DPCS-02

Constitution of India

DIPLOMA PROGRAMME IN PARLIAMENTARY AND CONSTITUTIONAL STUDIES

COURSE II

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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COURSE INTRODUCTION

This is the second course of the one year Diploma Program in Parliamentary and Constitutional Studies. The second course or paper of this Diploma Programme is titled "Constitution of India". It is designed to help the learners to have a basic knowledge of the Constitution of India. A constitution of a country is the fundamental law of the land. It tells us what kind of government the country will have. It also tells us who its legitimate citizens are. The constitution lays down the rules to govern the country. It also tells us about the rights and also the duties of its citizens. As citizen of a democratic counrty we should have knowledge about the Constitution of our country. Accorgingly this Diploma Program is designed to provide some basic knowledge about the Constitution of our country. This course contains 5 units. The units are as follows:

Unit 1 : Salient Features of the Indian Constitution

Unit 2 : Preamble, Citizenship, Fundamental Rights and Fundamental Duties, Directive Principles of State Policy, Amendment of the Indian Constitution, Emergency Provisions

Unit 3 : Constitutional Provisions Regarding Executive, Legislature and Judiciary in India

Unit 4 : Judicial Review, Judicial Activism, Public Interest Litigation (PIL), Social Action Litigation in India

Unit 5 : Election and Electoral Reforms in India

Accordingly, the course, "Constitution of India" begins by discussing the salient features of the Indian Constitution. The Constitution is the embodiment of ideas, objectives and aspirations of the people of a state. Keeping in mind the uniqueness of our country, the Constitution of India is framed on the basis of some strong philosophical foundations. In keeping with such a strong philosophical foundation, our Constitution incorporates certain salient features for which it has become one of the famous Constitutions of the World. The first unit of this course discusses the salient features of the Indian Constitution. The second of this course deals with Preamble of the Constitution. In India the Preamble is an integral part of the Constitution which reflects the entire philosophy and ideals of the Constitution. The same unit also discusses some other important provisions of the Indian Constitution. These are- Fundamental Rights, Fundamental Duties, Directive Principles of State Policy, Citizenship, Amendment Procedure of the Constitution, Emergency powers of the President etc. The third unit focuses on various provisions of the Indian Constitution related to the executive, legislature and judiciary both at the central and state levels. In the fourth unit learners are introduced to some basic concepts, such as judicial activism, judicial review, Public Interest Litigation (PIL), Social Action Litigation and their operational dynamics in India. The Constitution of India has adopted a democratic system of government based on the principle of the universal adult franchise. For the successful conduct of the election, the Constitution provides for an Election Commission in India. The fifth unit discusses the composition and powers and

functions of the Election Commission and electoral reforms in India.

While going through the units, you will find that unit is further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Again, the units carry certain activities after a particular section where needed. These “ACTIVITIES” will provide you the opportunity to practically apply your own thoughts based on the knowledge gained from reading the text in a particular section. 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 to asses for 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 intereted 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.

UNIT 1 : SALIENT FEATURES OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Salient Features of the Indian Constitution

1.4 Let Us Sum Up

1.5 Further Readings

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–

- explain the salient features of the Indian Constitution
- examine some distinctive features of the Indian Constitution such as lenghtiest Constitution, mixture of federal and unitary fetaures, etc.

1.2 INTRODUCTION

The Constitution is the embodiment of ideas, objectives and aspirations of the people of a state. Keeping in mind the uniqueness of our country, the Constitution of India is framed on the basis of some strong philosophical foundations. In keeping with such a strong philosophical foundation, our Constitution incorporates certain salient features for which it has become one of the famous Constitutions of the World. In this Unit we shall discuss the features of the Indian Constitution.

1.3 SALIENT FEATURES OF THE INDIAN CONSTITUTION

The constitution of a state is not only the fundamental law of the state, but it is also like a mirror of its social, political and economic systems.

Each constitution grows and develops within a particular environment. The Constitution of India is unique in many ways. Several special features of the Indian Constitution distinguish it from many other constitutions of the world. The salient features of the Indian Constitution of India are described as follows:

- **Written Constitution:** The Constitution of India is a written document. To draft the Indian Constitution, a Drafting Committee was constituted by the Constituent Assembly under the Chairmanship of Dr. B. R. Ambedkar. The Constituent Assembly was a representative body which was indirectly elected by the people. It consisted of 389 members out of whom 296 members were elected from British India and 93 members were the 'representatives of Native States'. The elections to the Constituent Assembly were held in 1946 and Dr. Rajendra Prasad was elected the President of the Constituent Assembly. The Drafting Committee prepared the draft of the Constitution. After long efforts, the new Constitution was finally adopted on November 26, 1949. Thus, the Indian Constitution came into force on January 26, 1950.
- **The Lengthiest Constitution:** The Indian Constitution is the lengthiest, bulkiest and most detailed Constitution in the World. It contains 395 Articles (divided into 22 parts) and 8 Schedules at the time of its enforcement. At present, it has 444 Articles, divided into 24 parts and 12 Schedules. The Constitution of India contains a detailed list of Fundamental Rights, Directive Principles of State Policy, distribution of Powers between Centre and the States, Official Languages, Election and many other provisions over and above laying out the provisions regarding the executive, legislature and judiciary.
- **Partly rigid and partly flexible:** The Constitution of India is neither too rigid nor too flexible. A flexible constitution is that in which its provisions may be amended or modified by ordinary legislative process, whereas, in the case of a rigid constitution, a special procedure is required to be followed for the amendment or revision of its provisions. The Indian Constitution follows three methods for amendment. Firstly, some of the provisions can be amended by a simple majority of the Parliament.

Secondly, some provisions may be amended by a special majority of the Parliament and thirdly, some other provisions which are federal in character may be amended only with a joint initiative of both the Parliament and the State legislature. The framers of the Indian Constitution adopted this system so that the Indian Constitution can adapt itself to the changing circumstances while still retaining its basic characteristics. Because of all these provisions, the Indian Constitution is characterized by the mixture of flexibility and rigidity.

- **Supremacy of the Constitution:** The Constitution of India is the supreme law of the country. All the three organs of the Government i.e.: the Executive, Legislature and Judiciary function under the Constitution of India and are controlled by it. They cannot violate the Constitution.
- **Mixture of Federal and Unitary features:** The Constitution of India establishes India as a partly Federal and partly unitary government. The word 'Federalism' is not mentioned anywhere in the Constitution. It describes India as a 'Union of States'. Because of the peculiar features of the Indian Constitution, some experts describe it as a 'quasi-federal state'. Indian federalism is also known as 'co-operative federalism'. Some of the federal features included in the Indian Constitution are written constitution, supremacy of the constitution, division of powers and distribution of powers between the centre and the states, a strong judiciary, bicameral legislature etc. But, India cannot be called a true federation because some non-federal features or unitary features like- a strong centre, some rigid methods of amendment of the constitution, single citizenship, common All- India services, uniformity of judiciary, emergency provisions enjoyed by the President, appointment of Governors in the States, are distinctly noticed in the Constitution. Therefore, the Constitution of India is a mixture of federal and unitary features.
- **Parliamentary Government:** The Constitution of India provides for a Parliamentary form of Government on the British model. In the Parliamentary form of Government, the Head of the State is nominal, whereas the Prime Minster who is the leader of the majority in the

Parliament is the real executive. In India, the President is only the nominal head of our country and the real and actual powers of the government are exercised by the Prime Minister.

- **Secularism:** Secularism is another important feature of the Indian Constitution. The word has been included in the Preamble by the 42nd Amendment in 1976. India does not recognize any religion as the state or official religion and treats all religions equally. All the people of India are given the liberty of thought, expression, belief and worship and there is no discrimination on the grounds of religion, caste or community. The State shall not make any discrimination against any person on the ground of his or her religion.
- **Provision of Fundamental Rights:** The Fundamental Rights are contained in Part-III of the Constitution from Articles 12 to 35.The framers of the Constitution derived inspiration from the 'Bill of Rights' from the Constitution of the U.S.A. Fundamental Rights are justiciable in the sense that a person can approach the court in case of violation of his or her Fundamental Rights. The Supreme Court of India is the Guardian of the rights and liberties of the people. They are not absolute. The Government can impose reasonable restrictions on them, specially for maintaing moreality, law and order of the society. The significance of the Fundamental Rights is that they protect the liberty and the freedom of the citizens against encroachment by the state. Originally, the Constitution provided for seven Fundamental Rights. But the Right to Property was abolished by the 44th Constitutional Amendment Act of 1978. At present, there are six Fundamental Rights. These six Fundamnetal Rights are- Right to Equality, Right to Freedom, Right Against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, Right to Constitutional Remedies.
- **Fundamental Duties:** Fundamental Duties are incorporated in Article 51A of Part IVA of the Constitution by the 42nd Constitutional Amendment Act of 1976. The original Constitution did not contain the fundamental duties. The Fundamental Duties are very important for the overall development of the country, these Duties must be performed by the

citizens of India. These duties are not legally binding upon the citizens. Some of the duties include abiding by the Constitution and to respect its ideals and institutions and the National Flag and National Anthem, to defend the country and render national service, to develop the scientific temper, humanism and the spirit of inquiry and reform, to safeguard public property, to value and preserve the rich heritage of our composite culture etc.

- **Directive Principles of State Policy:** Another distinctive feature of the Indian Constitution is the Directive Principles of State Policy described in Part IV of our Constitution from Articles 36-51. These Directive Principles are fundamental in the governance of our Country and it is the duty of the state to apply these principles in making laws. These principles aim at securing social and economic freedoms by appropriate state action. These Directive Principle of State Policy are categorised as Socialist and Economic Principle, Gandhian principles and International Principles
- **Independent and impartial Judiciary:** A basic feature of the Indian Constitution is independence of the judiciary. The judiciary is separated from the other two organs i.e. executive and legislature. The tenure of the Judges of the Supreme Court and High Court is fixed and the judges cannot be removed by simple procedure. Independence of judiciary is very essential for the success of democracy. This independent judiciary acts as the guardian of the Indian Constitution.
- **Division of Powers between the Centre and the States:** Another important feature of the Indian Constitution of India is the division of powers between the Central and State Government. For this purpose three lists have been included in the Seventh Schedule of the Constitution. These three list are - the Union List, the State List, and the Concurrent List. Over the subjects incorporated in the Union List the Central Government has exclusive jurisdiction, like that the State Government has jurisdiction over the subjects included in the State List. On the subjects included in the Concurrent List both the Central Government and the State Government have power.

- **Universal Adult Franchise:** The Universal Adult Franchise is introduced by the Constitution and thus, all adult citizens above the age of 18 years, irrespective of their religion, caste, race, color and sex are entitled to participate in the election process.
- **Single Citizenship:** To promote the feeling of unity and oneness among the people of India, the framers of the Indian Constitution provided for a single citizenship for its citizens. It means that all the citizens of this country are the Indian Citizens only. In the Federation like the United States of America dual citizenship is a very important federal feature, unlike India.
- **Emergency Powers:** The Indian Constituion has provided for emergency powers so that the whole nation can meet with any emergency situation the country or any part thereof may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers. These are-National Emergency (Article-352), Emergency in a State (Article 356) and Financial Emergency (Article 360).

The above are some the important salient features of the Indian Constitution which makes it one of the most unique and distinct constitutions in the world.



LET US KNOW

The National Emergency (Article-352) was declared three times respectively in 1962, 1971 and in 1975 in our country. Emergency in a State (Article 356) (commonly called President's Rule) has been imposed many times in different States of India. Financial Emergency (Article 360) has not been declared till now.



ACTIVITY 1.1

Do you know how many times President's Rule has been declared in Assam? Try to find out the reasons behind the same.

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CHECK YOUR PROGRESS

Q 1: The Indian Constitution has ..... Schedules. (Fill in the blank).

Q 2: Indian federalism is also known as "co-operative federalism" ? (True/False)

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Q 3: Mention any four Fundamnetal Duites incorporated in the Constitution of India.

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Q 4: Mention four important features of the Indian Constitution.

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Q 5: Mention four important unitary features of the Indian Constitution.

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Q 6 : Through which Amendment the Right to Property is removed from the list of Fundamental Rights?

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Q 7 : State the name of three lists which divide powers between the Central Government and the State Governments.

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Q 8 : Write briefly about Emergency Powers of the President of India.

