PGPS S1 04

Indian Political System

SEMESTER I

POLITICAL SCIENCE

BLOCK - 1

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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MASTER OF ARTS
POLITICAL SCIENCE
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COURSE INTRODUCTION

The fourth course of First Semester of M A in Political Science of KKHSOU is titled "Indian Political System". It is designed to help the learners to have a deeper understanding of the theoretical and practical dimensions of Indian political system. As a learner of Master Degree in Political Science one must have deep and thorough understanding about the political system of the country where he/she resides. Knowledge of the political system of the country, to which the individuals belong, will definitely create awareness among people and will encourage people to participate at various levels of the political process of one's own country. Accordingly, the course begins with a discussion of the philosophy of the Indian Constitution. The functioning of the Indian political system is based on a written Constitution, which is the basic and fundamental law of the land. The Constitution subscribes to the principles of popular sovereignty and democracy. The first unit of the course discusses the philosophy of the Indian Constitution which have laid foundation of the Indian political system. Some parts of the Indian Constitution are regarded as the basic structure of the Constitution. The parts which constituted the basic structure of the Constitution cannot be amended. On the issue of the basic structure of the Indian Constitution lots of debates and discussions have been made through various judicial verdicts. Accordingly the second unit of the course deals with the basic features and basic structure of the Indian Constitution. After independence India has adopted parliamentary democracy as a form of government. In the third unit the learners are made familiar with the fundamental aspects of functioning of parliamentary democracy in India. Various challenges to the functioning of parliamentary democracy as well as future prospects of parliamentary democracy in India have been discussed in detail in the third unit. One of the important philosophy of the Indian Constitution is the concept of secularism. The Constitution of India has established India as a secular state. But recently a number of factors have threatened the secular tradition in India. In this context the fourth unit focuses on the issue and challenges to the secular tradition of the Indian politics. A significant pre-requisite in a democratic polity is the existence of an independent judicial system to act as the guardian of the Constitution and the rights of the people. The Constitution of India too provides for an independent integrated judicial system, with the Supreme Court standing at the apex of the judicial structure, followed by the High Courts and the subordinate courts. Accordingly, the fifth unit discusses the judiciary in India with reference to the structure of the Indian judiciary and issues like judicial review, judicial activism and Public Interest Litigation. The Indian political system is federal in structure. However, the federal model in India has its own characteristics. The sixth unit discusses the nature of Indian federalism with special reference to the scheme of division powers between the Union and the States. The Constitution of India has put special emphasis on decentralisation of power and

government through Panchayati Raj Institutions and Municipalities. Accordingly the Indian Parliament has passed 73rd and 74th Amendment Acts to the Constitution of India and has provided constitutional status to these institutions of local self government. The seventh and eight units deal with politics of decentralisation in India with special refernce to the 73rd and 74th Amendment Acts. The issue of regionalism has been one of the most debatable issues in Indian politics. A number of states in India have been experiencing various types of movements which reflect aspiration for regioanl autonmy of the people of these states. Accordingly, the ninth and tenth units deal with the Language Movement, the Assam Movement and the Dravidian Movement. All these movements reflect the aspiration of the people of those states to safeguard their distinct linguistic and cultural identities. In India the problem insurgency has been a seriuos issue, more particularly in North East India, which has threatened security, unity and integrity of India. Thus the eleventh unit discusses the problem of insurgency in the north east region of India , particularly insurgency movements led by NSCN, ULFA, NDFB. The twelft unit focuses on the party system in India, with special reference to its recent trends. In democracy election is the process by which a political system tries to legitimize its existence by bringing about a sense of involvement on the part of general people. In India, we have parliamentary system of government with periodic elections revolving around a multi-party system. There is a system of regular elections for Parliament, legislative assemblies of States and Union Territories, local government institutions and for the posts of President and Vice President. Accordingly the thirteenth unit deals with various aspects associated with electoral politics and voting behaviour in India. Another important concept in the study of political science is the concept of political economy. Political economy is concerned with the interaction of the political and economic processes within a society. The fourteenth unit highlights on the concept of political economy in Indian context. Presence of pressure groups is one of the important characteristics of any democratic society. In a democratic country these groups act as mediator between people and the government. Pressure groups are the interest groups which try to secure their interests by influencing the formulation and execution of public policy. These groups create awareness among people and thus make democracy more participatory. The fifteenth unit discusses various dimensions associated with the pressure groups in India.

