective guardian of law, and to check the executive and legislative apathy.

Judicial activism is not when judiciary takes up an activity, but it is one where it is asked to take action on someone else behalf, including Public Interest Litigation (PIL). In this process in our country the Supreme Court has taken judicial decisions and given directions to the bureaucracy and police for the protection of public interest and human rights. It has given directions for checking environmental pollution, rescuing bonded labourers, workers, pavement dwellers, helping the victims of Bhopal gas Disaster. Sometimes supreme court sought to activate administrative machinery when it failed to perform its legal obligations. The high courts are also intervening to prevent misuse of state government powers in making recruitments/appointments/promotions. The courts also try to check malpractices and activate government, administration and public against corruption and other social evils.

Thus Judicial activism is that which ensures proper functioning of all organs and the best kind of judicial activism, according to justice Verma “is that which brings about results with the least judicial intervention”. While some supports it as “Judicial creativity and dynamism of judges” which brings revolution in the field of human rights and social welfare through enforcement of public duties, others criticised it by describing it as “Judicial extremism intervening into the areas of other organs of the state negating the constitutional spirit”. The two extreme views appear to have originated due to the role judiciary has played in different cases.

Therefore judicial activism is the judiciary acting, i.e; judiciary -in-action and not judiciary -in-intervention. Thus courts must act with caution and proper restraint, as advised by Dr. A.S. Anand, former chief justice of India. The judiciary should act

only as an alarm bell; it should ensure that the executive has become alive to perform its duties.

INDEPENDENCE OF JUDICIARY

The administration of justice is the vital task of judiciary. Justice which is the soul of the state must be administered without fear or favour. Hence judiciary should remain as far as possible outside politics. In interpreting laws and administering justice the judges must be impartial and honest. The vital need is to organise the judiciary properly. The appointment and tenure of the judges, their relation to other agencies of government these and other similar considerations are important in maintaining the independence and integrity of the judiciary.

(1) Organisation of Judiciary : The degree of independence enjoyed by the judiciary is largely dependent on the mode of its organisation. In the modern states the judiciary may be organised in three different ways: (1) it may be elected by the legislature; (2) It may be elected by the people; or (3) it may be appointed by the executive.

The system of election exists in many of the states in the USA. One of the defects of this system is that incapable judges may be elected who function according to the wishes of the people. Election by the legislature is somewhat better though the process is not free from the influence of party politics, and the judiciary may function under the control of the legislature.

(2) The system of appointment by executive: The system of appointment by executive has been found by practice to be satisfactory. The executive is a better judge of the merits and suitability of those appointed than that of the legislature or the people. But once appointed the judges should remain outside the influence of the executive. This system has been adopted in most of the states.

(3) Tenure : The security of tenure is essential for the independence of the judiciary, though the opinions and practices widely differ. In most of the American states the judges hold office for limited terms. The federal judges in the United States, however, hold office during good behaviour. Although the Indian constitution does not provide for any tenure the existing provision provides for a long tenure. Long tenure enables judges to gather experience and to dispense justice without fear or favour.

(4) Method of Removal: The judges should not be removed on flimsy grounds or by the whims and caprices of either the executive or the legislature. They should continue in office during good behaviour. It means in Great Britain that the judges shall be removed by the Crown except upon an address of both houses of parliament. In the United States the usual practice is to remove the judges through impeachment. In India a judge of the Supreme Court or a High Court can be removed only on the ground of proved misbehaviour or incapacity.

In order to ensure independence it is also necessary that the judges should not practise law after retirement. Any judge who practises law after retirement may not remain quite fair in the discharge of his duties while in service. In India the judges of Supreme Court are not allowed to practice after retirement as it hampers the independence of judiciary.

(5) Salary : Properly qualified and efficient persons will not be attracted to the judiciary unless the salary is attractive. Adequate remuneration keeps judges above corruption. Salary, allowance and retirement benefits ought to be lucrative for the independence of judiciary.

(6) Qualification : The nature of Judicial function requires technical competence hence the judges should have requisite qualifications. The usual practice is that almost all the countries appoint judges from among the distinguished member of the legal profession. In India for instance, the Constitution provides that to be a judge of the Supreme Court, a person must have been a judge of the High Court for at least five years standing or the person concerned is, in the opinion of the president, a distinguished jurist.

(7) Separation of the Judiciary from the executive : Judiciary should be free from the influence of the executive so that justice can be provided to the aggrieved parties. Executive should not interfere or exercise control over the working of courts.

Independence of Judiciary in India

The Constitution of India has made provision to ensure the independence of judiciary and to keep judges away from political and other influences. The judges are appointed by the executive on the basis of the prescribed qualification and legal competence. They cannot be removed from their office at the whims of the executive. Judges are appointed for a fixed period. They do not function under the fear of losing office. No discussion on the conduct of a judge in the discharge of his official duties

can take place in Parliament or state legislature unless the proposal to remove him from the office is brought before the House. Their salaries and other allowances cannot be voted by Parliament or the state legislature. The objective is to ensure that their behaviour and functioning does not come under criticism. The salaries and allowances cannot be changed or reduced to their disadvantages unless there is a declaration of emergency which the President of India is empowered to do so.