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1.4 LET US SUM UP

- The Indian Constitution is the lengthiest, bulkiest and most detailed Constitution in the World. It contains at present 444 Articles, divided into 24 parts and 12 Schedules. The Constitution of India contains a detailed list of Fundamental Rights, Directive Principles of State Policy, distribution of Powers between Centre and the States, Official Languages, Election and many other provisions over and above laying out the provisions regarding the executive, legislature and judiciary.
- The Indian Constitution is characterized by the mixture of flexibility and rigidity. The framers of the Indian Constitution adopted this system so that the Indian Constitution can adapt itself to the changing circumstances while still retaining its basic characteristics.
- The Constitution of India is the supreme law of the country. All the three organs of the Government i.e.: the Executive, Legislature and Judiciary function under the Constitution of India and are controlled by it. They cannot violate the Constitution.
- The Constitution of India establishes India as a partly federal and partly unitary government. Some of the federal features included in the Indian Constitution are written constitution, supremacy of the constitution, etc. But, India cannot be called a true federation because some non-federal features or unitary features like- a strong centre, some rigid methods of amendment of the constitution, single citizenship, etc. Therefore, the Constitution of India is a mixture of federal and unitary features.
- Some other important features of the Indian Constitution include provision of a Parliamentary form of Government on the British model, Secularism, Fundamental Rights, Independent and impartial Judiciary, Division of Powers between the Centre and the States,

Universal Adult Franchise, Single Citizenship, and Emergency Powers.



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.



1.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: 12 Schedules

Ans to Q No 2: True

Ans to Q No 3: (i) To abide by the Constitution and to respect its ideals and institutions and the National Flag and National Anthem,

(ii) to defend the country and render national service,

(iii) to develop the scientific temper, humanism and the spirit of inquiry and reform,

(iv) to safeguard public property, to value and preserve the rich heritage of our composite culture .

Ans to Q No 4: i) Written and Lengthiest Constitution

ii) Partly flexible and partly rigid Constitution

iii) Supremacy of the Constitution.

iv) Universal Adult Franchise

Ans to Q No 5: (i) Strong Centre (ii) Single Citizenship (iii) Common All-India Services (iv) Emergency provisions exercised by the President.

Ans to Q No 6: 44th Amendment

Ans to Q No 7: the Union List, the State List, and the Concurrent List

Ans to Q No 8: The Indian Constituion has provided for emergency powers so that the whole nation can meet with any emergency situation the country or any part thereof may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers. These are-National Emergency (Article-352), Emergency in a State (Article 356) and Financial Emergency (Article 360).



1.7 MODEL QUESTIONS

A) Very Short Questions

Q 1: Through which Amendment Act Fundamental Duties have been incorporated in the Constitution of India

Q 2: What are the Categories of the Directive Principles of State Policy?

Q 3: How many schedules does the Indian Constitution presently contain?

Q 4: Mention any two feredral features of the Indian Constitution.

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

Q 1: Discuss secularism and fundamental duties as features of the Indian Constitution.

Q 2: Why is the Indian state regarded as a mixture of Unitary and Federal features?

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

Q 1: Describe the features of the Indian Constitution.

*** ***** ***

UNIT 2 : PREAMBLE, CITIZENSHIP, FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES, DIRECTIVE PRINCIPLES OF STATE POLICY, AMENDMENT OF THE INDIAN CONSTITUTION, EMERGENCY PROVISIONS

UNIT STRUCTURE

2.1 Learning Objectives
2.2 Introduction
2.3 Preamble to the Constitution of India
2.4 Citizenship in India
2.5 Fundamental Rights
2.6 Fundamental Duties
2.7 Directive Principles of State Policy
2.8 Amendment Procedure of the Indian Constitution
2.9 Emergency Provisions of the Indian Constitution
2.10 Let Us Sum Up
2.11 Further Reading
2.12 Answers To Check Your Progress
2.13 Model Questions

2.1 LEARNING OBJECTIVES

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

- analyse the Preamble to the Constitution of India
- explain the various provisions of the Indian Constitution related to citizenship
- describe the types of Fundamental Rights
- describe the Fundamental Duties incorporated in the Indian Constitution
- discuss the various types of Directive Principles of State Policy incorporated in the Indian Constitution
- examine the amendment procedure of the Indian Constitution
- analyse the emergency powers of the President of India.

2.2 INTRODUCTION

In the previous unit we have discussed the salient features of the Indian Constitution. The philosophy and ideals of the Constitution are reflected in the Preamble to the Constitution. In this unit we shall discuss the Preamble so that we can have an overall idea about the philosophy and ideals of the Constitution. This unit also introduces you to the Fundamental Rights and Fundamental Duties of Indian citizens. This unit also introduces you to the Directive Principles of State Policy which are mentioned in Part IV of the Indian Constitution covering Article 36 to Article 51. These principles are meant for the State to follow them in matters of administration and in making of laws. Because the basic aim behind these principles is to establish a welfare State. In this unit we shall also discuss the amendment procedure and emergency provisions of the Constitution.

2.3 PREAMBLE TO THE CONSTITUTION OF INDIA

The philosophy and ideals of the Indian Constitution are reflected in the Preamble to the Constitution of India. Our Constitution may be said to be an expansion and explanation of the Preamble. Supreme Court Chief Justice, Justice Subba Rao opined, "Preamble contains, in a nutshell, its ideals and its aspirations." To understand the philosophy and ideals of the Indian Constitution, we must know the Preamble in the first place.

The Oxford Advanced Learner's Dictionary defines the word "Preamble" as an introduction to a book or a written document. The Constitution of India starts with a Preamble. It is the most precious part of the Constitution. It is the soul of the Constitution. The Preamble of the Indian Constitution says:

"WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

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

From the Preamble we can understand the philosophy and ideals of the Indian Constitution. The Preamble reflects that the India has accepted the principle of popular sovereignty. It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Preamble also declares India as a sovereign, socialist, secular state. The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state. The Constitution of India has established a parliamentary democracy in India marked by universal adult franchise, periodic election to choose the government, majority rule, rule of law, decentralization of power, independence of the judiciary, etc. The Preamble also declares India to be a republic. What it means is that the Head of the State in India, that is the President of India, is an elected head. The Constitution of India also ensures justice, liberty, equality to all its citizens. The Preamble to the Constitution of India also states that the state shall try to promote fraternity among all the people. With all these provisions India is committed to the ideal of a welfare state and tries to establish socio- economic justice.

The Preamble to the Indian Constitution has a great significance. It is important to mention here that, in the 'Biruberi Case' (AIR1960 SC 845) the Supreme Court held that the Preamble is not a part of the Constitution. But the famous 'Keshavananda Bharti - vs. - State of Kerala' (AIR 1973 SC 1461) has held that the Preamble is a part of the Constitution. It was also held in this case that, the Preamble could be amended by the Parliament under Article 368 but the 'Basic Structure' of the Constitution could not be changed. Thus, the Preamble can be amended but our Parliament cannot amend the Constitution in a way that it damages or destroys the objectives specified in the Preamble.

2.4 CITIZENSHIP IN INDIA

The notion of citizenship is seen in terms of a legal/formal status. Literally the term 'citizen' symbolise the person or resident of a country with certain privileges. Citizenship, very often focuses on a specific nationality, entitlements and claims, rights and duties for individuals enshrined in the Constitution of a country. It signifies that if the member of a particular political community performs their allotted duties and responsibilities according to the provisions of the Constitution, the state apparatus provides them all the rights and privileges for enjoyment of a public life. In any democratic country citizens are provided a number of rights and privileges and accordingly they must show their allegiance towards the state. The success of democracy also largely depends upon the qualities of the citizens.

Constitutional and Legal Provisions Regarding Citizenship in India

Though the Constitution of India has provided a federal structure, but the very nature of Indian political system is federal in spirit and unitary in practice. Therefore in India, each individual is entitled with single citizenship, i.e. Citizenship of India. In order to form unified polity, the framers of Indian Constitution basically put emphasis upon single citizenship. The framers of the Indian Constitution put enough importance upon the question of citizenship basically at the time of framing of the Constitution. Articles 5 to 8 of the Indian Constitution offer citizenship on the date of adoption of the Constitution (26 January, 1950) to the following categories of domiciled persons-

(a) Persons born within the territory of India [(Art. 5(a)].

(b) Person, either of whose parents was born within the territory of India- irrespective of the nationality of his/her parents or the place of birth of such person [Art. 5(b)].

(c) Person, who had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement [Art. 5(c)].

Article 5, 6, 7, 8, 9, 10, 11 of the Indian Constitution basically deals with the issue of citizenship.

Article 5: Citizenship at the commencement of the Constitution.

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

Article 7: Right of citizenship of certain migrants to Pakistan.

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

Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens of India.

Article 10: Continuance of the rights of citizenship.

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

The Constitution of India did not implement any comprehensive constitutional law and statutory basis of citizenship in India. Regarding the law of citizenship, the responsibility is vested upon the Indian Parliament of India to legislate certain laws related to citizenship. The Indian parliament enacted the Citizenship Act 1955, the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, the Citizenship (Amendment) Act, 2005 and Citizenship (Amendment) Act, 2015 regarding Indian citizenship.

Acquisition of Citizenship in India

According to the Citizenship Act 1955, Indian citizenship can be acquired through various methods. This Act focuses upon various modes of acquisition of citizenship. These methods of acquisition of citizenship can be discussed below–

- **Citizenship by Birth:** Each person born in India on or after January 26, 1950 shall be considered as the citizen of India by birth. But in case of the children born to foreign diplomats who posted in India are not eligible for Indian citizenship. In order to prevent the infiltration problem, an amendment was made in 1986 in the Citizenship Act of 1955 and thereby a person born in India can able to become a citizen of India by birth if his or her parent is a citizen of India at the time of birth.
- **Citizenship by Descent:** A person born outside India on or after January 26, 1950 shall be considered as the citizen of India by descent if his/her parents is citizen of India at the time of his/her birth.
- **Citizenship by Registration:** Through registration with definite authority,

a person can acquire Indian citizenship. Registration for Indian citizenship can be done through different methods. Persons of Indian Origin (PIOs) who generally reside in India for almost five years may apply for registration. A person, in case of citizenship, is deemed to be of Indian origin if his/her parents and grand-parents was born in undivided India. Ordinarily residing PIOs outside India can also be included under Citizenship by Registration. Those women who get married to Indian citizens too become the citizens of India through the process of registration.

- **Citizenship by Naturalisation:** A person can acquire Indian citizenship by naturalisation. To attain Indian citizenship, he/she must qualify the following conditions---
  (a) He/she must belong to a country where the citizens of India are allowed to become subjects or citizens of that country by naturalisation.
  (b) He/she needs to renounce the citizenship of his/her own country according to the prevailing law of that country.
  (c) Before the date of giving the application for naturalization, he or she must reside or serve the concern government authority for 12 months.
  (d) The person needs to possess a good and moral character.
  (e) He/she must have workable knowledge of a particular Indian language.
  (f) After acquiring citizenship by naturalisation, he or she is considered to be the permanent resident of India or elsewhere to serve under the Government of India.
- **Citizenship by Incorporation of Territory:** If India includes any new territory within its border, then the people of that territory will automatically become the citizens of India. For example-the people of Sikkim acquired Indian citizenship after the annexation of Sikkim with India in 1976.



CHECK YOUR PROGRESS

Q 1: The supreme source of authority as enshrined in the Preamble to the Constitution of India is the people of India. (True/False)

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Q 2: Why is India called a Republic?

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Q 3: Write briefly about the meaning of citizenship.

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Q 4: Mention two provisions of the Indian Constitution regarding Indian citizenship.

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Q 5: Mention any three methods of acquisition of Indian citizenship as provided by the Citizenship Act 1955.

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2.5 FUNDAMENTAL RIGHTS

Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. Fundamental Rights are enshrined in the Constitution. These are Constitutionally protected and guaranteed to the citizens while ordinary rights are protected by the ordinary law of the country. These are basic rights of individuals without which democracy becomes meaningless. The

Constitution of India has embodied a number of Fundamental Rights in Part III. Citizens can enjoy these rights within some definite limitations.

There are six types of Fundamental Rights in our Constitution

I. Right to Equality (Article 14 - Article 18)
II Right to Freedom (Articles 19 - Article 22)
III Right against Exploitation (Articles 23 - Article 24)
IV Right to Freedom of Religion (Articles 25 - Article 28)
V Cultural and Educational Rights (Articles 29 - Article 30)
VI Right to Constitutional Remedies (Article 32)



LET US KNOW

Right to Property, which was a fundamental right has been eliminated from the list of Fundamental Rights by the Forty-Fourth Constitution Amendment Act, 1978, and abolished it as the country intends to promote the socialistic objectives. So, now it is an ordinary legal right.

The six categories of Fundamental Rights are discussed below:

I. RIGHT TO EQUALITY ((Article 14 - Article 18): It implies equality before the law and equal protection of the laws within the territory of India. No man is above the law of the land. Every person is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. Any discrimination is prohibited and equality of opportunity in matters of public employment under the State is ensured. There is no distinction between officials and private citizen and no discrimination on the basis of caste, creed, religion, sex, etc is allowed. But right to equality does not mean absolute equality or universal application . Some exceptions are allowed by the Indian Constitution and these limitations are as follows:

- the President of India or the Governor of a State shall not be answerable to any court for the power exercised or act done by him or her.
- no criminal proceeding shall be instituted against the President or the Governor during his or her term of office.