The course “Indian Political System” is divided into two blocks- Block 1 and Block 2. Block 1 contains eight units (Unit 1-8) and Blocks 2 contains seven units (Unit 9-15).

INTRODUCTION TO BLOCK-1

This is the first block of the fourth course or paper of Krishna Kanta Handiqui State Open University's M.A. First Semester Programme in Political Science. The fourth course or paper of the MA First Semester Programme in Political Science is titled "Indian Political System". The first block of this course contains eight units- (Units 1-8).

The First Unit introduces the learners to the philosophy of the Indian Constitution.

The Second Unit discusses the basic features and basic structure of the Indian Constitution.

Third Unit focuses on parliamentary democracy in India with special reference to the various issues and challenges to the functioning of parliamentary democracy in India.

The Fourth Unit deals with the issues and challenges associated with one of the important philosophy of the Indian Constitution, i.e. secular tradition.

The Fifth Unit discusses Indian judicial system with special reference to its structure and issues like judicial review, judicial activism and Public Interest Litigation .

The Sixth Unit discusses federal structure of the Indian political system.

The Seventh Unit focuses on the decentralisation power in India with special reference to the Panchayati Raj Institutions.

The Eight Unit also discusses the issue of decentralisation of power in India with reference to the Municipality and growth of local self government in Assam.

While going through the units of the block, 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 "POSSIBLE QUESTIONS" is intended to give you a hint of the type of questions you are likely to get in the examination.

UNIT : 1 PHILOSOPHY OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Philosophy of the Indian Constitution

1.4 Let Us Sum Up

1.5 Further Reading

1.6 Answers To Check Your Progress

1.7 Possible Questions

1.1 LEARNING OBJECTIVES

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

- discuss the philosophy of the Indian Constitution
- analyse how the philosophy of the Constitution has helped India to become a democratic country in the real sense of the term.

1.2 INTRODUCTION

Every constitution has a philosophy of its own. Likewise the Constitution of India has a philosophical basis upon which the provisions of the Constitution are further developed. To understand the philosophy of the Constitution of India, we must look back to the historic Objective Resolution of Pandit Nehru which was adopted by the Constituent Assembly on January 22, 1947, which inspired the shaping of the Constitution through all its subsequent stages. The ideals embodied in the Resolution are faithfully reflected in the Preamble to the Constitution which summarizes the aims and objectives of the Constitution.

1.3 PHILOSOPHY OF THE INDIAN CONSTITUTION

The Preamble to the Constitution of India outlines the following principles and ideals of the Constitution which lay down the philosophical basis of the Constitution.

- **Source of Authority- Popular Sovereignty :** The Preamble to the Constitution of India begins with the words 'We the People of India….' and ends with the words '…adopt, enact and give to ourselves this Constitution'. It thus declares the ultimate sovereignty of the people of India. The people of India are the source of all authority in India. All powers and authority of the country are derived from the people.
- **Sovereign State :** The Preamble to the Constitution declares India a Sovereign State. It means that the state enjoys independent authority and has the power to legislate on any subject. The power of the state is not subject to the control of any other State or external power.



LET US KNOW

The sovereign status of India has been questioned by many due to its decision to join with the British Commonwealth of Nations. But the fact is that India is voluntarily associated with the Commonwealth of Nations and that association will not affect her sovereignty to any extent and it would be open to India to cut off that association at any time she finds it not to be honourable or useful.

