CERTIFICATE PROGRAMME IN INDIAN CONSTITUTION AND POLITY

Governance Structures and Institutions

Course II

SURYA KUMAR BHUYAN SCHOOL OF SOCIAL SCIENCES

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

SUBJECT EXPERTS

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BACHELOR OF ARTS
POLITICAL SCIENCE

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COURSE INTRODUCTION

The second course of the Certificate Programme in Indian Constitution and Polity is titled “Governance Structures and Institutions”. It is designed to help the learners to have an understanding of the institutional framework of governance of the Indian political system. The first unit of the course deals with the President of India who is regarded as the Constitutional head of Indian political system. In this unit, we shall discuss the election procedure, powers and functions of the President. The second unit of the course discusses the powers, functions and position of the Vice-President of India. In the third and fouth units , the learners will be able to become familiar with the powers and functions of the Prime Minister and the Union Council of Ministers along with the relationship of Prime Minister with the Indian President.The fifth unit focusses on the Indian Parliament and Legislative Procedure of the Indian Parliament. The composition, powers and functions of the Indian Parliament, relationship of the two Houses, powers, functions and position of the Speaker are discussed in this unit. Similarly, different stages of the passage of the Bill in the Indian Parliament including Money Bill are analysed in the fifth unit. The Judiciary plays an important role in Indian political system. The sixth and seventh units are concerned with the Supreme Court and the processes of judicial review and judicial activism respectively. From the eighth unit upto the eleventh unit, the powers and functions of the the state executive (The Governor, Chief Minister including the State Council of Ministers) and the state legislature (Legislative Assembly and Legislative Council of a State).are elaborately discussed. The twelfth unit discusses the High Court at the State level. Local self-government plays an important role in India. Therefore, thirteenth unit, growth of Local Government in India, 73rd and 74th Amendments, Local Self Government in Assam are explained. The fourteenth unit highlights the composition, powers and functions of the Election Commission and Electoral Reforms in India.

While going through the units of the block, you will find that the units are further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Besides, in order to give you additional information on certain relevant topics, you will find a category called “LET US KNOW”after the sections in each unit. Another category that has been included at the end of each section of a particular unit is “CHECK YOUR PROGRESS”. The purpose of this category is to help you asses yourself as to how thoroughly you have understood a particular section. You may then match your answers with “ANSWERS TO CHECK YOUR PROGRESS” given at the end of each unit. The section “FURTHER READING” in each unit contains the names of a few books which you might want to consult if you are interested in learning more elaborately about the concepts discussed in a particular unit. Furthermore, the category called “MODEL QUESTIONS” is intended to give you a hint of the type of questions you are likely to get in the examination.

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UNIT 1: PRESIDENT OF INDIA

UNIT STRUCTURE

1.1. Learning Objectives

1.2. Introduction

1.3. President of India

- 1.3.1 Qualification
- 1.3.2 Election Procedure
- 1.3.3 Tenure
- 1.3.4 Removal Procedure
- 1.3.5 Powers and Functions
- 1.3.6 Constitutional Position of the President of India

1.4. Let Us Sum Up

1.5. Further Reading

1.6. Answers to Check Your Progress

1.7. Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the qualifications, election procedure, tenure, removal procedure of the President of India
- discuss the powers and functions of the Indian President
- analyse the constitutional position of the President of India

1.2 INTRODUCTION

The Constitution of India has adopted the basic principles of the British Parliamentary system. In a Parliamentary form of government, there are two executives i.e. the nominal executive and the real executive. The President is the nominal executive while the real executive is the Council of Ministers headed by the Prime Minister. The Constitution has given enormous powers and functions in the hands of the President which are in theory only. In this unit, we will discuss in detail about the qualifications, election procedure, tenure, removal procedure, powers, functions and position of the President of India.

1.3 PRESIDENT OF INDIA

Article 52 of the Constitution of India states that there shall be a President of India and Article 53 confers executive powers of the Union on the President. He/she shall exercise these powers directly or through officers subordinate to him/her in accordance with the Constitution of India. But practically, he/she does not exercise any of them. He/she is thus a nominal head. He/she is a Constitutional ruler and head of the state but not head of the government. The President is the first citizen of India.

1.3.1 Qualifications

Article 58 of the Constitution lays down the following qualifications for the candidates contesting for Presidential election who:

1. must be a citizen of India.
2. must have completed 35 years of age.
3. must possess all qualifications prescribed for election as a member of the House of the People (Lok Sabha)
4. must not hold any office of profit under the Central and the State Governments or local authority.
5. should not be a member of the either House of the Parliament or any State Legislature.

1.3.2 Election Procedure

Article 54 states that the President of India Shall be elected indirectly by an Electoral College composed of the elected members of both the Houses of Parliament and the State Legislative Assemblies in accordance with the principle of proportional representation by means of single transferable vote system and secret ballot.

Thus, common citizens of the country cannot take direct part in this election. Nominated members of both the Houses of Parliament, State Legislative Assemblies and the members of the State Legislative Councils are not allowed to participate in the Presidential election.

Article 55 of the Constitution lays down the manner of election of the President. The election is based on two principles:

(a) The States are given uniform or near uniform representation.

(b) Parity is established between the States and the Union.

- In order to determine the value of vote of an M.L.A. of a state, the following formula is to be used.

Value of vote of an MLA of a State:

=

If the remaining figure is 500 or more, the vote value is further increased by one and if it is less than 500 it is ignored.

- The value of the vote of the elected members of the Parliament would be as follows:

  Value of vote of each elected MP=

  Total value of votes of all the elected MLAs of all the states

  Total numbers of elected Members of Parliament

In the process of division, a fraction exceeding one half being counted as one and fraction less than one –half is to be ignored.

- Each voter can cast only one vote and while casting his/her vote should indicate the order of his/her preference against each Presidential candidate.
- In order to win a Presidential election, a candidate has to secure a minimum fixed quota of votes which is calculated in accordance with the Drop Method, that is:

If no candidate secures the quota in the first count, the candidate who secures the least number of votes is eliminated and his/her second preference votes are transferred to the remaining candidates. This process of elimination goes on until one of the candidates secures the fixed quota of votes or remains in the field after the other candidates are eliminated.

1.3.3 Tenure

As per articles 56, the President holds office for a period of five years from the date on which he/she enters upon his/her office. He/she is eligible for re-election.

The office of the President may fall vacant on the expiry of five years term, by death, by resignation or removal by impeachment.

1.3.4 Removal Procedure

Article 61 of Constitution lays down that the President of India can be removed from the office before the expiry of his/her term, through a process of impeachment on grounds of violation of the Constitution. The charges for this purpose may be referred to by either House of the Parliament. But it is provided that at least 14 days' prior notice in writing must be given by not less than one-fourth of the total number of members of the House before such a resolution is moved. If the House, after deliberation, passes this resolution by a majority of 2/3 of its total members, it goes to the other House. If

the other House, after investigation, passes the resolution by not less than 2/3rd majority of the total membership of the House, then the President is removed from office from the date of passing of the resolution. However, the President has the right to appear in person or through a lawyer to defend himself/herself. So far, no President has been impeached.

Check Your Progress

Q. 1: What is the term of office of the President of India?

.....

Q. 2: What is the minimum age to be the President of India?

.....

Q. 3: Write True or False:

(a) The President is the Head of the State.

.....

(b) The President cannot be removed from his/her office.

.....

Q. 4: Write about the composition of the Electoral College.

.....

1.3.5 Powers and Functions of the President

The Constitution confers extensive powers on the President of India. His/her powers and functions can be discussed under following heads:

- **Executive Powers and Functions**

  The Executive powers mean not only the execution of laws passed by the legislature but also the power to carry on the business of the government. The President is the chief executive head of the Union Government. All executive action is taken in his/her name.

  (a) He/she makes appointment of the Prime Minister and on his/her advice, other ministers of the Central Government are appointed.

  (b) Besides, the President makes all important appointment such as Chief Justice and Judges of the Supreme Court and of the High Courts, Attorney General, Ambassadors and other diplomatic representatives, Governors of the States, Lt. Governor and Chief Commissioner of the Union Territories, Comptroller and Auditor General, Chairman and members of UPSC, Election Commission, Finance Commission and other statutory commissions etc.

- **Military Powers and Functions**

(a) The President is the commander-in-chief of the Armed Forces and appoints the Chief of the Army, Navy and Air Force.

(b) He/she has the power to take any military action i.e., declaration of war and concluding peace treaties in case of any danger or threat to the country's sovereignty.

(c) He/she grants all military honours and titles for acts of bravery and commendable service to the nation during peace and war. Of course, his/her military powers, regulated by laws are made by the Parliament.

- **Diplomatic Powers and Functions**

(a) As the head of the State, the President accredits India's diplomats to foreign countries and receives the diplomats who come from foreign countries.

(b) All the international treaties and agreements are signed in the name of the President.

(c) He/she represents India in international affairs and undertakes goodwill tours of other countries to promote good relations between India and other countries.

- **Legislative Powers and Functions**

Though the President is not a member of either House of the Parliament, but he/she is an integral part of the Parliament.

(a) The President has the power to summon and prorogue the session of the Parliament or either of its Houses.

(b) He/she can dissolve the Lok Sabha before the expiry of its full term of five years.

(c) He/she can summon a joint sitting of both the Houses of Parliament in case of differences between the two.

(d) The President has the right to address the opening session of a newly elected Parliament and the first session of each year. Besides, he/she may address either House or their joint sitting at any time.

(e) The President has the right to send messages to either House of Parliament on any pending matter or on a bill before the Parliament, which must be considered by it.

(f) He/she can nominate two members from the Anglo-Indian community to the Lok-Sabha if that community has not been adequately represented in the House. On the other hand, he/she nominates twelve members to the Rajya Sabha from the field of Art, Science, Literature or Social Service.

(g) No bill passed by the Parliament can become an Act without the President's assent. He/she may give his/her assent to a Bill or withhold his/her assent or he/she may send the Bill for reconsideration of the House along with his/her suggestions. If, however, the Parliament passes the Bill for the second time with or without amendment, then the president is bound to give his/her assent to it. This power of the President to withhold his/her assent is known as the Veto Power.

(h) The President has the power to approve or disapprove all such state Bills which the Governors of the States reserve for his/her consent.

(i) According to article 123, the President can issue ordinances to meet the urgent necessities of laws during the intervals between the two sessions of the Parliament. But such ordinance has to be placed before both the Houses of the Parliament, when they come into session.

- **Financial Powers and Functions**

The President has some financial powers also. These are:

(a) Before the beginning of a financial year, he/she causes to be laid before Parliament the annual budget and the supplementary budget, if any.

(b) No money bill can be introduced in the Lok Sabha without his/her prior recommendation.

(c) The President controls the Contingency Fund of India. He/she has the power to order an expenditure out of it for meeting an unforeseen expenditure.

(d) He/she distributes the share of all income-tax receipts between the Centre and States and allocates grant-in-aid to the States of Assam, Bihar, Odisha and West-Bengal in lieu of their share in export duty on jute.

(e) The President appoints the Finance Commission after every five years for allocation of the share of the States in regard to receipts from other taxes.

- **Judicial Powers and Functions**

The President enjoys the power to grant pardon, reprieve or remission of punishment to any convict, particularly in cases involving punishment with death.

The President can refer any matter of Constitutional law or a bill of public importance to the Supreme Court for advice. The Supreme Court may give such advice but he/she is not bound to accept such advice given by the Supreme Court.

- **Legal Immunities**

The President enjoys certain legal immunities. He/she is not answerable to any court of law for the exercise and performance of the powers and duties of his/her office. No criminal action can be taken against him/her in any court in India during the term of his/her office.

- **Emergency Powers and Functions**

The emergency provisions have been enumerated in the articles 352 to 360 of part XVIII of the Constitution. These provisions are known as emergency powers of the President of India. As per the advice of the Prime Minister and the Union Cabinet, the President exercises these special emergency powers for dealing with three kinds of emergencies, viz,
(a) National Emergency (b) State Emergency and (c) Financial Emergency.

(a) National Emergency: The President of India has the Power to proclaim Emergency on the ground of threat to the security of India or any part thereof by war, external aggression or armed rebellion under Article 352 of the Constitution. Such an emergency can be proclaimed either in the whole of India or any part/parts of India.

The proclamation of National Emergency needs to be approved by both the Houses of Parliament within one month from the date of Proclamation. But if the Parliament doesn't give its approval, this emergency ceases to operate after one month.

After approval, an emergency proclamation can remain in force for six months. After every six months, through subsequent approval, the proclamation can remain operative for any length of time.

- **Effects of National Emergency:**

(i) Under this emergency, the Parliament acquires powers to frame laws regarding the subjects mentioned in the State list.

(ii) The President can issue direction to any State regarding the conduct of executive powers.

(iii) He/she can modify the distribution of sources of revenue between the Union and the States, but all such decisions have to be placed before each House of the Parliament.

(iv) The President can suspend the operation of Fundamental Rights and their Constitutional guarantees, given in Article 19 and 32. No citizen can move to a court of law for the enforcement of these rights during the emergency period.

(v) The terms of the Lok Sabha and the State Legislative Assemblies can be extended for one year during such an emergency.

(b) State Emergency : If the President is satisfied either on the recommendation of the Governor or otherwise that the government of a particular State cannot be carried on in accordance with the Constitution, he/she may declare, under Article 356, the emergency in that State, which is also popularly known as President's Rule.

This type of emergency ceases to be effective after two months unless approved by the Parliament. It cannot be issued for more than six months at a time but it can be extended every six month up to a maximum period of 3 years. All extension to the life of such a proclamation must be approved by the Parliament.

- **Effects of State Emergency or President's Rule**

(i) The President assumes all the powers and functions exercised by the government and the Governor of the state and conducts its administration through the Governor assisted by some advisor if required.

(ii) The Council of Ministers of the State is dissolved. The Legislative Assembly of the State may be dissolved or kept in animated suspension.

(iii) The Parliament shall have the power to make laws on any of the subject of the State list and such laws will apply to this State alone.

(iv) The President gets the power to authorise expenditure from the Consolidated Fund of the State.

It is criticised that this has given some opportunity to the ruling party to misuse the power of state Emergency for the enhancement of its interests.

(c) Financial Emergency: The President under Article 360 can proclaim financial emergency in India if he/she is satisfied that a situation has arisen whereby the financial stability or credit of India or any part thereof is endangered.

Such a proclamation of Emergency will expire after a period of two months unless approved by the Parliament. It can extend its life by six

months at a time but by subsequent extensions of six months each, it can lend a maximum lease of three years to this type of emergency.

- **Effects:**

(i) During the Financial Emergency period, it becomes necessary for the States to observe those canons of financial propriety which the President may deem fit for overcoming the crisis.

(ii) The President can reduce the salaries and allowances of all or any class of public servants including the Judges of the Supreme Court and High Courts.

(iii) The President may direct the State governments to reserve all the Money Bills or other Financial Bills passed by the State Legislature for his/her consideration.

Fortunately, Financial Emergency has not yet been imposed in our country.

1.3.6 Constitutional Position of the President of India

There are conflicting views expressed by Constitutional experts on the position of the President. Some critics seem to be confused about the actual position of the President of India.

Apparently, it seems that the President of India is a very powerful ruler in the world. He/she dominates the executive, legislative, financial and judicial spheres. During the time of emergency, he/she almost becomes a dictator.

But, in reality, the powers enjoyed and exercised by the President mean the powers of the Council of Ministers headed by the Prime Minister in a Parliamentary form of government like ours. The President is the Constitutional figurehead only. He/she cannot ignore the advice of the Council of Ministers. Therefore, some critics compare the President to a rubber stamp.

Neither of the above opinions regarding the actual position of the President can be considered as totally acceptable. As the head of the state, he/she occupies a very significant position.
His/her influence over the government cannot be underestimated. He/she has right to be consulted, to encourage and to warn the Council of Ministers and even ask them to reconsider their decision. For a wise and intelligent President, this power is undoubtedly very significant.

His/her office is of great honour, dignity and prestige. The actual status of the President depends on the personality and integrity of character of the person who holds the post. A wise, intelligent and dynamic President may exert considerable amount of influence on the Council of Ministers to take proper steps towards the

welfare activities and betterment of the people and all-round development of the country. We may conclude in the words of Late Shri Jawaharlal Nehru that the President enjoys no powers but he can exercise a lot of influence.

Check Your Progress

Q. 5: The President can nominate .... members to the Rajya Sabha (Fill in the blank).

.....

.....

Q. 6: The emergency proclaimed under Article ... is also known as the imposition of President's Rule (Fill in the blank).

.....

Q. 7: The Lok Sabha can be dissolved by the .... (Fill in the blank).

.....

Q. 8: How many members can be nominated to the Lok Sabha by the President?

.....

Q. 9: Which Article of the Constitution of India provides for Financial Emergency?

.....

Q. 10: On what ground the President can declare National Emergency?

.....

1.4 LET US SUM UP

- The President is the Constitutional head of the State.
- As the Constitutional head of the state, the President exercises a wide range of powers and functions including very special emergency powers.
- The entire administration of the country runs in his/her name.
- The Constitution of India has provided for a Parliamentary system of government with two kinds of executives, nominal and real. Here, the Union Council of Ministers headed by the Prime Minister is the real executive and the President is the nominal or titular executive.
- All the powers of the President are exercised by the Union Council of Ministers headed by the Prime Minister.

- As per the advice of the Prime Minister and the Union Cabinet, the President exercises three special emergency powers namely, (a) National Emergency (b) State Emergency and (c) Financial Emergency
- Of course the position of the President depends upon the personality, ability and intelligence of the person who occupies the post. He/she can exercise a lot of influence on the Union Government.

1.5 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K.K. (2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.
5) Phillip A.T. and Shivaji Rao K.H.- Indian Government and Politics.

1.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: 5 years

Ans to Q No 2: 35 years

Ans to Q No 3: (a) True

(b) False

Ans to Q No 4: The Electoral College for the Presidential election is composed of the all elected members of both the Houses of Parliament and all the elected members of the State Legislative Assemblies of all the states of the country.

Ans to Q No 5: 12

Ans to Q No 6: 356

Ans to Q No 7: President

Ans to Q No 8: 2

Ans to Q No 9: 360

Ans to Q No 10: The President can declare National Emergency under Article 352, on the grounds of threat to the security of India or any part thereof, by war, external aggression or armed rebellion.

1.7 MODEL QUESTIONS

A. Very Short Questions

Q. 1: Which article of the Indian Constitution deals with office of the President of India?

Q. 2: Who is the present President of India and from which year he assumed the office?

Q. 3: To remove the President from his duty, a 14 days' prior notice have to be submitted to the President—— (True/False)

B. Short Questions (Answer each in about 150-200 words)

Q. 1: What are the necessary qualifications of a candidate contesting for Presidential election?

Q. 2: How is the value of the votes of the members of the State Legislative Assemblies determined for the purpose of election of the President of India?

Q. 3: Name three emergency powers of the President.

Q. 4: What is meant by President's Rule in a State?

C. Long Questions (Answer each in about 300-500 words)

Q. 1: Mention four legislative powers of the President of India.

Q. 2: Discuss the procedure of election and removal of the President of India.

Q. 3: Describe the powers and functions of the President of India.

Q. 4: Discuss the effects of the Proclamation of Financial Emergency.

Q. 5: Ascertain the position of the President of India.

****

UNIT 2: THE VICE PRESIDENT OF INDIA

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Qualifications

2.4 Election Procedure

2.5 Tenure

2.6 Removal Procedure

2.7 Powers and Functions of the Vice-President

2.8 Position of the Vice -President

2.9 Let Us Sum Up

2.10. Further Reading

2.11 Answers to Check Your Progress

2.12 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the qualifications and tenure of the Vice- President
- discuss the removal procedure of the Vice-President
- analyse the powers and functions of the Vice-President and his /her position.

2.2 INTRODUCTION

The Vice-President of India is considered to be the second citizen of India. The constitution of India provides great recognition to the Vice-President of India. According to article 63, 'there must be the office of the Vice-President'. The Vice-President of India performs the allotted duty provided by the Constitution of India. He/she also exercises the duties of the President as well during the time of absence of the President in the office. The system of Vice-President in India has been inherited by the framers of the Indian constitution from the US constitution. As an ex-officio Chairman of the Rajya Sabha, Vice-President plays a significant role in the Indian political system.

2.3 QUALIFICATIONS

A candidate to be placed in the office of the Vice-President of India, must possess the following qualifications:

a. He/she must be a citizen of India

b. He/she must have completed the age of thirty-five years.
c. He/she must possess the qualifications prescribed for the election of a member of the Rajya Sabha.
d. He/she must not hold any office of profit under the Government of India or the Government of any State under any local or other authority subjected to the control of the said Governments.
e. He/she must not be a member of either House of the Parliament or a House of the Legislature of any State
f. He/she must not be a person of unsound mind.
g. He/she must not be an undischarged bankrupt or insolvent.

2.4 ELECTION PROCEDURE

The Vice-President of India is elected on the basis of proportional representative system with single transferable vote plan. An electoral college comprised of the members of both the Houses of Parliament take part in the election of the Vice-President. The voting process of the Vice-President of India is conducted on the basis of secret ballot. In case of the election of the Vice-President of India, the members of the state legislatures are not included in the Electoral College as against the Electoral College formed for the election of the President of India. In case of the election of the Vice-President of India, the nominated members of the parliament also have the chance to vote. These nominated members cannot vote for the election of the President. Each Members of the Electoral College for the Vice-President enjoys only one vote.

Regarding the adoption of a different procedure of election of the Vice-President, Dr. B.R. Ambedkar justified the whole procedure of election. In the words of Ambedkar, “The President is the head of the state and his power extends both to the administration at the Centre as well at the states. Consequently it is necessary in his/her election that not only members of Parliament should play their part, but members of state legislatures should have a voice but when we came to the Vice-President, his/her normal functions are to preside over the Council of States. It is on a rare occasion and that too for a temporary period that he/she may be called upon to assume the duties of the President. That being so, it does not seem necessary that the members of the State Legislature should be invited to take part in the election of the Vice-President”.

The Vice-Presidential candidates have to be proposed by 20 electors and seconded by 20 electors. The candidates have to deposit Rs. 15000/- during the time of submission of nomination paper. Regarding the election of the Vice-President of India, sometimes no election are held due to the process of selection of Vice-President. Sometimes, candidates

have been selected unanimously. For example, Dr. S. Radhakrishnan was elected for two consecutive terms unopposedly in 1952 and 1957; Mr. M. Hidyattullah in 1979 and Dr. Shankar Dayal Sharma in 1987. Vice-President Dr. Mohammad Hamid Ansari contested election for two consecutive terms and managed to win election for two terms. Other Vice-Presidents who won election after contesting are- Dr. Zakir Hussain in 1962, Mr. V.V. Giri in 1967, Mr. G.S. Pathak in 1969, Mr. B.D. Jatti in 1974, Mr. R. Venkataraman in 1984, Mr. K.R. Narayanan in 1992, Sh. Krishan Kant in 1997, Sh. Bhairon Singh Shekhawat in 2002.

2.5 TENURE

The Constitution of India fixes the term of the office of the Vice-President to five years. He/she can again assume the office after being elected or selected by an electoral college comprised of the elected and nominated members of both the Houses of Parliament. The Vice-President may resign his/her office before the completion of the normal term. This occurred in case of Mr. V.V. Giri in 1969. The Vice-President can also be removed from office by the Rajya Sabha by passing a resolution by a majority of all the members of the House and agreed to by the Lok Sabha. To move any resolution regarding the removal of Vice-President, a 14 days prior notice has been given to the President. Although there is no provision for the re-election of the Vice-President in the Constitution, but nevertheless the Vice-President is eligible for re-election. Because regarding the re-election procedure, the Constitution is absolutely silent. But, there is an established convention that no person shall contest office for more than two terms both in case of Presidential as well as Vice-Presidential election.

2.6 REMOVAL PROCEDURE

By passing a resolution in the Rajya Sabha and agreed by Lok Sabha, The Vice-President can be removed from his/her office. But before moving any resolution in the Rajya Sabha against Vice-President, a fourteen days prior notice is required to be given to the President of India. The Vice-President can also resign from his/her post by submitting a resignation letter to the President.

CHECK YOUR PROGRESS

Q. 1: Which article states that ‘there must be the office of the Vice-President’?

.....

Q. 2: Mention one important function of the Vice-President of India.

.....

Q. 3: Mention three important qualifications for the office of the Vice-President.

.....

Q. 4: The Vice-President of India is selected on the basis of proportional representative system— (True/False).

.....

Q. 5: Mention about the Electoral College for the election of the Vice-President of India.

.....

Q. 6: How many times Dr. S. Radhakrishnan elected as the Vice-President of India?

.....

Q. 7: Discuss briefly the removal procedure of Vice-President of India.

.....

2.7 POWERS AND FUNCTIONS OF THE VICE-PRESIDENT

The Constitution of India provides significant powers and functions to the Vice-President of India who occupies the second highest office in India. With the help of constitutional arrangement, the Vice-President enjoys a respectable rank next to the President. The exercise of powers and function of the Vice-President of India depends upon the activeness on the part of that office holder because, he/she has not been entrusted with any special constitutional powers or functions. But nevertheless he/she performs several functions as the second highest administrative officer of the nation. The powers and functions of the Vice-President are——

- **Chairman of Rajya Sabha:** The office of the Vice-President plays a significant role as Chairman of Rajya Sabha. Vice-President of India exercises the duty of acting as ex-officio Chairman of Rajya Sabha, though he/she is not a member of the Rajya Sabha. Being the ex-officio Chairman of the house, he/she has the prime responsibility to conduct the proceedings of the House. He/she maintains discipline and decorum of the House and has the power to take action against those who violate the very rules and regulations of the House. He/she has the power to conduct discussions and debates and the members can speak and take part in the proceedings with the permission of the Vice-President. The Vice-President has the right of casting vote in case of a tie in Rajya Sabha regarding any kind of decisions. He/she also acts as the spokesman of the House to the President and the Lok Sabha. As Ex-officio Chairman of the Rajya Sabha, he/she protects the privileges of the Members of the House. He/she has sole responsibility for conducting entire affairs of the Rajya Sabha. Since the Rajya Sabha is a permanent House, so his/her role in case of the functionaries of the Rajya Sabha carries lots of significance.
- **Functions Relating to the Office of the President:** When the office of the President falls vacant, the Vice-President assumes charge and delivers services of the office of

the President. The office of the President may remain vacant due to death, resignation or removal on the part of the President. During this type of vacancy, the role of the Vice-President towards the office of the President become very important. In this sense, the office of the Vice-President of India is somewhat different from the office of the Vice-President of U.S.A. After the emergence of vacancy in the office of the President in U.S.A., the Vice-President assumes the charge and acts as the President for un-expired time. It signifies that the Vice-President in U.S.A. automatically assumes the office of the President after his/her disappearance. But, in India the methodology is different. A Vice-President can only perform the duties of the office of the President, but cannot hold office. To become President, he/she has to contest in the election. In India, Vice-President can deliver the services of the office of the President for a maximum period of six months which is a constitutional benchmark. In the history of Indian political system, so far only one casual vacancy in the office of the President arose, when Dr. Zakir Hussain died. As a result, the then Vice-President Mr. V.V. Giri acted as the President for a period of just four months. After that the fresh elections were held and the sitting Vice-President V.V. Giri was elected as regular President. In 1977, Sh. B.D. Jatti also acted as President due to the death of Fakhruddin Ali Ahmed, the then President of India. In several occasions, the Vice-President performs the duties of the President. In 1950, due to the absence of Dr. Rajendra Prasad form India, the then Vice-President Dr. S. Radhakrishnan discharged the duties of the President. In 1977, when Mr. Sanjivareddy went to U.S.A. for health purpose, Mr. B. D. Jatti, the then Vice-President of India acted as the President. Mr. Hidayatullah, former Vice-President of India also acted as President due to the absence of Mr. Zail Singh, the then President of India in 1990s.