- exemption from taxes on certain classes of property
- imposition of taxes upon different trades and professions
- making special provisions for women and children
- making special provisions for advancement of any socially, economically and educationally backward classes like Schedued Castes and Scheduled Tribes including special employment opportunities, which is called protective discrimination.

II. RIGHT TO FREEDOM (Article 19 - Article 22): This right is a most significant and important right for the citizens. This right confers some positive rights to promote the ideal of liberty. Article 19 guarantees six freedoms to all citizens. These are mentioned below:

As per Article 19 (1), all citizens shall have the right -

(a) to freedom of speech and expression ;
(b) to assemble peacefully and without arms ;
(c) to form associations or unions ;
(d) to move freely throughout the territory of India ;
(e) to reside and settle in any part of the territory of India ; and
(g) to practice any profession , or to carry on any occupation, trade or business

Article 20 and 21 guarantee the right to life, dignity and status. Under Article 20, no person accused of any offence shall be compelled to be a witness against himself. Similarly, under Article 21, no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 22 provides some safeguards against arbitrary arrest and detention.

Like the Right to Equality, Right to Freedom is not absolute. The State can impose reasonable restrictions upon these rights incorporated in Article-19 to maintain a balance between individual liberty and social control. When a proclamation of emergency is made under Article 352, provisions of Article-19 itself remain suspended (Art. 358)

III. RIGHT AGAINST EXPLOITATION (Article 23 - Article 24): The Indian Constitution recognizes the dignity of the individual against any form of exploitation either by the State or by the privileged section of the society.

Therefore, Right against Exploitation prohibits traffic in human beings and forced labour and employment of children in factories, mines or in any other 'hazardous employment'. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Artcle 24)

The provisions of Article 23 and Article 24 are absolute and the State is firm on maintaining the dignity and status of the individual against any form of exploitation.

IV. RIGHT TO FREEDOM OF RELIGION (Article 25- Article 28): The Indian Constitution has adopted a secular ideology and declared India as a secular state which maintains an attitude of neutrality and impartiality towards all religions. There is no state religion in India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate his own religion subject to public order, morality and health . Every religious group has been given the freedom to manage religious affairs, own and acquire movable and immovable property and administer such property in accordance with the law. The Right to Religion is also subject to certain limitations. The State has the right and duty to intervene if any religious activity creates public disorder, immorality and so on.

V. CULTURAL AND EDUCATIONAL RIGHTS (Article 29 - Article 30): The Constitution of India guarantees cultural and educational rights for all sections of people irrespective of their religious, racial and cultural diversities. These rights are non-political in nature. To preserve the religious and cultural interests of each community, the Constitution of India incorporated these cultural and educational rights under Article 29 and Article 30. Article 29 guarantees to every minority or section of the people to preserve its language, script and culture notwithstanding the provisions of Article 343 under which the official language of the union shall be Hindi in Devanagari script. The State shall not impose upon any minority group any culture other than the community's own culture Article 29(1). Clause (2) of Article 29 provides that no citizen may be denied

admission to State and State aided educational institutions on the grounds only of religion, race, caste or language. Article 30 provides that all communities shall have the right to establish and administer educational institutions of its choice and the state shall not discriminate against them in making grants on grounds of religion, race or language. This is implicit in the right conferred by Article 30 (1)- the right to impart instruction in their own institutions to the children of their own community in their own language.

This right has also some limitations. The State can regulate the affairs of such educational institutions in the interest of efficiency of instruction, discipline, morality and public order.

VI. RIGHT TO CONSTITUTIONAL REMEDIES (Article 32): A right without remedy is a meaningless formality. The Indian Constitution enumerates various rights to its citizen and in order to make these rights effective, it includes some means or remedies in the form of the Right to Constitutional Remedies under Article 32. Article 32 guarantees to every citizen the right to move the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional means. Both the Supreme Court under Article 32 and the High Courts under Article 226 can issue necessary writs for the purpose. When a citizen feels that his or her Fundamental Rights have been violated, he can move the court for the redressal of the same. The Supreme Court under Article 32 and the High Court under Article 226 may issue writs including habeas corpus, mandamus, prohibition, quo-warranto and certiorari to safeguard the Fundamental Rights. These are some instruments and means to make Fundamental Rights more effective.

However the right to move the court for protection of Fundamental Rights may be suspended during an emergency except those rights provided by Article 20 and Article 21.

2.6 FUNDAMENTAL DUTIES

When the Constitution came into force in 1950, no Fundamental Duties were enshrined in the Constitution of India. By the 42nd Amendment

to the Constitution of India in 1976, ten Fundamental Duties have been added to our Constitution. These duties are important and necessary for the vital interests of our country. These Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution. Under this Article, it shall be the duty of every citizen of India -

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

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

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

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India ;

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

(g) to protect and improve the natural environment ;

(h) to develop the scientific temper and spirit of inquiry ;

(i) to safeguard public property and abjure violence;

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

(k) duty of every parent or guardian to provide opportunities for education to child or ward between the age of 6 and 14 years. (added in 2002)

Fundamental Duties are like some noble advice of which some are civic duties and others are moral duties. They are not legally binding upon the citizens and even the courts can not enforce them. But these duties are important for National interest of our country. These duties have sanctity of its own. Besides these duties have moral and educative value upon citizen of our country. People fells that for proper enjoyment of rights, duties must be performed in a well manner. Because rights and duties are related to each other. Every right implies a corresponding duty towards individual and social welfare.



CHECK YOUR PROGRESS

Q 6: Fundamental Rights are mentioned in which part of Indian Constitution?

.....

Q 7: Fundamental Rights are justiciable. (True/False)

.....

Q 8: Fundamental Duties are inscribed in:

(a) Part III (b) Part IV-A (c) Part V of the Constitution

.....

Q 9: By which Constitutional amendment, Fundamental Duties are incorporated in the Indian Constitution?

(a) 42nd amendment (b) 44th amendment (c) 73rd amendment

.....

Q 10: Write briefly about the right against exploitation.

.....

.....

.....

.....

Q 11: Mention any two Fundamental Duties.

.....

.....

.....

.....

2.7 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are incorporated in Part IV of the Indian Constitution covering Article 36 to Article 51. These principles are meant for the State to follow them in matters of administration and in making of laws. Because the basic aim behind these principles is establish a welfare State. These principle are differ from fundamental rights. While fundamental rights are enforceable, Directive Principles are not enforceable by the courts. The courts can not compel the govt. to follow these principles. But it is the

duty of every responsible government to translate these principles in to action to promote social and economic justice among citizens. These principles are fundamental in the governance of the country . Borrowed from the Irish Constitution, the makers of our Indian Constitution incorporated these principles in Part IV of the Constitution from Article 36 to Article 51.

Classification of the Directive Principles of State Policy

(i) Socialist and Economic Principles: The socialist and economic principles always aim at shaping our country into a welfare state. Art. 38(1) provides that the State shall promote the welfare of the people by securing and protecting as it may a social order in which justice - social, economic, and political shall inform all the institutions of national life. The State shall strive to minimize the inequalities in income and try to eliminate inequalities in status, facilities and opportunities among individuals and groups engaged in different vocations within the country- Art.38(2). Thus promotion of welfare of people by securing a social order where justice shall prevail is the objective of our Constitution. To ensure such objectives, the State shall direct its policy in securing-

- adequate means of livelihood for all citizens irrespective of men and women equally ;
- equal distribution of wealth and resources among all classes ;
- equal pay for equal work for both men and women ;
- just and humane conditions of work, a decent standard of living , full employment, leisure and social and cultural opportunities;
- participation of workers in the management of undertakings and establishments;
- protection of children, youth against exploitation and against moral and material abandonment.
- Provision of work and compulsory education for all people, relief in case of unemployment, old age, sickness and disability and other cases of undeserved want;
- equality of opportunity and status for all individuals;
- level of nutrition and standard of living of the people;
- public health and enforce prohibition of consumption of intoxicating

drinks and drugs;

- environment safeguarding forest and wild life of the country ;
- a uniform civil code throughout the country;
- protection of adult and child labour.

(ii) Gandhian Principles: Principles enjoined under Gandhian principles in Article 40, Article 43, Article 47 and Article 48 are some ideals of Mahatma Gandhi followed during his life time. Our constitution framers wanted to implement these ideals to fulfill his dream. The State shall take steps-

- to organize village panchayats and endow them power and authority to enable them to function as unit of self-government. ;
- to promote cottage industries and village industries on an individual or co-operative basis in rural areas ;
- to prohibit consumption of intoxicating and injurious drinks and drugs;
- to promote educational and economic interests of the weaker sections of the people particularly SCs, STs to establish social justice and equity;
- to organize agricultural and animal husbandry on modern and scientific lines;
- to prohibit the slaughter of cows and other useful cattle;
- to protect and improve environment and safeguard the forests and wild life of the country;
- to protect, preserve and maintain places of national historical importance;
- to separate the judiciary from the executive.

(iii)International Principles: Principles enjoined in Art. 51 under international principles are some provisions to the State relating to ensure international peace and security. The State shall attempt -

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

2.8 AMENDMENT PROCEDURE OF THE INDIAN CONSTITUTION

The amendment procedure of the Indian Constitution has been discussed under Article 368 of the Constitution which lays down '….. Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.'The process of amendment of our Constitution incorporates both rigid and flexible methods. That is why our Constitution cannot be amended as easily as the British Constitution nor is it so difficult like the American one. Thus unlike other federal constitutions, the Indian Constitution can be amended by a rather simpler method. The Constitution must be amended if situation demands and also it must be protected from unnecessary and frequent changes. Thus Indian Constitution makes a balance between rigidity and flexibility and finds out a mixture of both.

Methods of Amendment of the Indian Constitution

Each of the three methods of amendment described in the Indian Constitution is unique in its own way and exhibits a mixture of flexibility and rigidity. Some of the provisions can be amended as easily as an ordinary law by the Union Parliament, some need a special majority of the Parliament and some provisions can be amended only when half of the States give consent besides special majority support in the Parliament.

- **First Method of Amendment of the Indian Constitution**

  There are some provisions in the Constitution which can be amended by simple law of the Parliament. No special techniques need to be applied for it. These provisions are amended by the Indian Parliament by simple majority in each of the two Houses without any approval of the States.

- **Second Method of Amendment of the Indian Constitution**

  Most of the provisions of the Indian Constitution can be amended by relatively rigid method which needs a special majority in each House of the Parliament. Such amendment Bill can be proposed by either House of the Parliament and that needs to be passed by two thirds of the

members present and voting in each House and this must also include majority of the total membership of each house.

- **Third Method of Amendment of the Indian Constitution**

There are some provisions in the Constitution which are amended by a rather difficult method. This method needs the support of half of the States besides the special majority of the Parliament. It involves two stages- The proposed amendment bill must be passed by a majority of the total membership and a 2/3rds majority of the members present and voting in each House. In the second stage such a bill must also have consent of 50% of the State legislatures.

The President of India needs to give his/her assent to all amendment bills. But he/she does not have any discretion in withholding his consent to a bill. Besides this, our Constitution has nowhere mentioned about any special commission for amendment. Also there is no question of referendum for ratification of the changes made in the Constitution as and when it is passed by the Parliament or in some cases by the State legislatures.

2.9 EMERGENCY PROVISIONS OF THE INDIAN CONSTITUTION

The Constitution has given the President of India same special powers to meet emergency situations. He or she exercises this power under three conditions - i) National Emergency under Article 352 when the country is threatened by war, external aggression or armed rebellion; ii) State Emergency under Article 356 when there is break down of constitutional machinery in a State and iii) Financial Emergency under Article 360 when there is a threat to the financial stability and credit of India.

The above mentioned powers are given to the President by the Constitution of India. But they are, in reality, exercised by the Council of Ministers in his or her name.



CHECK YOUR PROGRESS

Q 12: Directive Principles are non-justifiable (True/False)

.....

Q 13: What is the main aim of Directive Principles?

.....

Q 14: Directive principles are meant for

(a) the people (b) the State

.....

Q 15: Mention any two Gandhian Principles.

.....

.....

Q 16: Which Article of the Indian Constitution deals with the amendment procedure of the Constitution itself?

.....

Q 17: The Constitution of India provides for how many amendment procedures?

.....

Q 18: Which Article of the Indian Constitution deals with financial emergency?

.....



2.10 LET US SUM UP

- The Preamble to the Indian Constitution reflects the philosophy and ideals of the Constitution.
- The concept of citizenship indicates the relationship between the individual and the state. Citizenship denotes individual's status as a responsible member of a state. For attaining all the facilities of citizenship, he or she must fulfil the duties and responsibilities along with obligations towards the state.