- **Socialism :** Socialism is one of the core ideals of the Indian polity. The Preamble also declares India as a Socialist State by the inclusion of the term through the 42nd Amendment of the Constitution in 1976. The Indian variety of socialism implies that the State will be committed to secure Socialistic goals i.e. socio-economic justice and an egalitarian society. For the fulfillment of this goal of Socialism,

the Indian state adopted the ideal of Welfare State. The state is committed to provide basic minimum living standards to all, ensuring equality among all in social, economic and political spheres. To secure this goal the State favours distribution of the benefits of the resources of the country among all. It favours national planned economic development, nationalization of resources and limited freedom to private business and industries. For the realization of the ideal of Socialism, in the Indian Constitution there are some directives to the Indian State in the Part-IV of the Indian Constitution known as the Directive Principles of State Policy. Through these directives the Constitution stresses for the establishment of the Socialistic pattern of society in India.

- **Secularism :** The word Secularism was also incorporated in the Preamble to the Constitution of India through the 42nd Amendment in 1976 which declares in clear terms that India is a Secular State. The State protects all religions equally and does not itself uphold any religion as the State religion. At the same time, the citizens of the country will enjoy freedom of religion as a fundamental right.
- **Democratic State :** The Constitution of India adopts Democracy not only as a form of government but as a way of life. In other words, it envisages not only a democratic form of government but also a democratic society, infused with the spirit of 'justice, liberty, equality and fraternity'. As a form of Government, it envisages a representative democracy where people of India elect their representatives through a system of universal adult suffrage. In matters of public opportunities, there is equal opportunity to all irrespective of caste, creed and religion to avail these benefits.
- **Republic :** The Preamble declares in unequivocal terms that the State of India is a Republic. It means India has an elected President as the head of the State and all offices including that of the President will be open to all citizens.



CHECK YOUR PROGRESS

Q 1 : The term "socialist" was added to the Preamble by which Amendment?

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Q 2 : Explain briefly the philosophy of socialism as enshrined in the Preamble to the Indian Constitution.

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- **Justice:** The Preamble to the Constitution of India declares that the Indian state will strive to establish justice among its citizens in their political, social and economic life. To establish political justice, every person in the territory of India, without any discrimination, is allowed to take part in the political process of the country through the system of universal adult suffrage. The Constitution ensures complete equality before the law. To establish social justice, it seeks to establish a democratic society in India aimed at securing the welfare of all. For that, the Constitution of India provides certain directives to the state through the inclusion of the provision of Directive Principle of State Policy. To establish economic justice it has directed the Indian State to remove poverty by enhancement of the national wealth and resources and equitable distribution of the resources among all its citizens, and thereby to remove economic inequality from the Indian society.
- **Liberty:** Democracy, in any sense, cannot be established unless certain minimum rights, which are essential for a free and civilized existence, are assured to every citizen. The Preamble mentions these essential rights as 'Liberty of thought, expression, belief, faith

and worship' and these are guaranteed by the Part-III of the Constitution in the form of Fundamental Rights.

- **Equality:** Guaranteeing of certain rights to each individual would be meaningless unless inequality is removed from all the social structure and each individual is assured of equality of status and opportunity. The Constitution of India tries to secure this objective by making illegal all discriminations by the State on the basis of religion, sex, race, caste or place of birth, and by guaranteeing equality before the law and equal protection of law.
- **Unity and Integrity of the nation by assuring Fraternity and Dignity of the individual:** Unity among the citizens of this vast country was the first requisite for maintaining the independence of the country. For the fulfillment of the ideal of unity and to ensure the integration of the people, the spirit of fraternity or brotherhood must be infused amongst the heterogeneous populations of India belonging to different races, religions and cultures. This can be achieved only by abolishing all communal, sectional, local, or provincial anti-social feelings. Fraternity can be ensured by generating the feeling of oneness among all the sections of people composed of so many races, religions, languages and cultures. Further, fraternity cannot be assured unless the dignity of each citizen is maintained. Therefore to secure the dignity of each citizen of India, the Constitution of India guaranteed equal fundamental rights to every citizen of India, which can be enforced in a court of law.