- **Functions Relating to Foreign Relation:** The Vice-President of India has to visit different foreign countries in order to develop friendly relationship with the neighbouring regions. As the second highest office of the Union Executive, Vice-President of India enjoys lots of pride and privileges by visiting and meeting the Heads of different countries. In case of developing healthy relationships with the foreign counterparts, this kind of visit by the Vice-President of India, helps a lot to the Indian Parliamentary Democracy.
- **Miscellaneous Functions:** The Vice-President of India also performs certain miscellaneous functions as well. Under miscellaneous functions, he/she performs the duties like visiting different Universities, research institutions, technical institutions etc. as a part of developing consensus in case of higher education, creation of human

resource and social capital. He/she visits different states of India as a part of integrating different regions into common sentiment.

Though the Vice-President has not been entrusted with any special constitutional powers and functions, but nevertheless with the help of charismatic qualities and activeness on the part of the Vice-President, he/she can make it an important one. Since the office of the Vice-President is considered to be the second highest administrative office in the country, so with the help of this status, this office may raise its activities with pride and privileges.

CHECK YOUR PROGRESS

Q. 8: The Vice-President of India has the right to cast vote in case of a tie— (True/False).

.....

.....

Q. 9: Who was the Vice-President of India during the Presidentship of Dr. Zakir Hussain?

.....

Q. 10: Mention briefly about the miscellaneous functions of the Vice-President of India.

.....

2.8 POSITION OF THE VICE-PRESIDENT

The position and status of the Vice-President of India is almost similar to that of the position of the Vice-President of the U.S.A. Both the offices of the Vice-President of India and the U.S.A. carry lots of status with high superficiality. But in case of assuming the power of holding the office of the President in case of his/her absence, the Vice-President of India is in the back foot in comparison to the office of the Vice-President of the U.S.A., because in U.S.A., the Vice-President can automatically assume the office of the President after sudden death or other kinds of absence which is not available in Indian context. As a result, the office of the Vice-President increasingly becomes weak in comparison to the office of the Vice-President of U.S.A., where the Vice-President can continue his/her service till unexpired term. In Indian context, the office of the Vice-President merely serves the duty of a gap arranger till the appointment of the regular President. The regular appointment of the President has to be made within six months. The Vice-President of U.S.A. has every possibility of becoming a President which is totally absent in case of the office of the Vice-President of India. But in case of absence of the President, the Vice-President can perform the duties of the President. Constitutionally, the Vice-President of India has the privileges as ex-officio chairman of Rajya Sabha. In a very simple word, we may say that office of the Vice-President is one of the great

institutions with dignity and esteemed pride and privileges despite the fact that the constitution has no provision regarding the power, patronage and responsibility towards the Vice-President.

CHECK YOUR PROGRESS

Q.11: Mention one difference between the Vice-President of India and the Vice-President of U.S.A.

.....

.....

Q.12: The office of the President of India has to be filled-up within six months from the date of its vacancy—— (True/False)

.....

2.9 LET US SUM UP

- According to article 63, 'there must be the office of the Vice-President'. The Vice-President of India performs the allotted duty provided by the Constitution of India.
- The Vice-President of India is elected on the basis of proportional representative system with single transferable vote plan. An electoral college comprised of the members of both the Houses of Parliament takes part in the election of the Vice-President.
- The voting process of the Vice-President of India is conducted on the basis of secret ballot. In case of the election of the Vice-President of India, the nominated members of the Parliament also have the chance to vote.
- The constitution of India fixes the term of the office of the Vice-President into five years. He/she can again assume the office after being selected or elected by a electoral college comprised of the elected and nominated members of both the Houses of parliament. The Vice-President may resign his/her office before the completion of the normal term.
- By Passing a resolution in the Rajya Sabha with the prior knowledge of the Lok Sabha, the Vice-President can be removed from his/her office. But before moving any resolution in the Rajya Sabha against Vice-President, a fourteen days prior notice is required to be given to the President of India. The Vice-President can also resign from his/her post by submitting resignation letter to the President.
- The office of the Vice-President plays a significant role as Chairman of Rajya Sabha. Vice-President of India exercises the duty of acting as Ex-officio Chairman of Rajya

Sabha. The Vice-President has the right of casting vote incase of a tie in Rajya Sabha regarding any kind of decisions.

- During the vacancy of the office of the President, the Vice-President assumes the charge and delivers services of the office of the President. The office of the President may remain vacant due to death, resignation or removal on the part of the President. During this type of vacancy the role of the Vice-President towards the office of the President become significantly important.
- The Vice-President of India visits different foreign countries in order to develop friendly relationship with the neighbouring regions.
- The position and status of the Vice-President of India is almost similar to that of the position of the Vice-President of U.S.A. Both the offices of the Vice-President of India and the U.S.A. carry lots of status with high superficiality.
- Constitutionally, the Vice-President of India has the privileges as Ex-officio Chairman of Rajya Sabha despite the fact that Constitution has no provision regarding the power, patronage and responsibility towards the Vice-President.

2.10 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K.(2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K.(2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

2.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Article 63.

Ans to Q No 2: One of the important functions of the Vice-President of India is that he/she serves as the ex-officio Chairman of Rajya Sabha.

Ans to Q No 3: Three important qualifications of the Vice-President of India are——

a. He/she must be a citizen of India
b. He/she must have completed the age of thirty-five years.
c. He/she must possess the qualifications prescribed for the election of a member of the Rajya Sabha.

Ans to Q No 4: True.

Ans to Q No 5: The Vice-President of India is elected on the basis of proportional representative system with single transferable vote plan. An electoral college comprised of the members of both the Houses of Parliament takes part in the election of the Vice-President. In case of the election of the Vice-President of India, the nominated members of the parliament also have the chance to vote.

Ans to Q No 6: Two times.

Ans to Q No 7: By passing a resolution in the Rajya Sabha with the prior understanding with Lok Sabha, the Vice-President can be removed from his/her office. But before moving any resolution in the Rajya Sabha against Vice-President, a fourteen days' prior notice is required to be given to the President of India. The Vice-President can also resign from his/her post by submitting resignation letter to the President.

Ans to Q No 8: True.

Ans to Q No 9: V.V. Giri.

Ans to Q No 10: The Vice-President of India also performs certain miscellaneous functions as well. Under miscellaneous functions, he/she performs the duties like visiting different Universites, Research institutions, Technical institutions etc as a part of developing consensus in case of higher education, creation of human resource and social capital. He/she visits different states of India as a part of integrating different regions into common sentiment. He/she has to be present in all those oath taking ceremony related to the chief justice of India, President of India and the members of the Parliament after every general election.

Ans to Q No 11: One of the difference between the Vice-President of India and the Vice-President of the U.S.A. is that the former cannot assume the office of the president in his/her absence due to death or other and the later has the privileges to act as the President in case of absence in the office of the President.

Ans to Q No 12: True.

2.12 MODEL QUESTIONS

A. Very Short Questions

Q.1: Which article of the Indian Constitution deals with office of the Vice-President?

Q.2: Who is the present Vice-President of India and from which year he assumed the office?

Q.3: To remove the Vice-President from his/her duty, a 14 days' prior notice have to be submitted to the President of India —— (True/False)

B. Short Questions (Answer each in about 150-200 words)

Q.1: Mention briefly the election procedure of the Vice-President of India.

Q.2: ''The office of the Vice-President of India is considered to be weak in comparison to the office of the Vice-President of U.S.A.'' —— Explain.

Q.3: Discuss briefly the role of Vice-President in Indian parliamentary democracy.

C. Long Questions (Answer each in about 300-500 words)

Q.1: Write a note on the position and importance of the Vice-President of India.

Q.2: Critically discuss the powers and functions of the Vice-President of India.

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UNIT: 3 PRIME MINISTER

UNIT STRUCTURE

3.1 Learning Objectives
3.2 Introduction
3.3 The Prime Minister of India
3.3.1 Appointment of the Prime Minister
3.3.2 Tenure
3.3.3 Powers and Functions of the Prime Minister
3.3.4 Position of the Prime Minister
3.4 Relationship Between President and Prime Minister
3.5Let Us Sum Up
3.6Further Reading
3.7Answers to Check Your Progress
3.8 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit you will be able to:
* discuss the appointment, tenure, powers and functions and position of the Prime Minister of India
*discuss the relationship between President and Prime Minister

3.2 INTRODUCTION

In India, President is the Head of the State but the real executive is the Council of Ministers headed by the Prime Minister. Here, we will discuss the appointment, tenure, powers and functions and position of the Prime Minister of India. We will discuss the relationship between President and Prime Minister.

3.3 THE PRIME MINISTER OF INDIA

The Office of the Prime Minister is the most powerful office in India. Prime Minister is the Head of the Government of India. Under the Constitution of India, the real centre of power happens to be the office of the Prime Minister. 3.3.1 Appointment of the Prime Minister Article 74(1) provides for a Council of Ministers of which the Prime Minister is the head to aid and advise the President. Article 75(1) says that the Prime Minister shall be appointed by the President. But the President has little choice in the matter. He/she is bound to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. Whenever a party gets a clear majority in Lok Sabha elections, the President plays a little role and he/she appoints the leader of such a party as the Prime Minister. The President has a choice to make only if no single party, secures a clear majority in the parliament. In that case, the President may play a real role in appointing the

Prime Minister. The Prime Minister must be a Member of the Parliament. If he/she is not a member of the Parliament at the time of his/her appointment, he/she must become a member of any of the House within a period of six months. 3.3.2 Tenure The Prime Minister has no fixed term of office. The Prime Minister holds office during the pleasure of the President. It means that the Prime Minister remains in his/her office so long he/she is supported by the majority of the members of the Lok Sabha. The majority of the members of the Lok Sabha can pass a vote of no confidence against him/her and in such a situation the Prime Minister either submits his/her resignation to the President or gets dismissed by the President.

3.3.3 Powers and Functions of the Prime Minister

The powers and functions of the Prime Minister can be briefly discussed as under: Formation of the Council of Ministers The Prime Minister plays a very important part in the formation of the Council of Ministers. The first and foremost function of the Prime Minister is to form the Council of Ministers. After the appointment of the Prime Minister, the President appoints all other ministers on the advice of the Prime Minister. He/she is free to determine the strength of his Ministry and also to select the ministers as per his/her choice. Distribution of Portfolios Another important function of the Prime Minister is the distribution of portfolios. The Prime Minister distributes the portfolios among the other ministers. He/she has complete freedom in distributing portfolios to the different ministers. In this regard he/she allots the portfolios according to the capabilities of the selected ministers. Change of Portfolios The Prime Minister has the power to change the portfolios of the ministers at any time. He/she may appoint new ministers. He/ she may transfer the portfolios from one minister to another. It is his privilege to shuffle and re-shuffle his/her ministry at any time. Chairman of the Cabinet The Prime Minister is the leader of the Cabinet. He/she presides over the meetings of the Cabinet. He/she decides the date, time and the agenda of its meeting. He/she must resolve the differences arising among the ministers. He/she is the channel of communication between the Cabinet and the President. All issues are discussed in the meeting with the permission of the Prime Minister.

* Head of the Council of Ministers

The Prime Minister is the head of the Council of Ministers. He/she presides over the meetings of the Council of Ministers. He/ she may ask a minister to resign in case he/she is dissatisfied with his/her work. The Prime Minister decides the subjects of discussion of the meetings of the Council of Ministers.

*Leader of the Parliament

The Prime Minister is the leader of the majority party of the Lok Sabha and hence the leader of the Parliament as well. The President summons and prorogues the Parliament and also dissolves the Lok Sabha on the advice of the Prime Minister. No bills can be passed in the Parliament without the approval of the Prime Minister. As a leader of the majority party, he/she supports the speaker in maintaining decorum in the Parliament. Moreover, he/she declares the important policies of the government on the floor of the Parliament.

*Chief Adviser of the President

The Prime Minister is the chief adviser of the President. He/ she gives advice to the President from time to time on different issues. He/she supplies necessary information to the President. He/she informs the President about the national and international situations. He/she informs the President about the decisions taken by the Council of Ministers. The President sends his/her messages to the Council of Ministers through the Prime Minister. Moreover, the Prime Minister is the connecting link between the President and the Parliament.

*Chief Co-ordinator

The Prime Minister is the chief co-ordinator. He/she coordinates the workings of different ministers. He/she can supervise the functioning of any ministry. It is his responsibility to secure cooperation amongst all government departments. He/she tries to remove differences, if any, among the ministers.

* Leader of the Nation

The Prime Minister is the leader of the nation. He/she leads the nation both in times of war and peace. He/she represents the country in all national and international gatherings. He/she is the chief spokesman of the nation. The Prime Minister is also the chief spokesman of the government of India.

*Director of Foreign Affairs

As a real head of the state, the Prime Minister plays an important role in determining Indian foreign policy and relations with other countries. He/she is the chief spokesman of India in international politics. He/she represents our country in all important international conferences. He/she also plays a key role in the world politics for establishing world peace and security.

*Role of the Prime Minister during Emergency

According to the Constitution of India, the President declares emergency on the advice of the Cabinet. But in reality, the President declares emergency on the advice of the Prime Minister. During an emergency under Article 352, the Prime Minister becomes very powerful.

*Miscellaneous Powers

The Prime Minister of India has miscellaneous powers also. The Prime Minister of India enjoys a vast power of patronage. All important appointments at the national level are made by the Prime Minister. He/she takes part in all popular activities. He/she is all in all in the country.

3.3.4 Position of the Prime Minister

The Prime Minister occupies the most significant position in the political system of our country. The Prime Minister exercises vast authority. His/her position is so supreme that he/she has no other parallel in the country. In India, the Prime Minister is the real executive. According to the practice of Parliamentary government,
the powers are vested in the President of India by the Constitution but in real practice, these powers are exercised by the Prime Minister. The powers and functions of the President are actually exercised by the Council of Ministers headed by the Prime Minister. The president is like a titular head while the Prime Minister is the real executive head.

The Prime Minister is the key person in the government. He/she is the leader of the Cabinet. He/she presides over Cabinet meetings and he/she instructs, encourages the individual ministers. Thus “he is the key-stone of the Cabinet arch”, as Gladstone said. Ivor Jennings described him, “The Sun around which the planets revolve”. He/she was also called ‘first among equals’.

The Prime Minister is the connecting link between the President and the Council of Ministers. He/she is the chief adviser of the President. As a leader of the Lok Sabha, the Prime Minister plays an important role in the process of legislation. He/she maintains strict discipline of his/her party.

The Prime Minister is the leader of the nation. As a leader of the nation, he/she plays an important part in the formation of the national and the international policies. The Prime Minister has unlimited powers. Although the powers of the Prime Minister are unlimited, he/she cannot be a dictator.

From the above discussion, it is obvious that the Prime Minister holds a very important position in the country. However, the position of the Prime Minister ultimately depends upon his/her charismatic personality. He/she must be a man of dynamic personality.

Thus, as the head of the government, the leader of the cabinet, head of the Council of Ministers, leader of the Parliament, the leader of the nation, the chief adviser of the President, the Prime Minister holds a very powerful position in the political system of India.

3.4 RELATIONSHIP BETWEEN PRESIDENT AND PRIME MINISTER

The President of India is the Head of the State. In India, President is the nominal head. He/she is only a constitutional head. The powers and functions of the President are actually exercised by the Council of Ministers headed by the Prime Minister. The President cannot act independently. He/ she acts in accordance with the aid and advice of the Council of Ministers headed by the Prime Minister. The amendments made in 1976 and 1978 had permanently settled the issue. Article 74(1) as amended in 1978 states that the advice of the Council of Ministers is binding upon the President. In India, the Council of Ministers in general and the Prime Minister in particular, is responsible for all the acts of the President.

It is the duty of the Prime Minister (Article 78) to communicate to the President all decisions of the Council of Ministers relating to the administration of the Union and proposals for legislation. This makes Prime Minister a link between President and Cabinet and chief advisor of the President. He/she gives advice to the President from time to time on different issues. He/she supplies necessary information to the President. He/she informs the President about the decisions taken by the Council of Ministers. The President sends his/her messages to the Council of Ministers through the Prime Minister. The President may ask for information regarding administration. The President may ask the Council of Ministers to reconsider their advice but he/she has to act in accordance with the advice rendered after reconsideration.

Thus, the President is a constitutional and nominal head of the state and the Prime Minister is the real head of the government with enormous powers. It is thus clear from the above discussion that the relations between the President and Prime Minister have been mostly in line with the norms and requirements of the parliamentary system of government.

****Activity**
Find out who was the first woman Prime Minister of India.

CHECK YOUR PROGRESS

Q.1: Who is the Head of the Government of India?
..... Q. 2: Q.2:Who appoints the Prime Minister? .....
Q. 3: Who is the leader of the nation?
.....
Q. 4: What is the tenure of office of the Prime Minister?
.....
Q. 5: Discuss about the relationship between the President and the prime minister.

3.5 LET US SUM UP

* In India, the President is the Head of the State but the real executive is the Council of Ministers headed by the Prime Minister. *The Prime Minister remains in his/her office so long he/she is supported by the majority of the members of the Lok Sabha.
* In India, the Prime Minister is the real executive.
*The powers and functions of the President are actually exercised by the Council of Ministers headed by the Prime Minister.
*The Prime Minister holds a very powerful position in the political system of India as the head of the government, the leader of the cabinet, head of the Council of Ministers, leader of the Parliament, the leader of the nation, the chief adviser of the President.
* The position of the Prime Minister ultimately depends upon his/her charismatic personality. He/she must be a man of dynamic personality.

3.6 FURTHER READING

1) Chander, Prakash. (2000). Indian Government and Politics. New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K. (2007). Indian Government and Politics. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K.(2006). Select Constitutions. New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). Constitutional Government in India. New Delhi: S. Chand and Company.

3.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Prime Minister.
Ans to Q No 2: President of India
Ans to Q No 3: Prime Minister
Ans to Q No 4: No fixed term but normally five years.

Ans to Q No 5: In India, the President and the Prime Minister have a complex relationship defined by the Constitution. Let's discuss:

1. Roles:
   President: The head of state, symbolizing national unity and integrity. Key powers include appointing the Prime Minister, dissolving Lok Sabha, and granting pardons.
   Prime Minister: The head of government, responsible for advising the President and leading the Council of Ministers.

2. Appointment: The President appoints the Prime Minister, typically the leader of the majority party in Lok Sabha.

3. Powers:
   President: Exercises powers on the Prime Minister's advice, except in certain situations (e.g., testing majority in Lok Sabha).
   Prime Minister: Advises the President on key decisions, including appointments and policy matters.

4. Checks and Balances: The President can:
   - Dismiss the government if it loses confidence.
   - Return bills for reconsideration (though the government can resend them).
   - The Prime Minister ensures the government functions smoothly and implements policies.

In practice, the Prime Minister holds significant power, while the President often acts on advice. However, the President can play a crucial role in maintaining constitutional balance, especially in politically sensitive situations.

3.8 MODEL QUESTIONS

A. Very Short Questions
Q.1: Which article of the Indian Constitution deals with office of the Prime Minister of India?
Q.2: Who appoints the Indian Prime Minister?

B. Short Questions (Answer each in about 150-200 words)
Q.1: Write a note on the position of the Prime Minister of India.
Q.2: Write a note on the relation between President and Prime Minister.

C. Long Questions (Answer each in about 300-500 words) Q.1: Discuss the powers and functions of the Prime Minister of India.

UNIT 4: UNION COUNCIL OF MINISTERS

UNIT STRUCTURE

4.1Learning objectives
4.2 Introduction
4.3 The Union Council of Ministers
4.3.1 Composition
4.3.2 Powers and Functions of the Union Council of Ministers
4.4. Relationship between the Union Council of Ministers and the president.
4.5 Let Us Sum Up
4.6 Further Reading
4.7 Answer to check your progress
4.8 Model questions.

4.1 LEARNING OBJECTIVES

After going through this unit learners will be able to:

*explain the composition, powers and functions of the Union Council of Ministers

* Learners will understand the President-Council of Ministers relationship, roles, and powers, and how they ensure democratic governance and stability in India.

4.2 INTRODUCTION

India follows a parliamentary system of government, which means that real executive authority lies not with the nominal head of the state (the President) but with the elected representatives who command the confidence of the legislature. At the heart of this executive system is the Union Council of Ministers. The Union Council of Ministers is the highest decision-making body of the executive branch at the national level. It plays a crucial role in policy formulation, administration, legislation, and governance of the country.

Although the Constitution of India vests executive power formally in the President, in actual practice this power is exercised by the Council of Ministers headed by the Prime Minister. Thus, the Union Council of Ministers is often described as the real executive of India. Understanding its composition, powers, functions, and relationship with other constitutional authorities is essential for comprehending how the Indian political system functions in reality.

4.3 THE UNION COUNCIL OF MINISTERS

The Constitution of India provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President in performing his/her duties. The President appoints the leader of the majority party in Lok Sabha as the Prime Minister. The Prime Minister is the head of the Union Council of Ministers. After the appointment of the Prime Minister, the President appoints all other ministers on the advice of the Prime Minister.

4.3.1 Composition

The Article 74(1) of the Constitution of India provides for the formation of a Council of Ministers with the Prime Minister as its head to aid and advise the President in exercising his/her functions. Article 75 has provided for the composition of the Council of Ministers. After the general election, the party with the majority in the Lok Sabha forms the Union Council of Ministers. The President appoints the Prime Minister. Other ministers are appointed by the President on the advice of the Prime Minister. The Prime Minister is free to select members of the Council of Ministers. While appointing the Council of Ministers he/she has to keep in mind that all major communities and geographical regions of the country find a representation in the ministry. According to the Constitution, the Ministers hold office during the pleasure of the President. The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). The tenure of the Council of Ministers is not fixed. The members of the Lok Sabha by a majority vote may remove the ministry by passing a vote of no confidence. Thus, the future of the Union Council of Ministers depends on the support of the majority of the members of the Lok Sabha. However, the maximum period for which a ministry can remain in office is 5 years, i.e. for the term of the Lok Sabha. The Council of Ministers has three categories of ministers. They are- Cabinet Ministers, Ministers of State and Deputy Ministers. The salaries and allowances of ministers are determined by the Parliament by laws from time to time.

4.3.2 Powers and Functions of the Union Council of Ministers

The powers and functions of the Union Council of Ministers can be discussed as under:

Executive Powers:

The Union Council of Ministers formulates national and international policies. All internal and external policies of the government are determined by the Council of Ministers. Council of Ministers is also responsible for implementing these policies. No member of the Council of Ministers can express disagreement to the collective decision of the Cabinet. The President makes all the higher appointments- Ambassadors, Governors, High Commissioners, Judges of the Supreme Court and High Courts, Election Commissioner, Members of UPSC, Military Commanders etc., in accordance with the advice of the Cabinet. Council of Ministers regulates the appointment, promotion, transfer and dismissal of high officials. It can create new posts, cadres and services. The Council of Ministers is the chief machinery to run national administration. It runs the administration in accordance with the laws and policies. In the administration of the country, the Council of Ministers is responsible, not the President.

The Council of Ministers formulates the foreign policy of the Union and determines India’s relation with the foreign countries. All important treaties and other international agreements are negotiated and signed by the Ministers on behalf of the President or the Government of India as the case may be. The exercise of Emergency Powers by the President of India, under Article 352-360 is done in accordance with the advice of the Council of Ministers. Council of Ministers

in India, decides about the imposition of the President's rule in the State and also duration of that rule. The President declares a National Emergency only under the written advice of the Council of Ministers. The Council of Ministers decides about the time and duration of emergency, both internal and external.

Legislative Powers

The Council of Ministers has a lot of work to do in the legislative field and its responsibilities in this regard are quite vast. It takes important decisions about the programme of legislature. It controls the legislative work of the Parliament. The members of the Council of Members are the members of either House of Parliament. Generally, most of the bills are introduced in the Parliament by the ministers. Such bills have a better chance of being easily passed in Legislature. The bills which are not supported by the Council of Ministers have no chance of being accepted by the House. 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 the former by passing a vote of no confidence. According to Article 123, the President of India may issue Ordinances for meeting the urgent needs of law when Parliament is not in session. The Ordinances are issued by the President only in accordance with the requirement of the Cabinet.

Financial Powers

In the financial field, the Council of Ministers has many functions to perform. It frames the economic policies of the government. The budget is prepared under the guidance and supervision of the Cabinet. At the beginning of every financial year the Cabinet places the budget before the Parliament. The Cabinet takes an active role in passing the budget in the Parliament. No change in the budget may be effected unless the Cabinet agrees to it. In India, Money Bills can be introduced only in the Lok Sabha and only by the Ministers. The Parliament can modify such financial measures only with the consent of the Cabinet. The Council of Ministers has an important role in formulating the economic plans of the country. The future of the economic progress of the country always depends upon the efficiency of the Council of Ministers. The Council of Ministers takes an active part in all matters connected with the economic stability and prosperity of the country.

From the powers and functions of the Council of Ministers, it is found that the Council of Ministers is the real and powerful executive in India. The executive, legislative, emergency and financial powers of the President are really exercised by the Council of Ministers. In fact, Council of Ministers performs the activities and enjoys the power which the Constitution has given to the President. In India, within the Council of Ministers, the Cabinet is the most powerful institution and in reality, it is the central institution which enjoys all these powers.

LET US KNOW

The Constitution's 91st Amendment Act (2003) says the total number of members in a state ministry or in the Union Council of Ministers (including the Chief Minister and the Prime Minister as the case may be) shall not be more than 15% of the members of the Lower House of the Legislature. But the strength of the Ministry in a state shall not be less than 12.

4.4 Relationship between the Union Council of Ministers and the President

The Constitution of India establishes a close and well-defined relationship between the President and the Union Council of Ministers. While the President is the constitutional head of the State, the Council of Ministers is the real executive authority. Their relationship is based on constitutional provisions, conventions, and the principles of parliamentary democracy.

1. Constitutional Basis

Article 74 of the Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President. The President is bound to act in accordance with this advice. This makes the Council of Ministers central to the functioning of the executive.

2. President Acts on Ministerial Advice

In practice, all executive actions of the President are taken on the advice of the Council of Ministers. Whether it is policy decisions, appointments, or administration, the President functions as per the recommendations made by the Council.

3. Binding Nature of Advice

After the 42nd and 44th Constitutional Amendments, it has been clearly established that the advice of the Council of Ministers is binding on the President. The President may ask the Council to reconsider its advice once, but if the advice is reiterated, the President must accept it.

4. Executive Authority in Practice

Though the Constitution vests executive power in the President, the real executive power lies with the Council of Ministers. The President performs functions as a formal head, while actual decision-making is done by the ministers.