- The Constitution of India has provided a number of provisions regarding Indian citizenship. But the responsibility to make laws and other statutory provisions related to Indian citizenship is vested upon the Parliament of India. Accordingly the Indian Parliament has enacted a number of laws in this regard, such as the Citizenship Act 1955, the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, the Citizenship (Amendment) Act, 2005 and Citizenship (Amendment) Act, 2015.
- The Citizenship Act 1955 has provided a number of methods of acquisition of Indian citizenship. These methods are- citizenship by birth, citizenship by descent, citizenship by registration, citizenship by naturalisation, citizenship by incorporation of territory.
- Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self.
- The Constitution of India has embodied six types of Fundamental Rights in Part III. These rights are the Right to Equality (Article 14 - Article 18), the Right to Freedom (Articles 19 - Article 22), the Right against Exploitation (Articles 23 - Article 24), the Right to Freedom of Religion (Articles 25 - Article 28), Cultural and Educational Rights (Articles 29 - Article 30) and the Right to Constitutional Remedies (Article 32). Fundamental Rights are not absolute. Therefore within some reasonable restrictions citizens can enjoy them.
- Fundamental Duties are incorporated in the Indian Constitution through the 42nd Amendment. Fundamental Duties are covered by Article 51A incorporated in a new chapter, Part IV-A of the Constitution. The Constitution of India contains 11 Fundamental Duties.
- The Directive Principles of State Policy are incorporated under Chapter-IV from Article 36-Article 51are some instructions to the State for achieving socio-economic development and establishment of a welfare state. These principles have been largely borrowed from the Irish Constitution.

- The Directive Principles of State Policy are classified into Socialist and Economic Principles, Gandhian Principles and International Principles.
- The amendment procedure enshrined in the Indian Constitution is unique in the sense that it is mixture of both flexibility and rigidity, combining three different methods for amending different provisions. The amendment procedure of the Indian Constitution has been discussed under Article 368 of the Constitution.
- The Constitution has given the President of India same special powers to meet emergency situations.



2.11 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.



2.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: True

Ans to Q No 2: The Head of the State in India, i.e., the President of India, is an elected head. He is not a hereditary ruler. Therefore India is called a Republic.

Ans to Q No 3: The notion of citizenship is seen in terms of a legal/formal status. Literally the term 'citizen' symbolise the person or resident of a country with certain privileges. By citizenship, very often focuses on a specific nationality, entitlements and claims, rights and duties for

individuals enshrined in the Constitution of a country. It signifies that if the member of a particular political community performs their allotted duties and responsibilities according to the provisions of the Constitution, the state apparatus provides them all the rights and privileges for enjoyment of a public life.

Ans to Q No 4: (i) Article 5: Citizenship at the commencement of the Constitution.

(ii) Article 6: Right of citizenship of certain persons who have migrated to India from Pakistan.

Ans to Q. No 5: Citizenship by birth, Citizenship by descent, Citizenship by registration.

Ans to Q. No 6: Part-III, Art. 12-35

Ans to Q No 7: True

Ans to Q No 8: Part-IV.A

Ans to Q No 9: 42nd amendment

Ans to Q No 10: The Indian Constitution recognizes the dignity of the individual against any form of exploitation either by the State or by the privileged section of the society. Therefore, Right against Exploitation prohibits traffic in human beings and forced labour and employment of children in factories, mines or in any other 'hazardous employment'. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24).

The provisions of Article 23 and Article 24 are absolute and the State is firm on maintaining the dignity and status of the individual against any form of exploitation.

Ans to Q No 11: (i) to abide by the Constitution and respect the National Flag and the National Anthem,

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom.

Ans to Q No 12: True

Ans to Q No 13: Establishment of a welfare state

Ans to Q No 14: State

Ans to Q No 15: (i) to organize village panchayats and endow them power and authority to enable them to function as unit of self-government. ;
(ii) to promote cottage industries and village industries on an individual or co-operative basis in rural areas.

Ans to Q No 16: Article 368

Ans to Q. No 17: Three

Ans to Q. No 18: Article 360



2.13 MODEL QUESTIONS

A) Very Short Questions

Q 1: Under which Article of the Indian Constitution, a citizen can approach the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional means?

Q 2: The Directive Principles of State Policy or DPSPs have been borrowed from which Constitution?

Q 3: The International Principles under Directive Principles of State Policy are incorporated in which Article?

Q 4: Fundamental Duties are covered by which Article of the Indian Constitution?

Q 5: By which constitutional amendment has Fundamental Duties been added to our Constitution?

Q 6: Mention any one provision of the Indian Constitution regarding citizenship.

Q 7: State the name of one important Act enacted by the Parliament of India which provides details provisions about Indian citizenship.

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

Q 1: Write briefly about the Right to Equality.

Q 2: Explain any six features of Fundamental Rights.

Q 3: Discuss the restrictions on Fundmental Rights.

Q 4: Write a short note on the Preamble to the Indian Constitution.

Q 5: Mention any four Gandhian Principles enumerated under Directive

Principles of State Policy.

Q 6: Write a short note on the meaning of citizenship.

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

Q 1: What are the various types of Fundamental Rights included in the Indian Constitution? Explain any four Fundamental Rights.

Q 2: Discuss the various types of Directive Principles of State Policy.

Q 3: Discuss various provisions of the Indian Constitution regarding citizenship.

Q 4: Examine the various methods of acquisition of Indian citizenship.

Q 5: Critically examine the amendment procedure of the Indian Constitution.

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UNIT 3 : CONSTITUTIONAL PROVISIONS REGARDING EXECUTIVE, LEGISLATURE AND JUDICIARY IN INDIA

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Separation of Power

3.4 Constitutional Provisions regarding Executive in India

3.5 Constitutional Provisions regarding Legislature in India

3.6 Constitutional Provisions regarding Judiciary in India

3.7 Let Us Sum Up

3.8 Further Reading

3.9 Answers to Check Your Progress

3.10 Model Questions

3.1 LEARNING OBJECTIVES

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

- explain the concept, origin and different aspects of separation of power in India
- explain the executive organ of the government in India
- explain the legislative organ of the government in India
- discuss different dimensions associated with the judiciary of India.

3.2 INTRODUCTION

The doctrine of Separation of Powers emphasizes the mutual exclusiveness of the three organs of government, viz., legislature, executive and judiciary. The main underlying idea is that each of these organs should exercise only one type of function. There should not be concentration of all the functions in one organ, otherwise it will pose a threat to personal freedom, for in that case, it could act in an arbitrary manner. It could enact a tyrannical law, execute it in a despotic manner and interpret it in an arbitrary manner

without any external control. In this unit efforts will be made to discuss the concept of separation of power and various constitutional provisions related to the executive, legislature and judiciary in India.

3.3 SEPARATION OF POWER

The theory of separation of powers is an important theory in Political Science. It is a theory of functional division of power between the three organs of the government. The French writer Montesquieu is called the father of this theory. He discussed this theory in his book "The Spirit of the Laws" (1748).

According to this theory, the three organs of the government, i.e. the executive, the legislature and the judiciary should be separated from each other. The government has to perform three types of functions and these functions should be given to three separate organs. The advocates of this theory believe that if three functions are performed by one individual or only one organ then there will be misuse of power. Then the government will become all powerful and rights of the people may be violated. Again, one individual or one organ may not be able to perform all the legislative, executive, and judicial functions efficiently and properly. Thus in order to have a good government the three functions must be separated and the individuals or the organs which perform these functions should not have any relation between them.

Separation of Power in India

In India, the doctrine of Separation of Powers has not been accorded a constitutional status. Apart from the directive principles laid down in Article 50 which enjoins separation of judiciary from the executive, the constitutional scheme does not embody any formalistic and dogmatic division of powers. As a general provision, Parliament is entrusted to make the law for the union. Executive is entrusted with the duty of implementation of law and judiciary is also considered to be independent under the constitutional scheme in India. However, there are many exceptions which negate the application of this doctrine.

Under Article 53 the executive powers of the union are vested with the President and under Article 154 the Governor is vested with executive powers of the state but they do exercise their powers with the aid and at advice of the council of ministers at the Centre (Article 74) and at the State, as the case may be. Both the President and the Governor exercise the power of ordinance making under the Constitution thus performing legislative functions. President makes laws for a State, after the dissolution of the State Legislature, following the imposition of the President's Rule (Article 356). President has the power to disqualify any member of the House under Article 103. The judges of the Supreme Court are appointed by the President, while the Parliament has the power to impeach the judges. The President has the power to decide a disputed question of the age of a judge of the Supreme Court or any High Court in order to restrain the concerned judge from the judicial service. The Union Council of Ministers is responsible to the Lok Sabha (Article 75). This House has the power to start impeachment proceedings against the President (Article 61) and the judges of the Supreme Court. The members of Council of Ministers will be members of either House of Parliament under Article 75(5) which means there is overlapping of personnel also.

The judicial function of Parliament is too substantial in certain respects. It can consider the question of breach of any known parliamentary privilege; and in a case where the charge is established, then they have power to punish the lawbreaker. The High Courts in certain marginal spheres perform such functions which are administrative rather than judicial. Their power of supervision over other subordinate courts under Article 227 is more of the administrative nature than judicial. When under Article 228 they have power to make transfer of cases, which also exercises administrative control over the State district courts as well. The legislative power of the High Courts and the Supreme Court includes their power to frame rules which is fairly wide.

The Executive in India is authorized to legislate in the name of delegated legislation. In the name of administrative adjudication of the right of individual citizens, the administrative agencies, which are statutory

tribunals and domestic tribunals have been constituted and perform judicial function.



CHECK YOUR PROGRESS

Q 1: Who is regarded as the father of the Separation of power theory?

.....

Q 2: Which Article of the Indian Constitution deals with the executive powers of the President?

.....

3.4 CONSTITUTIONAL PROVISIONS REGARDING EXECUTIVE IN INDIA

In India at the Centre the executive arm consists of the President, Vice-President and the Council of Minister (the Cabinet) headed by the Prime Minister. Any minister holding portfolio must be a member of the either House of the Parliament. In India's parliamentary system, the executive is responsible to the legislature.

Article 52 of the Constitution says that there shall be a President of India. He/she is the head of the state. Article 53 says that the executive power of the Union shall be vested in the President and it shall be exercised by him/her in accordance with the Constitution either directly or through officer's subordinate to him/her.

The expression "executive is not defined in the Constitution. Article 73 however, provides that the executive powers of the union shall extend to the matters with respect to which the Parliament has the power to make laws and includes the exercise of such right, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. Thus, the executive power of the union which is exercisable by the President is co-extensive with the legislative powers of the Union. The executive power of a modern State is not capable of any precise definition. In Ram Jawaya Kapur v. State of Punjab, even the Supreme Court also finds it difficult to explain the context of the executive power. The Court has

observed, "It may not be possible to frame an exhaustive definition of what executive functions mean and imply. Ordinarily, the executive powers connotes the residue of government functions that remain after the legislative and judicial functions are taken away".

It is neither necessary nor possible to give an executive enumeration of the kinds and categories of executive functions which may compromise both the formulations of the policy as well as its execution. Under Articles 73 and 163, the executive power is not confined merely to administration of laws already enacted but it includes determination of the Government policy, intimation of legislation, maintenance of law and order, promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of State. The executive powers of the Union does not extend to a matter in the Concurrent List unless (1) expressly provided in the Constitution e.g., Article 256, 257, 258, 353 and 356, or (2) expressly entrusted by a law made by Parliament. Clause (2) of Art.73 is an exception to the rule laid down in clause (1). This clause provides that until otherwise provided by the Parliament, a State may continue to exercise executive power on the matters (now include in the union and concurrent list) which it was authorized to exercise before the commencement of the Constitution. It should not, however, encroach upon any legal or fundamental right of citizens.

Executive Powers of the President: The Constitution of India has conferred extensive executive powers on the President. The executive powers of the Union of India are vested in the President. He/she is the head of the Indian Republic. All executive functions are executed in the name of the President, authenticated in such manner as may be prescribed by rules to be made by the President (Art.77). The President has power to appoint Prime Minister and on his/her advice other Ministers of the Union, the judges of the Supreme Court and the High Courts, the Governors of the States, the Attorney General, the Controller and the Auditor-General, the Chairmen and the Members of the Public Service Commissions, the Members of the Finance Commission and Official Commissions, Special Officer for the Schedule Castes and Schedule Tribes, Commission to report on the

administration of Schedule Areas, Commission to investigate into the conditions of backward classes, Special Officer for linguistic minorities are appointed by the President. The above-mentioned officials hold their office during the pleasure of the President. This means that the President has the power to remove them from their posts. This power is, however, to be exercised subject to the procedure prescribed by the Constitution. It is, however, to be noted that the President has to exercise his/her executive powers on the advice of the Council of Ministers.

The Vice-President of the India (Article 63) shall be ex Officio Chairman of the Rajya Sabha. [Art.64]. His/her normal function is to preside over the meetings of the Rajya Sabha. But since the Vice-President is not the member of the Rajya Sabha, he/she has no right to vote. His/her importance in the Constitution is that whenever any vacancy occurs in the office of the President, the Vice President has acts as President, until a new President is elected.