The ideal of fraternity which is professed in the Preamble is not confined within the bounds of national territory, rather it favours to extend that to foster the ideal of universal brotherhood. For this ideal India always pledge to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations and settlement of disputes by arbitrations among the nations.

From the above, one can easily comprehend that the Constitution seeks to constitute India as a Sovereign Democratic

Republic. The Constitution upholds the democratic principles of freedom of the individual, socio-economic equality and justice, and peace and brotherhood among all, with the people as the real sovereign. For the establishment of a just and democratic society the Constitution upholds the ideal of Secularism and Socialism. The Preamble to the Indian Constitution thus outlines the ideals, goals and the philosophical basis of the Constitution.



CHECK YOUR PROGRESS

Q 3 : Write a short note on the philosophy of justice as incorporated in the Constitution.

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Q 4 : How can we achieve unity and integrity within India? Explain.

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1.4 LET US SUM UP

- The philosophical and ideological basis of the Constitution is reflected in the Preamble to the Constitution of India itself. Popular sovereignty, socialism, secularism, democracy, justice, equality and fraternity are some of the essential ideals enshrined in the Preamble to the Indian Constitution.
- Popular sovereignty indicates that people are the ultimate source of all authority and power in India. The Government derives power from the people.

- The Constitution in its Preamble also declares India as a sovereign state. It indicates no other country or organization has the power or authority to exercise any control over India in its internal and external matters.
- The inclusion of the term 'socialist' reflects that one of the prime object of India is to secure social, economic and political justice among all its people by eradicating exploitation of all forms and ensuring equitable distribution of wealth and resources.
- India being a republic, the Head of the State in India, that is the President of India, is elected by its people through the representatives in the Parliament and State Legislatures.
- The Constitution of India seeks to ensure justice- social, economic and political to all its citizens.
- The Preamble of the Indian Constitution declares liberty of thought, expression, belief, faith and worship as the one of the main objective of the Constitution.
- The Preamble of the India Constitution ensures equality of status and opportunities to its entire people.
- The Preamble to the Indian Constitution declares fraternity one of its major objectives which is designed to secure dignity of the individual and unity and integrity of the nation.



1.5 FURTHER READING

1) Basu, Durga Das. (2015). *An Introduction to the Constitution of India.*

2) Basu, Durga Das. and Bakhi, P. M. (2013). *The Constitution of India.* New Delhi: *U*niversal Law Publishing Co.

3) Ghai, K.K. (2008). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

4) Sikri, S. L. (2002). *Indian Government and Politics.* New Delhi : Kalyani Publishers.

1.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : 42nd Amendment of the Constitution.

Ans to Q. No. 2 : Socialism is one of the core ideals of the Indian polity. The Preamble also declares India as a Socialist State by the inclusion of the term through the 42nd Amendment of the Constitution in 1976. The Indian variety of socialism implies that the State will be committed to secure Socialistic goals i.e. socio-economic justice and an egalitarian society. For the fulfillment of this goal of Socialism, the Indian state adopted the ideal of Welfare State. The state is committed to provide basic minimum living standards to all, ensuring equality among all in social, economic and political spheres. To secure this goal the State favours distribution of the benefits of the resources of the country among all. It favours national planned economic development, nationalization of resources and limited freedom to private business and industries. For the realization of the ideal of Socialism, in the Indian Constitution there are some directives to the Indian State in the Part-IV of the Indian Constitution known as the Directive Principles of State Policy. Through these directives the Constitution stresses for the establishment of the Socialistic pattern of society in India.

Ans to Q. No. 3 : The Preamble to the Constitution of India declares that the Indian state will strive to establish justice among its citizens in their political, social and economic life. To establish political justice, every person in the territory of India, without any discrimination, is allowed to take part in the political process of the country through the system of universal adult suffrage. The Constitution ensures complete equality before the law. To establish social justice, it seeks

to establish a democratic society in India aimed at securing the welfare of all. For that, the Constitution of India provides certain directives to the state through the inclusion of the provision of Directive Principle of State Policy. To establish economic justice it has directed the Indian State to remove poverty by enhancement of the national wealth and resources and equitable distribution of the resources among all its citizens, and thereby to remove economic inequality from the Indian society.