5. Decisions Taken in the Name of the President

All executive actions of the Union government are taken in the name of the President, but these decisions are framed and implemented by the Council of Ministers. This reflects the principle of constitutional symbolism combined with democratic governance.

6. Appointment of Ministers

The President appoints the Prime Minister and other ministers. However, these appointments are made according to parliamentary conventions, and the President acts on the advice of the Prime Minister in appointing other ministers.

7. Right to receive information

The President has the right to be informed of all decisions of the Council of Ministers. The Prime Minister communicates cabinet decisions and important policy matters to the President.

8. President's Limited Discretion

The President has very limited discretionary powers in relation to the Council of Ministers. These powers are exercised only in exceptional situations, such as during political instability or when no party has a clear majority.

9. Collective Responsibility

The Council of Ministers is collectively responsible to the Lok Sabha, not to the President. This ensures that democratic accountability lies with the elected representatives rather than the nominal head.

10. Harmony in Functioning

The relationship between the President and the Council of Ministers is based on cooperation, constitutional morality, and mutual respect. This balance ensures smooth functioning of the parliamentary system.

The relationship between the Council of Ministers and the President reflects the spirit of parliamentary democracy in India. While the President is the constitutional head, the Council of Ministers is the real executive authority. The President acts as a symbol of unity and continuity, whereas the Council of Ministers governs the country in the name of the people. This arrangement ensures democratic control, accountability, and stability in governance.

CHECK YOUR PROGRESS

Q. 1: How many categories of ministers are there in the Council of Ministers?
Q. 2: Who is the Head of the Union Council of Ministers?
Q. 3: Discuss the powers and functions of the Union Council of Ministers with regard to law making. (Within 50 words)
Q. 4: Write a note on the position of the Union Council of Ministers. (Within 50 words)

4.5 LET US SUM UP

*The Council of Ministers is the real and powerful executive in India. The executive, legislative, emergency and financial powers of the President are really exercised by the Council of Ministers.

*In India, within the Council of Ministers, the Cabinet is the most powerful institution and in reality, it is the central institution which enjoys all these powers.

*The President is the constitutional head, while the Council of Ministers, led by the Prime Minister, is the real executive authority. The President acts on the Council's binding advice (Article 74). The Council makes decisions, taken in the President's name, and is collectively responsible to Lok Sabha, ensuring democratic accountability and smooth governance.

4.6 FURTHER READING

1) Chander, Prakash. (2000). Indian Government and Politics. New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Kapur, Anup Chand and Misra, K.K.(2006). Select Constitutions. New Delhi: S. Chand and Company.
3) Pylee, M.V. (2006). Constitutional Government in India. New Delhi: S. Chand and Company.
4.Jain, M.P. (1962). Indian Constitutional Law.

4.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Three
Ans to Q No 2: Prime Minister
Ans to Q No 3: Law making is an important function of the Union Council of Ministers. Generally, most of the bills are introduced in the parliament by the ministers. Such bills have a better chance of being easily passed in legislature. The bills which are not supported by the Council of Ministers have no chance of being accepted by the House.
Ans to Q No 4: The Union Council of Ministers enjoys a powerful position in the political system of our country. The Council of Ministers is the real and powerful executive in India. The executive, legislative, emergency and financial powers of the President are really exercised by the Council of Ministers. In fact, Council of Ministers performs the activities and enjoys the power which the Constitution has given to the President.

4.8 MODEL QUESTIONS

Q.1: The Prime Minister is the connecting link between the President and the Council of Ministers. (True/ False).
Q.2: Write in brief about the composition of the Union Council of Ministers.
Q.3: Describe the powers and functions of the Union Council of Ministers.

UNIT 5: PARLIAMENT OF INDIA

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 The Parliament of India

5.3.1 Composition of the Parliament of India

5.3.2 Powers and Functions of the Parliament

5.4 The Rajya Sabha

5.4.1 Composition of the Rajya Sabha

5.4.2 Qualifications of Members

5.4.3 Powers and Functions of the Rajya Sabha

5.5 The Lok Sabha

5.5.1 Composition of the Lok Sabha

5.5.2 Qualifications of Members

5.5.3 The Powers and Functions of the Lok Sabha

5.6 Relationship Between two Houses of Parliament

5.7 The Speaker of the Lok Sabha

5.7.1 Election

5.7.2 Powers and Functions of the Speaker

5.7.3 Position of the Speaker

5.8 Legislative procedure of the Indian Parliament

5.9 Let Us Sum Up

5.10 Further Reading

5.11 Answers to Check Your Progress

5.12 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the composition of the Indian Parliament
- explain the powers and functions of the Parliament

- describe the relations between the two Houses of the Parliament and
- explain the appointment, powers and functions and position of the Speaker of the Lok Sabha

5.2 INTRODUCTION

In India, the law-making powers of the Union are with the Union Parliament. The general pattern of the Indian Parliament is like that of the English Parliament. Legislature of the Indian Union is called the Parliament. The Indian Parliament is not a sovereign legislature like the British Parliament. It is a non-sovereign law-making body like the American Congress.

5.3 THE PARLIAMENT OF INDIA

India's Parliament is bicameral. Of the two Houses, the Rajya Sabha (the Council of States) is the Upper House and the Lok Sabha (the House of the People) is the Lower House.

5.3.1 Composition of the Parliament of India

Article 79 of the Indian Constitution provides for a Parliament of India consisting of the President and two Houses, namely, the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). The President is not a member of any House of the Parliament, but he/she is an integral part of the Parliament, because without his/her signature no law can have validity.

In India, the members of the Lok Sabha are elected by the people and the members of the Rajya Sabha are elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by single transferable vote.

5.3.2 Powers and Functions of the Parliament

The powers and functions of the Indian Parliament can be discussed under the following heads:

- Legislative Powers

The main function of the Indian Parliament is to make laws. It can make laws on all the matters specified in the Union List and Concurrent List. Under certain circumstances, it can also make laws on the subjects of the State list. The Rajya Sabha enjoys equal powers with the Lok Sabha in the sphere of ordinary law making. An Ordinary bill may be introduced in either House or by any member. A non-money bill can not become a law unless it is passed by the Rajya Sabha. If there is any difference of opinion in both the Houses, the President may call for a joint session of the Parliament. The Speaker of the House of the People presides over a joint session. The Lok Sabha enjoys an advantageous position due to its higher strength. In India, a money bill is introduced only in Lok Sabha. After passing a money bill, the Lok Sabha sends it to the Rajya Sabha. The Rajya Sabha has to give its opinion on the bill within 14 days. Otherwise the Bill is sent to the President for his assent by the Lok Sabha.

- Amendment Powers

The Parliament can amend the Constitution. Both Rajya Sabha and Lok Sabha have equal power in case of amendment of the Constitution. A Constitution amendment bill can be introduced in either House of the Parliament. An amendment bill must be passed by both the Houses sitting separately. There are some provisions of the Constitution which the Parliament can amend by a simple majority while some provisions can be amended by a 2/3rd majority. For amendment of some provisions of the Constitution, approval of at least fifty percent States is required. There is no provision for a joint session of both Houses of Parliament for resolving a deadlock regarding the question of Constitutional amendments.

- Executive Powers

The Parliament exercises control over the executive through various measures. The Union Council of Ministers is collectively responsible before the Lok Sabha for its activities. The Members of the Parliament can move adjournment motions, introduce call-attention motions and can put questions to the executive in order to exercise their control over the government. In extreme cases, Lok Sabha alone can pass a no-confidence motion against the Council of Ministers. The ministry can remain in office as long as it enjoys the confidence of the parliament.

- Financial Powers

Parliament plays an important role in financial matters of the country. A Money Bill can be introduced only in Lok Sabha. After passing a Money Bill, the Lok Sabha sends it to the Rajya Sabha and the Rajya Sabha has to give its opinion on the bill within 14 days. Rajya Sabha can delay the Money Bill only for 14 days and not more.

The powers of the Rajya Sabha in financial matters are advisory in nature. Parliament determines the financial policy of India. No taxes can be levied and no expenditure can be made by the government without its approval.

- Electoral Powers

The Parliament has some electoral powers also. The Parliament constitutes a part of the Electoral College to elect the President of India. The Vice-President of India is elected by the Members of both the Houses of Parliament in accordance with the system of proportional representation.

- Judicial Powers

In case of removal of President, Vice-President, Judges etc. both the Houses have equal powers.

- Miscellaneous Powers

The parliament has some miscellaneous powers. Mainly, the proclamation of emergency by the President is subject to the approval of the Parliament.

According to Article 312 for national interest, Rajya Sabha can create one or more All India Services. Again the Rajya Sabha has the right to discuss the annual reports of the Union

Public Service Commission, Finance Commission etc. Like Rajya Sabha, Lok Sabha has also some miscellaneous powers. The Lok Sabha has to pass the Ordinance declared by the President. Lok Sabha can take initiative in case of formation of new State, change of State's name, change of boundaries etc.

To sum up, it may be said that the Constitution of India vests wide powers and functions in the Parliament. But, laws of the Parliament are subject to the judicial review.

5.4 THE RAJYA SABHA

India's Parliament is bicameral. Rajya Sabha, i.e. the Council of States, is the Upper House of the Parliament.

5.4.1 Composition of the Rajya Sabha

Article 80 of the Indian Constitution describes the composition of the Rajya Sabha. The Rajya Sabha has a maximum strength of 250 members. According to Article 80, it consists of 12 members to be nominated by the President from amongst distinguished people and not more than 238 representatives of the States and the Union Territories. The highest number of members in Rajya Sabha can be 250. There is no equal representation of States to the Rajya Sabha. It is based on the population of a State.

Rajya Sabha is a semi-permanent House. It cannot be dissolved by the President. Every member is elected for a period of six years. One-third of its members retire after every two years and elections are held for the vacant seats. The Vice-President of India is the Ex-officio Chairman of the Rajya Sabha.

5.4.2 Qualifications of the Members

The Constitution lays down the following qualifications for the membership of the Rajya Sabha:

[i] He/she must be a citizen of India.

[ii] He/she must be 30 years and above of age.

[iii] He/she must possess all the qualifications that the Parliament may prescribe.

[iv] He/she must not be a lunatic or a bankrupt.

5.4.3 Powers and Functions of the Rajya Sabha

The powers and functions of the Rajya Sabha can be discussed under the following heads:

- Legislative powers

The Rajya Sabha enjoys equal powers with the Lok Sabha in the sphere of ordinary law-making. An Ordinary Bill may be introduced in either House or by any member. A non-money bill can not become a law unless it is passed by the Rajya Sabha. If there is any difference of opinion in both the Houses, the President can call for a joint session of the Parliament. The Speaker of the Lok Sabha presides over a joint session.

- Financial powers

In the financial sphere, the Rajya Sabha is comparatively weak House. The powers and functions of the Rajya Sabha is limited in case of financial matters. In India, a money bill is introduced only in Lok Sabha. After passing a money bill, the Lok Sabha sends it to the Rajya Sabha and the Rajya Sabha has to give its opinion on the bill within 14 days. Rajya Sabha can delay the Money Bill only for 14 days and not more. The powers of the Rajya Sabha in financial matters are advisory in nature.

- Amendment powers

The Rajya Sabha plays an important role in case of amendment of the Constitution. Both Rajya Sabha and Lok Sabha have equal power in case of amendment of the Constitution. A Constitution amendment bill can be introduced in either House of the Parliament. An amendment bill must be passed by both the Houses sitting separately.

- Executive powers

The Rajya Sabha can indirectly control the government. The Rajya Sabha cannot make or unmake governments. It can criticise the policies and activities of the government. It can simply discuss the government policy and exercise some influence through questions, adjournment motions and critical speeches. Rajya Sabha cannot pass a vote of no confidence against the ministry.

- Electoral powers

Rajya Sabha has electoral powers also. The elected members of the Rajya Sabha can participate in the elections of the President. The members of the Rajya Sabha take part in the election of the Vice-President.

- Judicial powers

The members of the Rajya Sabha take part in the removal of the President, Vice-President, Judges of High Courts and the Supreme Court.

- Miscellaneous powers

The Rajya Sabha has some miscellaneous powers.

According to Article 312 for national interest Rajya Sabha can create one or more All India Services. Again the Rajya Sabha has the right to discuss the annual reports of the Union Public Services Commission, Finance Commission etc. According to Article 249, in the national interest, the Rajya Sabha may pass a resolution empowering Parliament to make laws on subjects mentioned in the State list.

From the above discussion, it is seen that Rajya Sabha is neither a very weak House nor a very powerful House.

5.5 THE LOK SABHA (THE HOUSE OF THE PEOPLE)

The Lok Sabha or the House of the People is the Lower House of the Parliament. It represents the people of India. The Constitution of India has provided for direct election to the House of the People.

5.5.1 The Composition of the Lok Sabha

The Article 81 of the Constitution of India deals with the composition of the House of the People. The maximum strength of the Lok Sabha is 552 members. Out of these, 530 members are elected from the States and 20 are elected from the Union Territories. Moreover, two Anglo-Indian members are nominated by the President to give the community adequate representation. At present the strength of the House is 545.

According to Article 83, the tenure of the Lok Sabha is normally 5 years. The Lok Sabha may be dissolved before the expiry of the term during emergency. During emergency the parliament may by law extend its term by one more year.

However, after the end of emergency, the Lok Sabha must be dissolved within six months and fresh elections held.

5.5.2 Qualifications of the Members

To be qualified for election to the Lok Sabha, a person must have the following qualifications:

[i] He/she must be a citizen of India.

[ii] He/she must not be less than 25 years of age.

[iii] He/she must possess all other qualifications that are prescribed by the Parliament.

5.5.3 Powers and Functions of the Lok Sabha

The powers and functions of the Lok Sabha can be discussed under the following heads:

- Legislative Powers

As a legislative chamber, the most important function of the Lok Sabha is to make laws. An Ordinary Bill may be introduced in either House or by any member. If there is any difference of opinion in both the Houses, the President can call for a joint session of the Parliament. The Speaker of the Lok Sabha presides over the joint session. The Lok Sabha enjoys an advantageous position due to its higher strength.

- Financial Powers

The Lok Sabha has a superior position in the financial matters. A Money Bill can be introduced only in Lok Sabha. After passing a Money Bill, the Lok Sabha sends it to the Rajya Sabha and the Rajya Sabha has to give its opinion on the bill within 14 days. The Rajya Sabha can delay the Money Bill only for 14 days and not more. If a dispute arises regarding the question as to whether a bill is a Money Bill or not, the Speaker of the Lok Sabha gives the decision. His/her decision is final. In passing the budget also the Lok Sabha is all in all. No new

tax can be imposed, increased or reduced without the approval of the Lok Sabha. The Lok Sabha has complete control on the financial matters of the country.

- Executive Powers

The Article 75(3) provides that the Council of Ministers is collectively responsible to the Lok Sabha. It is the Lok Sabha which can move no confidence motion against the Council of Ministers. The members of the Lok Sabha can move adjournment motions, introduce call-attention motions and can put questions to the executive in order to exercise their control over the government.

- Amendment Powers

The Lok Sabha plays an important role in case of amendment of the Constitution. Both Rajya Sabha and Lok Sabha have equal power regarding amendment of the Constitution. A Constitution amendment bill can be introduced in either House of the Parliament. An amendment bill must be passed by both the Houses sitting separately.

- Electoral Powers

The Lok Sabha has some electoral powers. The elected members of the Lok Sabha together take part in the election of the President. The Vice-President of India is elected by the members of both the Houses of Parliament.

- Judicial Powers

The Lok Sabha has a number of judicial powers and functions. In case of removal of the President, Vice-President, Judges etc., both the Houses have equal power.

- Miscellaneous Powers

Apart from the above mentioned powers and functions, the Lok Sabha has some other powers and functions. These are:

Lok Sabha plays an important role in the formation of the Council of Ministers.

The Lok Sabha has to pass the Ordinance declared by the President.

The emergency declaration of the President is sent to the Lok Sabha for its approval.

After studying the powers and functions of the Lok Sabha, we may come to a conclusion that the Lok Sabha is more powerful than the Rajya Sabha. The Lok Sabha has monopoly in case of financial powers.

5.6 RELATION BETWEEN TWO HOUSES OF THE PARLIAMENT

India's Parliament is bicameral. Of the two houses, the Rajya Sabha (the Council of States) is the Upper House and the Lok Sabha (the House of the People) is the Lower House.

Between the two Houses of the Parliament, the Lok Sabha represents the people directly. The Lok Sabha is the popular House. The members of the Lok Sabha are elected by the people. The members of the Rajya Sabha are indirectly elected. The members of the Rajya Sabha

(Upper House) are elected by the elected members of the Legislative Assembly of the States in accordance with the system of proportional representation by single transferable vote.

Thus, the Lok Sabha, which consists of the directly elected representatives of the people, naturally commands more respect as a democratic institution. Again, the Rajya Sabha has a maximum strength of 250 members while the strength of the Lok Sabha is 545. Thus, numerically also the Lok Sabha occupies a better position.

In respect of powers and functions in certain matters both the Houses enjoy equality, in certain others, the Lok Sabha occupies a better position than the Rajya Sabha and only in a very few cases the Council of States enjoys powers which the House of the People does not have.

The Rajya Sabha enjoys co-equal powers with the Lok Sabha in the field of ordinary law making. An Ordinary Bill may be introduced in either House or by any member. A non-money bill cannot become a law unless it is passed by the Rajya Sabha. If there is any difference of opinion in both the Houses, the President can call for a joint session of the Parliament. The speaker of the House of the People presides over a joint sitting. The Lok Sabha enjoys an advantageous position due to its higher strength. In India, a Money Bill is introduced only in Lok Sabha. After passing a Money Bill, the Lok Sabha sends it to the Rajya Sabha. The Rajya Sabha has to give its opinion on the bill within 14 days. Otherwise the Bill is sent to the President for his/her assent by the Lok Sabha. The Rajya Sabha can give advice for making some changes in the Money Bill. The Lok Sabha may or may not accept its opinion. Upper House (Rajya Sabha) can delay the Money Bill only for 14 days and not more. In fact, the powers of Rajya Sabha in financial matters are advisory in nature.

Both Rajya Sabha and Lok Sabha have equal power in case of amendment of the Constitution. A Constitution amendment bill can be introduced in either House of the Parliament. An amendment bill must be passed by both the Houses sitting separately.

The Lok Sabha exercises full control over the executive i.e. the Council of Ministers. The Rajya Sabha can indirectly control the government. The Rajya Sabha may exercise some influence over the Council of Ministers but has no control over it. The Union Council of Ministers is collectively responsible before the Lok Sabha for its activities. The members of both the Houses can move adjournment motions, introduce call-attention motions and can put questions to the executive in order to exercise their control over the government. In extreme cases, Lok Sabha alone can pass a no-confidence motion against the Council of Ministers. The ministry can remain in office as long as it enjoys the confidence of the Parliament. Rajya Sabha cannot pass a vote of no confidence against the ministry.

The Lok Sabha occupies a position of superiority in the case of Money Bills. A Money Bill can be introduced only in Lok Sabha. After passing a Money Bill, the Lok Sabha sends it to the Rajya Sabha and the Rajya Sabha has to give its opinion on the bill within 14 days. Rajya Sabha can delay the Money Bill only for 14 days and not more. The powers of the Rajya Sabha in financial matters are advisory in nature. In the financial sphere, the Rajya Sabha is a comparatively weak House. The powers and functions of the Rajya Sabha are limited in case of financial matters.

Both the Houses of Parliament participate in the election of the President and the Vice-President of India. In the case of removal of President and Vice-President both the Houses have also equal powers. In the case of removal of the Judges of the Supreme Court and High Courts, Chief Election Officer etc. both the Houses possess equal power.

However, there are some matters in which the Rajya Sabha enjoys more authority than the Lok Sabha. According to Article 312, for national interest, the Rajya Sabha can create one or more All India Services. Again the Rajya Sabha has the right to discuss the annual reports of the Union Public Service Commission, Finance Commission etc. According to Article 249, in the national interest, the Rajya Sabha may pass a resolution empowering Parliament to make laws on subjects mentioned in the State list.

From the above discussion of the powers of the Rajya Sabha and the Lok Sabha, it may be concluded that Rajya Sabha is less powerful and influential than the Lok Sabha. However, the co-operation between the two Houses is of vital importance for the smooth functioning of the Parliament.

LET US KNOW

7 members are elected from Assam to Rajya Sabha and 14 members are elected from Assam to Lok Sabha.

CHECK YOUR PROGRESS

Q. 1: Who is the Chairman of the Rajya Sabha?

.....

.....

Q. 2: Money Bill can only be introduced in the _____. (Fill in the blank).

.....

.....

Q. 3: Explain how the Parliament exercises control over the executive. (Within 50 words)

.....

.....

5.7 THE SPEAKER OF THE LOK SABHA

The Speaker is the presiding officer of the House of the People. Article 93 of the Constitution of India deals with the offices of the Speaker and the Deputy Speaker of the Lok Sabha.

The Speaker is the most powerful man in the Lok Sabha. The office of the Speaker is of great honour, dignity and authority.

5.7.1 Election

The Speaker is elected by the members of the Lok Sabha, in its first session, from amongst themselves. The Speaker of the Lok Sabha is elected on party basis. The Speaker is normally elected unanimously.

The tenure of the Speaker is equal to the tenure of the Lok Sabha, i.e. 5 years. The Speaker can resign from his/her office at any time before the completion of full tenure.

5.7.2 Powers and Functions of the Speaker

The powers and functions of the Speaker of the Lok Sabha may be enumerated as under.

- To Preside over the Meetings of the House

The Speaker presides over the sessions of the Lok Sabha and conducts its proceeding according to the Rules of Procedure. He/she also presides over the joint session of the two Houses.

- To Conduct the Business of the House

The Speaker conducts the business of the House. He/she determines the order of business in the House and the time limit for the speeches to be delivered by the members. He/she allows the members to introduce the bills or to move motions. He/she can warn the members against the use of unparliamentarily language. No motion for adjournment or a debate on a bill can be taken up without his/her consent.

- To Maintain Discipline in the Lok Sabha

The Speaker maintains discipline in the House. No member can speak in the meeting without the consent of the Speaker. The Speaker may give his/her rulings to settle a matter.

- Decision about a Money Bill

The Speaker certifies whether a particular bill is a Money Bill or not and his/her certificate is final in this regard and it cannot be challenged inside or outside the House.

- To Fix the Agenda of the House

The Speaker fixes the agenda of the meetings of the House, in consultation with other members and committees of the House.

- Power to Adjourn the House

The Speaker may adjourn the meeting of the House in the absence of quorum. In case of grave disorder, he/she can adjourn the House.

- Channel of Communication between the President and the Parliament

The Speaker is the Channel of Communication between the President and the Parliament. The members of the Lok Sabha can approach the President through the Speaker.

- Administrative Functions

The Speaker has some administrative functions. He/she has to supervise the works of the officers of the Lok Sabha. It is the duty of the Speaker to make arrangements for sittings of the House and its Committees.

- To Exercise a Casting Vote

The Speaker does not take part in the voting on bills. But, he/she has a casting vote in case of a tie.

- To Constitute various Committees

The Speaker plays an important role in the composition of the committees. He/she constitutes various committees of the Lok Sabha and appoints their Chairmen. He/she himself/herself presides over some of the committees.

- Permission to Ask Questions

No member can speak in the meeting without the consent of the Speaker. A member may ask questions, supplementary questions and move motions of adjournment. For the exercise of this power, the permission of the Speaker is required. However, no member can speak in the meeting without the consent of the Speaker.

- Control over Visitors' Galleries

The Speaker controls Visitors' Galleries. He/she regulates the lobbies and galleries meant for the press and the public.

5.7.3 Position of the Speaker

The Speaker of the Lok Sabha enjoys greater prestige, honours and dignity. He/she is the symbol of the prestige and honour of the House.

As a presiding officer of the House, he/she commands a great deal of prestige and authority. The Speaker is the custodian of the House and an impartial arbitrator of its proceedings. He/she is the guardian of the House. Within the House, the Speaker acts neither as the man of the majority nor of the opposition but as the man of the House who is committed to preserve the dignity of the House. The Speaker represents the dignity of the House and its freedom. He/she acts as the representative of the House and as its impartial Chairman.

The Speaker presides over the sessions of the Lok Sabha. He/she also presides over the joint session of the two Houses. His/her responsibility is very high in maintaining the order and decorum of the House.

The position of the Speaker also depends on his/her honesty, personality, intelligence and impartiality. The Speaker holds a very important position in the country. In short, he/she is an honoured person both in and outside the Parliament.

LET US KNOW:

Ganesh Vasudev Mavalankar was the first Speaker of the first Lok Sabha (May 15, 1952 – February 27, 1956).

5.8 LEGISLATIVE PROCEDURE OF THE INDIAN PARLIAMENT

Law making is an important function which is increasing day by day in view of the goal of welfare state. The Union Parliament is the Legislative organ of the Union of India and as such enjoys extensive legislative powers as per the provisions of the Constitution of India. The Union Parliament has exclusive legislative jurisdiction over 97 subjects included in the Union or Central list. It has co-equal jurisdiction with the State Legislatures over 52 (47+5) Concurrent subjects. The Union Parliament not only makes laws regarding the Union subjects and the Concurrent subjects, but it can also make laws regarding subjects mentioned in the State List. This can be done both in peace time and during the operation of a proclamation of emergency. Besides, the Union Parliament can also make laws on all those subjects i.e. Residuary Subjects', which are not mentioned in any of the three list of subjects.

Article 107 to 122 of the Indian Constitution deal with the legislative procedure or law making procedure in Indian Parliament. A Bill is nothing but a draft of a proposal for legislation, which becomes an Act or a law when duly enacted by the Legislature. The Parliament of India enjoys law making powers over all the subjects of Central List, Concurrent List and over the Residuary subjects. The Parliament can also exercise this power on the subjects of State List, in exceptional circumstances, as specified by the Constitution of India. The Bills that are introduced in the Parliament can be classified into two kinds- (a) Ordinary Bill and (b) Money Bill. An Ordinary Bill concerns the matters of general public importance and does not contain any proposal for taxation or expenditure of public funds. On the other hand, a Money Bill is related to the imposing, reducing or repealing of taxes and expenditure of public funds. Again, Ordinary Bills are subdivided as Government or Public Bill and Non-Government or Private Member's Bill. A Bill, whether an Ordinary or a Money Bill must pass through a number of stages to become an Act. However the enactment procedures of the Ordinary and Money Bills are not the same. Therefore, both the procedures are separately discussed below.

Stages in the Passage of Ordinary Bill

In Indian Parliament An Ordinary Bill has to pass through the following stages to become an Act:

An Ordinary Bill has to pass through the following stages to become an Act:

¬ Introduction or First Reading An Ordinary Bill can be introduced in either House of the Parliament. A Bill introduced by the Minister concerned is known as Government or Public Bill, for which he/she has to give a formal notice of introduction in the House. On the other hand, a Bill introduced by a member, other than a Minister is known as Private Member's Bill. However, he/she has to give one month's notice to the presiding officer for the introduction of a Bill. A Government or Public Bill is drafted in the concerned department in consultation with the law department and also, if necessary, with other departments on the other hand drafting of a Private Member's Bill is the responsibility of the member concerned. In any case, every Bill can only be introduced with the permission of the presiding officer of the House (Speaker of the Lok Sabha or The Chairman of the Rajya Sabha). After getting permission, the mover of the Bill can introduce the Bill in the House and read out the title of the Bill only. At this stage, there is no debate or discussion on the Bill. It must also be published in the Gazette of India. The Presiding officer of the House may allow some Bills to be published in the gazette even before the introduction or First Reading. Such bills don't require formal introduction in the Parliament. Of Course, a private member's Bill may be referred to a committee for consideration and report before publication in the Gazette. The introduction of the Bill is known as First Reading of the Bill. ¬

Second Reading and Committee Stage

This is the most important stage in the life of a Bill. Normally Second Reading takes place after an interval of two days after the First Reading. After the permission is granted by the Presiding Officer of the House, the mover of the Bill may propose any one of the following motions:

The Bill may be taken for consideration by the House at once.