Originally, Article 74(1) provides that "there shall be a Council of Ministers with Prime Minister as its head to the aid and advise the President in the exercise of his function," After the 42nd Amendment,1976, the language of Article 74(1) is as follows- "There shall be a Council of Minister with the Prime Minister as its head to aid and advice the President who shall, in exercise of his functions act in accordance with such advice." Council of Ministers consists of three categories of ministers- Ministers of Cabinet rank, Minister of State and Deputy Minister.

The State Executive : The pattern of the Government in the State is the same as that for the Union, that is, a parliamentary system. The executive power of the State is vested in the Governor. He/she shall exercise the executive power either directly or through office subordinate to his. [Art.154]. The expression "officer subordinate to him" include a Minister of the State. Article 162, says that the executive powers of the State extends to matter with respect to which the legislature of the State has power to make laws. All executive actions of the Government of a State shall be expressed to be taken in the name of the Governor. Orders and instrument, made and executed in the name of the Governor shall be authenticated in the manner

specified in the rules made by the Governor. The validity of an order of instrument which so authenticated shall not be called in question on the ground that it was not made or executed by the Governor. [Article 166(1) and (2)]. The provision of Article 166(1) and (2) are however, directory and not mandatory. This means that even if an order is not expressed in the way mentioned in these provisions, it is not invalid. In such a case, it should be proved that it was made by the proper authority, under clause (3) of Article.166, if not proved then the order can be challenged in the Court on the grounds mentioned in clause (2) of the Article. Authentication only signifies that the order is made by the Governor but if in making the order, the Governor has not acted according to law the order can be challenged. [art.166(1)]. Under Article 166 (3), the Governor is authorized to make rules for the convenient transaction of the business of the Government of the State and for its allocation among Ministers.

Real executive powers vested in the Council of Ministers, the Supreme Court in Ram Jawaya Kapur v. State of Punjab, has held that our Constitution has adopted the British system of Parliamentary form of Government and the basic principle of this type of Government is that the President and the Governor are Constitutional heads and the real executive powers are vested in the Council of Ministers. In Shamsher Singh state of Punjab, the Supreme Court has held that the President and the Governors are only Constitutional heads and they exercise their powers and functions with the aid and advice of the Council of Ministers and not personally save in cases where the Governors are required by the Constitution to exercise his/her functions in his/her discretion. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive function of the Governor to be exercised on the advice of the Council of Ministers. Wherever the Constitution requires the 'satisfaction' of the President or the Governor, the satisfaction is not the personal satisfaction of the President or the Governor but it is the satisfaction of the Council of Ministers. The Indian Constitution envisages a parliamentary and responsible form of government at the Centre and in the State and not a Presidential form of Government.

3.5 CONSTITUTIONAL PROVISIONS REGARDING LEGISLATURE IN INDIA

The Constitution of India provides that, India is a sovereign, socialist, secular, democratic, republic with a bicameral Legislature. Union Parliament of India consists of the President, the Council of States (the Rajya Sabha) and the House of the People (the Lok Sabha). Though the President is not a member of either House of the Parliament, yet he/she is an integral part of the Parliament and performs certain functions relating to its proceedings. In India the President summons the two Houses of the Parliament, dissolves the House of the People and gives assent of Bills.

Although, the Rajya Sabha (Upper House) is a permanent body but in respect to powers it enjoys inferior position vis-à-vis the Lok Sabha. A money bill can only be introduced in the Lok Sabha. Even in case of ordinary bill, if a deadlock is created between the two Houses and the joint Session is held, then by virtue of the numerical strength the Lok Sabha will be able to pass that bill.

The most important function of the Parliament is the making of the law. The legislative procedure is initiated in the form of a Bill. An ordinary Bill, i.e. Bill, other than Money Bill and Financial Bills, may originate in either House of the Parliament. The Bill must be passed by both the Houses of the Parliament and then only it can be sent for President's assent. It becomes a law when it is assented to by the President. A Money Bill can only be introduced in the Lok Sabha. It cannot be introduced in Rajya Sabha [Art.109(1)]. A Money Bill can only be introduced on the recommendation of the President. The most important legislative power of the President is Ordinance making power. If at any time, when both Houses of the Parliament are not in session and the President is satisfied that circumstances exist which render it necessary for him/her to take immediate action, the President may issue such Ordinance as the circumstances appear to him/her to require. The Ordinance issued by the President shall have the same forces as an Act of Parliament.

The Constitution provides for a Legislature for every state in the Union.

The Legislature of every State consists of the Governor and House or Houses. The Legislature in the State are either bicameral (consisting of two House) or unicameral (consisting of one House). The Legislature in Bihar, Andhra Pradesh, Maharashtra, Karnataka, Uttar Pradesh, Telangana, Jammu & Kashmir is bicameral. In the remaining states the Legislature is unicameral consisting of only one House, i.e the Legislative Assembly [Art.168]. The procedure for legislation in a state legislature is a broadly similar to that in the Parliament under Article 107. All Bills except a Money Bill or a Financial Bill, may originate in either House of the state legislature. As is the case in the centre, a Bill must be passed by both the Houses, either without amendments or with such amendments only as are agreed to by both the Houses, except in the case of deadlock.

3.6 CONSTITUTIONAL PROVISIONS REGARDING 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 stands of the apex of the judicial system. There are High Courts at the State level and further below are subordinate courts. The Supreme Court has both, original jurisdiction over disputes between States and the Centre, and appellate jurisdiction over the High Courts of India. There are eighteen appellate High Courts, having jurisdiction over a large state or a group of states. Each of these states has a tiered system of lower courts. A conflict between the legislature and the judiciary is referred to by the President. Article 129 makes the Supreme Court a 'court of record' and confines all the powers of such a court including the power to punish for its contempt. A Court of Record is a court whose records are admitted to be of evidentiary value and they are not to be questioned when they are produced before the court. Once a court is made a Court of Record, its power to punish for contempt necessarily follows from that position. The power to punish for contempt of court has been expressly conferred on the Supreme Court by our Constitution.

Original Jurisdiction: Article 131 states that the Supreme Court has original

jurisdiction in any dispute-

(a) between the Government of India and one or more States;

(b) between the Government of India and any State or States on one side and one or more States on the other;

(c) between two or more States.

The Supreme Court in its original jurisdiction cannot entertain any suits brought by private individuals against the Government of India. The dispute relating to the original jurisdiction of the Court must involve a question of law or fact on which the existence of legal right depends. This means that the Court has no jurisdiction in matters of political nature. The term 'legal right' means a right recognized by law and capable of being enforced by the power of a State but not necessarily in a court of law.

Appellate Jurisdiction: Article 32 confers appellate jurisdiction on the Supreme Court to enforce Fundamental Right. Under Article 32, every citizen has a right to move to the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Right. The Supreme Court is given power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition and certiorari whichever may be appropriate.

Article 132 states that the Supreme Court is the highest Court of Appeal in the country. The Appellate jurisdiction of the Supreme Court can be divided into four main categories -

(a) constitutional matter,

(b) civil matters,

(c) criminal matters,

(d) special leave to appeal.

The judiciary in States consists of a High Court and a system of Courts that are subordinate to High Court. Article 124 says that there shall be a High Court in each State. However, under Art.231(1) Parliament can established a common High Court by law for two or more States or for two or more States and a Union Territory. The High Court stands at the head of the Judiciary in the State.

Jurisdiction of the High Court: Article 215 declares that every High Court

shall be a Court of Record and have all powers of such a court including the power to punish for its contempt. The scope and nature of the power of High Court under this Article is similar to the powers of the Supreme Court under Article 129.

Article 225 of the Constitution says that subject to the provisions of the Constitution and the provisions of any law of the appropriate Legislature are: (a) the jurisdiction of the High the Court, (b) the law administered in the exiting High Court, (c) the powers of the judges in relation to administration of justice in the Courts, (d) the power to make rule of the High Court shall be the same as immediately before the commencement this constitution. Thus, the pre-Constitutional jurisdiction of the High Court is preserved by the Constitution. The jurisdiction and powers of the High Courts can be changed both by the Union Parliament and the State Legislatures.

Article 226 provides that notwithstanding anything, in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or to authority including the appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them -(a) for the enforcement of fundamental rights conferred by Part III, and (b) for any other purpose.

Article 233 to 237 of the Constitution provides that in every State there is a system of subordinate Courts below the High Court. The Constitution secures the independence of subordinate Judiciary from the Executive. Article 233 provides that the appointment, posting and the promotion of District Judge shall be made by the Governor of the State in consultation with the High Court.



CHECK YOUR PROGRESS

Q 3: Mention the names of the two Houses of the Indian Parliament.

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Q 4: Write briefly about power of appointment of the President of

India.

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Q 5: Write briefly about the appellate jurisdiction of the Supreme Court of India.

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3.7 LET US SUM UP

- Parliamentary democracy stands for a system where political power is held by an elected parliament representing the people. In this system of government, the executive is responsible to the Parliament and executive and legislature are not independent of each other; instead the executive is a part of the legislature and therefore, unlike in a Presidential system, conflicts are less likely to arise between them.
- All the executive powers at the Centre are provided to the President who exercises all his/her powers according to the advice of the Union Council of Ministers headed by the Prime Minister.
- At state level the executive powers are provided to the Governor who exercises all his/her powers according to the advice of the State Council of Ministers headed by the Chief Minister.
- The India Parliament consists of the President, the Rajya Sabha and the Lok Sabha. The most important function of the Parliament is law-making.
- The Constitution also provides for either bicameral or unicameral legislature of each state.

- India has a single and unified judicial system for the entire country. The Supreme Court stands at the apex of the Indian judicial system. There are High Courts at the State level and further below are subordinate courts.



3.8 FURTHER READING

1) Jain. M.P. (2011). *Indian Constitutional Law*. Nagpur: Lexis Nexis Butterworths Wadhwa.

2) Pandey J. N. (2006). *Constitutional Law of India*. Allahabad: Central Law Agency.



3.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Montesquieu

Ans to Q No 2: Article 53

Ans to Q No 3: Rajya Sabha and Lok Sabha

Ans to Q No 4: The President has power to appoint Prime Minister and on his/her advice other Ministers of the Union, the judges of the Supreme Court and the High Courts, the Governors of the States, the Attorney General, the Controller and the Auditor-General, the Chairmen and the Members of the Public Service Commission, the Members of the Finance Commission and Official Commissions, Special Officer for the Schedule Castes and Schedule Tribes, Commission to report on the administration of Schedule Areas, Commission to investigate into the conditions of backward classes, Special Officer for linguistic minorities are appointed by the President. The above-mentioned officials hold their office during the pleasure of the President. This means that the President has the power to remove them from their posts. This power is, however, to be exercised subject to the procedure prescribed by the Constitution.

Ans to Q No 5: Article 32 confers appellate jurisdiction on the Supreme

Court to enforce Fundamental Right. Under Article 32, every citizen has a right to move to the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Right. The Supreme Court is given power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition and certiorari whichever may be appropriate.Article 132 states that the Supreme Court is the highest Court of Appeal in the country. The Appellate jurisdiction of the Supreme Court can be divided into four main categories -

(a) constitutional matter,

(b) civil matters,

(c) criminal matters,

(d) special leave to appeal.



3.10 MODEL QUESTIONS

A) Very Short Questions

Q 1: Mention names of any two states which have bicameral legislatures.

Q 2: Under which Article of the Indian Constitution the citizens can move to the High Court for the enforcement of their Fundamental Rights?

Q 3: Who is the ex-officio chairman of the Rajya Sabha?

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

Q 1: Write a short note on the theory of separation of power.

Q 2: Write briefly about powers of the High Courts.

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

Q 1: Discuss constitutional provisions related to the executive in India.

Q 2: Explain constitutional provisions related to the legislature in India.

Q 3: Discuss constitutional provisions related to the judiciary in India.

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UNIT 4 : JUDICIAL REVIEW, JUDICIAL ACTIVISM, PUBLIC INTEREST LITIGATION (PIL), SOCIAL ACTION LITIGATION IN INDIA

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Judicial Review in India

4.4 Judicial Activism and Public Interest Litigation in India

4.5 Social Action Litigation in India: Emerging Judicial Trends

4.6 Let Us Sum Up

4.7 Further Reading

4.8 Answers to Check Your Progress

4.9 Model Questions

4.1 LEARNING OBJECTIVES

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

- describe the idea of Judicial Review as well as Judicial Activism in India
- explain the idea of Social Action Litigation
- discuss important judicial pronouncements in reference to the Public Interest Litigation in India.