Ans to Q. No. 4 : For the fulfillment of the ideal of unity and to ensure the integration of the people, the spirit of fraternity or brotherhood must be infused amongst the heterogeneous populations of India belonging to different races, religions and cultures. This can be achieved only by abolishing all communal, sectional, local, or provincial anti-social feelings. Fraternity can be ensured by generating the feeling of oneness among all the sections of people composed of so many races, religions, languages and cultures. Further, fraternity cannot be assured unless the dignity of each citizen is maintained. Therefore to secure the dignity of each citizen of India, the Constitution of India guaranteed equal fundamental rights to every citizen of India, which can be enforced in a court of law.



1.7 POSSIBLE QUESTIONS

Q 1 : According to the Constitution of India, who is the main source of authority in India?

Q 2 : What is meant by fraternity?

Q 3 : What are the provisions included in the Indian Constitution to ensure equality among its citizens?

Q 4 : How does the Constitution of India try to ensure political democracy in India?

Q 5 : How does the Constitution of India try to ensure secularism among its citizens?

Q 6 : Discuss the philosophical foundations of the Indian Constitution.

Q 7 : Explain the philosophy of democracy of the Indian Constitution.

Q 8 : Explain the provisions enumerated in the Indian Constitution to ensure the philosophy of liberty.

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UNIT : 2 BASIC FEATURES OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Basic Features of the Constitution of India

2.4 Concept of the Basic Structure of the Constitution: Judicial Interpretation

2.5 Let Us Sum Up

2.6 Further Reading

2.7 Answers to Check Your Progress

2.8 Possible Questions

2.1 LEARNING OBJECTIVES

After going through this unit you will be able to -

- discuss the basic features of the Constitution of India
- analyse the concept of basic structure of the Constitution with special reference to the judicial interpretation in this context.

2.2 INTRODUCTION

Every constitution has some basic features that reflect its principles and philosophy. The basic features are the foundation of the Constitution. 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. While discussing the features of the Constitution efforts

will also be made to put light on the issue of basic structure of the Constitution.

2.3 BASIC FEATURES OF THE CONSTITUTION OF INDIA

In this section we shall discuss the basic features of the Indian Constitution.

- **Written and Detailed Constitution :** The Constitution of India is a wholly written document. It is a detailed document consists of 395 Articles divided into 22 Parts with 12 Schedules.
- **Preamble of the Constitution :** The Constitution of India has a Preamble which states the philosophy of the constitution. It gives an introduction to the Constitution and declares its ideals.
- **Popular Sovereignty :** The Preamble of the Constitution of India is based on the idea of popular sovereignty. The people are the ultimate source of authority. The Government derives its powers from the people. The Constitution has its roots in the people.
- **Socialism :** Although, right from the beginning, the Indian Constitution epitomized the spirit of Socialism, it was only in 1976 through the 42nd Constitution Amendment that the term was inserted in the Constitution. The aim of socialism is to secure justice – social, economic and political to all people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. This has to be done by peaceful, constitutional and democratic means. It signifies the commitment to socio-economic justice which is to be secured by the state through the democratic process and organized planning.
- **Secularism :** By the 42nd Amendment, the term 'Secular' was incorporated in the Preamble along with other features of Indian polity. As a state, India does not give special status to any religion. There is no such thing as a state religion of India. India adopts

Secularism by guaranteeing equal freedom to all religions. The Constitution grants the right to religious freedom to all the citizens without any discrimination. The state does not interfere with the religious freedom of the citizens and prohibits the levying of taxes for religious purposes.