It may be sent to a Select Committee of the House.

If may be sent to a joint Select Committee of the two Houses.

[Iv]It may be circulated for eliciting public opinion.

The adoption of any of the above motions depends upon the urgency and importance of the Bill. Very rarely Bills are taken up for consideration straight way. If the fourth motion or proposal is adopted, the secretariat of the concerned House requests the State Governments to publish the Bill in the State Gazettes inviting opinions from local bodies and recognized associations. Such opinions are circulated among the members of the House. Usually, a Bill is referred either to a Select Committee or to a Joint Select Committee. The committee consisting of both ruling and opposition members proportions to their strength in the concerned House where it originates. When a Bill is referred to a committee, it scrutinizes the Bill thoroughly and carefully. The committee may accept or may propose amendments on the Bills, but cannot alter the principles or policies underlying the Bill. After completing the discussion, it sends back the Bill to the House along with their report. The Bill is then circulated

among the members of the House along with the report or recommendations of the committee. The mover of the Bill may propose that the Bill as reported by the committee be taken into consideration. After this motion is carried, the Bill is taken up for consideration clause by clause. Every clause is debated upon, amendments are proposed, which may be accepted or rejected by the House. Voting is held on each clause or groups of clauses taken together. When, the House thus approves the Bill as a whole, it is put to the vote of the House. When, the House thus approves the Bill, the Second Reading is over. This stage is very crucial, because during this stage, a bill assumes its final shape. Before discussing about the Third Reading stage of the law making procedure, we must discuss about the committee system of the Union Parliament and how they play a vital role in the field of Legislation. The committees perform a vital function in modern Legislatures. Because in modern times, the works of the Legislature have become complicated. The committees provide technical knowledge and expert advice to the Legislatures and also save it's time. The committee system differs from country to country. Our Parliament has developed its own system of committee to cope with tremendous work. Being a deliberative body, it is realised that it cannot do detailed serious work amidst a large number of members in a dispassionate manner. Therefore, the Union Parliament like its counterparts in other democratic countries, has constituted a good number of committees in order to discuss in detail various matters in small groups; which cannot be taken up by a large body. But, we must remember that, committees are subordinate bodies created by Parliament to assist in its legislative work. These committees are small in size and consist generally of experts and therefore they work very efficiently. The committees make parliamentary work smooth, efficient and expeditious. They provide a certain expertise to the deliberations of the Parliament. They have increased the efficiency of the Parliament. Now a days, the committees have become inseparable parts of the Parliament. The Parliament cannot function efficiently without the help of these committees. In the words of Thomas Reed, "Committees are the eyes, the ears and the hands of Legislature and sometimes these become the very brain of the legislature also."

There are several committees of our Parliament which are involved in law making procedure. These are – (i) Business Advisory Committee

(ii) Select Committee(iii) Joint Committee

(iv) Committee on Private Member's Bill

(v) Committee on Subordinate Legislations.

Business Advisory Committee: The main function of this committee is to control the time-table of the House. The Committee make recommendations as to how much time should be given for the discussion of the various stages of a Bill.

Select Committee: These committees are constituted when a motion that the said Bill be referred to a Select Committee is passed by the House. The Committee examines the Bill clause by clause and may make substantial amendments on the Bill, then submits its report

to the House. The Committee can also call for evidences or witnesses – official or non-official in connection with a Bill.

[iii] Joint Committee: Very often, a joint Select Committee is constituted by the two Houses of the Parliament for undertaking a review of an important public bill. This committee helps the House to perform the business of legislation smoothly. It avoids duplication of legislation and thereby saves time of the Parliament.

Committee on Private Member's Bill: This Committee determines the fate of all private-member's bills. In other words, the main function of the Committee is to examine or scrutinise the bills presented by the private members of the House. The Committee sorts out the bills according to their contents, urgency and importance and recommends to the House as to which bill is to be discussed. (v) Committee on Subordinate Legislations: The Legislature delegates some of its law making powers to the Executive. Accordingly, the Executive makes laws on the basis of the powers delegated to it by the Parliament. This system of law making is known as Subordinate Legislation or Delegated Legislation. But, this system involves the danger of a possible misuse of the delegated powers by the Executive.

That is why, the Parliament always want to keep a control over Delegated Legislation. For this purpose, the Parliament appoints the 'Committee on Subordinate Legislation'. The main function of this Committee is to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules, bye-laws delegated by the Parliament to the Executive are being properly exercised within the limits of such delegation or not From the above discussion, we can now realise how the Parliamentary Committees play an important role in law-making process. These Committees really relieve the Parliament of its burden. They also save time and give expert opinion on the subject. ¬

Third Reading

At this stage, the mover of the Bill may propose that the Bill be passed. This stage of the Bill is a formal stage. Therefore, details are not discussed nor are amendments moved. However, some verbal amendments may be made. The debate is of general character either in support of the Bill or against the Bill. No bill is generally rejected in this stage. If the majority of members, present and voting, accept the Bill, the Bill is regarded as passed by the House and referred to the other House for consideration after duly signed by the Chairman or Speaker of the House. ¬ Procedure in the Other House A Bill passed by one House must also be passed by the other House exactly in the same process. After consideration, if the other House passes the Bill without any amendments, then it is assumed that the Bill is passed by both the Houses of the Parliament. The other House may seek amendment and send back the Bill with amendments. In this case, the 1st House, where the Bill was originated, if accepts the amendments made by the other House, then it is regarded that the Bill has been passed by both the Houses of the Parliament. If the other House takes no action and keeps it pending for more than six months or if the previous House does not accept the amendments made by

the other House, then the President of India may summon a joint session of the two Houses of Parliament to decide the fate of the Bill. If in the joint session, the Bill is passed with a majority of votes, it is sent for the assent of the President. Assent of the President When a Bill is finally passed by both the Houses of the Parliament, it is sent to the President for his/her assent. Because without his/her assent no Bill can become an Act. The President may give his/her assent to the Bill, he/she may return the Bill to the Parliament for reconsideration with or without his/her recommendation. The Parliament is not bound to adopt the recommendations of the President.

Therefore, if the Parliament passes the Bill for the second time, with or without amendments by simple majority; the President must give his/her assent to the Bill. In this context, we must always remember that, the Union Parliament is not a sovereign legislature as it exercises only those law-making powers which are conferred by the Constitution. The laws made by the Parliament are subject to Judicial Review of the Supreme Court of India, which can reject any law, in case it is found to be unconstitutional. Besides, the Lok Sabha and the Rajya Sabha enjoy equal law making powers in respect of Ordinary Bills. A defeat of any Govt. Bill in the Lok Sabha is regarded as the Vote of no-confidence against the Council of Ministers; which may lead to the fall of the government. But, if a Government. bill is defeated in the Rajya Sabha, the Council of Ministers remains unaffected.

Check Your Progress

Q.4: What is the main function of the Union Parliament? .....
.....

Q.5: How many subjects are included in the Union list over which the Parliament can make law? .....

Q.6: What do you mean by a Bill? .....

Q.7: An Ordinary Bill can be introduced only in the House of the people. (True/False) .....

Q.8: Mention the difference between the Public Bill and Private Member's Bill. .....

Q.9: Mention the names of the Parliamentary Committees which are involved in law making process. .....

LET US KNOW

Annual Budget is regarded or considered as a Money Bill, which is introduced in the Lok Sabha by the Finance Minister with prior approval from the President

Legislative Procedure Regarding Money Bill

According to the provisions of the Constitution of India (Article 110) a Money Bill is one which deals with the imposition, reducing or increasing, repealing of taxes, borrowing, custody and expenditures of the Consolidated or Contingency Fund of India. A Money Bill is considered as the government or public Bill, therefore only the Ministers can introduce it in the House. Of course, a Money Bill can only be initiated in the House of the people (Lok Sabha) with the prior consent of the President. No Money Bill can originate in the Council of States (Rajya Sabha). Like an Ordinary Bill, a Money Bill also has to pass through all these stages in the Lok Sabha. The members of the Lok Sabha may criticise the financial policy of the Government, amendments may be made on the Bill. After this, when a Money Bill is passed by the Lok Sabha, it is sent to the Rajya Sabha for ratification under the signature of the Speaker. In respect of Money Bill, the Rajya Sabha enjoys very limited power. In case of any proposed alterations,it must send back a Money Bill to the Lok Sabha within 14 days of its receipts. If it does not return the Money Bill to the Lok Sabha within 14 days period, it is considered to have been passed by both the Houses of Parliament. Of course, the Rajya Sabha has the power to suggest certain modifications to a Money Bill, but the Lok Sabha may or may not accept such modifications. Thus, the Rajya Sabha plays only a delaying role in the sphere of financial legislation. After being passed by both the House of the Parliament, a Money Bill is sent to the President for his/her assent, along with a certificate from the Speaker of the Lok Sabha that this Bill is a Money Bill. The President cannot return the Money Bill without his/her assent because prior permission was taken from him/her to introduce the Money Bill in the Lok Sabha.

CHECK YOUR PROGRESS

Q. 10: Who can declare whether a bill is a Money Bill or not?

.....

Q. 11: Who presides over the joint session of the Union Parliament?

....

5.8 LET US SUM UP

 The Parliament of India is bicameral. The Upper House is called the Rajya Sabha and the Lower House is called the Lok Sabha.

 Article 79 of the Indian Constitution provides for a Parliament of India consisting of the President and two Houses, namely, the House of the People (Lok Sabha) and the Council of States (Rajya Sabha).

 The main function of the Indian Parliament is to make laws.

 The Constitution of India vests wide powers and functions in the Parliament. But, the laws of the Parliament are subject to the judicial review.

 Article 80 of the Indian Constitution describes the composition of the Rajya Sabha. The Rajya Sabha has a maximum strength of 250 members.

 The Article 81 of the Constitution of India deals with the composition of the House of the People. The maximum strength of the Lok Sabha is 552 members.

 The Lok Sabha is more powerful and influential than the Rajya Sabha. The Lok Sabha has monopoly in case of financial power.

 The co-operation between the two Houses is of vital importance for the smooth functioning of the Parliament.

 The Speaker presides over the meetings of the Lok Sabha. He/she enjoys a position of respect and dignity.

 The Union Parliament is the Legislative organ of the Union of India and as such enjoys extensive legislative powers as per the provisions of the Constitution of India.

 The Union Parliament has exclusive legislative jurisdiction over 97 subjects included in the Union or Central list.

 Article 107 to 122 of the Indian Constitution deal with the legislative procedure or law making procedure in Indian Parliament.

 The Bills that are introduced in the Parliament can be classified into two kinds- (a) Ordinary Bill and (b) Money Bill.

 A Money Bill can only be initiated in the House of the People (Lok Sabha) with the prior consent of the President. No Money Bill can originate in the Council of States (Rajya Sabha).

 In respect of Money Bill, the Rajya Sabha enjoys very limited power.

 After being passed by both the Houses of the Parliament, a Money Bill is sent to the President for his/her assent and after getting the assent of the President, it becomes an Act.

9 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt.Ltd.

2) Ghai, K.K.(2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K.K.(2006). *Select Constitutions.* New Delhi: S. Chand and Company.

4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

5.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The Vice-President of India

Ans to Q No 2: Lok Sabha.

Ans to Q No 3: The Parliament exercises control over the executive through various measures. The Council of Ministers is collectively responsible before the Lok Sabha for its activities. The Members of the Parliament can move adjournment motions, introduce call-attention motions and can put questions to the executive in order to exercise their control over the government. In extreme cases, Lok Sabha alone can pass a no confidence motion against the Council of Ministers.

Ans to Q No 4: Law-Making

Ans to Q No 5: 97 subjects

Ans to Q No 6: A Bill is a proposal for legislation, which becomes an Act or law when duly passed by both the Houses of the Parliament and after that the President gives his/her assent to it

Ans to Q No 7: False

Ans to Q No 8: A Bill introduced by the Minister concern is known as Public Bill and a Bill introduced by a member other than a Minister is known as Private Member's Bill.

Ans to Q No 9: Business Advisory Committee, Select Committee, Joint Committee, Committee on Private Member's Bill and Committee on Subordinate Legislations

Ans to Q No 10: The Speaker of the Lok Sabha.

Ans to Q No 11: The Speaker of the Lok Sabha.

5.11 MODEL QUESTIONS

A. Very Short Questions

Q. 1: Which article of the Indian Constitution provides for a Parliament in India?

Q. 2: Rajya Sabha is more powerful than the Lok Sabha (True/ False).

Q. 3: Money Bill can be introduced only in the ……. Sabha. (Fill in the blank).

B. Short Questions (Answer each in about 150-200 words)

Q. 1: What are the two special powers of the Rajya Sabha?

Q. 2: Briefly explain the procedure for passing the Money Bill in the Lok Sabha.

Q. 3: Write a note on executive power of the Lok Sabha.

Q 4. Write short note on the role of the Rajya Sabha regarding Money Bill.

Q. 5: Briefly explain the relationship between the two Houses of the Parliament regarding law making procedure

C. Long Questions (Answer each in about 300-500 words)

Q. 1: Discuss the composition, powers and functions of the Rajya Sabha.

Q. 2: Describe the composition, powers and functions of the Lok Sabha.

Q. 3: Examine the role of the Parliament in Indian Democracy.

Q. 4: Discuss the powers and functions of the Speaker of the Lok Sabha.

Q. 5: Describe in short how a Money Bill is passed in the Parliament.

Q. 6: Discuss the procedure of Legislation of an Ordinary Bill in Indian Parliament.

Q. 7: Discuss the important role played by the various Parliamentary Committees in the process of Law-making.

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UNIT 6: SUPREME COURT

6.1 Learning Objectives
6.2 Introduction
6.3 The Supreme Court
6.3.1 Composition
6.3.2 Qualifications
6.3.3 Appointment and Removal of Judges
6.3.4 Powers and Functions of the Supreme Court
6.3.5 As a Guardian of the Constitution and Fundamental Rights
6.4 Measures to Ensure Independence of the Judiciary in India
6.5 Let Us Sum Up
6.6Further Reading
6.7Answers to Check Your Progress
6.8 Possible Questions

6.1 Learning Objectives

•After going through this unit you will be able to: • know the composition, powers and functions of the Supreme Court of India
• explain the measures to ensure independence of the judiciary in India .
•describe the role of the Supreme Court as a guardian of the Constitution and the Fundamental Rights of the Indian people.

6.2 Introduction

India, we have an independent and integrated judicial system. Unlike other federations, India has a single and unified judicial system for the entire country. There are High Courts at the State level and further below are subordinate courts. In this unit, we shall discuss the various aspects regarding the Supreme Court, will learn about the independence of the judiciary as prevalent in India.

6.3 The Supreme Court

The Supreme Court is the highest court of appeal in India. Let us discuss the following aspects regarding the Supreme Court of India:

6.3.1 Composition

At present the total sanctioned strength of the Supreme Court is 31 consisting of the Chief Justice and 30 other judges appointed by the President. The President may appoint an adhoc judge at the request of the Chief Justice.

6.3.2 Qualifications

To be a judge of the Supreme Court, one must be
• a citizen of India
• a judge of a High Court for at least five years; or
• an advocate of a High Court for at least ten years
• a distinguished jurist in the opinion of the President.

6.3.3 Appointment and Removal

A judge of the Supreme Court retires at the age of 65 years. He may also resign from his office. Every judge of the Supreme Court is appointed by the President of India after consultation with such judges of the Supreme Court and the High Courts of States as the President may deem necessary for the purpose. However, in the matter of appointment of a judge other than the Chief Justice, consultation of the Chief Justice of India by the President is obligatory. A judge of the Supreme Court can also be removed by the President from his/her position only on the ground of proved misbehaviour or incapacity if a resolution in this regard is passed by the Parliament supported by two-thirds of the members present and voting in each House and the majority of the total membership of each House.

6.3.4 Powers and Functions of the Supreme Court

The Supreme Court enjoys enormous powers and functions. The jurisdiction of the Supreme Court may be categorised as Original, Appellate and Advisory. It is discussed below:

Original Jurisdiction: Under this jurisdiction, the Supreme Court can settle disputes: (a) between the Centre and one or more States;
(b) between the Centre and any State or States on the one side and one or more other States on the other; or
(c) between two or more States.

Appellate jurisdiction : Under this jurisdiction, the Supreme Court can hear appeals on the following cases: (a) Constitutional Cases: An appeal can be made to the Supreme Court in cases which relate to the interpretation of the Constitution.

(b) Civil Cases: In a civil cases also, an appeal can be made to the Supreme Court against a decision of a High court. In these cases, the High Court must certify that the case involves a substantial question of law as to the interpretation of the Constitution.

(c)Criminal Cases: An appeal can be made in the Supreme Court against any judgement, final order or sentence given by a High Court. In criminal matters, ordinarily, the High Courts are the

final courts of appeal. But, the Supreme Court has been given the special power by the Parliament to hear appeal against the decisions of the High Courts in criminal matters.

Advisory Jurisdiction: The Supreme Court has some advisory powers also. The President of India can seek the opinion of the Court if there is a question of law or fact where the interpretation of the Constitution is involved. The Supreme Court may give its opinion on the President's question but it is not binding on any party.

Court of Records: The Supreme Court also acts as the Court of Records. The judgements of the Supreme Court are recorded and considered as authoritative and serve as cases, laws and proceedings. These records have great evidentiary value.

Directions, Orders or Writs: The Supreme Court is regarded as the protector of the Fundamental Rights of the citizens. For this purpose, it has been given the power of issuing certain writs like that of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. It can also issue orders and directions.

Contempt of Court: The Supreme Court can punish anyone who is found to be indulged in contempt of the court. Contempt of court includes criticism of a judgement of the court, criticism of judges and the court, passing derogatory remarks against the court, refusing to abide by the decisions of the court, etc.

Review of Judgment and Order: The Supreme Court is empowered to review any judgement given by it earlier. It can do this if —— (a) some new facts or evidences appear; (b) a fault is found according to its own record ; and (c) there are sufficient reasons for review.

6.3.5 **As a Guardian of the Constitution and Fundamental Rights**

The Supreme Court of India is regarded as the guardian of the Constitution. It is the supreme or final interpreter of the Constitution. The interpretation of the Constitution given by the Supreme Court is to be respected.

The Supreme Court has been given the power to decide whether a law passed by the Parliament or the State legislatures and the executive decisions taken by the Central or State government is constitutional or not. If such a law or executive decision is found unconstitutional, then it can declare it as invalid. Even if the victim or affected parties do not file cases, any one from the general public, not involved in the case, may file litigation (law suit), if it is in the general public interest. It is the privilege of the Court to entertain or not to entertain the application for Public Interest Litigation.

The Supreme Court also acts as the guardian and protector of the Fundamental Rights of the citizens. It has been given the power of judicial review in order to protect the Constitution from

any law passed by the legislature or a decision taken by the executive. It can issue directions, orders and writs to protect the Fundamental Rights. The Supreme Court can issue Writs like Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The Supreme Court has also got the power to penalise for contempt of court. According to this power, it can punish anyone for criticizing the judgements of the court, criticizing the judges and the court, passing derogatory remarks against the court, refusing to abide by the decisions of the court, etc.

CHECK YOUR PROGRESS

Q 1: Which is the highest Court of appeal in India?
..... Q 2: India has an integrated judiciary. (True/False)
..... Q 3: What is the retirement age of a judge of the Supreme Court?
.....
Q 4: What are the qualifications to be a judge of the Supreme Court?
.....
.....

LET US KNOW

1. Two recent devices in the judicial system of India are the Lok Adalats and Public Interest Litigation. They provide speedy and affordable judicial service to the poor and the downtrodden.

2. A writ is a formal written court order. The writ of Habeas Corpus is a remedy against wrongful detention of a person. The writ of Mandamus is an order given by the court to some subordinate authority to perform an act which falls within its jurisdiction. The writ of Prohibition is issued by a superior court to a subordinate court to prevent it from dealing with a matter over which it has no jurisdiction. The writ of Quo-Warranto is issued by the court to prevent a person from acting in a public office to which he/she is not entitled. The writ of Certiorari is issued by a superior court to a subordinate one to submit the record of a case for its proper consideration.

6.4 Measures to Ensure Independence of the Judiciary in India

The Constitution of India has provided for an independent and impartial judiciary in India. For ensuring independence of the judiciary, some provisions have been made which can be discussed as follows:
Appointment of judges: In India, the judges of the Supreme Court and the High Courts are appointed on the basis of prescribed qualification. They are appointed by the President of India.

Security of tenure: The President appoints the judges but he cannot dismiss them during their term of office without a resolution passed by the Parliament in this regard.

Economic Security: The judges are paid handsomely. The salary of the judges is charged from the Consolidated Fund of the Union and the States. Their salary cannot be decreased during their term of office.

Privileges: Various privileges have been given to the judges like allowances, rent free residence, etc. Adequate steps are taken for the protection of the judges.

Contempt of Court: The judges cannot be criticized in public for the judgement they give while deciding cases. The Supreme Court and the High Courts can punish anyone for contempt of the Court.

Independence of judiciary is very important in a democracy as its main responsibility is to give justice to the people. Therefore, provisions should be made so that the judiciary cannot be controlled by either the executive or the legislature and it can discharge its duty fairly and impartially.

CHECK YOUR PROGRESS

Q 5: In India, the Supreme Court while exercising its power of judicial review has to follow the principle of “procedure established by law.” (True/ False)
.....

Q 6: Mention any two means whereby the independence of judiciary is ensured.
.....
.....

Q 7: The Supreme Court cannot declare any legislation as invalid if it violates the provisions of the Constitution. (True/False)

6.5 LET US SUM UP

• The Constitution of India has provided for an independent and impartial judiciary in India.
• In India, we have an independent and integrated judicial system. Unlike other federations, India has a single and unified judicial system for the entire country.
• The Supreme Court is the highest court of appeal in India. Every judge of the Supreme Court is appointed by the President of India.
• The jurisdiction of the Supreme Court may be categorised as Original, Appellate and Advisory. The Supreme Court can issue directions, orders or writs and acts as the guardian of the Constitution. It also has the power of judicial review and that of entertaining Public Interest Litigation suits.
•For ensuring independence of the judiciary, some provisions have been made in terms of security of tenure, contempt of court, etc.

6.6FURTHER READING

1) Chander, Prakash.(2000). Indian Government and Politics. New Delhi :Cosmos Bookhive Pvt. Ltd.
2) Ghai, K.K.(2007). Indian Government and Politics.New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K. (2006). Select Constitutions.New Delhi : S. Chand and Company.
4) Pylee, M,V. (2006). Constitutional Government in India. New Delhi:S. Chand and Company.

6.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The Supreme Court
Ans to Q No 2: True
Ans to Q No 3: 65 Years of age
Ans to Q No 4: To be a judge of the Supreme Court, one must be
(i) a citizen of India
(ii) a judge of a High Court at least for five years; or
(iii) an advocate of a High Court for at least ten years
(iv) a distinguished jurist in the opinion of the President.
Ans to Q No 5: True

Ans to Q No 6 (i) Appointment of judges: In India, the judges of the Supreme Court and the High Courts are appointed on the basis of prescribed qualification. They are appointed by the President of India. (ii) Security of tenure: The President appoints the judges but he can not dismiss them during their term of office without a resolution passed by the Parliament in this regard.

Ans to Q No 7: False

6.8 POSSIBLE QUESTIONS

A) Very Short Questions

Q 1: Who appoints the judges of the Supreme Court of India?
Q 2: Who can remove a judge of the Supreme Court from office?

B) Short Questions– (Answer each question in about 150 words)

Q 1:Discuss the Original, Appellate and Advisory functions of the Supreme Court of India?
Q 2: How is the independence of judiciary in India maintained?

C) Long Questions– (Answer each question in about 300-500 words):

Q 1: Discuss the composition, powers and functions of the Supreme Court of India

UNIT 7: JUDICIAL REVIEW AND JUDICIAL ACTIVISM

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Judicial Review

7.3.1 Meaning

7.3.2 Judicial Review in India

7.4 Judicial Activism

7.4.1 Meaning

7.4.2 Judicial Activism in India

7.5 Public Interest Litigation

7.6 Let Us Sum Up

7.7 Further Reading

7.8 Answers to Check Your Progress

7.9 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the judicial system in India
- understand the process of judicial review and
- understand the new developments, such as, public interest litigation and judicial activism.

7.2 INTRODUCTION

India has established an integrated judicial system. At the top of this system stands the Supreme Court, then comes the High Courts and after that other Lower Courts. One important feature of the Indian judicial system is the provision of judicial review which enables the courts to examine the constitutionality of the laws made by the legislature and the executive actions. In the process of its working, some new features have emerged in the Indian judicial system, such as,

Public Interest Litigation and Judicial Activism. We are going to discuss all these in the following heads:

7.3 JUDICIAL REVIEW

7.3.1 Meaning

The Constitution of India has provided for a special power to the Supreme Court and the High Courts. According to this power, the courts can examine whether a law passed by the legislature and an action taken by the executive are in consonance to the provisions of the Constitution or not. If the courts find that they are against the provisions of the Constitution or violate the Constitution, then they declare them as unconstitutional or invalid. This power has made the Supreme Court and the High Courts the guardian of the Indian Constitution.

7.3.2 Judicial Review in India

This power of the judiciary has helped to impose a certain amount of responsibility upon the legislature and the executive. The legislature while formulating laws must always keep it in mind that the laws do not go against the Constitution. Likewise, the executive should also take actions as per the provisions of the Constitution.

The power of judicial review of the Indian judiciary is limited. The Supreme Court and the High Courts can exercise this power only on two grounds. They are – i) whether the law or the executive action which has come under scrutiny falls within the competence of the authority that has framed it and ii) whether it is consistent with Part III of the Constitution which deals with the Fundamental Rights of the citizens.

The Indian judiciary does not have unlimited power of judicial review. It has to exercise its power by following the principle of “procedure established by law”. Article 21 of the Constitution mentions that “no person shall be deprived of his life and personal liberty except according to procedure established by law”. The term “law”, which is mentioned here, does not refer to natural law rather it refers to “state-made law”. This means that the courts while scrutinizing the laws can only question the procedure and if the procedure is not followed, only then the court can declare any law made by the legislature as unconstitutional. At the same time, the court can declare any law as unconstitutional when it finds violation of the

provisions of the Constitution. In spite of the limitations, the Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.

7.4 JUDICIAL ACTIVISM

7.4.1 Meaning

Judicial activism has emerged to be an important feature of the Indian judicial system in recent years. The Supreme Court and the High Courts have been given the responsibility to protect the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism.