4.2 INTRODUCTION

'Judicial review', 'judicial activism' and 'judicial overreach' are frequently used terms in public discourse. Judicial review is the principle by which courts can declare acts of either the executive branch or the legislative branch as unconstitutional. This means that although legislature has the power to make laws, this power is not absolute. The constitutional power of judicial review authorises the courts to rule in favour of or against the constitutional amendment or statute in question. 'Judicial activism' connotes a more active role taken by the judiciary to dispense social justice. Critics,

however, say judicial activism means that courts make political rather than legal decisions to further their own agenda, rather than strictly reviewing the legality of a law under the letter of the law and the precedent (earlier court decisions in similar cases). Judicially invented mechanisms without an explicit constitutional support such as *suo moto* (on its own) cases, public interest litigation (PIL) born in the famous *Marbury* versus Madison case in the US, social action litigation (SAL) - a term coined by Professor Upendra Baxi for PIL-like (but not PIL) cases of social justice against state repression and official neglect in India, and a variety of new doctrines are examples of judicial activism. The innumerable examples of social action litigation include under-trial as well as convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant labourers, unorganised labourers, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum-dwellers and pavement-dwellers, kins of victims of extrajudicial executions - these and many more groups flock to the Supreme Court seeking justice. In this unit we will discuss the concepts of judicial review, judicial activism, Public Interest Litigation (PIL) , Social Interest Litigation (SIL) in India.

4.3 JUDICIAL REVIEW IN INDIA

This is the power of a court to adjudicate the constitutionality of the laws of a government or the acts of a government official. In other words, it is the principle by which courts can declare acts of either the executive branch or the legislative branch unconstitutional. The US Supreme Court has exercised this power, for example, to revoke state laws that denied civil rights guaranteed by the Constitution. This refers to limitations imposed on all branches of a government by vesting in each branch the right to amend or void those acts of another that fall within its purview. The theory of checks and balances suggests limitations imposed on all branches of a government by vesting in each branch the right to amend or void those acts of another that fall within its purview. It assumes significance due to competition and mutual restraint among the various branches of government. Existence of

such a legal mechanism ensures a system of constitutional government which guards against absolute power by providing separate executive, judicial, and legislative bodies who share powers and thereby check and balance one another.

Indian Constitution has borrowed this crucial principle from the US Constitution. While the US judiciary functions on the basis of 'due process of law', the Indian judiciary acts as per the 'procedure established by law' or the 'procedure prescribed by the Constitution'. Both the legislature and the courts are the creatures of the Constitution and they are autonomous in their own prescribed spheres. The judiciary can review any law passed by the legislature but the latter retains the right to put it out of the ambit of judicial review by placing it in the Ninth Schedule of the Constitution. Further, the legislature determines its internal procedure in which the courts cannot interfere. Its mainly uncodified privileges operate like 'the due process of law'. Article 13 lays down the procedure for judicial review in India. It enables the courts to examine the constitutional validity of laws passed by the Parliament and the State Legislatures. But Parliament can amend the Constitution subject to the condition that its amendments do not alter the basic structure of the constitution. Justice S.K. Das, in the case of *A.K. Gopalan V. the State of Madras* (1950), observed:

> While in the main, our Parliament and state legislatures are supreme in their respective legislative fields, our Constitution has, by some of its Articles, put upon the legislatures certain specified limitations. But outside the limitations imposed on the legislative powers, our Parliament and state legislatures are supreme in their respective legislative fields and the courts have no authority to question the wisdom or policy of the law duly made by the appropriate legislatures.

In the case of *Keshavanda Bharathi* v. State of *Kerela*, the Supreme Court of India propounded the basic structure doctrine according to which it said the legislature can amend the Constitution, but it should not change the basic structure of the Constitution, The Judges made no attempt to define the basic structure of the Constitution in clear terms. S.M. Sikri, C.J mentioned five basic features:

1. Supremacy of the Constitution. 2. Republican and democratic form of Government. 3. Secular character of the Constitution. 4. Separation of powers between the legislature, the executive and the judiciary. 5. Federal character of the Constitution.

He observed that these basic features are easily discernible not only from the Preamble but also from the whole scheme of the Constitution. He added that the structure was built on the basic foundation of dignity and freedom of the individual which could not by any form of amendment be destroyed. It was also observed in that case that the above are only illustrative and not exhaustive of all the limitations on the power of amendment of the Constitution. The Constitutional bench in *Indira Nehru Gandhi* v. *Raj Narain* (1975 Supp SCC 1.) held that Judicial Review in election disputes was not a compulsion as it is not a part of basic structure. In *S.P. Sampath Kumar v. Union of India*((1987) 1 SCC 124 at 128.), P.N. Bhagwati, C.J., relying on *Minerva Mills Ltd*. ((1980) 3 SCC 625.) declared that it was well-settled that judicial review was a basic and essential feature of the Constitution. If the power of judicial review was absolutely taken away, the Constitution would cease to be what it was. In *Sampath Kumar* the Supreme Court further declared that if a law made under Article 323-A(1) were to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would violate the basic structure and hence outside the constituent power of Parliament.

In *Kihoto Hollohan v. Zachillhur* (1992 Supp (2) SCC 651, 715, para 120) another Constitution Bench, while examining the validity of para 7 of the Tenth Schedule to the Constitution which excluded judicial review of the decision of the Speaker/Chairman on the question of disqualification of MLAs and MPs, observed that it was unnecessary to pronounce on the contention whether judicial review is a basic feature of the Constitution and para 7 of the Tenth Schedule violated such basic structure. Subsequently, in *L. Chandra Kumar v. Union of India* ((1997) 3 SCC 261) a larger Bench of seven Judges unequivocally declared: "the power of judicial review over legislative action vested in the High Courts under Article 226 and in the

Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure".

The Indian Constitution explicitly provides for judicial review through articles 13, 32, 131-136, 143, 226 and 246.This power is given to the High Courts under Article 226 of the Constitution and to the Supreme Court under Article 32 as well as Article 136 of the Constitution. At the same time, the parameters on which the power of judicial review of administrative act is to be undertaken are different from the parameters on which validity of legislative enactment is to be examined. No doubt, in exercise of its power of judicial review of legislative action, the Supreme Court, or for that matter, the High Courts can declare law passed by the Parliament or the State Legislature as invalid. However, the power to strike down primary legislation enacted by the Union or the State Legislatures is on limited grounds. Courts can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights or other Constitutional rights/provisions of the Constitution of India. No doubt, since the Supreme Court and the High Courts are treated as the 'ultimate arbiter in all matters involving interpretation of the Constitution, it is the Courts which have the final say on questions relating to rights and whether such a right is violated or not. This argument is based on Article 13(2) of the Constitution which forbids the State from making 'any law which takes away or abridges the right conferred by Part III', enshrining fundamental rights. It categorically states that any law made in contravention thereof, to the extent of the contravention, be void. One may also take cognizance of Article 372 of the Constitution which applies to pre-constitutional laws.

In the context of judicial review of legislation, this provision indicates that all laws enforced prior to the commencement of the Constitution can be tested for compliance with the provisions of the Constitution by Courts. Such a power is recognized by the Supreme Court in *Union of India & Ors. v. Sicom Limited & Anr*.(2009) 2 SCC 121. In that judgment, it was also held that since the term 'laws', as per Article 372, includes common law the power of judicial review of legislation, which is a part of common law applicable in India before the Constitution came into force, would continue

to vest in the Indian courts.

Thus the judiciary plays a vital role as a watchdog of the constitutional norms that the framers of Constitution have established. The judiciary is entrusted to protect fundamental rights and reverse the damage that is done by the legislature and the executive and also seeks to provide every citizen what has been promised by the Constitution under the Directive Principles of State Policy. All this is possible thanks to the power of judicial review. This, however, has not been accomplished overnight. It has taken almost seven decades to evolve and reiterate these valuable principles from time to time. In other words, rule of law is the foundation of democracy, and the primary responsibility for implementation of the rule of law lies with the judiciary.

While acknowledging the immense value of judicial review, one cannot say that judiciary has an absolute power to review all legislative and executive acts. Higher judiciary in India, by interpreting judicial review as a part of basic feature of the Constitution, has given a different meaning or rather changed meaning of the theory of checks and balances as well as buried the critical concept of separation of powers. In other words judiciary seems to have arrogated to itself an unfettered jurisdiction to review anything and everything that is done by the legislature.



CHECK YOUR PROGRESS

Q 1: From which Country India borrowed the concept of Judicial Review?

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Q 2: How Indian Judiciary has contributed in interpreting the idea of Judicial Review?

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4.4 JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION (PIL) IN INDIA

The popular phrase 'judicial activism' refers to an approach of judiciary towards the exercise of its power of judicial review. It may also allude to a description of a particular judicial pronouncement, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions. Although debates over the proper role of the judiciary go back to the nascent days of the American republic (as well as in India), the phrase judicial activism seems to have been bought into vogue by Arthur M. Schlesinger, Jr., in a 1947 article in Fortune magazine. Although the term is very often used to describe a judicial decision or judicial philosophy, its use can confuse readers because it can connote diverse meanings, and even if speakers may agree on which specific meaning is intended, they often disagree on whether it correctly describes a given decision.

The term activism is used in both political rhetoric and academic research. In academic usage activism usually means only the willingness of a judge to strike down the action of another branch of government or to overturn a judicial precedent, with no implied judgment as to whether the activist decision is correct or not. Activist judges enforce their own views of constitutional requirements rather than deferring to the views of other government officials or earlier courts. Judicial activism is simply the opposite of judicial restraint. It is not pejorative, and studies suggest that it does not have a consistent political dimension. Both liberal and conservative judges may be activist in this sense, though conservative judges have been more likely to invalidate federal laws and liberals more likely to strike down those of the states.

The expansion of the horizon of judicial review is respected as well as reviled; respect in as much as the judicial review is a creative element of interpretation, which serves as an omnipresent and potentially omnipotent check on the legislative and executive branches of government. But at the same time there is a danger that they may trespass into the powers given

to the legislature and the executive.

- **Expansion of Judicial Activism through Public Interest Litigation in India**

  After the draconian exposition of power by the executive and the legislature during Emergency the expectations of the public soared high and the demands on the courts to improve the administration by giving appropriate directions for ensuring compliance with statutory and constitutional prescriptions. Likewise the judiciary had taken an activist view beginning with the *Ratlam Municipality* case, there was a sweep of public interest litigation (PIL) or social action litigation (SAL) that had encompassed a wide variety of causes. PIL is a judicial process under which a group of people can access justice from a court of law. That group of people would mean "people who have no access to justice for protection of their fundamental rights due to poverty, illiteracy, backwardness and ignorance". In short, a PIL can be described as a legal action which is initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or entitlements are affected.

  With the interpretation given by it in *Menaka Gandhi* case the Supreme Court brought the ambit of constitutional provisions to enforce the human rights of citizens and sought to bring the Indian law in conformity with the global trends in human rights jurisprudence. This was made possible in India, because of the procedural innovations with a view to making itself more accessible to disadvantaged sections of society giving rise to the phenomenon of Social Action Litigation/Public Interest Litigation. During the 1980s and the first half of the 1990s, the Supreme Court (as well as High Courts) broke the shackles and moved far away from being a mere legal institution. Its decisions have tremendous social, political and economic ramifications. Repeatedly, the judiciary has sought to interpret constitutional provisions and the objectives sought to be achieved by it and directed the executive to comply with its orders.

PIL or SAL, a clear manifestation of judicial activism, has introduced a new dimension regarding judiciary's involvement in public administration. The sanctity of *locus standi* and the procedural complexities are totally side-tracked in the causes brought before the courts through SAL. In the beginning, the application of SAL was confined only to improving the lot of the disadvantaged sections of the society who by reason of their poverty and ignorance were not in a position to seek justice from the courts and, therefore, any member of the public was permitted to maintain an application for appropriate directions.

The new role of the Supreme Court has, however, been criticised in some quarters as being violative of the doctrine of separation of powers. It is claimed that the top court has, by formulating policy and issuing directions in respect of various aspects of the country's administration, transgressed into the domain of the executive and the legislature.

Complaints about activism have arisen in most common-law systems (e.g., at the federal levels in Australia, Canada, and India) where courts exercise significant judicial review. Although in the US context allegations of activism have been raised more recently by conservatives than liberals, such charges can be made by both sides, and the primary factor is probably where do the courts or rather activist judges stand politically *vis a vis* other government branches.

Since neither supporters nor critics claim that judicial decisions should be based on politics rather than law, the debate over judicial activism does not take the form of arguments for and against. Instead, each side blames the other for hyper-activism while denying that they themselves indulge in it. The constant disagreement among scholars and judges on how to interpret the Constitution makes it difficult to exemplify that any decision in a controversial case is the product of politics rather than law. As a result, calling a judicial decision activist serves primarily to indicate the speaker's view that those on the other side are not working in good faith.



CHECK YOUR PROGRESS

Q 3: Define Judicial Activism.

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Q 4: Locus *Standi* is derived from which language.