- **Democratic State :** The Preamble of the Constitution declares India a Democratic State. The authority of the Government rests upon the sovereignty of the people. The people enjoy equal political rights. It is on the basis of these political rights that the people participate in the political process the country. For all its acts, the Government is responsible before the people. The Government in India enjoys limited tenure and defined, limited powers. No Government can remain in power which does not enjoy the confidence of the majority of the representatives of the people. The representative, responsible and accountable character of the government symbolizes the self-rule of the people.
- **Republic :** The Preamble declares India to be a Republic. This means that India is not ruled by a monarch or a nominated head of state. India has an elected head of state who wields power for a fixed term. India is a Sovereign Republic. Membership of the Commonwealth of Nations is a voluntary act. It is a courtesy arrangement whereby India has decided to maintain her traditional friendship and links with other members of the Commonwealth who happened to be ex-colonies of British Empire but which are now sovereign independent states.
- **Federal Structure and a Unitary Spirit :** While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a 'Quasi Federation' (K.C. Wheare) or a federation with a unitary bias or even as a Unitarian federation. Like a federation, the Constitution of India provides for division of powers between the centre and the states, a written and rigid constitution, supremacy of the constitution,

independent judiciary with the power of judicial review etc. but it also provides for a very strong Centre, single citizenship, emergency provisions, common All India Services etc. Hence, the Constitution of India is neither federal nor unitary but a mixture of the two. It is partly federal and partly unitary.

- **Mixture of Rigidity and Flexibility :** The Constitution of India is a mixture of rigidity and flexibility. Some parts of it can be amended in a very simple way and the amendment of some other parts is very complex. Article 368 of the Constitution provides for two special methods of amendment- i) The Union Parliament can amend some provisions of the Constitution by passing the Amendment Bill and ii) for the amendment of some specified provisions, a rigid method has been provided in which the Union Parliament passes the Amendment Bill which should be ratified by the State Legislatures.
- **Fundamental Rights :** The Constitution of India grants and guarantees six Fundamental Rights to its citizens. Initially there were seven Fundamental Rights but the Right to Property [Art. 19(1) (6) and Art. 31] was deleted from the category of the Fundamental Rights by the 44th Constitution Amendment Act of 1979. These rights are justiciable rights, which means that a citizen can approach the courts for the enforcement of his/her Fundamental Rights in case of violation of such rights by any authority or individual. The privilege of enforcing of Fundamental Rights itself is a Fundamental Right (Right to Constitutional Remedy).
- **Fundamental Duties :** Along with the Fundamental Rights the Constitution of India under its Part-IVA-Article 51A incorporated some fundamental duties (by the 42nd Constitution Amendment, 1976) for the citizens of India. However, these duties are not enforceable in the court but form a part of constitutional morality.
- **Directive Principles of State Policy :** The Directive Principles of State Policy are one of the most striking features of the Indian Constitution. These are the instructions to the State for securing

socio-economic developmental objectives through its policies and thereby make India a welfare state. However, these directives have no legal binding on the state yet the Government is bound to implement it for its political sanctions.

- **Parliamentary Form of Government :** The Constitution of India provides for a Parliamentary form of Government for both Centre as well as the States. Following the British pattern, the President of India is only the constitutional head of the State with nominal powers. The Union Council of Ministers headed by the Prime Minister constitutes the real executive. Ministers are essentially the members of the Parliament. The Council of Ministers is collectively responsible, for all its acts to the Parliament.
- **Bicameral Parliament :** The Constitution of India provides for a bicameral legislature: the Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower house, whose members are directly elected by the people of the country. The maximum strength of the Lok Sabha stands fixed at 545 where 543 members are directly elected by the people and 2 are nominated members by the President of India from the Anglo-Indian community. Normally the tenure of the Lok Sabha is five years but can be dissolved earlier by the President of India on the advice of the Prime Minister. The Rajya Sabha is the upper and indirectly elected House which represents the States. Its total membership is be 250. Out of these 238 are elected by all the State Legislative Assemblies through a system of proportional representation and 12 members are nominated by the President from amongst eminent persons from the fields of Arts, Science and Literature.