7.4.2 Judicial Activism in India

The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibility towards the public.

The Supreme Court and the High Courts have been delivering judgements, decisions and directives against the apathetic and irresponsive attitude of the executive and the legislature on the matters of common public interest. They have also become active against corrupt practices of the public servants and others.

While showing its activism, the Supreme Court has issued directions to control pollution, to check the evil of child prostitution, to revive a sick company to protect the livelihood of 10,000 employees, to look into the dangers in building a dam, to protect the Taj Mahal from environmental pollution and many others.

The process of judicial activism can be said to have actually started in India in 1985. The then Chief Justice of India, Justice P.N. Bhagavati accepted a letter written to him on a post card by an aggrieved citizen for consideration of judicial decision. Thus, the process of judicial activism began in India. It became more and more pronounced in the 1990s.

It has been cautioned that while becoming active the judiciary should not cross its limits set by the Constitution. It must observe restraint in its activities. Because judicial

dictatorship is even more dangerous than that of executive dictatorship. It must remember its jurisdiction and respect the authority of the executive and the legislature.

LET US KNOW

A writ is a formal order given by a court. The writ of Habeas Corpus is issued to protect a person from wrongful detention. The writ of Mandamus is issued to give an order to some subordinate authority to perform an act which falls within its jurisdiction. The writ of Prohibition is issued by a superior court to a subordinate court to prevent it from dealing with a matter over which it has no jurisdiction. The writ, which is issued in order to prevent a person from acting in a public office to which he is not entitled, is known as Quo-warranto. Another writ, which is issued by a superior court to a subordinate court for submitting the record of a case for its proper consideration, is called Certiorari.

7.5 PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL) has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people. The PIL which is also described as the “New Legal Horizon” has been designed to achieve four main objectives, such as, to make judicial system active, efficient, less costly and simple.

This device emerged when the seven-judge Constitution bench of the Supreme Court in its historic judgement in the Judges Transfer case held that any member of the public even if not directly involved but having “sufficient interest” can approach the High Court under Article 226 or in case of violation of the Fundamental Rights, the Supreme Court can be approached under Article 32. The Courts can be approached for redress of grievances of the persons who cannot move the courts because of “poverty, helplessness or disability or socially or economically disadvantaged positions”.

PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case. The persons who seek justice may write even a postcard to the court and the court may consider the case for action if found to be fit. This is called the epistolary jurisdiction of the higher courts.

PIL can be misused for vested interest by some unscrupulous persons. The critics are also of the view that as there are no proper guidelines for admission and disposal of PIL cases, so the courts have the chances for going beyond their limits. Then, the lack of follow up actions may

make the PIL system ineffective even after the courts provide relief to the aggrieved. At the same time, public consciousness is also not so strong in India for proper working of such a progressive device.

CHECK YOUR PROGRESS

Q.1: What do you understand by Judicial Review? Discuss the process of Judicial Review in India.

.....

.....

Q.2: What is Judicial Activism?

.....

.....

Q.3: What is Public Interest Litigation?

.....

.....

LET US KNOW

Lok Adalats is an important device provided in the Indian judicial system for speedy and efficient settlement of disputes. They have been organized outside the formal judicial proceedings. Lok Adalats consists of a judicial officer and other members who are usually nominated from among social workers, members of women organizations, retired civil servants, doctors, teachers, etc. The judicial officer and the members of the Lok Adalats while deciding cases always try to find a settlement mutually arrived at by the disputing parties.

7.6 LET US SUM UP

- India has established an integrated judicial system. At the top of this system stands the Supreme Court, then come the High Courts and after that other Lower Courts. In the process of its working, some new features have emerged in the Indian judicial system, such as, Public Interest Litigation and Judicial Activism.
- The Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.

- The court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution.
- Judicial activism has emerged to be an important feature of the Indian judicial system in recent years.
- The process of judicial activism can be said to have actually started in India in 1985. It became more and more pronounced in the 1990s.
- It has been cautioned that while becoming active, the judiciary should not cross its limits set by the Constitution. It must observe restraint in its activities.
- Public Interest Litigation (PIL) has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people.
- PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case.
- PIL can be misused for vested interest by some unscrupulous persons.

7.7 FURTHER READING

1) Chander, Prakash.(2000). *Indian Government and Politics*. New Delhi : Cosmos Bookhive Pvt. Ltd.
2) Ghai, K.K.(2007). *Indian Government and Politics*.New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.*New Delhi : S. Chand and Company.
4) Pylee, M,V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.

7.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Judicial Review is a special power given to the Supreme Court and the High Courts by the Constitution of India. According to this power, the courts can examine whether a law passed by the legislature or an action taken by the executive is in consonance to the provisions of the Constitution or not. If the courts find that these are against the provisions of the Constitution or they violate the Constitution, then they declare them as

unconstitutional or invalid. This power has made the Supreme Court and the High Courts the guardian of the Indian Constitution.

This power of the judiciary has helped to impose certain amount of responsibility upon the legislature and the executive. The legislature while formulating laws must always keep it in mind that the laws do not go against the Constitution. Likewise the executive should also take its actions as per the provisions of the Constitution.

The power of judicial review of the Indian judiciary is limited. The Supreme Court and the High Courts can exercise this power only on two grounds. They are – i) whether the law or the executive action which has come under scrutiny falls within the competence of the authority that has framed it and ii) whether it is consistent with Part III of the Constitution which deals with the Fundamental Rights of the citizens.

The Indian judiciary does not have unlimited power of judicial review. It has to exercise its power by following the principle of "procedure established by law". Article 21 of the Constitution mentions that "no person shall be deprived of his life and personal liberty except according to procedure established by law". The term "law", which is mentioned here, does not refer to natural law rather it refers to "state-made law". This means that the courts while scrutinizing the laws can only question the procedure and if the procedure is not followed, only then the court can declare any law made by the legislature as unconstitutional. At the same time, the court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution. In spite of the limitations, the Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.

Ans to Q No 2: Judicial activism has emerged to be an important feature of the Indian judicial system in recent years. The Supreme Court and the High Courts have been given the responsibility to protect the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism. The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibilities towards the public.

Ans to Q No 3: Public Interest Litigation has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people. The PIL which is

also described as the “New Legal Horizon” has been designed to achieve four main objectives, such as, to make judicial system active, efficient, less costly and simple.

This device emerged when the seven-judge Constitution bench of the Supreme Court in its historic judgement in the Judges Transfer case held that any member of the public even if not directly involved but having “sufficient interest” can approach the High Court under Article 226 or in case of violation of the Fundamental Rights the Supreme Court can be approached under Article 32. The Courts can be approached for redress of grievances of the persons who cannot move to courts because of “poverty, helplessness or disability or socially or economically disadvantaged positions”.

7.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: “The Supreme Court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution.” (True/False)

Q 2: What is Public Interest Litigation?

B) Short Questions (Answer each question in about 150 words)

Q.1: What are the qualifications to be a judge of the Supreme Court?

Q. 2: How the judges of the Supreme Court and the High Courts can be removed from office?

Q. 3: What are the Subordinate Courts in India?

C) Long Questions (Answer each question in about 300-500 words)

Q. 1: Discuss the process of judicial activism in India?

Q. 2: Critically examine the working of Public Interest Litigation system in India?

Q. 3: Describe the system of Judicial Review in Indian political system.

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REFERENCES

Books :

1) Basu, D. D. (2009). Introduction to the Constitution of India. New Delhi : Prentice Hall of India.
2) Brass, Paul R. (1997). The Politics of India Since Independence. New Delhi: Cambridge University Press.
3) Chander, Prakash(2000). Indian Government and Politics. Cosmos Bookhive Pvt. Ltd.
4) Ghai, K. K.(2007). Indian Government and Politics. New Delhi: Kalyani Publishers.
5) Kapur, Anup Chand & Misra, K.K. (2006). Select Constitutions. New Delhi: S. Chand and Company.
6) Pylee, M. V. (2006). Constitutional Government in India. New Delhi: S. Chand and Company.
7) https://www.legislative.gov.in/constitution-of-india
8) https://static.pib.gov.in

UNIT 8: GOVERNOR

UNIT STRUCTURE

8.1. Learning Objectives

8.2. Introduction

8.3. Governor

- 8.3.1. Appointment
- 8.3.2. Qualifications
- 8.3.3. Oath of Office
- 8.3.4. Tenure or Term of Office
- 8.3.5. Emoluments
- 8.3.6. Legal Privileges
- 8.3.7. Powers and Functions of the Governor
- 8.3.8. Constitutional Position of the Governor

8.4. Let Us Sum Up

8.5. Further Reading

8.6. Answers to Check Your Progress

8.7. Model Questions

8.1. LEARNING OBJECTIVES

After going through this unit, you will be able to:

- describe the qualifications, tenure, powers and functions of the Governor
- explain the Constitutional position of the Governor.

8.2. INTRODUCTION

The office of the Governor has been in existence since the beginning of the British regime in India. But, then the Governor was an autocrat, a despot and a dictator having enormous discretionary powers in every sphere of administration. On the other hand, under the Constitution of India, the machinery of the State Government is the same as that of the Central Government. Like the Union or Central Government, the State Governments are also formed on the parliamentary pattern. So, the chief executive of a State is the Governor who resembles the President of the Union Government. Like the President, the Governor is also a Constitutional ruler, a nominal de-jure head of the State; not real executive. The real executive powers are exercised by the Council of Ministers headed by the Chief Minister.

8.3. GOVERNOR

8.3.1. Appointment:

Article 153 of the Constitution of India provides for the appointment of a Governor for each State. Of course, a common Governor may also be appointed for two or more States including some Union Territory or Territories.

Article 155 lays down that, the President of India appoints the Governor by warrant under his/her hand and seal as per the advice of the Union Cabinet. The President has no choice in this regard.

As a convention, the Chief Minister of the State Government is consulted by the Central Government while appointing the Governor. Again, a permanent inhabitant of a State is not appointed as its Governor.

8.3.2. Qualifications

Article 157 and 158 of the Constitution state that a person can be appointed as Governor, if he or she has the following qualifications:

(i) He/she must be a citizen of India.

(ii) He/she must have completed 35 years of age.

(iii) He/she must not be a member of either House of Parliament or of any State Legislature. In case he/she is member of a legislative body in India, he/she will have to resign before taking over the charge of his/her office.

(iv) He/she cannot hold any office of profit either under the Central Government or under any State Government.

8.3.3. Oath of Office

The Governor, before taking charge, takes an oath or affirmation in the presence of the Chief Justice of the High Court exercising jurisdiction in the State or in his/her absence, before the senior most judge available. He/she has to swear that he/she will preserve, protect and defend the Constitution and execute the office of the Governor for the well-being of the people of the State.

8.3.4. Tenure or Term of Office

The Governor is appointed by the President for a period of five years. Under article 156 of the Constitution, he/she holds office during the pleasure of the president. Governor may be dismissed or removed by the President before the expiry of five years term. He/she may also be transferred to another State at any time. Even after the expiry of five years term, a Governor can continue in office until his/her successor takes over. Moreover, the Governor may, by writing under his/her hand addressed to the

President, resign from office at any time. The State Government does not have any power or authority in the removal of the Governor.

8.3.5. Emoluments

The monthly salary and other allowances of Governors are determined by the Parliament from time to time. At present, as per the Union Budget (2018-19), the Salary of Governor has been increased to Rs. 3.5 lacs per month besides other allowances befitting his/her position and status. He/she is also provided a rent free official residence. The salary and allowances of the Governor cannot be reduced during his/her term of office.

8.3.6. Legal Privileges

By article 361 of the Constitution, the Governor is protected against legal proceeding in the law court. The Governor of a State is not answerable to any court for the exercise and performance of the powers and duties of his/her office or for any act done or purporting to be done by him/her in the exercise and performance of those powers and duties. No criminal or civil cases can be filed against the Governor in any court during his/her term of office. The Courts are prohibited from issuing any warrant for the arrest of Governor during his/her term of office. The Governor is also not responsible to the State Legislature for his/her functions.

8.3.7. Powers and Functions of the Governor

The Governor has no diplomatic, emergency or military powers like the President, but as the head of the State, he/she exercises wide range of powers and functions which can be discussed under the following five heads:

(i) Executive Powers & Functions (ii) Legislative Powers & Functions (iii) Financial Powers & Functions (iv) Judicial Powers & Functions (v) Discretionary Powers & Functions.

- **Executive Powers and Functions**

Under Article 154, the executive powers of the State is vested upon the Governor who may discharge these powers either directly or through officers subordinate to him/her. All executive actions of the State Government are taken in his/her name. The Governor also makes the necessary rules for the transaction of the business of the government and for the allocation of work among the ministers.

The Governor appoints the Chief Minister and other Ministers on the advice of the Chief Minister. He/she distributes portfolios among them as advised by the Chief

Minister. The Governor administers them oath of office and secrecy and accepts their resignation. The Council of Ministers remain in office during the pleasure of the Governor. He/she may also dismiss them.

The Governor also makes appointments of important officials of the State like the Advocate-General, the Chairman and the member of the State Public Service Commission, Vice Chancellors for all the State Universities, Judicial Appointments below those of the Judges of High Court, and many other high officials relating to the State administration.

According to Article 167, The Chief Minister should apprise the Governor of the decision of the Council of Ministers relating to the administration of the State. He/she may call for any information from the Chief Minister in this connection. He/she may also ask the Chief Minister to submit the decision of an individual minister for the consideration of the Council of Ministers.

The Governor is the Ex-Office Chancellor of the State Universities and therefore, he/she is responsible for looking to their proper management.

Article 356 of the Constitution empowers the Governor to recommend to the President for imposition of State Emergency in case of the breakdown of the Constitutional machinery. If the President imposes State Emergency or President's Rule, the Governor takes the full responsibilities of the administration of the State as an agent of the Central Government.

- **Legislative Powers and Functions**

Though the Governor is not a member of the State Legislature, but he/she is an integral part of it. The Governor can summon and prorogue the session of the State Legislature, he/she can dissolve the Lower House of the State Legislature i.e. the State Legislative Assembly at any time.

The Governor can nominate one member from the Anglo-Indian Community to the State Legislative Assembly, if there are people of that community in the State and they are not adequately represented. He/she also nominates about one-sixth (1/6) members to the State Legislative Council from among the persons having special knowledge or experience in the field of Science, Literature, Art, Social Service and Co-operative movements.

Every Bill passed by the State Legislature become an Act only after the Governor gives his/her assent or signature on it. The Governor does not enjoy the power to veto on Bill passed by the State Legislature, but he/she may withhold his/her assent to a Bill (other than money bill) and return the same to the Legislature for

reconsideration. But, if the bill is again passed by the Legislature in the same form, it becomes obligatory for the Governor to give his/her assent. The Governor can also send certain Bills passed by the State Legislature for the consideration of the President, if a bill is derogatory to the powers of the High Court or if it involves acquiring of property for public purposes.

When the State Legislature is not is session, the Governor is vested with the power to issue an Ordinance to meet any emergency situation. Such an Ordinance shall have the force of law and continue to remain in operation till six weeks after the re-assembling of the State Legislature. In case of certain Ordinances, he/she requires to obtain approval of the President.

The Governor has been authorised by the Constitution to deliver an address to either House or both Houses assembled together and if he/she desires, he/she can send message to them for consideration. The First session of the State Legislature after general election and its first session of each year vis -a-vis the budget session begins with the address of the Governor, which embodies the policies of the Government for the ensuing year.

The Governor has the power to decide on a matter relating to the disqualification of a member of the State Legislature in consultation with the Election Commission. He/she also has the responsibility to observe that the annual reports of various Govt. agencies submitted to him/her are placed before the State Legislature for consideration.

- **Financial Powers and Functions**

It is the duty of the Governor to see that State Budget is placed before the State Legislative Assembly every year in time and passed.

No demand for supplementary, additional and excess grants from the Legislature can be made without the prior consent of the Governor.

The Contingency Fund of the State is at the disposal of the Governor and he/she can make advances out of it to meet the unforeseen expenditure before the Legislature makes arrangement for them.

No Money Bill can be introduced in the Legislative Assembly of the State without his/her recommendation. He/she must always give his/her assent to a Money Bill passed by the Legislature. He/she cannot withhold or return a Money Bill.

- **Judicial Powers and Functions**

The Governor enjoys certain judicial powers. He/she is consulted by the President in matter relating to the appointment of the judges for the High Court of his/her State. The judges of the High Court take oath of their office before him/her.

The Governor determines the appointment, posting and promotion of the District Judges and other Judicial officers in consultation with the High Court and Public Service Commission.

Article 161 has empowered the Governor to grant pardon to the persons convicted by the Courts of Law by remitting or commuting their sentences provided the offence comes under the law relating to matters that are within the executive competence of the State Government. However, unlike the President, the Governor cannot grant pardon against a death sentence; he/she can only suspend the execution of a death sentence.

Let us know

We must keep in our mind that, the Governor exercises all the powers and functions (as mentioned above) as per the advice of the Council of Ministers headed by the Chief Minister, under Article 163 of the Indian Constitution. The framers of the Constitution intended the Governor to be a nominal head.

- **Discretionary Powers and Functions**

In general, the Governor should act in accordance with the advice of the Council of Ministers, but the Constitution under Article 163 (I) has empowered him/her to act in his/her discretion in certain matters for which he/she is not required to act on the advice of his/her Council of Ministers. The following are the occasions on which the Governor can exercise his/her discretion:

(a) In case of no party holding a clear majority in the Legislative Assembly, the Governor shall exercise his/her discretion in the selection and appointment of the Chief Minister.

(b) He/she has the power to send report to the President that there is a breakdown of the Constitutional machinery of the State and State Emergency or President's Rule may be declared in respect of his/her State.

(c) During the State Emergency or President's Rule, the Governor acts in his/her discretion while acting as the agent of the President.

(d) The Governor can use his/her discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the State Legislative Assembly due to revolt or a split in the party.

(e) The Governor may exercise his/her discretion is summoning and dissolving the Legislative Assembly.

(f) The Governor also has discretionary power in reserving a Bill, passed by the State Legislature, for President's consideration, if it is in conflict with a law or policy of the Union Government.

(g) He/she can exercise his/her discretion in certain matter in the event of conflict between the Union and the State Government.

(h) In case the President appoints a Governor as administrator of an adjoining Union Territory, he/she shall exercise his/her functions, related to that Union Territory, independently.

- **Special Powers**

Besides the powers and functions described above, the Governors of some States like Assam, Arunachal Pradesh, Nagaland, Sikkim, Manipur, Gujarat, Orisha, Maharashtra and Madhya Pradesh have been given some special powers or responsibilities.

CHECK YOUR PROGRESS

Q.1: Fill in the blanks:

a) The Governor is appointed by the ————————–.

.....

b) The Legislative Assembly can be dissolved by the _____.

.....

Q.2: Write True or False

a) The Governor can be removed by the State cabinet.

.....

b) The Governor enjoys discretionary powers.

.....

c) The Governor is a member of the State Legislature.

.....

6.3.8. Constitutional Position of the Governor

The powers and functions of the Governor as discussed above, reveals that he/she enjoys immense powers in all spheres of administration. But, it is wrong to suppose that the Constitution has made him/her a virtual dictator. The Constitution clearly prescribes that the Governor is to be aided and assisted in the discharge of his/her function by a Council of Ministers headed by the Chief Minister, which will have collective responsibility towards the Legislative Assembly.

Dr. Ambedkar, made a remark on the position of the Governor's office and powers that his/her powers will be so limited, so nominal and his/her position so ornamental that it would be a waste to spend public money on his/her election.

Normally, the Governor is bound by the advice of the Council of Ministers but that does not mean that he/she has nothing to do except sign on the dotted line. He/she can guide the Council of Ministers under different circumstances. Sometimes he/she has to take important decision by himself/herself. Besides, he/she has considerable discretionary powers in terms of which he/she can work without consultation with the Council of Ministers. The position of the Governor therefore, cannot be considered as merely ornamental.

The position of the Governor as in the case of any of the public offices depends much on the holder of the post. A Governor with a weak personality may reduce himself/herself to the position of a non-entity rubber stamp to be used by the Ministers when required. But, if the Governor is a man of strong personality, he/she can easily influence and guide his/her Council of Ministers as well as the administration in the right path. He/she may persuade his/her government to take proper steps towards the welfare activities and betterment of the people as well as social, economic and educational development of the State. The Governor may play an important role in bringing about unity among the people of the State. Being a link between the Central and State Government, he/she can contribute a lot towards the improvement of Centre-State relations by pointing out the difficulties and grievances of the State before the Central Government.

But, it is very unfortunate that, the office of the Governor has become very controversial recently. Because the ruling party at the Centre always expect him/her to take care of its interest (Political Interest). Moreover, the appointment and removal of Governor on political consideration always adversely affects the working and prestige of the office of the Governor. It has been noticed that the Governors sometimes don't perform their duties impartially. The political neutrality and impartiality of the Governor

will help him/her to serve properly the interest of the people of the State, which will improve his/her position.

CHECK YOUR PROGRESS

Q.3: Write a short note on the term of the office of the Governor (within 50 words)

.....

Q.4: Write two qualifications to be the Governor of a State

.....

Q.5: When the Governor can issue an Ordinance?

.....

Q.6: Who is the custodian of the Contingency Fund of the State?

.....

Q.7: Can the Governor declare emergency?

.....

8.4. LET US SUM UP

- Article 153 of the Constitution of India provides for the appointment of a Governor for each State.
- The Governor is appointed by the President for a period of five years.
- As the Constitutional head of the States, the Governor exercises wide range of powers. The entire administration of the State runs in the name of the Governor.
- Every Bill passed by the State Legislature become an Act only after the Governor gives his/her assert or signature on it.
- The Governor is vested with the power to issue an Ordinance to meet any emergency situation.
- Like the President, the Governor is also the titular or nominal head of the State. In reality, all the powers of the Governor are exercised by the council of Ministers headed by the Chief Minister.
- The Governor enjoys certain discretionary powers for which he/she is not required to act on the advice of the Council of Ministers.
- The Governor is to be aided and assisted in the discharge of his/her function by a Council of Ministers headed by the Chief Minister, which will have collective responsibility towards the Legislative Assembly.

- Actually the position of the Governor depends upon the personality and ability of the person who occupies it.

8.5 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K.(2008). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K.(2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

8.6. ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: a) President

b) Governor

Ans to Q No 2: a) No

b) Yes

c) No

Ans to Q No 3: A Governor is appointed by the president for a period of 5 years but his/her term depends on the pleasure of the President. He/she can dismiss him/her, transfer him/her to another State or even extend his/her term. The Governor can also resign from office at any time.

Ans to Q No 4: (i) He/she must be a citizen of India

(ii) He/she must have completed 35 years of age.

Ans to Q No 5: When the State Legislative is not in session.

Ans to Q No 6: The Governor

Ans to Q No 7: No

8.7. MODEL QUESTIONS

A. Very Short Questions

Q. 1. Who is the Constitutional head of a State?

Q. 2. What are the qualifications of a Governor?

Q. 3. The Governor can dissolve the State Legislative Council? (True/False)

Q. 4. The Governor must sign a Money Bill? (True/False)

B. Short Questions (Answer each in about 150-200 words)

Q. 1: What do you understand by the 'Discretionary Powers' of the Governor of a State?

Q. 2: Write a note on the legal privileges of the Governor of a State.

C. Long Questions (Answer each in about 300-500 words)

Q. 1. How is the Governor of a State appointed? Discuss his powers and functions.

Q. 2. Explain the Constitutional position and role of the Governor in State administration.

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UNIT 9: CHIEF MINISTER

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 The Chief Minister

9.3.1 Appointment of the Chief Minister

9.3.2 Tenure

9.3.3 The Powers and Functions of the Chief Minister

9.4 Position of the Chief Minister

9.5 Let Us Sum Up

9.6 Further Reading

9.7 Answers to Check Your Progress

9.8 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the appointment, powers and functions of the Chief Minister of a State
- analyse the position of the Chief Minister of a State

9.2 INTRODUCTION

India is the Union of States. It has 28 States and 8 Union Territories. In India, every State has a government to run its own administration. The State executive consists of the Governor and the Council of Ministers headed by the Chief Minister. Here, we will discuss the appointment, tenure, powers, functions and position of the Chief Minister of a State.

9.3 THE CHIEF MINISTER

The Article 163 of the Constitution provides for the office of the Chief Minister. The Chief Minister is the most powerful functionary of the State government. The Chief Minister is the real executive head of the State government. His/her position is like that of the Prime Minister in the State level. He/she is the head of the Council of Ministers.

9.3.1 Appointment of the Chief Minister

Article 163(1) states that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions. According to Article 164, the Chief Minister shall be appointed by the Governor and

the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. While appointing the Chief Minister the Governor cannot act arbitrarily. The Governor appoints the leader of the party which gets the highest number of seats in the State Legislative Assembly as the Chief Minister of the State. If no party has an absolute majority in the Legislative Assembly, then the Governor may have some role in the selection of the leader. The elected Chief Minister must prove his/her majority in the Assembly within the given time.

The Chief Minister must be a member of the State Legislature. If he/she is not a member, then within six months he/she must get elected to the State Legislature.

9.3.2 Tenure

The Chief Minister has no fixed tenure under the Constitution. Although the Legislative Assembly has a five-year term, the Chief Minister remains in office only as long as he or she enjoys the confidence of the majority in the House. The moment the Chief Minister loses majority support, he or she is constitutionally required to resign. The Governor may dismiss the Chief Minister only when it is clearly established—usually through a floor test—that the ministry has lost its majority and the Chief Minister refuses to resign. Thus, the tenure of the Chief Minister is not fixed but is entirely dependent on majority support in the House.

9.3.3 Powers and Functions of the Chief Minister

The Chief Minister enjoys enormous powers and functions in the administration of a State. It can be discussed under the following heads:

- **Formation of the Council of Ministers**

The Chief Minister of a State is appointed by the Governor from the members of the majority party in the State Legislature and rest of the ministers are appointed by the Governor on the advice of the Chief Minister. The Governor can drop a minister on his/her advice.

- **Allocation of Portfolios**

The Chief Minister advises the Governor on the distribution of portfolios among the ministers. He/she can reallocate portfolios as well. The Chief Minister can also include new minister in the Council or remove an earlier minister. He/she can call upon any minister to resign.

- **Chairman of the Council of Ministers**

The Chief Minister acts as the Chairman of the cabinet. He/she presides over the meetings of the Council. He/she convenes and presides over its meetings. He/she has the right to summon the meetings of the Council at any time.

- **As a Co-ordinator**

The Chief Minister has to maintain co-ordination among the departments. He/she co-ordinates the policies and working of all the ministers. He/she may interfere in the affairs of any ministry. It is the duty of the Chief Minister to resolve any conflict between the different departments. He/she must observe that there is no serious disagreement and conflict among the members of his/her Council of Ministers.

- **Link between the Governor and the Council of Ministers**

The Chief Minister is the channel of communication between the Governor and the ministers. He/she communicates to the Governor all decisions of the Council of Ministers relating to the administration of the State. The Governor can seek any information from the Council of Ministers through the Chief Minister. He/she furnishes such information as the Governor may call for. He/she is the chief adviser of the Governor.