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4.5 SOCIAL ACTION LITIGATION (SAL) IN INDIA: EMERGING JUDICIAL TRENDS

Since the series of PILs field in late 1970s and early 1980s had made the Supreme Court accessible to hitherto ordinary masses and thereby enhanced its visibility, there was a new era of litigation in India. In a lucid article , an eminent jurist Professor Upendra Baxi, himself a participant in "public interest litigation" (PIL), however, objected to the terminology of PIL, which he pointed out that, had been borrowed from the Unites States of America. Stressing the need to highlight the conceptual differences, he suggested "Social Action Litigation" (SAL) as a more accurate description. Baxi laments that the term PIL has been transplanted into India from the US without relevant socio-cultural-legal soil. He says this is an instance of epistemological servitude even in a politically (but not intellectually) independent India. Baxi analyses this and writes:

> The label PIL has slipped into Indian juridical diction as effortlessly as all Anglo-American conceptual borrowings readily do. But while labels can be borrowed, history cannot be. The PIL represents for America a distinctive phase of socio-legal development for which there is no counterpart in India; and the salient characteristics of its birth, growth and, possibly, decay are also distinctive to American history.

Baxi argues that a striking feature of SAL is that it is primarily "judge-led and even judge-induced". And it is in turn related to juristic and judicial activism on the High Bench. Many justices have, on and off the bench,

advocated active assertion of judicial power to ameliorate the miseries of the masses. Baxi says SAL compels judges and lawyers increasingly to take human suffering seriously. He points out that although the active, almost explosive, assertion of judicial power in the aid of the dispossessed and the deprived began in the aftermath of the emergency, "judicial populism" had become pronounced even before the emergency, particularly in the great decisions in *Golak Nath* and *Kesvananda Bharati*. In these landmark decisions, familiar to students of constitutional law and politics of India, judges who wished Parliament to have unbridled power to amend the Constitution invariably sought to justify it in the name of, and for the sake of, the "teeming millions" of impoverished Indians. They sought to mould constitutional interpretation and doctrine in unmistakably and demotionally surcharged people-oriented ways.

According to Baxi, SAL is the unique Indian experience. The substance of the SAL in India is also distinctive to its contemporary condition. Much of SAL is concerned with combating repression and governmental lawlessness. In rare instances does the SAL concern assertion of new constitutional rights. The other distinctive feature of SAL proceedings is that all of them are Article32 petitions; that is, they are writ proceedings for the enforcement of the fundamental rights. The Supreme Court is empowered and some would say rather obligated, to duly consider them.

These two features characterize a special complexity of the SAL in India. On the one hand, they impart "high visibility and exalted status to the cause"; on the other hand, they present "some specific problems" for the Court, since all the complaints of governmental repression and lawlessness raise" disputed questions of fact which the Court does not as a matter of practice normally handle" and which cannot be wholly satisfactorily dealt with by 'affidavit evidence'. The distinct profile of the SAL in India compels judges and lawyers increasingly to take human suffering seriously.

Professor Baxi contends that SAL is distinctive as it does not raise the problems of validity of a law on the ground that it violates fundamental rights. In his view, the heart of the SAL proceedings is rather that gross violation of fundamental rights has actually occurred in the exercise of state

powers, either by commission(repression) or omission (lawless disregard of statutorily or constitutionally imposed duties). Moreover, the facts relied upon initially by the SAL petitioner, in most cases, are reported in the press. And the SAL petitioner is himself or herself often not the victim of repression or lawlessness, but a public citizen. Therefore, the Court has to satisfy itself about the factual foundations of the proceedings; and this requires constancy of the Bench. Baxi opines that late Justice P N Bhagwati's initiative in retaining many SAL matters with him seemed to proceed on the appreciation of this requirement. On the other hand, "it imprints the SAL with the insignia of an individual justice, whereas what is needed in days to come is a collective imprimatur of the Court for the new litigation". The future of SAL depends, in great measure, on a satisfactory resolution of this dilemma, says Baxi. Thus, much of the future of the SAL ultimately depends on the "organisational learning capacity of the Court" in dealing with novel and complex problems. And this capacity is "affected by existent judicial thought ways and styles of decision-making."



CHECK YOUR PROGRESS

Q 5: Who used the term SAL instead of PIL?

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Q 6: Explain Baxi's argument regarding the terminology of SAL instead of PLI.

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4.6 LET US SUM UP

- There is a symbiotic relationship among judicial review, judicial activism and social action litigation. There cannot be one without

the other.

- It is next to impossible to have rule of law in a society, without effective access to justice to the economically weaker classes and meaningful realization of fundamental rights guaranteed in the Constitution.
- Public law is closely related to the Rule of Law, one of whose main concerns is to ensure that law is enforced strictly and stop its violations by vested interests enjoying impunity. Legislative inaction and executive indifference very often compel courts to resort to judicial activism.
- The basic flaw in the criticism of judicial activism is that it overlooks the fact that PIL and SAL are non-adversarial.
- When the Court entertains PIL or SAL it is to ensure observance of constitutional obligations and protect the have-nots and the handicapped against violation of their basic human rights, which is also the constitutional obligation of the executive.
- The Court is really assisting in the realization of constitutional objectives.



4.7 FURTHER READING

1) Fordham, Michael. (2012). *Judicial Review Hand Book*. Hart Publishing.
2) Sathe, S.P. (2001) . *Judicial Activism in India*. OUP India
3) Basu, Durga Das. *The Constitution of India.*



4.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The United States of America.

Ans to Q No 2: Indian Judiciary with the help of different landmark judgments developed and interpreted the idea of Judicial Review in Indian Context.

Ans to Q No 3: The popular phrase 'judicial activism' refers to an approach

of judiciary towards the exercise of it power of judicial review.

Ans to Q No 4: Latin term- meaning, place to stand.

Ans to Q No 5: Professor. Upendra Baxi.

Ans to Q No 6: Professor Upendra Baxi, himself a participant in "public interest litigation" (PIL), however, objected to the terminology of PIL, which he pointed out that, had been borrowed from the Unites States of America. Stressing the need to highlight the conceptual differences, he suggested "Social Action Litigation" (SAL) as a more accurate description. Baxi laments that the term PIL has been transplanted into India from the US without relevant socio-cultural-legal soil. He says this is an instance of epistemological servitude even in a politically (but not intellectually) independent India. Baxi analyses this and writes: The label PIL has slipped into Indian juridical diction as effortlessly as all Anglo-American conceptual borrowings readily do. But while labels can be borrowed, history cannot be. The PIL represents for America a distinctive phase of socio-legal development for which there is no counterpart in India; and the salient characteristics of its birth, growth and, possibly, decay are also distinctive to American history. Baxi argues that a striking feature of SAL is that it is primarily "judge-led and even judge-induced".



4.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: From which case the main idea of Judicial Review has been developed?

Q 2: Who well defined the Word PIL as SIL?

Q 3: From which Country India borrowed the concept of Judicial Review?

Q 4: Define Judicial Activism.

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

Q 1: Differentiate Judicial Review and Judicial Activism in Indian context.

Q 2: Evaluate the development of Judicial Review in India.

Q 3: Write briefly about expansion of Judicial Review through Judicial Activism In India.

Q 4: Write a short note on Public Interest Litigation in India.

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

Q 1: Write an essay Social Action Litigation (SAL) Vis a Vis Public Interest Litigation (PIL) in the context of Indian Judiciary.

Q 2: Do you think that Judicial Activism or Judicial overreach is crossing its limits in India? Critically comment.

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UNIT 5 : ELECTION AND ELECTORAL REFORMS IN INDIA

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Election Commission of India

5.4 Electoral Reforms in India

5.5 Let Us Sum Up

5.6 Further Reading

5.7 Answers To Check Your Progress

5.8 Model Questions

5.1 LEARNING OBJECTIVES

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

- explain the composition of the Election Commission of India
- discuss the functions of the Election Commission of India
- describe the electoral reforms in India.

5.2 INTRODUCTION

The Constitution of India has adopted a democratic system of government based on the principle of the universal adult franchise. Since India is considered as the largest democracy in the entire world, election has been one of the largest tasks in India. For the successful conduct of the election, the Constitution provides for an Election Commission in India. Through this unit, an effort will be made to provide basic idea regarding Election Commission in India, its composition, powers and functions and also about Electoral Reforms in India.

5.3 ELECTION COMMISSION OF INDIA

Free and fair elections are at the core for proper functioning of a democratic country. The framers of the Indian Constitution were keen to

have fair and free General Elections to the President, Vice-President, Parliament and state legislatures and therefore inserted provisions related to the election commission in the Constitution. Article 324 of the Indian Constitution provides that the superintendence, direction and control of all elections in India will be vested in an independently constituted Election Commission. The Election Commission is an autonomous body. The Constitution of India has emphasised on ensuring the autonomy of the Election Commission and thus keeps it free from political and executive influence. It is an all India body and has jurisdiction over election to the Parliament, state legislatures, offices of the President and Vice-president of India.

- **Composition of the Election Commission**

  The Election Commission of India is a constitutional authority set up in pursuance of Article 324 of the Constitution of India. The Election Commission is composed of Chief Election Commissioner and as many Election Commissioners as President of India may deem essential at a particular time. In 1994 through an Act the Election Commission was made a three-member body with provision for making decision by majority. All the members of the Commission are appointed by the President of India.

  - Term: The term of the members of the Election Commission is not fixed by the Constitution. The conditions of service and tenure of the office of the Chief Election Commissioner and other members of Election Commissioners were laid down by the Act of Parliament with the assent of President of India in January, 1994. The Chief Election Commissioner and other members are appointed for a term of 6 years from the date of their appointment. This term can be further extended by one year at a time but in no case extended beyond the age of 65 years of the members.
  - Removal: Before the expiry of their normal term, the members of the Commission can quit the office by submitting their resignation to the President of India. However, the members of the Commission can also be removed by the President of India on the recommendation

of the Parliament. The Parliament can make such recommendation for the removal of the Chairperson or members of the Election Commission on the grounds of proved misbehaviour or incapacity. The resolution of removal of the members of the Commission must be adopted with majority of total membership and 2/3rd majority of the members present and voting. The removal process of the members of the Commission has been made complex to ensure the independence of the working of the Election Commission from both the legislature and executive organs of the government.

- **Powers and Functions of the Election Commission**

As the sole body to conduct, superintend and control elections in India, the Election Commission enjoys certain powers and functions which are outlined in Article 324- 328 of the Constitution of India. These powers and functions of the Commission can be mentioned as follows:

- Preparation of Electoral Rolls: Preparation of the electoral rolls for the elections of the Parliament and all state legislatures, including the local bodies are made by the Election Commission. It also revises these electoral rolls from time to time in accordance with the provisions of the Constitution and laws enacted by the Parliament or the state legislatures.
- Delimitation of election constituencies: According to the provisions of the Delimitation Commission Act, 1952, the delimitation of election constituencies has to be conducted after every Census, completed after every ten years. The Delimitation Commission is headed by the Chief Election Commissioner and the commission is responsible for conducting delimitation of constituencies in due course of time.
- Supervision of elections: The Election Commission supervises, directs and controls all the matters relating to the elections of the President and Vice-President of India, Parliament and state legislatures.
- Advisory function: The Election Commission provides advice to the President of India and Governor of the states of India on the questions regarding disqualification incurred by members of the Union or State

Legislatures.

- Appointment making power: The Election Commission has the appointment making power. The Commission appoints election officers for enquiring into the disputes arising out of or connected with the election arrangement.
- Settlement of disputes: The Election Commission has the power for the settlement of disputes regarding allotment of election symbols to the parties at the time of elections.
- Recognition of Political Parties: The Election Commission recognizes political parties as national or state political parties. The recognition is based on the percentage of vote share in national or state election.
- Determination of Code of Conduct: The Election Commission determines the code of conduct to be observed by the political parties and the candidates at the time of the elections.
- Scrutiny of Expenses: The Election Commission has the power to scrutinize the election expenses of candidates. The Commission has the power to take action against those who submit incorrect expenses or cross the limit of expenses in election.
- Notification of Elections: The Commission notifies dates and schedules of elections and conducts scrutiny of the nomination papers. It also fixes dates for poll, counting of voting etc.
- Broadcast: The Commission prepares the order for central broadcasts and telecasts and allocation of days and time to different political parties.
- Residuary Powers: The Supreme Court of India has opined that where the enacted laws are silent or make insufficient provision to deal with a given situation in the conduct of elections, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.
- Other functions: Apart from above, the Commission does some other functions like- receiving election related complains, re-poll, publishing reports of recent election etc.

- **Means to ensure the independent functioning of the Election Commission**

With a view to ensure free and impartial election, the Constitution of India has taken numerous steps to ensure the independence functioning of the Election Commission. Let us discuss the constitutional arrangement to ensure impartiality of Election Commission.

- Appointment: The President of India, which is considered as a neutral head of the state, appoints the Chief Election Commissioner and other Election Commissioners. This may ensure the neutrality of the commissioners.
- Removal Procedures: The procedure for removal of Chief Election Commissioner has been made quite difficult. The Chief Election Commissioner can be removed from his/her office only by the President on the ground of proved misbehaviour or incapacity. The resolution for his/her removal must be passed by the both Houses of the Parliament with majority of total membership and 2/3rd majority of the members present and voting. This difficult procedure helps in keeping the Commission free from political control.
- Parliamentary Law: The condition of service of the Election Commission cannot be varied to his disadvantage during his term of office. The Constitution have made provisions for their condition of service on the basis of law made by the Parliament.
- Advice of the Chief Election Commissioner: According to Article 324(5) 'other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner'.