POINTS TO REMEMBER

Judiciary in India

- Indian Constitution provides for a single integrated system of judiciary. Supreme Court is the highest court, and then there are High Courts at the state level and subordinate courts below them.
- The Supreme Court of India consists of the Chief Justice and 20 other judges appointed by the President and can be removed on the ground of proved misbehaviour or incapacity.
- The Supreme Court has original, appellate and advisory jurisdiction. In original jurisdiction the cases come directly, while in appellate jurisdiction, cases come in the form of appeal from High Courts relating to civil, criminal and constitutional matters. The President of India can refer any question of law or fact with considerable public importance for the advise of the Supreme Court. The Supreme Court also is the guardian of the Constitution and protector of fundamental rights of citizens.
- The High Court consists of a Chief Justice and some other judges appointed by the President. The High Court have original and appellate jurisdiction. It acts as a court of record and has the power to punish for contempt of court.

MODEL QUESTIONS**(Group - A)**

1. What are the different ways in which the independence of the judiciary is ensured? Choose the odd ones out.
 - (a) Chief Justice of the Supreme Court is consulted in the appointment of other judges of Supreme Court.
 - (b) Judges are generally not removed before the age of retirement.
 - (c) Judge of a High Court cannot be transferred to another High Court.
 - (d) Parliament has no say in the appointment of judges.
2. Does independence of the judiciary mean that the judiciary is not accountable to any one? Write your answer in not more than 100 words.
3. What are the different provisions in the constitution in order to maintain the independence of judiciary?
4. Read the following statements: Match them with the different jurisdictions the Supreme Court can exercise - Original, Appellate, and Advisory.
 - The government wanted to know if it can pass a law about the citizenship status of residents of Pakistan-occupied areas of Jammu and Kashmir.
 - In order to resolve the dispute about river Cauvery the government of Tamil Nadu wants to approach the court.
 - Court rejected the appeal by people against the eviction from the dam site.
5. In what way can Public Interest Litigation help the poor?
6. Do you think that judicial activism can lead to a conflict between the judiciary and the executive? Why?
7. How is judicial activism related to the protection of fundamental rights? Has it helped in expanding the scope of fundamental rights?

(Group - B)

1. **Correct (errors if any) of the following sentences**
 - (i) The judges of Supreme Court retire at the age of 62.
 - (ii) Supreme Court is not a Court of record.
 - (iii) The Odisha High Court is situated at Bhubaneswar.

2. Fill in the Blanks of the following sentences

- (i) The chief function of the judiciary is _____.
- (ii) _____ is called the protector of the liberty of the individual.
- (iii) In India, there is a _____ judiciary.
- (iv) The chief justice and other judges of High Court are appointed by _____.

3. Answer in one word/sentence

- (i) Which organ of the government is called the guardian of the constitution?
- (ii) Odisha High Court is situated in which city?
- (iii) Which Court is called the apex court in India?
- (iv) What is the age of retirement of the Supreme Court judges?

4. Multiple choice questions

- (i) Who is the protector of fundamental rights in India?
 - (a) Legislature
 - (b) Judiciary
 - (c) Bureaucracy
 - (d) Human Rights Commission
- (ii) Which is regarded as the final court of appeal in India?
 - (a) Supreme court
 - (b) High Court
 - (c) Military Court
 - (d) Administrative Tribunal
- (iii) The judges of the Supreme Court are appointed by
 - (a) Prime Minister
 - (b) President
 - (c) Vice-president
 - (d) Speaker
- (iv) How can a judge of the Supreme Court be removed?
 - (a) By Prime Minister
 - (b) By a judicial commission
 - (c) Impeachment
 - (d) None of the above
- (v) The Supreme Court was established in Independent India in
 - (a) 1947
 - (b) 1948
 - (c) 1950
 - (d) 1956

5. Questions with very short answer

- (i) What is Judicial Review?
- (ii) What is meant by independence of judiciary?

- (iii) How many judges are there in the Supreme Court?
- (iv) How is the chief justice of India appointed?
- (v) What is the retirement age of a judge of the Supreme Court?
- (vi) Who is called the guardian of the constitution?
- (vii) What is the advisory jurisdiction of the Supreme Court?
- (viii) Which is the highest court in the state?
- (ix) How many High courts are at work in India?
- (x) Name some of the writs which the Supreme Court can issue for protecting the fundamental rights?

6. Short Questions (to be answered in 3/4 sentences)

- (i) Why the judiciary is called the guardian of the constitution?
- (ii) What is independence of judiciary?
- (iii) How are the judges of Supreme Court appointed?
- (iv) How can the judges of Supreme Court and High Courts in India can be removed?
- (v) How the Supreme Court of India protects the constitution?
- (vi) What is Judicial Review?
- (vii) What is Public Interest Litigation?
- (viii) What is Judicial Activism?

(Group - C)

Essay Type Questions

1. Discuss the organisation and jurisdiction of the Supreme Court.
2. Discuss the organisation and jurisdiction of a High Court.
3. What is judicial Review? How does it operate in India?
4. How independence of judiciary has been secured in India?