- **Leader of the State Legislative Assembly**

The Chief Minister is the leader of the majority party in the Legislative Assembly. He/she is the chief spokesman of the House. He/she makes all policy Statements in the House. He/she helps in maintaining discipline in the House. The Speaker of the House consults the Chief Minister before fixing up agenda for the House.

The Chief Minister has to extend help on the floor of the House to a minister in answering the questions asked by the opposition members. He/she is the chief defender of the policies of the government.

According to the advice of the Chief Minister, the Governor summons and prorogues the sessions of the Legislative Assembly. The Chief Minister can even advise the Governor to dissolve the House. Normally such advice is given by the Chief Minister on the basis of political consideration (for example, seeking fresh elections, or maintaining majority support, etc.). As he/she is the leader of the Assembly, no legislative proposal can be submitted in the legislature by the ministers without the prior consent of the Chief Minister.

- **Appointment-making Powers**

The Chief Minister advises the Governor in case of appointment and promotion of the high officials in the State. In this regard, the Chief Minister plays an important role and enjoys substantial authority in appointments.

- **As the leader of the party**

The Chief Minister is the leader of his/her party in the State. He/she leads the members of his/her party in the Assembly. It is his/her responsibility to maintain unity and co-operation among the members of his/her party. It is the duty of the Chief Minister to maintain party discipline.

- **Role on Centre-State Relations**

The Chief Minister is the real executive head of the State government. As a chief executive of the State government, it is his/her responsibility to ensure a good relationship between the centre and the State.

- **Miscellaneous Powers**

The Chief Minister has some miscellaneous powers. He/she plays an important role in the financial sphere also. The Finance Minister of the State must consult him/her before presenting the yearly budget. No Money Bill can be introduced without his/her knowledge.

The Chief Minister represents his/her State in the meetings and conferences convened by the Central government.

The Chief Minister of a State occupies a very significant position in the State administration. The Chief Minister, in short, is the leader of the Council of Ministers, the leader of his/her party, the leader of the legislature and the leader of the people of his/her State. He/she also plays an important role in making policies of the government. The success of the State government depends to a great extent upon the leadership quality, personality, administrative skill and vision of the Chief Minister.

CHECK YOUR PROGRESS

Q.1: Who appoints the Chief Minister of a State?

.....

Q.2: The Governor appoints the Chief Minister under the Article _____. (Fill in the blank)

.....

Q.3: The State Council of Ministers is presided over by the _____. (Fill in the blank)

.....

Q.4: The Chief Minister is the chief administrator of the State. (True/False)

.....

Q.5: Write two functions of the Chief Minister.

.....

9.4 POSITION OF THE CHIEF MINISTER

The Chief Minister of a State occupies a very significant position in the State administration. The Chief Minister occupies a pivotal role in the governance of a State. The position of the Chief Minister in many respects is similar to that of the Prime Minister at the Union. The Chief Minister is the real executive head of the State government. The Governor is the nominal head of the State. The Chief Minister, as the real executive, enjoys a dominant and powerful position in the State.

The Chief Minister is the architect of the Council of Ministers. The Chief Minister of a State is appointed by the Governor from the members of the majority party in the State legislature and rest of the ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister advises the Governor on the distribution of the portfolios among the ministers. The Governor can drop a minister on his/her advice. He/she can reallocate portfolios as well. The Chief Minister can also include new minister in the council or remove an earlier minister. He/she can call upon any minister to resign.

The Chief Minister plays an important role in making policies of the government. The success of the State government depends to a great extent upon the leadership of the Chief Minister.

The Chief Minister acts as the Chairman of the Cabinet. He/she presides over the meetings of the Council. He/she convenes and presides over its meetings.

The Chief Minister has to maintain co-ordination among the departments. He/she co-ordinates the policies and working of all the ministers. He/she may interfere in the affairs of any ministry.

The Chief Minister is the channel of communication between the Governor and the ministers. He/she communicates to the Governor all decisions of the Council of Ministers relating to the administration of the State.

The Chief Minister is the leader of the majority party in the Legislative Assembly. He/she is the chief spokesman of the House.

The Chief Minister enjoys a lot of patronage. The Chief Minister advises the Governor in case of appointment and promotion of the high officials in the State.

The Chief Minister is the chief advisor to the Governor, the leader of the Council of Ministers, the leader of his/her party, the leader of the legislature and the leader of the people of his/her State.

The Chief Minister plays an important role in the financial sphere also. The Finance Minister of the State must consult him/her before presenting the yearly budget. No Money Bill can be introduced without his/her knowledge.

The real position of the Chief Minister depends upon many factors, i.e. personality, character, integrity and honesty etc. His/her position in the State is similar to the one enjoyed by the Prime Minister at the Centre. Persons like Lokapriya Gopinath Bordoloi, Shri Bimala Prasad Chaliha, Dr. B. C. Roy, Shri Pratap Singh Kairon, Shri G. B. Pant, Shri Biju Patnaik, among others proved to very powerful Chief Ministers in the past decades.

CHECK YOUR PROGRESS

Q 6: Write briefly about the position of the Chief Minister of a State. (within 50 words)

……

……

……

……..

9.5 LET US SUM UP

- The Article 163 of the Constitution provides for the office of the Chief Minister.

- The Chief Minister has no fixed tenure under the Constitution. Although the Legislative Assembly has a five-year term, the Chief Minister remains in office only as long as he or she enjoys the confidence of the majority in the House.

- The Chief Minister of a State is appointed by the Governor from the members of the majority party in the State Legislature and rest of the ministers are appointed by the Governor on the advice of the Chief Minister.

- The Chief Minister advises the Governor on the distribution of portfolios among the ministers. He/she can reallocate portfolios as well. The Chief Minister can also include new.

- The Chief Minister acts as the Chairman of the cabinet. He/she presides over the meetings of the Council. He/she convenes and presides over its meetings. He/she has the right to summon the meetings of the Council at any time.

- The Chief Minister has to maintain co-ordination among the departments. He/she co-ordinates the policies and working of all the ministers.

- The Chief Minister is the channel of communication between the Governor and the ministers. He/she communicates to the Governor all decisions of the Council of Ministers relating to the administration of the State.
- The Chief Minister is the leader of the majority party in the Legislative Assembly. He/she is the chief spokesman of the House. He/she makes all policy Statements in the House.
- According to the advice of the Chief Minister, the Governor summons and prorogues the sessions of the Legislative Assembly.
- The Chief Minister advises the Governor in case of appointment and promotion of the high officials in the State. In this regard, the Chief Minister plays an important role and enjoys substantial authority in appointments.
- The Chief Minister is the leader of his/her party in the State. He/she leads the members of his/her party in the Assembly.

- The Chief Minister is the real executive head of the State government. As a chief executive of the State government, it is his/her responsibility to ensure a good relationship between the centre and the State.

- The Chief Minister of a State occupies a very significant position in the State administration. The success of the State government depends to a great extent upon the leadership of the Chief Minister.

9.6 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K.(2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K.(2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

9.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The Governor.

Ans to Q No 2: 164.

Ans to Q No 3: The Chief Minister.

Ans to Q No 4: True.

Ans to Q No 5: (a) To organise the State Council of Ministers.

(b) To act as the chief co-ordinator of the State government.

Ans to Q No 6: The Chief Minister is the real executive head of the State, leading the Council of Ministers, guiding policy, coordinating departments, influencing appointments, and directing legislative and financial matters. The Chief Minister's authority, similar to the Prime Minister's at the Centre, largely depends on personal leadership and political strength.

9.8 MODEL QUESTIONS

A. Very Short Questions

Q.1: Mention the Article that is related with the appointment of the Chief Minister of a State.

Q.2: Who appoints the Chief Minister of a State?

Q.3: Who is the Constitutional head of a State in India?

B. Short Questions (Answer each in about 150-200 words):

Q.1: Explain five functions of the Chief Minister of a State.

Q.2: Write a note on the position of the Chief Minister of a State.

C. Long Questions (Answer each in about 300-500 words):

Q.1: Discuss the appointment, powers and functions of the Chief Minister of a State.

Q.2: Describe the role of the Chief Minister in the administration of a State.

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Unit 10:STATE COUNCIL OF MINISTERS
UNIT STRUCTURE

10.1 Learning Objectives
10.2 Introduction
10.3The State Council of Ministers
    10.3.1 Composition
    10.3.2 Powers and Functions of the State Council of Ministers
    10.3.3 Position of the State Council of Ministers.
10.4 Let us sum up
10.5 Further Readings
10.6 Answers to check your progress
10.7 possible Questions

10.1 Learning Objectives

After going through this unit, learners will able to:
*describe the composition, powers and functions of the State Council of Ministers
*examine the position of the State Council of Ministers.

10.2 Introduction

In every democratic system, the executive branch plays a vital role in governing the people and implementing laws. In India's federal structure, while the Union Government governs national affairs, each state has its own executive body responsible for running the administration and implementing policies at the state level.

At the heart of the state's executive machinery is the State Council of Ministers — a body of individuals collectively responsible for governance in the state. This Council is critical for decision-making, policy formulation, public administration, and maintaining a link between the elected legislative body and the administrative machinery.

10.3 The State Council of Ministers

The Constitution of India provides for a parliamentary form of government not only at the Centre but also in the States. The Governor is the nominal head of the State executive. The real executive powers are exercised by the State Council of Ministers with the Chief Minister as its head. Although the Constitution vests the executive power with the Governor, yet it is exercised in fact by the Council of Ministers.

10.3.1 Composition

The Council of Ministers is the most important part of the State executive. Each State has a Council of Ministers, which is headed by the Chief Minister. The Article 163 provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his/her functions. The Chief Minister and the ministers together make the State Council of Ministers. The procedure for the formation of the Council of Ministers at the State level is same as in the case of the Union Council of Ministers. The Article 164 of the Constitution lays down that the Governor shall appoint the Chief Minister and the other ministers shall also be appointed by him/her on the advice of the Chief Minister. Thus, the appointment of the Chief Minister is the first step in the process of formation of the State Council of Ministers. The Chief Minister is the leader of the majority party in the State legislature. The Governor has to call the leader of the majority party in the Legislative Assembly to form the ministry. After appointment of the Chief Minister, the other ministers are appointed by the Governor on the advice of the Chief Minister. If no party gains majority, then the Governor can select anyone and appoint him/her as Chief Minister. In this matter, he/she enjoys complete freedom of choice. But that person should be able to prove his/her majority in the given time. The Chief Minister is free to select or not to select anyone for his/her team.

If a minister is not a member of the State Legislature at the time of his/her appointment, he/she has to get elected as a member within six months of his/her appointment.

The Chief Minister can change the portfolios of his/her colleagues and re-constitute the Council of Ministers as he/she likes. The State Council of Ministers has three categories of minister. They are- Cabinet Ministers, Ministers of State and Deputy Ministers.

The salaries and other allowances of the Ministers are to be determined by the State Legislature. The State Council of Ministers is responsible to the State Legislative Assembly. The Article 164(2) States “The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State”. There is no fixed term of the Council of Ministers. The Council of Ministers remains in power so long as it commands the confidence of the legislature. If a no confidence motion is passed in the Assembly, the Council must resign.

10.3.2 Powers and Functions of the State Council of Ministers

The State Council of Ministers is the highest executive of the State. The main powers and functions of the State Council of Ministers can be discussed under the following heads: Formation of the Policy of State Administration The State Council of Ministers is the highest policy making body of the State. The State Council of Ministers formulates the policies of government on the basis of our Constitution. It also implements them. All the important policies of the State are discussed and decided upon by it. Each minister of the Council has to make separate policies for their own ministries.

Administrative Powers

The State Council of Ministers runs the whole State administration in the name of the Governor. It bears the responsibility of administration of the State. The State Council of Ministers has to aid and advise the Governor in performing his/her duties. All the higher officials of State government are appointed on the advice of the State Council of Ministers. Each minister is the head of a particular department. It is his/her responsibility to see that his/her department functions smoothly. Ministers are responsible for the administration of their department. They are also responsible for smooth running of the administration of the State.

Legislative Powers

The State Council of Ministers plays an important part in legislation. In the process of law-making, the Council of Ministers plays a very significant role. The State Council of Ministers prepares the proposal for legislation. The laws are framed in the State Legislature at the initiative of the ministers. In the Assembly, most bills are introduced by the ministers and no bill can become an Act without their support. Generally, the bills moved by the ministers are mostly passed by the State Legislature because the ministry enjoys the support of the majority.

Thus, in the process of law making, the State Council of Ministers plays a very significant role. The State Council of Ministers also advises the Governor for the dissolution of the Legislative Assembly. It also prepares the address of the Governor to be delivered in the Legislative Assembly.

Appointment Powers

The State Council of Ministers makes all important appointment in the State. The Governor makes all the higher appointments: the Advocate General, Chairmen of various Corporations and Boards, Chairman and Members of the State Public Service Commission etc., in accordance with the advice of the State Council of Ministers.

Moreover, the State Council of Ministers controls the system of transfer and promotion etc. of the senior officers of the State.

Financial Powers

In the financial field, the State Council of Ministers has many functions to perform. It frames the economic policies of the government. It controls the financial policy of the State and decides the tax structure for the public welfare of the State. The Money Bills can be introduced in the Assembly only by the ministers. The budget is prepared under the guidance and supervision of the Cabinet. Before presenting the budget to the Assembly the Finance Minister must place it before the Cabinet for its approval.

The budget allocations are finalised by the State Council of Ministers and the policy of taxation is determined by it. The Finance Minister introduces his/her annual budget after it is approved by the Council of Ministers. The Finance Minister introduces his/her budget in the Legislative Assembly with a speech called the “Budget Speech”.The Budget Speech is actually a Statement of the financial condition and programme of the State.

The Council of Ministers formulates and implements all developmental policies and plans of the State.

Co-ordination Function

It is one of the important functions of the State Council of Ministers. The State Council of Ministers must maintain co-operation among different departments of the State government.

Judicial Functions

The State Council of Ministers is indirectly associated with the judicial functions. The judicial powers of the Governor, like granting of pardon, respite, reprieve etc. are actually exercised by him/her only with the advice of the State Council of Ministers.

Miscellaneous Functions

The State Council of Ministers performs some other functions in addition to those mentioned above. Every year the Governor gives a speech in the State Assembly. It is prepared by the Council. The Governor of a State summons and prorogues the State Legislature or dissolves the Assembly of the State on the advice of the Chief Minister. In this regard, the Chief Minister is advised by the Council. The State Council of Ministers considers and takes decisions on some matters i.e. reservation of seats for Scheduled Castes and Scheduled Tribes, Service Conditions of the public servants, appointment of Inquiry Commissions and taking decisions on their reports, Report of the Public Service Commission etc. It also maintains the direct relationship with the Central government. From the above discussion, it appears that the State Council of Ministers is all in all in the administration of the State. As the real executive, the Council of Ministers enjoys a powerful position in the State. It runs the whole State administration in the name of the Governor. The Governor acts as the Constitutional Head of the State Executive. The Council of Ministers is the formulator and executor of policy of the State. Theoretically, the State Council of Ministers has to aid and advise the Governor but in actual practice, it is the real executive in the State.

10.3.3 Position of the State Council of Ministers

The Council of Ministers enjoys a powerful position in the State. The Governor acts as the Constitutional head of the State. The State Council of Ministers is the real executive in the

State. The State Council of Ministers is all in all in the administration of the State. It runs the whole State administration in the name of the Governor. The Council of Ministers is the formulator and executor of the policies of the State.

The State Council of Ministers is the highest policy making body of the State. The State Council of Ministers formulates the policies of government on the basis of our Constitution.

The State Council of Ministers runs the whole State administration in the name of the Governor. It bears the responsibility of administration of the State.

The State Council of Ministers plays an important part in legislation also. In the process of law-making, the Council of Ministers plays a very significant role.

The State Council of Ministers makes all important appointments in the State.

In the financial field, the State Council of Ministers has many functions to perform. It frames the economic policy of the government. It controls the financial policy of the State. The Money Bills can be introduced in the Assembly only by the ministers. The budget is prepared under the guidance and supervision of the Cabinet. Before presenting the budget to the Assembly, the Finance Minister must place it before the Cabinet for its approval. The budget allocations are finalised by the State Council of Ministers.

From the above discussion, it appears that the State Council of Ministers is all in all in the administration of the State. As the real executive, the Council of Ministers enjoys a powerful position in the State. It runs the whole State administration in the name of the Governor. Theoretically, the State Council of Ministers has to aid and advise the Governor but in actual practice, it is the real executive in the State.

Conclusion:

The State Council of Ministers is the core of executive power in a state. Its composition reflects democratic choice and political balance, while its powers and functions embody governance, administration, and public service delivery. The Council's position — constitutionally, politically, and administratively — places it at the heart of state governance, accountable both to the legislature and, ultimately, to the people. Through its collective and individual responsibilities, the Council ensures that the state runs efficiently, justly, and in accordance with constitutional principles.

CHECK YOUR PROGRESS

Q.1: The Ministers of the State Council of Ministers are appointed by _____. (Fill in the blank)
....

Q.2: How many types of Ministers exist in the State Council of Ministers?
.....
.....

Q.3: Who appoints the State Council of Ministers?
.....
.....
Q.4: The State Council of Ministers is responsible to _____. (Fill in the blank)
.....
.....

Q.5: Discuss the policy making powers and functions of the State Council of Ministers. (within 50 words) .....
.....

10.4 LET US SUM UP

*The Council of Ministers is the most important part of the State executive. The Chief Minister and the ministers together make the State Council of Ministers.
*The State Council of Ministers is the highest executive of the State. *The State Council of Ministers is all in all in the administration of the State. As the real executive, the Council of Ministers enjoys a powerful position in the State.

10.5 FURTHER READING

1) Chander, Prakash. (2000). Indian Government and Politics. New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K. (2007). Indian Government and Politics. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K.(2006). Select Constitutions. New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). Constitutional Government in India. New Delhi: S. Chand and Company.

10.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The Governor on the advice of the Chief Minister.
Ans to Q No 2: Three.
Ans to Q No 3: The Governor.
Ans to Q No 4: The State Legislative Assembly
Ans to Q No 5: The State Council of Ministers is the highest policy making body of the State. The State Council of Ministers formulates the policies of government on the basis of our Constitution. All the important policies of the State are discussed and decided upon by it. Each minister of the council has to make separate policies for their own ministers.

10.7 POSSIBLE QUESTIONS

Q 1:Write a note on the position of the State Council of Ministers.
Q 2: Discuss the composition, powers and functions of the State Council of Ministers.

UNIT 11 : STATE LEGISLATURE

UNIT STRUCTURE

11.1 Learning objectives

11.2 Introduction

11.3 State Legislature

- 11.3.1 The Legislative Assembly
- 11.3.2 Composition of the Legislative Assembly
- 11.3.3 Qualifications of the Members
- 11.3.4 Powers and Functions of the Legislative Assembly

11.4 The Legislative Council

- 11.4.1 Composition of the Legislative Council
- 11.4.2 Qualifications of Members
- 11.4.3 Powers and Functions of the Legislative Council

11.5 Let Us Sum Up

11.6 Further Reading

11.7 Answers to Check Your Progress

11.8 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- know about the Legislature at the State level
- explain the composition, powers and functions of the Legislative Assembly
- describe the composition, powers and functions of the Legislative Council.

11.2 INTRODUCTION

The Constitution of India has made a provision for a Legislature in every State. It plays an important role in the administration of a State. In other words, it is the real executive in the State. Here, we will discuss the composition, powers and functions of the Legislature at the State level. We will also discuss the composition, powers and functions of the Legislative Assembly or Vidhan Sabha and the Legislative Council or Vidhan Parishad.

11.3 STATE LEGISLATURE

In India, the state Legislature is composed of the Governor and one or two Houses. The Lower House is called Legislative Assembly and the Upper House is called Legislative Council.

11.3.1 The Legislative Assembly

In India, the State Legislature consists of the Governor and one or two Houses. The Lower House is called the Legislative Assembly or Vidhan Sabha while the Upper House is called the Legislative Council or Vidhan Parishad. The various aspects of the Legislative Assembly and the Legislative Council are discussed below.

11.3.2 Composition of the Legislative Assembly

The members of the Legislative Assembly are elected directly by the people. Some seats in the Legislative Assembly are reserved for Scheduled Castes and Scheduled Tribes. The Governor can nominate one or more members from the Anglo-Indian Community if no member is elected from that Community to the House. According to the Constitution, a Legislative Assembly cannot have more than 500 members and less than 60 members.

The members of the Legislative Assembly are elected for a term of five years. But the Governor can dissolve the House before the expiry of five years and can call for fresh elections if they fail to get majority support in the House.

The meetings of the Assembly are presided over by the Speaker who is elected from among the members of the Assembly. In his/her absence, the Deputy Speaker conducts its meetings.

11.3.3 Qualifications of the Members

To be a member of the Legislative Assembly, one must have the following qualifications namely he/she must-

a) be a citizen of India
b) have attained 25 years of age
c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Thus, according to the Constitution, a person shall not be elected either to the Legislative Assembly or Legislative Council, unless he/she is himself/herself an elector for any Legislative Assembly Constituency in that State.

LET US KNOW

When State Emergency is declared under Article 356 of the Constitution in a State, the Legislative Assembly is kept either “suspended” or is dissolved.

11.3.4 Powers and Functions of the Legislative Assembly

The Constitution of India has entrusted enormous powers and functions in the hands of the Legislative Assembly. As the real executive of the State, it plays an important role in running the administrative machinery of the State. Among the important powers and functions of the Legislative Assembly, the following can be worth mentioning.

The main duty of the Legislative Assembly is to make laws for the State. It can make law on the subjects mentioned in the State list and the Concurrent list. However, during State Emergency, it cannot exercise its legislative power.

The assembly has control over the State Council of Ministers. The State Council of Ministers is responsible or answerable to the Assembly for its activities. The Assembly many pass a no- confidence motion against the Council of Ministers and bring its downfall if it is not satisfied with the performance of the Council of Ministers.

The Legislative Assembly has control over the finances of the State. A Money Bill can be introduced only on the floor of the Assembly. The government cannot impose, increase, lower or withdraw any tax without the approval of the Assembly.

The elected members of the Legislative Assembly can take part in the election of the President of India and all members can take part in the election of the members of the Rajya Sabha from the State.

The Assembly also takes part in the amendment of the Constitution on certain matters.

It is thus clear from the above discussion that the Legislative Assembly enjoys wide range of powers and functions. The development of the State depends upon the effective administration of the Legislative Assembly.

11.4 LEGISLATIVE COUNCIL

The Legislative Council is the Upper House of the State Legislature. Its existence depends upon the will of the Legislative Assembly and the enactment of a law made by the Union Parliament for legalising its will. In other words, it depends upon the wishes of the people of each State whether they want a bi-cameral or unicameral Legislature.

11.4.1 Composition of the Legislative Council

The Constitution provides that the total strength of the Legislative Council must not be less than 40 and not more than 1/3rd of the total strength of the Legislative Assembly of

the State. The strength of the State Legislative Councils differs from one State to another.

The members of the Legislative Council are elected indirectly. 1/3rd of its members are elected by the local government bodies like the Zila Parishad and Municipalities. Another 1/3rd are elected by the members of the Legislative Assembly. 1/12th are elected by the graduates of the constituency and another 1/12th by the teachers of secondary schools, colleges and universities. 1/6th of the members of the Legislative Council are nominated by the Governor of the State from amongst persons having distinguished themselves in art, science, literature, social service or corporate movement.

The Legislative Council is a continuing House. The Governor cannot dissolve this House. 1/3rd of its members retire after every two years and elections are held to fill the vacant seats. The members are elected for a term of six years.

The Chairman is the presiding officer of the Legislative Council. In his/her absence, the Deputy Chairman presides over its meetings. They are elected from among the members of that House.

11.4.2 Qualifications of the Members

To be a member of the Legislative Council, one must have the following qualifications namely he/she must-

a) be a citizen of India
b) have attained 30 years of age
c) possesses such other qualifications as may be prescribed on that behalf by or under any law made by Parliament.

Thus, according to the Constitution, a person shall not be elected either to the Legislative Assembly or Legislative Council, unless he/she is himself/herself an elector for any Legislative Assembly Constituency in that State.

LET US KNOW

At present, only seven States in India have bi-cameral Legislature i.e. Legislative Council in their Legislature. They are– Andhra Pradesh, Bihar, Jammu & Kashmir, Karnataka, Uttar Pradesh, Maharashtra and Telangana.

11.4.3 Powers and Functions of the Legislative Council

Ordinary bills can be introduced in the Council on any matter of the State List and the Concurrent List. A Money Bill cannot be introduced in the Legislative Council. A Money Bill passed by the Legislative Assembly must be adopted by the Legislative Council within a period of 14 days. If a Money Bill is not adopted within that period, then it is regarded as passed by both the Houses of the State Legislature.

The Legislative Council exercises control over the Council of Ministers. The members can ask questions to the Ministers on various matters and can introduce motions against the ministers. However, it cannot pass a no- confidence motion against the Council of Ministers.

The Legislative Council also takes part in the amendment of the Constitution along with the Legislative Assembly.

The existence of the Legislative Council is criticized as purposeless. It is not only less powerful than that of the Legislative Assembly, but also cannot be compared with the Rajya Sabha of the Union Parliament. The Rajya Sabha, which is an Upper House like that of the Legislative Council, is not as powerless as the Legislative Council. The Legislative Council is often regarded as ornamental in terms of powers and functions as compared to the Legislative Assembly.

LET US KNOW

The State Legislature follows the same procedure for passing an Ordinary or a Money Bill like that of the Parliament. In State Legislatures also, the Legislative Assembly which is the Lower House is more powerful than the Legislative Council which is the Upper House.

ACTIVITY 11.1

1. Find out how many States are there in India at present.
2. How many members are there in the Assam Legislative Assembly?

CHECK YOUR PROGRESS

Q. 1: Name the two Houses of the State Legislature?

…….

Q. 2: Write the qualifications of the members of the Legislative Assembly?

……..…….

Q. 3: Write a note on the strength of the Legislative Council.

…….

……..

Q. 4: Write a note on the strength of the Legislative Assembly.

……

……....……

Q. 5: Write the qualifications of the members of the Legislative Council?

…….

…….

11.5 LET US SUM UP

- The Constitution of India has made a provision for a Legislature in every State.
- The State Legislature consists of the Governor and one or two Houses. The Lower House is called the Legislative Assembly or Vidhan Sabha while the Upper House is called the Legislative Council or Vidhan Parishad.
- The Governor is only a nominal head like that of the President of India. His/her Powers are exercised by the Council of Ministers headed by the Chief Minister.
- The members of the Legislative Assembly are elected directly by the people for a period of five years.
- The Legislative Assembly enjoys wide range of powers and functions. The development of the State depends upon the effective administration of the Legislative Assembly.
- The Constitution provides that the total strength of the Legislative Council must not be less than 40 and not more than 1/3rd of the total strength of the Legislative Assembly of the State.
- The strengths of the State Legislative Councils differ from one State to another. The members are elected for a term of six years.
- The Legislative Council is often regarded as ornamental in terms of powers and functions as compared to the Legislative Assembly.

- In case of the State Legislature, in the States where there are two Houses, the Legislative Assembly is more powerful than the Legislative Council. The Council of Ministers is responsible to the Legislative Assembly for its activities.

11.6 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt.Ltd.
2) Ghai, K.K.(2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

11.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Legislative Assembly or Vidhan Sabha and the Legislative Council or Vidhan Parishad.