These provisions protect the Election Commission from undue interference of the executive and legislative influence.



ACTIVITY 5.1

Try to find out the name of the present Chief Election Commissioner of India.

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CHECK YOUR PROGRESS

Q 1: Which agency issues the notification for elections in India?

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Q 2: Who appoints Chief Election Commissioner of India?

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Q 3: Write the constitutional position of the Election Commission of India.

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Q 4: Mention any two functions of the Election Commission of India.

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5.4 ELECTORAL REFORMS IN INDIA

Since 1952, the Election Commission of India has been conducting elections at both national and state level. The electoral system in India, suffers from several defects. Some of the important shortcomings highlighted by the critics include (a) growing use of corrupt practices and misuse of governmental machinery; (b) role of money and muscle power; (c) role of caste and religion; (d) lack of equal opportunities and resources with the various political parties, which gives a distinct advantage to ruling party; (e) presence of large number of political parties and increasing number of independent candidates; (f) wide-gap between the votes polled and seats

captured by the political parties. In view of the shortcomings in the electoral process, demand for electoral reforms has been frequently made in India. Meaningful seminars, workshops and conferences have striven to go deep into the electoral shortcomings and have also suggested concrete electoral reforms. The Election Commissions also after every general election has been making concrete suggestions for effecting improvement in the system. A number of Committees and Commissions were constituted to suggest reforms in the electoral system of India.

In 1974, Jaya Prakash Narayan appointed Tarkunde Committee which recommended a number of electoral reforms, some of which are- (i) the President should appoint the Election Commissioners on the advice of a committee comprising the Prime Minister, Leader of Opposition in Lok Sabha and the Chief Justice of India; (ii) the Election Commission should have three members; (iii) voters councils be formed to ensure free and fair elections.

In 1990, Dinesh Goswami Committee was formed which recommended that

- The security deposits for independent candidates and candidates of registered political parties should be increased to reduce the multiplicity of candidates and parties;
- A person should not be permitted to contest elections from more than two constituencies;
- To curb the evil of booth capturing, the returning officers should be authorised to order re-poll or even countermand the elections;
- The Election Commission should be empowered to appoint investigating agencies, prosecuting agencies and special courts;
- In order to eradicate false voting or impersonation during elections, photo identity cards should be introduced;
- Model code of conduct must be strictly enforced and misuse of government machinery and media must be curbed;
- Proper accounts of expenditure during election must be maintained and submission of false accounts should be made an offence;
- The members of the Commission including the Chief Election

Commissioner should be appointed by the President in consultation with the leader of the Opposition in Lok Sabha and Chief Justice of India and in case of other members of the Commission, the Chief Election Commissioner must also be consulted.

In addition to the various committees and commissions, the Election Commission has also suggested certain electoral reforms from time to time. In 1994, the Election Commission issued a notification which recommended the political parties to elect their respective office bearers as per their constitutions within four months.

During the tenure of T.N. Sheshan as Chief Election Commissioner (1991-1996), the Election Commission adopted several measures to ensure free and fair elections. These measures includes:

(a) video coverage of polling booths to curb booth capturing and other malpractices,

(b) the introduction of photo identity cards,

(c) engraining serial number in the ballot box to eradicate its substitution,

(d) confiscation of arms and ammunition during the poll period and,

(e) closure of liquor shops and tables on anti-social elements and known offenders.

These reforms, however, did not find favour with the government and various political parties.

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

(i) Effective campaigning period was cut down from 20 to 14 days. This curtailed chances of accentuating of mutual skirmishes and vitiating of tranquil atmosphere of the constituency.

(ii) Conviction for insult to the National Flag and the National Anthem will disqualify a person from contesting elections for 6 years.

(iii) No election is to be countermanded on the death of a candidate. If the candidate concerned belonged to the recognized party, the election shall be postponed. In the mean while, the party in question will be allowed to nominate another candidate as his substitute.

(iv) The by-election shall be held within a period of six months from the date

the vacancy occurs.

(v) The security deposit for Parliamentary Election was raised from Rs. 500 to Rs. 10,000 and in case of State Assembly from Rs. 250 to Rs. 5,000. This was done to discourage non-serious candidates.

(vi) To maintain secrecy of voting, signatures or thumb impression of the voters will not be required.

In 1997, the Election Commission announced that 40 MPs and 700 MLAs of the then Parliament and state legislatures had criminal records. Therefore the Commission issued a directive that any person convicted by a court under section 8 of the Representative of People's Act would be debarred from contesting elections. It also demanded several other changes in the existing election law. These changes included: (i) while calculating the election expenses of the candidates, the expenses incurred on him by the political party must also be counted; (ii) the ceiling on polling expenses should be raised to 15 lakhs for the Lok Sabha poll and Rs. 6 lakhs for the assembly poll; (iii) the Election Commission should be authorised to amend these limits for smaller or larger constituencies; (iv) the Election Commission should have power to punish the government employees on poll duty; (v) it should be obligatory for all state governments, state-run firms, banks and statutory bodies to make available their employees to the Election Commission for election duty; and (vi) a candidate should be allowed to contest the Rajya Sabha polls from any parliamentary constituency in the country so long as he or she is a valid voter. In 1998, the security deposit for the candidates contesting elections was increased from Rs. 500 to Rs. 10,000 for general constituencies and Rs. 250 to Rs. 5,000 for the reserved constituencies.

In the wake of Supreme Court judgement of May 2, 2002 which stated that it should be made mandatory for persons filing nominations for elections to disclose information about their wealth, education and criminal background, the Election Commission issued an order under Article 324 on June 28, 2002. The representatives of 21 political parties which met in New Delhi on 8 July, 2002 rejected the Election Commission's order and urged the government to introduce a comprehensive law at the earliest so that the

incongruities in the Election Commission's order could be effectively dealt with.

While summing up, we can say several important committees like the Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, the Election Commission's recommendations in 1998 have produced a comprehensive set of proposals regarding electoral reforms. Based on all these, the Election Commission has introduced several reforms in Indian election system. Some of these are mentioned below-

- Reform related to Age: The qualifying age for voting has been lowered from 21 years to 18 years and this has helped in increasing the number of votes. In 1988, the voting age was reduced from 21 to 18 by the 61st amendment to the Constitution.
- Reform related to Security deposit: The Election Commission has increased the amount of security deposit by the candidates to prevent many non-serious candidates from contesting elections. This has resulted in minimizing wastes of votes.
- Photo Identity: The Commission has introduced photo voter identity card to eradicate false voting or impersonation.
- EVM: The Election Commission has introduced Electronic Voting Machines (EVM) and it is an electoral reform to stop rigging, false voting and other election malpractices. The use of EVM will in the long run result in reducing the cost of holding elections and also the incidence of tampering during counting of votes.
- Complain line: The Election Commission has started a 24 hour call centre to register poll-related complains.

Judicial Interpretations of Electoral Mechanism:

(1) In S.S. Dhannao v. Union of India (AIR 1991 SC 1745), the Supreme Court held that Election Commissioners cannot be placed on a par with the Chief Election Commissioner in terms of power and authority. The Court dismissed the petition of Mr. S.S. Dhanoa, challenging his removal from the post. Holding that the removal of the two E.Cs were 'not a case of premature termination of service' but it was a case of the abolition of the posts with termination of service as a consequence. Hence the

termination of service was not open to challenge on ground of illegality. The Court said that the protection available to C.E.C. were not available either to the Election Commissioners or the Regional Commissioners and therefore their conditions of service can be varied even to their disadvantage.

(2) In a significant judgment in T.N. Seshan v. Union of India (1995) SCC 611 a five judge Constitution Bench of the Supreme Court (comprising Ahamadi CJ, J.S. Verma, N.P. Singh, S.P. Bharuch and M.K. Mukherjee, JJ.) unanimously upheld the validity of the Act equating the status, power and authority of two Election Commissioners with that of CEC. The Chief Election Commissioner Mr. T.N. Seshan had challenged the validity of the Ordinance and the Act on the ground that it was arbitrary, unconstitutional and void.

(3) In Venkatachalam v. A. Swamickan (AIR 1999 SC 172) the Supreme Court has held that Art. 329(b) which bars interference of Court in Electoral matter does not come into play in a case which falls under Arts.191 and 193 which provides for disqualification of membership and penalty for sitting and voting when disqualified and the whole of election process is over. In such case the High Court can interfere under Art.226 and declare that he was not entitled to sit in the State Assembly.

(4) Criminalization of politics and politicization of crime have not only become a grave social malady but has adverse impact on impacted our electoral process. Therefore, it is of utmost public importance that criminal elements should be eliminated from the electoral process. Though this is difficult, several steps have been taken by the Election Commission of India and by the Supreme Court to confront the menace head on.



CHECK YOUR PROGRESS

Q 5: Tarkunde Committee was appointed by whom?

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Q 6: In which year was Dinesh Goswami Committee appointed?

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Q 7: What is the full form of EVM?

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Q 8: Write about the defects of the Indian electoral system.

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Q 9: Mention any two recommendations made by the Dinesh Goswami Committee.

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5.5 LET US SUM UP

- Article 324 of the Indian Constitution provides for the establishment of Election Commission in India.
- Presently the Election Commission of India consists of one Chief Election Commissioner and two other commissioners.
- The President of India appoints the Chief Election Commissioner and other Election Commissioners according to the law made by the parliament. Generally the Election Commissioner and other members are appointed for a term of 6 years from the date of their appointment. This term can be further extended by one year at a time but in no case extended beyond the age of 65 years of the members.
- The members of the Election Commission can be removed by the President of India on the recommendation of the Parliament. The Parliament can make such recommendation for the removal of the Chairman or members of the Election Commission on the grounds of proved misbehaviour or incapacity.
- The Election Commission of India enjoys lot of powers and functions

such as preparation of Electoral Rolls, notification of election, superintendence of all election matters, giving recognition to the political parties, allotment of symbols to political parties, delimitation of election constituencies, advisory functions, appointment of officers for the purpose of conducting elections, settlement of election related disputes, determination of code of conduct, scrutiny of expenses, residuary functions etc.

- The electoral system of India suffers from several defects, some are- use of corrupt practices and misuse of governmental machinery, role of money and muscle power and caste and religion, lack of equal opportunities and resources among political parties, wide-gap between the votes polled and seats captured by the political parties etc.
- To overcome all these defects several important committees like Tarkunde Committee 1974, Dinesh Goswami Committee of 1990, the Election Commission's recommendations of 1998 etc have produced a comprehensive set of proposals regarding electoral reforms in India.



5.6 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.

5.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Election Commission

Ans to Q No 2: The President of India

Ans to Q No 3: According to Article 324 of the Indian Constitution, there shall be an independent body viz. Election Commission to supervise the entire procedure and machinery for election and for some other ancillary matters. According to Article 324(2), the Election Commission shall consist of a chief election commissioner and such other commissioners as the President may decide from time to time.

Ans to Q No 4: (i) Preparation of Electoral Rolls: Preparation of the electoral rolls for the elections of the Parliament and all state legislatures, including the local bodies are made by the Election Commission. It also revises these electoral rolls from time to time in accordance with the provisions of the Constitution and laws enacted by the Parliament or the state legislatures.

(ii) Supervision of elections: The Election Commission supervises, directs and controls all the matters relating to the elections of the President and Vice-President of India, Parliament and state legislatures.

Ans to Q No 5: Jaya Prakash Narayan

Ans to Q No 6: 1990

Ans to Q No 7: Electronic Voting Machine

Ans to Q No 8: The Indian electoral systems suffers from certain defects, such as-(a) growing use of corrupt practices and misuse of governmental machinery; (b) role of money and muscle power; (c) role of caste and religion; (d) lack of equal opportunities and resources with the various political parties, which gives a distinct advantage to ruling party; (e) presence of large number of political parties and increasing number of independent candidates; (f) wide-gap between the votes polled and seats captured by the political parties.

Ans to Q No 9: (i) The security deposits for independent candidates and candidates of registered political parties should be increased to reduce the multiplicity of candidates and parties.

(ii) A person should not be permitted to contest elections from more than two constituencies.



5.8 MODEL QUESTIONS

A) Very Short Questions

Q 1: At present the Election Commission is composed of how many members?

Q 2: Who can remove the members of the Election Commission from office?

Q 3: By which Amendment Act of the Indian Constitution the voting age was reduced from 21 to 18 years?

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

Q 1: Write a short note on the composition of the Election Commission of India.

Q 2: Explain briefly the term and removal procedure of the members of the Election Commission.

Q 3: Write briefly about the defects of electoral system of India.

C) Long Questions (Answer within 300-500 words)

Q 1: Discuss the powers and functions of Election Commission in India.

Q 2: Examine the electoral reforms in India.

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