Ans to Q No 2: To be a member of the Legislative Assembly one must be a citizen of India and should have attained 25 years of age. He cannot be a member of both the Houses of the State Legislature or a member of the Union Parliament at the same time.

Ans to Q No 3: The Constitution provides that the total strength of the Legislative Council must not be less than 40 and not more than 1/3 of the total strength of the Legislative Assembly of the State.

Ans to Q No 4: According to the Constitution, a Legislative Assembly cannot have more than 500 members and less than 60 members.

Ans to Q No 5: To be a member of the Legislative Council one must have the following qualifications namely he/she must-

a) be a citizen of India
b) have attained 30 years of age
c) possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Thus, according to the Constitution, a person shall not be elected either to the Legislative Assembly or Legislative Council, unless he/she is himself/herself an elector for any Legislative Assembly Constituency in that State.

11.8 MODEL QUESTIONS

A. Very Short Questions

Q.1: Who is the constitutional head of a State in India?

Q.2: Who is the leader of the State Council of Ministers?

Q.3: "The members of the Legislative Council are elected indirectly". (True/False)

Q.4: What is the maximum number of members of the State Legislative Assembly?

Q.5: How many members can be nominated by the Governor to the Legislative Council?

Q.6: Who is the presiding officer of the Legislative Assembly?

B. Short Questions (Answer each in about 150-200 words)

Q.1: Explain in brief about the composition of the Legislature at the State level.

Q.2: Write the qualifications to be a Member of the Legislative Assembly of a State.

Q.3: Write a note on the powers and functions of the Legislative Council.

C. Long Questions (Answer each in about 300-500 words):

Q.1: Discuss the powers and functions of the State Legislature.

Q.2: Discuss the composition, powers and functions of the Legislative Assembly.

Q.3: Examine the role of the Legislative Council in the administration of a State.

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UNIT 12: HIGH COURT

UNIT STRUCTURE
12.1 earning Objectives
12.2 Introduction
12.3 The High Court
    12.3.1 Composition
    12.3.2 Qualification
    12.3.3 Tenure and Removal of Judges
    12.3.4 Powers and Functions of the High Court
12.4 Subordinate Courts
12.5 Indian High Courts: Background and Evolution
12.6 Let us sum up
12.7 Further Readings
12.8 Answers to check your progress
12.9 Possible questions

12.1 Learning Objectives
After studying this unit, learners will be able to:

*Understand the concept and significance of the High Court in India.
*Identify the composition and structure of High Courts.
*Explain the qualifications required for appointment as a High Court judge.
*Discuss the tenure, retirement, and removal procedures of High Court judges.
*Analyze the powers and functions of the High Court in India.

12.2 Introduction

The High Court is the highest judicial authority at the state level in India. The Constitution provides for a High Court in every State which works under the Supreme Court of India. But in some cases, one High Court serves more than one State. For example, the Gauhati High Court serves not only Assam but also the other States of the North-Eastern region.

The High Court serves as the principal civil and criminal court of original and appellate jurisdiction in each state or group of states. Established under the Constitution of India, High Courts play a crucial role in upholding the rule of law, protecting fundamental rights, and ensuring justice is delivered efficiently. While the Supreme Court operates at the national level, High Courts operate regionally, providing a bridge between lower courts and the Supreme Court.

High Courts ensure a uniform application of law across their respective states and also act as guardians of the Constitution within the state. They hear appeals from subordinate courts and have the authority to review laws and government actions to ensure constitutional compliance.

12.3.1 Composition

A High Court is headed by a Chief Justice and may have a number of other judges as determined by the President of India in consultation with the Chief Justice of India and the Governor of the respective state.There is no fixed number regarding the judges of the High Courts. The President may also appoint a qualified person as an additional judge in a High Court for two years.

Chief Justice: The principal head of the High Court responsible for administrative supervision and judicial leadership.

Other Judges: Their number varies depending on the workload of the court and the population of the state.

Permanent and Additional Judges: Some High Courts have additional judges to handle temporary increases in workload.

High Courts are established for each state, and in some cases, a single High Court serves two or more states (e.g., Punjab and Haryana High Court).

12.3.2 Qualification

To be appointed as a judge of a High Court, a person must fulfill the following conditions as per Article 217 of the Constitution of India:

*Must be a citizen of India.

*Must have held a judicial office in India for at least 10 years, or

*Must have been an advocate in a High Court for at least 10 years.

Additionally, judges are expected to possess integrity, legal expertise, and impartiality. The Chief Justice is appointed by the President of India after consulting the Chief Justice of India and the Governor of the state.

12.3.3 Tenure and Removal of Judges

Tenure: Judges of High Courts hold office until the age of 62 years.

Resignation: Judges may resign by submitting a written resignation to the President of India.

Removal: Judges can be removed before the age of retirement for proven misbehavior or incapacity. The process, called impeachment, requires:
1)An inquiry by the Parliament.
2)A motion passed by a two-thirds majority in both Houses of Parliament.

Transfer: A High Court judge may also be transferred to another High Court by the President after consultation with the Chief Justice of India.

12.3.4 Powers and Functions of the High Court

The High Courts have been given three types of powers or jurisdictions, such as, Original, Appellate and Administrative.

Original Jurisdiction: Under the Original Jurisdiction, a High Court has the power to issue direction or orders including writs to any person, authority and any government within its jurisdiction against the violation of the Fundamental Rights of the citizens. It has limited Original Jurisdiction in cases relating to admiralty, will, divorce, marriage, company laws and contempt of Court.

Appellate Jurisdiction: Under this jurisdiction, a High Court has the power to hear appeals about civil and criminal cases against the decisions of the Lower Courts.

Administrative Jurisdiction: Under this jurisdiction, a High Court has the authority to supervise the workings of all subordinate Courts. It can issue general rules to regulate their proceedings. The judges of the Subordinate Courts are appointed, promoted and transferred in consultation with the High Court of the state.

Other Jurisdiction: (a) The judgments of the High Courts are regarded and considered authoritative and serve as case law. (b) A High Court can start contempt proceedings against anyone who is found to indulge in contempt of the court. (c) Every High Court can admit Public Interest Litigation like that of the Supreme Court of India.

12.4 The Subordinate Courts

The Subordinate Courts which work under the High Courts are – the Court of the District Judge, the Court of the Assistant Judges, the Court of the Sub-Judges, the Court of Munsifs and the Court of small causes. The Court of the District Judge is the highest court in a district. The District Judge is appointed by the Governor in consultation with the High Court of the State. He is called the District Judge while dealing with the civil cases and Sessions Judge while dealing with the criminal cases. All the Subordinate Courts function under the supervision of the

concerned High Court. The judge is called the District Judge while dealing with civil cases and Sessions Judge while dealing with criminal cases. Besides these Courts, there are Courts of Assistant Judges, Sub-Judges, Munsifs and Courts of small causes. The High Court has been given control over District Courts and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge.

12.5 Indian High Courts: Background and Evolution

The High Courts in India hold a unique and pivotal place in the country's judicial system. They serve as the highest courts at the state or union territory level and play a crucial role in safeguarding the rule of law, protecting constitutional rights, and ensuring justice is delivered effectively and fairly. Their journey from colonial institutions to modern constitutional courts mirrors India's own historical evolution.

The story of High Courts begins long before independence. During the early days of British rule in India, the judiciary was fragmented and complicated. In the Presidency towns – Calcutta, Bombay, and Madras – Supreme Courts were set up to administer English law primarily for British subjects, while separate Sadar Adalats dealt with Indian subjects under different rules. This dual system was confusing and inefficient. To unify and modernize the judicial system, the British Parliament passed the Indian High Courts Act in 1861. This act abolished the older courts and authorized the creation of High Courts in the three Presidency towns, combining the jurisdictions of previous courts into a single, more efficient structure. These newly established High Courts had both original and appellate jurisdiction in civil and criminal matters, and they also supervised lower courts within their region.

The Calcutta High Court was formally inaugurated in 1862, followed closely by the Bombay High Court on 14 August 1862 and the Madras High Court on 15 August 1862. These institutions laid the foundation for the judiciary we know today. The Bombay High Court, for example, became one of the most prominent judicial bodies in the country and helped shape legal traditions that are still observed.

After India gained independence in 1947, the High Courts continued to function under the new legal order established by the Constitution of India, adopted on 26 January 1950. The Constitution guarantees the existence of a High Court for each state, although some courts serve more than one state or union territory. The jurisdiction and powers of High Courts are set out in Articles 214 to 231 of the Constitution, which empower them to hear appeals, enforce fundamental rights, and exercise judicial review over legislative and executive actions that violate constitutional principles.

Over time, as India's administrative and demographic needs grew, new states were formed and existing boundaries changed. This led to the creation of additional High Courts. For instance, the Gujarat High Court came into existence on 1 May 1960 when the former Bombay State was reorganized into Maharashtra and Gujarat. Similarly, the Delhi High Court was established on

31 October 1966 to serve the National Capital Territory. Such developments reflect how the judicial structure adapted alongside India's political evolution.
In the modern era, High Courts have embraced both tradition and innovation. They remain guardians of law in their respective jurisdictions, resolving complex legal disputes, protecting individual rights, and interpreting constitutional provisions. Many High Courts now leverage technology to improve transparency and access to justice—for example, by live-streaming court proceedings, launching mobile apps for case tracking, and implementing e-court systems to simplify filings.

Beyond adjudication, High Courts have supervisory authority over subordinate courts, ensuring uniform judicial standards across districts. They act as training grounds for legal minds, often shaping judges who later serve on the Supreme Court of India. Today, there are several High Courts across India, each reflecting the legal needs of its region while upholding shared constitutional values.
In essence, from their colonial roots to becoming essential pillars of India's democratic and constitutional order, High Courts have continuously evolved. They bridge historical foundations with present-day challenges, strengthening the judiciary's role as an independent arbiter of justice and protector of citizens' rights.

In addition, The High Courts form the backbone of India's state-level judiciary, balancing justice, constitutional protection, and supervision of lower courts. From their colonial origins to their modern role under the Constitution, they have evolved to meet changing legal and societal needs. By safeguarding citizens' rights, ensuring the rule of law, and shaping future legal leaders, High Courts remain a vital pillar of India's democratic system.

CHECK YOUR PROGRESS

Q 1: Describe the composition of the High Courts in India?
.....
.....
Q 2: What are the qualifications required to be a judge of the High Court?
.....
.....
Q 3: Who appoints the judges of the High Court?
.....

Q 4: Mention the different types of Subordinate Courts.
.....
.....

12.6 LET US SUM UP

*In India, we have an independent and integrated judicial system. Unlike other federations, India has a single and unified judicial system for the entire country.
*The Constitution provides for a High Court in every State. The judges of the High Court are appointed by the President of India.
*The High Courts have been given three types of powers or jurisdictions, such as, Original, Appellate and Administrative.
* All the Subordinate Courts function under the supervision of the concerned High Court. The Court of the District Judge is the highest Court in a District.

12.7 FURTHER READING

1)Chander, Prakash.(2000). Indian Government and Politics. New Delhi :Cosmos Bookhive Pvt. Ltd.
2)Kapur, Anup Chand and Misra, K.K. (2006). Select Constitutions.New Delhi : S. Chand and Company.
3)Pylee, M,V. (2006). Constitutional Government in India. New Delhi:S. Chand and Company.

12.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The High Court consists of a Chief Justice and other judges. There is no fixed number regarding the judges of the High Courts. The President may also appoint a qualified person as an additional judge in a High Court for two years.

Ans to Q No 2: Qualifications: To be a judge of a High Court one must be : (i) must be a citizen of India, (ii) must hold a judicial office in the territory of India or; (iii) must be an advocate of a High Court for at least ten years.

Ans to Q No 3: The President of India

Ans to Q No 4: All the Subordinate Courts function under the supervision of the concerned High Court. The Court of the District Judge is the highest Court in a District. The judge is called the District Judge while dealing with civil cases and Sessions Judge while dealing with criminal cases. Besides these Courts, there are Courts of Assistant Judges, Sub-Judges, Munsifs and Courts of small causes.

12.9 POSSIBLE QUESTIONS

A) Very Short Questions
Q 1: Who appoints the judges of the High Courts in India?

Q 2: At what age, a judge of a High Court retires?

B) Short Questions– (Answer each question in about 150 words)
Q 1: Discuss the Original and Appellate jurisdictions of the High Courts.

C) Long Questions– (Answer each question in about 300-500 words): Q 1: Discuss the composition, powers and functions of the High Court of India.

UNIT 13: LOCAL-SELF GOVERNMENT IN INDIA

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Growth of Local Self-government in India

13.4 Growth of Local Self-government in Assam

13.5 The Constitution (73rd Amendment) Act 1992 and the Constitution (74th Amendment) Act 1992

12.5.1 The Constitution (73rd Amendment) Act, 1992

12.5.2 The Constitution (74th Amendment) Act, 1992

13.6 Let Us Sum Up

13.7 Further Reading

13.8 Answers to Check Your Progress

13.9 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- describe the growth and development of local self -government in India.
- describe the growth and development of local self -government in Assam
- explain the Constitution (73rd Amendment) Act, 1992and its main provisions
- explain the Constitution (74th Amendment) Act, 1992 and its main provisions
- discuss the main functions of Zila Parishad, Anchalik Panchayat and Gaon Panchayat as institutions of self-government

13.2 INTRODUCTION

This unit introduces you to the system of local self-government in our country. This local self-government was prevalent during the British rule and now it has obtained constitutional status after the Constitution (73rd Amendment) Act 1992. Panchayats are now considered as an institution of self-government and it has autonomy in matters of resources in decision making and its implementation. The Constitution (73rd Amendment) Act 1992 has initiated the principle of political participation at the grass-root level aimed at balanced economic development and social justice for all.

13.3 GROWTH OF LOCAL SELF- GOVERNMENT IN INDIA

The term “local self-government” originated when the British regime ruled our country. Gradually, the British regime took the decision to engage and associate Indians in administering local affairs which contributed more towards the process of local self-government for the people of our country. With the enactment of the Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992, local self-governments, both rural and urban, have been given constitutional recognition in our country and it is the third stratum of government, the first two being the Central and the State governments.

In the pre-Independence period, Indian villages were organised in a way that enabled them to maintain social order through Panchayats. The informal institution of panchayat was responsible for maintaining and governing village society in accordance with the socio-political norms of their times. During the British period, the Montague-Chelmsford report in 1919 made local self-government a “transferred subject” under the scheme of diarchy. During this period, establishment of the village panchayat in a number of provinces was the major achievement. When India got Independence, the main question which came up was whether panchayat should have a place in the new Constitution or not? Indian Constitution didn’t mention the panchayat of the Gandhian model. The Constituent Assembly didn’t accept the Gandhian proposal and stressed that stability, unity and economic progress demanded a more centralized government. But, with the heralding of a new era, India’s commitment towards local self-govt. and grass-root democracy stood upright. In fact, it was the inner urge to ensure all round development of India’s political leadership that committed the government to implement the decentralization process through the Panchayati Raj framework. Ideologically, the initiation of the Panchayati Raj system drew its inspiration from Gandhiji’s firm conviction that independence must begin at the grass-root level and thus Panchayati Raj was synonymous with Swaraj or self-rule to Gandhi.

Thus, the new Constitution enforced on January 26, 1950 gave Constitutional importance to Panchayati Raj Institutions (PRIs) including them in Directive Principles of State Policy (DPSPs) under Article-40 of the Constitution. But it abstained from giving constitutional status to it.

After independence, the country adopted the five year plan for the economic growth and prosperity of rural India. To ensure growth and prosperity in rural India, the Community Development Project was launched in 1952, which was the biggest rural reconstruction scheme to fight against rural poverty, hunger, disease and ignorance. The First Five Year plan envisaged the establishment of 500 community centres.

In 1953, the National Extension Service was also launched, but the Balwant Rai Mehta Committee (1957) found that people's participation was not there and the village panchayats were not even involved. The committee therefore, recommended the devolution of development and decentralization of machinery of administration with adequate delegation of power to the Panchayati Raj Institutions. The committee recommended three-tier system of rural local government namely, the Village Panchayat at the local level i.e. village, the Panchayat Samiti at the Block level and Zila Parishad at the District level. Rajasthan was the first State to introduce the three-tier panchayat framework. The other States of the Indian union also gradually launched the system. This heralded a new phase in India's federal democratic polity. The Panchayati Raj Institutions particularly, the gram panchayats known as tiny-legislatures worked very well till the mid-sixties. However, in the wake of many problems confronting the PRIs including absence of adequate financial autonomy and holding of irregular elections.

To fine tune the working of these PRIs, the government appointed various committee from time to time. First to come was the Sadiq Ali Committee in 1964 to oversee the progress in decentralization and grass-root democracy in Rajasthan. The next major committee constituted was Ashok Mehta Committee (1978) appointed by the Janata government in 1977 to assign meaningful role to Panchayati Raj Institutions and revitalize them. The committee recommended two tier system of Panchayati Raj system viz, the Mandal Panchayats and the Zila Parishad. The recommendations given by the committee evoked mixed response, from different states. Some states were not eager to introduce panchayat system based on the recommendations made by Ashok Mehta committee, while States like Kerela, Karnataka, Maharashtra and West Bengal came forward to establish panchayats at local levels.

In the 1980s due to expansion of anti-poverty programme and creation of District Rural Development Agency (DRDA) and other organizations for rural development purposes at lower level, it was required to integrate PanchayatiRaj system with development programmes. As a result, C.H. Hanumanth Rao Working Group on district planning was set up in 1983. There after G.V.K. Rao Committee was setup in 1985 to review the existing administrative arrangements for rural development and poverty alleviation programmes. The committee recommended the need of regular elections to the PRIs and strengthening of Zila Parishad.

Another committee under the chairmanship of distinguished Jurist L.M. Singhvi was set up in 1986 to deal with the financial aspects of these bodies. The committee recommended the reorganization of the villages to make village panchayats more viable. The committee recommended that the panchayat should be made financially viable by combining 2-3 villages in one panchayat. Similarly, the Sarkaria Commission on Centre-State Relations in 1988 too

observed that most of the local self-governing bodies were not functioning efficiently and effectively. The Thungan Committee also made exhaustive recommendations on this account. The committee strongly recommended that PanchayatiRaj Institutions should be constitutionally recognized and timely and regular elections to these bodies be ensured.

During the time of Rajiv Gandhi government, attempts were made to reconstruct local governments, both rural and urban. Prime Minister Rajiv Gandhi took the initiative to amend the Constitution of India. In the year 1987and 1988, the Prime Minister held a series of conferences and workshops where district collectors were summoned and the theme was on "Responsive Administration". These conferences decided to decentralize functions, powers and authority to local government so that it might become strong and vibrant. Rajiv Gandhi introduced 64th Constitutional amendment Bill in 1989. But the Bill did not come into effect because of the fall of his Ministry. Finally, the P.V.Narasimha Rao government introduced Panchayati Raj system in India through the Constitution (73rd Amendment) Act in 1992.On on 24th April 1993 the Constitution (73rd Amendment) Act, 1992 came into force. It was a red-letter day for the Panchayati Raj system of our country. It gave constitutional status to the Panchayati Raj Institutions by inserting Part IX and adding the Eleventh Schedule to the Constitution. Under this Act, a Panchayat has been defined as an institution of self-government constituted under Article 243B of the Constitution for the rural areas. It provides that there shall be constituted in every State, panchayats at the village level, intermediate and district levels. However, panchayats at the intermediate level may not be constituted in a State having a population not exceeding 20 lakh. Accordingly, a three-tier structure of Panchayati Raj Institutions was put in place. It aims to strengthen the democratic base of the country as it provided constitutional status to Gram Sabha, a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. The Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a state may by law provide. The Act provides for regular elections to PRIs every five years; proportional seat reservation for Scheduled Castes and Scheduled Tribes and reservation of not less than 33% seats for women. Under the 1993 Act a Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. The Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a state may by law provide.

The National Democratic Alliance(NDA) Government headed by Prime Minister A.B.Vajpayee convened a two day long conference of all heads of panchayats of the country in Delhi form April 5-6, 2002 to have a firsthand information about the problems of Panchayati

Raj Institutions in India. He underlined the need for strengthening the grass-root level institutions by giving more power to PRIs.

The Panchayati Raj Act constitutes a major milestone in the history of rural local self-government as it provides political and administrative decentralization and devolution of resources and powers to local people.

CHECK YOUR PROGRESS

Q 1: Which report during the British period made local self-government a "transferred subject" under the scheme of diarchy?

.....

Q 2: When was Community Development Project (CDP) launched in our country?

(a) 1947 (b) 1951 (c) 1952

.....

Q 3: Which committee is considered as a Magna Carta of panchayat system in our country?

(a) Balwant Rai Mehta Committee (b) Ashok Mehta Committee

(c) G. V. K. Rao Committee.

.....

Q 4: Balwant Rai Mehta Committee recommended a three-tier panchayat system.(True/False)

.....

13.4 GROWTH OF LOCAL SELF-GOVERNMENT IN ASSAM

The present local self-government can be traced back to the British regime. During the British regime, limited powers were granted to the local institutions. The traditional system of panchayat suffered a great setback as the Britishers had little interest in the welfare of the native people. However, before the advent of Britishers, there were certain rules and regulations to administer our rural villages for protection of life and property of village people. In 1887, the Chowkidar Panchayat Act was passed and it provided for the establishment of panchayat in any village consisting of more than sixty (60) houses. The responsibility to create any panchayat in a village was entrusted to the District Magistrate. Besides, provision was made to establish panchayat for more than two villages provided they were continuous to one another. The functions of the panchayat were confined to the chowkidari system only. It is mentionable here that in ancient Assam, chowkidari system was prevalent and chowkidar served the villages and salaries were paid from collection of taxes to secure service from them.

The history of panchayat system turned into a specific direction after 1909 both for India and Assam. Because, the recommendations of the Royal commission on de-centralisation in 1907 were accepted in 1909. The commission suggested that more power should be conferred to the panchayat. Since then, attempts had been made to establish informed village authorities. Accordingly, the Government of Assam accepted the recommendations of the royal commission on de-centralisation and made an attempt to delegate more powers regarding sanitation, water supply etc. These provisions were incorporated in the Local Self Government Act, 1915. But, institutions established like panchayat under this act faced a lot of administrative and financial problems due to conflicts amongst the people of different parts of the same village.

In 1926, the Assam Rural Self-Government Act was passed with a view to provide an administrative setup where villagers could participate for solution of their own problems under this Act, powers were given to the panchayat and provision was made to increase the powers and functions of the panchayat in course of time in under the same Act. But, the villagers were unable to run the administration of their own affairs.

In 1948, the Assam Rural Panchayat Act was accepted and it provided for two-tier panchayat system i.e. primary panchayat and rural panchayat. Under this act primary panchayat and rural panchayat were formed. The rural panchayats would be serving more than one village and the administrative area of the primary panchayat would be one village. But, this Act also failed to serve the villages satisfactorily.

On the recommendations of the Ashok Mehta Committee (1957), the Assam Panchayati Raj Act of 1959 provided for establishment of Mohkuma Parishad, Anchalik Panchayat and Goan Panchayat in rural areas of Assam. Mohkuma Parishad was an advisory body at the top of the system and Anchalik Panchayat was the middle tier and at the lower level there was the Gram Panchayats. The Anchalik Panchayat could not function effectively and as a result in 1972 it was abolished. In 1972, two-tier Panchayat system was introduced and accordingly Gaon Panchayat at the village level and Mohkuma Parishad at the district level was established. The Mohkuma Parishad was entrusted with the executive functions in the field of public health, education, welfare, agriculture, small scale industry, co-operative society etc. The Goan Panchayat was entrusted with several developmental functions.

In 1986, the Assam Panchayati Raj Act was passed and it introduced a three-tier panchayat system of Gaon Panchayat, AnchalikPanchayat and Mohkuma Parishad. The Mohkuma Parishads were entrusted with several functions like security and approval of the budget of the Anchalik Panchayat, review of the work of the Anchalik Panchayat to advise the government in distribution of funds etc.

In 1992, panchayat elections were held in Assam which may be considered as landmarks in the history of Panchayati Raj system in Assam. In the year 1992, the Government of India introduced a new Panchayati Raj system by the Constitution (73rd Amendment) Act 1992. In order to take appropriate action under the 73rd Amendment, the Government of Assam replaced Assam Panchayati Raj Act 1986 with the Assam Panchayat Act 1994. Under this Act, Zila Parishads, Anchalik Panchayats and Gaon Panchayats are constituted at the District level, Block or intermediate level and village level, respectively.

The voters of the Gaon Panchayat directly elect the President and the members of the Gaon Panchayat. The President of the Anchalik Panchayat is elected from amongst the Anchalik Panchayat members. The members of the Zila Parishad are elected by the voters of Zila Parishad constituency. There is a provision of reservation of seats for SCs, STs and women also. 33% of total seats of panchayats are reserved for women. Seats are reserved for the Scheduled Tribes and Scheduled Castes communities on the basis of population. The Act provides for setting up a State Finance Commission to review the financial position of the panchayat bodies and suggest recommendations for sharing of resources between the State and panchayats. Besides, there will be a District Planning Committee to consolidate the district plan. The Act also provides opportunities to mobilize the resources of panchayat in many ways.

The Assam Panchayat Act, 1994 mentions some functions of the three-tier Panchayati Raj Institutions. Among these, preparation of annual plans and annual budget, mobilization of relief in natural calamities, removal of encroachment on public properties, organizing voluntary labourers and contribution for community works, maintenance of essential statistics of villages and such other development works as may be entrusted are some important functions of the Gaon Panchayats.

Similarly, Anchalik Panchayats are entrusted with preparation of annual plan and annual budget which are submitted to the Zila Parishad for approval, consolidation of the annual plans of all Gaon Panchayats, execution of work entrusted by the government or the Zila Parishad, and to assist the government in relief operation in natural calamities.

The function of a Zila Parishad is to prepare plan for economic development and social justice of the district and ensure the co-coordinated implementation of such plan.

The legislature of a State may by law endow the Panchayat with such powers and authority as may be necessary to enable them to function as institutions of self-government as the State or the Central governments, reservation of seats for Scheduled Castes and Scheduled Tribes, etc., mandatory reservation of seats (not less than one-third) for women in proportion to their population, etc. To prevent executive control over powers and functions of

Panchayati Raj Institutions, many State governments have enacted laws, empowering panchayats as institutions of self-government and transferred many departments to panchayats. In Madhya Pradesh, the State government transferred 22 departments to panchayats. In Assam, the State government transferred 14 subjects out of 29 subjects to Panchayati Raj Institutions.

LET US KNOW

Gram sabha is truly the bed-rock of Panchayati Raj. It is people's parliament of rural people. Every adult who is 18 years and above is a member of the gram sabha. It is through gram sabha that a representative is made accountable to the villagers.

ACTIVITY 13.1

When were the last Panchayat elections held in Assam? Try to gather information regarding the same.

.....

.....

CHECK YOUR PROGRESS

Q 5: The Assam Rural Panchayat Act, 1948, provided for a two-tier panchayat system. (True/False)

.....

Q 6: Mention the three tiers of panchayats constituted under the Assam Panchayat Act, 1994.

.....

Q 7: Which body does the Assam Panchayat Act, 1994, provide for setting up a State Finance Commission to review the financial position of the panchayat bodies?

.....

Q 8: In 1986, the Assam Panchayati Raj Act was passed and it introduced a ..... (Fill in the Blank)

13.5 THE CONSTITUTION (73rd AMENDMENT) ACT, 1992 AND THE CONSTITUTION (74th AMENDMENT) ACT, 1992

The Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992, were landmarks in the history of local self-government in India in the sense that it gave constitutional status to local self-government at the grass-root level and as a result, it became an indispensable part of governance in the country.

13.5.1 The Constitution (73rd Amendment) Act, 1992

The core features of the Constitution (73rd Amendment) Act, 1992 are as follows:

- As per the Constitution (73rd Amendment) Act, 1992, a new part, namely, Part IX 'The Panchayats' has been inserted in the Constitution of India.
- A new schedule, namely, the Eleventh Schedule to the Constitution has been added containing 29 subjects which have been devolved to the Panchayats by Part IX of the Constitution. These include agriculture, including agricultural extension, land improvement, implementation of land reforms, land consolidation and soil conservation, minor irrigation, water management and watershed development, animal husbandry, dairying and poultry, fisheries, social forestry and farm forestry, khadi, village and cottage industries, rural housing, drinking water, fuel and fodder, etc.
- Article 243-B of the Constitution mentions panchayats as institutions of self-government constituted under the Constitution for rural areas. Therefore, local government is not a mere agency of the executive branch. As an institutions of self-government, panchayats have autonomy in matters of resources, decision making in respect of powers and functions assigned and autonomy in implementing decisions through its own functionaries, for promoting economic development and ensuring social justice.
- The amendment initiates a three-tier panchayat structure. It provides that there shall be constituted in every State, panchayats at the village level, intermediate and district levels. However, panchayats at the intermediate level may not be constituted in a State having a population not exceeding 20 lakh. Accordingly, a three-tier structure of Panchayati Raj Institutions was put in place. Accordingly, Zilla Parishads, Anchalik Panchayats and Gaon Panchayats in the District, Block and village levels have been constituted respectively.
- It fixed a five years tenure for all panchayats and their office bearers so that regular election is held.
- Article 243-G recognizes panchayat as institutions of self-government with necessary powers and authority in matters of resources in decision making and to implement its decisions through its own functionaries.
- The Amendment provides institutions like Gram Sabha as people's parliament of rural areas. Gram Sabha constitutes the foundation of Panchayati Raj system. It aims to strengthen the democratic base of the country as it provided

constitutional status to Gram Sabha, a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. The Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may by law provide.

- Another important feature is the provision for setting up a State Finance Commission to allocate adequate resources to panchayat bodies.
- The provision of a mandatory District Planning Committee in each district to consolidate the plans prepared by the panchayats and municipalities in the district and prepare a draft of development plan for the district is another feature of the amendment under Article 243-ZD
- The amendment provides reservation of seats for Scheduled Castes and Scheduled Tribes based on their population.
- One third of the total numbers of seats are reserved for women so that they may represent in participatory development process and in decision making process.
- The amendment introduces effective devolution of powers and functions to Panchayati Raj Institutions so that they can function as institutions of self-government.
- The Act provides mandatory regular elections for PRIs and entrusts responsibility on the State Election Commission to conduct fair and free election.
- The State legislature shall make laws for maintenance of accounts by the panchayats and laws to audit such accounts.

LET US KNOW

Social auditing emerged as complementary to the financial auditing. It is the assessment of an organization's non-financial aspects, its achievements or failures. It is a mechanism of monitoring and evaluation of a panchayat body. Selected issues are audited socially in the meeting of gram sabha and performance of an institution is assessed.

13.5.2 The Constitution (74th Amendment) Act, 1992

The Constitution (74th Amendment) Act, 1992 came into effect in April 1993. The core features of the Constitution (74th Amendment) Act, 1992 are as follows:

Features:

- It inserted Part IX A to the Constitution and incorporated 18 subjects under the Twelfth Schedule related to municipality.

- According to Article 243-Q, there shall be constituted in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations and all the seats of the municipality shall be filled by direct election from the territorial constituencies in the municipal area. Each municipal area shall be divided into territorial constituencies to be known as wards. The legislature of a State may by law make provision with respect to composition, manner and territorial area of wards committee.
- Seats are reserved for SCs and STs in every municipality and one-third of the total seats are reserved for women.
- Every municipality shall continue for five years from the date appointed for its first meeting. Under the Act, a municipality means an institution of self-government. As an institution of self-government, it can prepare plans and implement them for economic development and social justice.
- The legislature of a State may by law endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provision for the devolution of powers and responsibilities with respect to preparation of plan and its implementation and subjects incorporated in Twelfth Schedule for economic development and social justice. The legislature of a State may by law authorize a municipality to levy collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits.
- The Finance Commission constituted under the 73rd (seventy third) amendment act shall review the financial position of the municipality. Similarly, the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the municipalities shall be vested in the State Election Commission.

CHECK YOUR PROGRESS

Q 9: As per the Constitution (73rd Amendment) Act, 1992, which new part has been inserted in the Constitution of India?

.....

Q 10: Gram Sabha is a people's parliament under a panchayat area. (True/False)

.....

Q 11: The term of office of a panchayat is -

(a) Four years (b) Five years (c) Six years

.....

Q 12: How is the President of a Gaon Panchayat elected?

.....

Q 13: The term of office of a municipality is six years. (True/False)

.....

Q 14: What are the various forms of municipalities?

.....

13.6 LET US SUM UP

- The term “local self-government” originated when the British regime ruled our country. In the post-independent period, the government appointed various committees from time to time to look into the working of the Panchayati Raj Institutions.
- The Constitution (73rd Amendment) Act and the Constitution (74th Amendment) Act, 1992 are considered to be milestones in the field of local self-government in the country.These Acts constitute a major milestone in the history of rural local self-government as it provides political and administrative decentralization and devolution of resources and powers to local people.
- The Constitution (73rd Amendment) Act, 1992 gave constitutional status to the Panchayati Raj Institutions by inserting Part IX and adding the Eleventh Schedule to the Constitution. The amendment initiates a three-tier panchayat structure.
- The Act provides for regular elections to PRIs every five years; proportional seat reservation for Scheduled Castes and Scheduled Tribes and reservation of not less than 33% seats for women.
- In order to take appropriate action under the 73rd Amendment, the Government of Assam replaced Assam PanchayatiRaj Act 1986 with the Assam Panchayat Act 1994. Under this Act, Zila Parishads, Anchalik Panchayats and Panchayats are constituted at the District level, Block or intermediate level and village level, respectively.
- The Constitution (74th Amendment) Act, 1992 came into effect in April 1993. It inserted Part IX A to the Constitution and incorporated 18 subjects under the Twelfth Schedule related to municipality.

13.7 FURTHER READING

1) Chander, Prakash.(2000). *Indian Government and Politics*. New Delhi :CosmosBookhive Pvt. Ltd.
2) Ghai, K.K.(2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.*NewDelhi : S. Chand and Company.
4) Pylee, M,V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

13.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Montague-Chelmsford Report

Ans to Q No 2: 1952

Ans to Q No 3: (a) Balwant Rai Mehta Committee.

Ans to Q No 4: True

Ans to Q No 5: True

Ans to Q No 6: Gaon Panchayat, Anchalik Panchayat and Zila Parishad

Ans to Q No 7: State Finance Commission

Ans to Q No 8: Three

Ans to Q No 9: Part IX

Ans to Q No 10: True

Ans to Q No 11: 5 years

Ans to Q No 12: The President of a gaon panchayat is elected directly by the people of that panchayat area.

Ans to Q No 13: False

Ans to Q No 14: Nagar Panchayats, Municipal Councils and Municipal Corporations

13.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: Which committee recommended two tier system of PanchayatiRaj system viz, the Mandal Panchayats and the Zila Parishad?

Q 2: Which Article of the Constitution mentions panchayats as institutions of self-government?

Q 3: Write two functions of a municipality.

Q 4: Which Schedule of the Indian Constitution is related to municipality?

B) Short Questions (Answer each question in about 150 words)

Q 1: Explain the main features of the Assam Panchayat Act, 1994.

Q 2: Discuss any two features of the Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992.

Q 3: Write a note on the growth of local self-government in India.

Q 4: Discuss the growth of local self-government in Assam.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Discuss the main features of the Constitution (73rd Amendment) Act, 1992.

Q 2: Write the main features of the Constitution (74th Amendment) Act, 1992.

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UNIT 14: ELECTION COMMISSION AND ELECTORAL REFORMS

UNIT STRUCTURE

14.1. Learning Objectives

14.2 Introduction

14.3 Election Commission

- 14.3.1. Composition
- 14.3.2. Appointment and Tenure
- 14.3.3. Independence of the Election Commission
- 14.3.4. Powers and Functions of the Election Commission of India.

14.4 Electoral Reforms in India

14.5 Let Us Sum Up

14.6 Further Reading

14.7 Answers to Check Your Progress

14.8 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the composition of the Election Commission
- observe how the independence of the Election Commission is maintained
- describe the powers and functions of the Election Commission
- analyse the various electoral reforms carried out by the Government of India and the Election Commission along with suggestions for further reforms.

14.2 INTRODUCTION

Election is a part and parcel of a democratic system.Since a democracy gives the power of enacting law to the representative of the people, the importance of elections cannot be underestimated. Without a well organised and stable election system, no democratic system can become effective.

Republic of India is the largest democratic country of the world along with the Parliamentary form of government. So, election system and the machinery for the conduct of election has an important place in the Indian Political System. The framers of the Constitution were fully aware of this and therefore provided an independent machinery i.e. the Election

Commission to conduct the elections of the President, the Vice President, the Union Parliament and the State Legislature.

In this chapter, we will discuss in detail about the composition, powers and functions of the election commission as well as various reforms made so far in our election system along with some suggestions for further reforms.

14.3 ELECTION COMMISSION

Article 324 of the Constitution of India provides for a single Election Commission to supervise, direct and control all elections to Parliament and to the State Legislatures, to the office of the President and the Vice President. It is a permanent, independent and statutory body.

14.3.1. Composition

The Election Commission was established on 25th January 1950 with only one Chief Election Commissioner. In 1989 two more Election Commissioners were appointed to the Commission for the first time during Mr. Rajiv Gandhi's government. But this decision was abolished by Mr. V.P. Singh's government in November 1989. Again in 1993, two additional commissioners were appointed to the commission by an ordinance of the President. Later on, the Parliament enacted the Election Commissioner Amendment Act (1993). Since then, the Election Commission comprises of a Chief Election Commissioner over and two Election Commissioners. As per the verdict of the Supreme Court in 1995, all three Election Commissioners enjoy equal powers and Constitutional status in all respects. However,the Chief Election Commissioner presides over the meetings of the Election Commission. The decisions are taken unanimously, otherwise by majority votes.

The Secretariat of the Election Commission is situated in New Delhi and comprises of about 300 officials, headed by two Deputy Election Commissioners, selected by the Commission. The Secretariat helps the commission in performing executive functions.

In the state level, the Chief Electoral Officer Supervises the election work who is appointed by the Election Commission in consultation with the State Government.

14.3.2 Appointment and Tenure

All the three Election Commissioners are appointed by the President subject to the provisions of the law made by the Parliament in this respect. The President may also appoint Regional Commissioners to assist the Election Commissioner in the discharge

of his/her functions before the commencement of the general elections to the Union Parliament and State Legislature.

The term or tenure of service of all the three Election Commissioners is six years. The President may increase their term by one year at a time. But, they cannot remain in their office after attaining 65 years of age.

14.3.3 Independence of the Election Commission

The Constitution of India has made certain provisions for maintaining the independence of the Election Commission from the possible influence of the Executive and Legislature to ensure free and impartial election in the country without interference from political parties in power. The following initiatives have been taken by the Constitution to maintain the impartiality and independence of the Commission.

- The Chief Election Commissioner once appointed cannot be removed by the President in an ordinary manner. However, he/she can resign on his/her own. He/she can only be removed by the President if he/she is presented with a resolution passed by both the Houses of the Parliament by absolute majority coupled with 2/3rd majority of the members present and voting. Other Election Commissioners or Regional Commissioners can be removed from service by the President on the recommendation of the Chief Election Commissioner.
- The conditions of service of the Chief Election Commissioner cannot be changed to his/her disadvantage after his/her appointment.
- The powers of the Election Commissioner in regards to supervision, direction and control of elections are absolute and cannot be questioned by any one.

14.3.4 Powers and Functions of the Election Commission of India

The Election Commission under the Chief Election Commissioner performs its functions with the help of People's Representation Acts made in 1950 and 1951. The whole electoral system of the country is run through these two Laws. These two Acts also constitute the basis for the electoral system and its working. The powers and functions of the Election Commission, as enumerated by the Constitution in Articles 324 to 328 can be described as follows:

- **Administrative Functions**

(1) To prepare electoral rolls for the elections to Parliament, State Legislatures, President, Vice President and Local bodies; suitably revise them after every census and before every general election to the Parliament and State Legislatures.

(2) To supervise the machinery to conduct elections free and fair throughout the country.

(3) To fix and declare the dates of election, submission and withdrawal of nomination papers, scrutiny of nomination papers before election and declaration of election result.

(4) The Commission can advise the President and Governors on the question of disqualifications incurred by the members of the Union or State Legislatures.

(5) To request the President or the Governor of the State as the case may be to make available of the necessary staff for conducting elections.

(6) The Commission may also arrange for a fresh poll in constituencies, where the polling has been unfair due to malpractices.

(7) The election commission deals with matters pertaining to reservation of seats for the Scheduled Caste and scheduled Tribes in Lok Sabha as well as Vidhan Sabhas of the State.

(8) To determine the territorial constituencies of all over India as per recent delimitation act of the Parliament.

(9) To register and recognize political parties, grant them status of National or State parties after election result on the basis of their performance in election and allocate symbols to parties.

(10) The Commission decides disputes regarding election symbol in the event of splits in a political party.

(11) The Election Commission also determines and allocates time to all the political parties for campaigning through the public media i.e, All India Radio and Doordarshan during the time of election.

- **Quasi Judicial Functions**

(i) The Election Commission acts as a court for settling disputes regarding recognition of political parties and allocation of symbols. It appoints officers to enquire into disputes connected with the electoral arrangement.

(ii) The commission has the power to disqualify a candidate who has failed to lodge an account of his/her election expenses within the time and in the manner prescribed by law.

(iii) The Election Commission has also the power of removing or reducing the period of such disqualification as also other disqualification under the law.

- **Model Code of Conduct (M.C.C.)**

  Another important function of the Election Commission is to formulate and enforce the Model Code of Conduct (M.C.C.) as soon as election to either State Assemblies or the

Lok Sabha are announced by the Commission.The M.C.C. continues till the entire process of election is completed.

Model Code of Conduct is a set of guidelines or norms issued by the Election Commission of India for conduct of all the political parties including the ruling party/parties and all the contesting candidates during elections mainly with respect of general conducts, speeches, election manifestos, meeting and processions, polling days and polling booths.

These sets of guidelines have been worked out with the consensus of all the political parties of the country who have consented to abide by the norms or instructions incorporated in the said code. The main objective of the Model Code of Conduct is to ensure free and fair elections, to avert communal clashes and corrupt practices.

- **Guidelines for General Conduct**

No party or candidate should involve in any such activities which may aggravate existing differences or cause tension between different castes and religious or linguistic communities.

When criticism is made of other political parties, it should be confined to their policies and programmes, past records and works. Party or candidate should not criticise on the aspects of private life of other opponent candidates.

All parties and candidates should avoid corrupt practices such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations. On the day of poll, holding public rally during the period of 48 hours before the end of poll and the transport of voters to and from polling station should be avoided.

Mosques, Temples, Churches or other places of worship should not be used as forum for election propaganda. There should be no appeal on grounds of caste, community or language and religion for securing votes.

- **Guidelines relating to Meeting and Processions**

The party or candidate should obtain necessary permission or license from the concerned authority for the use of loudspeakers or any other facilities in connection with any proposed meeting.

The organiser of an election meeting should take permission from the concerned authority for the use of public field, public hall, public buildings etc. well in advance.

The party or candidate should inform the local police authority about the venue and time of any proposed meeting, procession well in time so that the police can control the traffic and maintain peace and order.

The organiser of a procession should intimate the administration well in advance about the beginning and ending point as well as the route of the procession. There should be no deviation in this regard.

- **Guidelines for the Polling Day and the Polling Booth**

All the political parties and candidates or their supporters should refrain from serving or distributing liquor on polling day and during the period of 48 hours before the end of the poll.

Unnecessary crowd should not be encouraged or allowed near the polling booths and temporary party camps or counters by the political parties and candidates.

No one without a valid pass from the Election Commission will be allowed to enter the polling booths except the voters and the recognised polling agents of the candidates.

Disorderly conduct and disturbance in or near a polling station, use of loud speakers and booth capturing should be avoided by the parties and the candidates.

- **Guidelines for the Ruling Party or the Party in Power**

The ruling party whether at the Centre or in the State or States concerned, should not use its official position for the purposes of the election campaign.

The public places or grounds for holding of public meetings and use of helipads for air flights or helicopters in connection with elections should not be monopolised by the ruling party. Other parties and candidates should also be allowed to use such places and facilities on the same terms and conditions used by the ruling party.

Rest houses, dak bungalows or other government accommodation should also not to be monopolised by the ruling party or its candidates and such accommodations should be allowed to use by other parties and candidates in a fair manner. But, no party or candidates can use such accommodations or its premises as a campaign office or for holding any party meeting for election purpose.

The party in power should avoid issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for coverage of political news and publicity regarding achievements of the ruling party.

The code prohibits the ministers and other authorities, in making of announcement of any financial grants in any form or promises thereof, laying of

foundation stones of projects or schemes of any kind and adhoc appointments in government or public undertakings etc. which can have the effect of influencing the voters in favour of the ruling party.

Besides, the ministers are not permitted to use their official vehicles for election work. Prohibition of the use of vehicles belonging to local bodies, corporation, public undertakings and municipalities for electioneering by the candidates, MLAs, MPs and the Ministers.

In conclusion, we may say that multiple cases of model code of conduct violations come to the notice of the Election Commission of India, but in most cases the guilty are left off with a warning not to repeat the same mistake.

CHECK YOUR PROGRESS

Q.1. The Election Commission is a Constitutional body. (True/False)

.....

.....

Q. 2. The Election Commission is a single member commission (True/False)

.....

.....

Q. 3. Who appoints the Chief Election Commissioner?

.....

.....

Q. 4. What is the tenure of the Election Commissioners?

.....

.....

Q.5. Mention any two initiatives taken to maintain the independence of the Election Commission.

.....

.....

Q. 6. Write three important functions of the Election Commission of India.

.....

.....

14.4 ELECTORAL REFORMS IN INDIA

From the above discussion, we may realize the importance of the Election Commission in the democratic political system of our country. No doubt that, the Election Commission has been performing its duties with great efficiency and honesty, but our electoral system has certain defects. Many infirmities and malpractices such as money and muscle power, booth capturing, rigging, poll violence, poverty, Casteism, Communalism, unemployment, multi cornered contest, march of criminal and antisocial elements in the electoral process, electoral imbalances due to simple majority vote victory system,low voters' turnout, misuse of electoral and official machinery by the ruling party, illiteracy among the vast majority of the voters etc. have creeped into our electoral process.

Therefore, to get rid of these anomalies and defects, there is obviously a need for a wide range of electoral reforms to restore the health of Indian democracy.

The reports of various election reform committees, commissions and a number of formal and informal group discussions at various forums and by individuals, came out with some useful suggestions. Some of the important committees are – V.M. Tarkunde Committee (1974), Dinesh Goswami Committee (1990), Vohra Committee (1993) on Criminalization of Politics, Indrajit Gupta Committee (1998) on state funding of elections, subsequent reports by the Law Commission, Election Commission, National Commission to review the Constitution headed by M.N. Venkatachelliah, Second ARC on ethics in governance headed by Veerappa Moily, Law Commission report headed by A.P. Shaw (2015) etc.

However the government has accepted the recommendations of the reports of many commissions partially. For example- Lowering of voting age from 21 years to 18 years by 61st amendment in 1988, increase in number of proposers to prevent frivolous candidates, introduction of Electronic Voting Machine (EVM) in 1998, fresh poll date or countermanded election in a constituency because of booth capturing, disqualification for contesting election on conviction for insulting the National Honour Act 1971, increase in security deposit, restriction on contesting election for more than two constituencies, prohibition with respect to going armed to or near a polling station, paid holiday to employees on the poll day, prohibition on sale of liquor, time limit for bye-elections, reducing campaigning period from 20 days to 14 days, restriction on exit poll during the election period, ceiling on election expenditure for a Lok Sabha seat has been increased between 16 to 40 lakhs and for assembly seat between 8 to 16 lakhs, voting through postal ballot, grating voting right to citizens of India living abroad, celebration of National Voters Day on 25th January every year for creation of awareness among the voters, political parties need to report any contribution in excess of Rupees 20,000/- to the Election Commission for claiming income tax benefit, creation of a fully computerised database of electors, comprehensive photo electoral roll, video recording of the polling and

counting procedures, exemption of travelling expenditure during elections, declaration of criminal antecedents and assets etc. by the candidates and declaring false information in the affidavit is now a punishable electoral offence, introduction of photo identity card to voters, appointing observer to note the amount of expenditure incurred by the candidates on their poll campaign, introduction of VVPAT to allow voters to verify if their vote has gone to the intended candidate etc.

Yet, the problems tend to be as critical and challenging as ever. Therefore, the following specific reforms can be suggested:

(i) Political parties should be brought under the ambit of R.T.I. Act.

(ii) Conducting elections for Union and State Legislatures at the same time to curtail election expenditure.

(iii) Transparency in funding of political parties and their financial accounts should be mandatory.

(iv) Introduction of common electoral rolls for assembly, Parliamentary and local body election.

(v) Independent candidates should not be allowed to contest in the election who are mostly dummy or non-serious candidates.

(vi) Candidates should be allowed to contest from only one constituency.

(vii) Totaliser should be used for counting of votes to hide booth wise voting patterns and counting fears of intimidation and victimisation.

(viii) The Election Commission should be strengthened by giving equal Constitutional protection to all members of commission in matters of removability and creating a permanent independent secretariat for the Election Commission.

(ix) Trial of election disputes should be expedited for which one or more election benches in each High Court should be introduced.

(x) Regulation of opinion polls or exit polls is necessary to ensure the credentials of the organisations and to assess the validity of the methods used in conducting the opinion polls by the public.

It is expected that the above suggested electoral reforms will contribute to better participation of the citizens in electoral practices, reduce corruption and strengthen democracy in India.

CHECK YOUR PROGRESS

Q. 7: Write the names of the two committee involved with the electoral reforms of India.

.....

.....

Q. 8: Mention any three election reforms implemented so far.

.....

.....

Q. 9: By which amendment the age of the voters of Indian citizen has been decreased from 21 years to 18 years?

.....

.....

Q.10: In which year Electronic Voting Machine (EVM) was first introduced in India?

.....

.....

Q.11: Mention any three suggestions for electoral reforms.

.....

.....

14.5 LET US SUM UP

- Election is part and parcel of a democratic system. Without a well organised and stable election system, no democratic system can become effective.
- Article 324 of the Constitution of India provides for a single Election Commission to supervise, direct and control all elections to Parliament and to the State Legislatures, to the office of the President and the Vice President.
- The Election Commission is a permanent, independent and Constitutional or statutory body, presently comprises of one chief Election Commissioner and two other Election Commissioners along with two Deputy Election Commissioners and a Secretariat.
- The Election Commission was established on 25th January 1950 with only one Chief Election Commissioner. The Chief Election Commissioner presides over the meetings of the Election Commission. The decisions are taken unanimously, otherwise by majority votes.
- The Election Commissioners are appointed by the President subject to the provisions of the law made by the Parliament in this respect.The term or tenure of service of all the three Election Commissioners is six years. But they cannot remain in their office after attaining 65 years of age.
- The Election Commission under the Chief Election Commissioner performs its functions with the help of People's Representation Acts made in 1950 and 1951.

- The Election Commission is to formulate and enforce the Model Code of Conduct (M.C.C.) as soon as election to either State Assemblies or the Lok Sabha is announced by the Commission.
- Model Code of Conduct is a set of guidelines or norms issued by the Election Commission of India for conduct of all the political parties including the ruling party/parties and all the contesting candidates during elections.
- The main objective of the Model Code of Conduct is to ensure free and fair elections, to avert communal clashes and corrupt practices.
- To ensure free and impartial election without any interference from the executive, legislature and the ruling political party, the Constitution of India has made certain provisions to maintain the independence of the Election Commission.

14.6 FURTHER READING

1. Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.*New Delhi: S. Chand and Company.
2. Ghai K.K. (2017).*Indian Government and Politics*. New Delhi, Kalyani Publishers.
3. Chander, Prakash. (2000). *Indian Government and Politics*. New Delhi:Cosmos Bookhive Pvt. Ltd.
4. Pylee, M, V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.

14.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: True

Ans to Q No 2: False

Ans to Q No 3: The President of India

Ans to Q No 4: 6 years, but they cannot remain in their office after attaining 65 years of age.

Ans to Q No 5: (a) The condition of service of the Chief Election Commissioner cannot be changed to his disadvantage after his appointment.

(b) The powers of the Election Commission in regards to Superintendence, direction and control of elections are absolute and cannot be questioned by anyone.

Ans to Q No 6: a) To supervise the machinery to conduct elections free and fair throughout the country.

b) To fix and declare the dates of election submission and withdrawal of nomination papers, scrutiny of nomination papers before election and declaration of election result.

Ans to Q No 7: (a) V.M. Turkunde Committee (1974) (b) Dinesh Goswami Committee (1990)

Ans to Q No 8: (a) Introduction of photo identity card to voters.

(b) Lowering of voting age from 21 years to 18 years.

(c) Celebration of 'National Voters Day' on 25th January every year for creation of awareness among the voters.

Ans to Q No 9: 61st Amendment in 1988.

Ans to Q No 10: 1998

Ans to Q No 11: (a) Political Parties should be brought under the ambit of R.T.I. Act.

(b) Candidates should be allowed to contest from only one constituency.

(c) One nation one election principle i.e conducting elections for union and State Legislature at the same time to curtail election expenditure.

14.8 MODEL QUESTIONS

A) Very Short Questions

Q. 1: Which article of the Indian Constitution provides for a single Election Commission in India?

Q. 2: In which year the Election Commission was established?

Q. 3: In which year two more Election Commissioners were appointed for the first time?

B) Short Questions (Answer each question in about 150 words)

Q.1: Mention briefly the provisions laid down by the Constitution in order to maintain the independence or impartiality of the Election Commission.

Q. 2: What do you mean by Model Code of Conduct? Mention briefly the guidelines or instructions laid down in the Model Code of conduct.

Q. 3: Write a short note on the appointment and removal procedures of the Chief Election Commissioner.

C) Long Questions (Answer each question in about 300-500 words)

Q. 1: Discuss the powers and functions of the Election Commission of India.

Q. 2: Do you think that there is a need for electoral reforms in India? If yes, give agreements in favour of your answer.

Q. 3: Describe the election reforms implemented so far and suggest some more reforms you think necessary for our electoral system.

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