  The Lok Sabha is more powerful than the Rajya Sabha. It alone has financial powers and it alone can remove the union cabinet from office. The Council of Ministers is collectively responsible to the Lok Sabha.

- **Universal Adult Suffrage:** Another notable feature of the Indian Constitution is the introduction of the universal adult suffrage. In this system, all the citizens enjoy equal right to vote without discrimination on any ground. Now the qualifying voting age stands at 18 years.
- **Single Citizenship:** Another notable feature of the Constitution of India is that all the citizens enjoy a common uniform citizenship which entitles them all to equal rights and freedoms and equal protection of the State.
- **Integrated Judiciary with the power of Judicial Review:** Though the Constitution provides for a federal structure, it establishes a single integrated judicial system common for the Union and the States. The Constitution provides the Supreme Court at the apex, High Courts at the State level and other subordinate courts under the High Courts. The Supreme Court is the highest court of the land. It controls and runs the judicial administration in India. The Constitution also provides the arrangements to make the judiciary independent from the control of other organs of the Government.

  The Supreme Court of India and the High Courts enjoy the power of Judicial Review. The Supreme Court acts as the protector and interpreter of the Constitution and the guardian of the Fundamental Rights. For this purpose, it exercises the power of judicial review. By it, the Supreme Court has the power to determine the constitutional validity of the acts of the legislatures and the orders of the executive. It can strike down the acts of the legislature and the orders of the executive if it finds it as unconstitutional.
- **Emergency Provisions:** The Constitution of India vests in the President of India some emergency powers. The Constitution stipulates three types of emergency powers: national emergency, constitutional emergency in a state and financial emergency. During the emergencies, the powers of the President, actually of the Prime Minister and the Cabinet, increase tremendously. However, there are certain set rules for using this power as well as several limitations upon the exercise of the emergency powers.

From the above discussion of the basic features of the Indian Constitution, it can be said that the Constitution of India is detailed one. It contains in details all the areas of Government. It is the fundamental law of the land which is to be obeyed by all in the country. All the acts of the Government should be according to the provisions of the Constitution.



CHECK YOUR PROGRESS

Q 1 : Write about secularism as one of the important features of the Indian Constitution.

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Q 2 : Write about composition of the Indian Parliament.

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Q 3 : Write briefly about any two features of the Constitution of India.

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2.4 CONCEPT OF THE BASIC STRUCTURE OF THE CONSTITUTION : JUDICIAL INTERPRETATION

As mentioned above the Supreme Court of India acts as the protector and interpreter of the Constitution. In interpreting the Constitution, it has propounded the concept of a basic structure of the Constitution. Until the case of Golak Nath (Golak Nath vs State of Punjab, 1967), the Supreme

Court of India had been holding that no part of our Constitution was unamendable, that Parliament can amend any provision of the Constitution under Article 368. It was held that the word 'Law' in Article 13(2) would not include an Amendment Act of the Constitution which was passed by the Parliament in its constituent capacity. (Under Article 13(2), the Law enacted by Parliament could not violate the provisions of the Constitution as such; such are subject to the power of Judicial Review of the Judiciary). But in the Golak Nath case a majority of six judges in a special Bench took the view that the Fundamental Rights of the Constitution cannot be subject to the process of amendment. Also they held that a Constitution Amendment Act was also a 'Law' within the purview of Article 13(2). After the Golak Nath case, the Parliament sought to supersede it by amending Article 368 itself by the Constitution (24th Amendment) Act, 1971, as a result of which, an amendment of the Constitution passed in accordance with Article 368 will not be 'Law' within the meaning of Article 13 and the validity of a Constitution Amendment Act shall not be open to question on the ground that it takes away or affects a fundamental right [Article 368(3)].

Further the Parliament by 25th Amendment Act, 1971 of the Constitution inserted Article 31(C) which deprive the courts of their power to determine the validity of the Amendment Act on the ground that it contravened some provisions of the Constitution.

The 24th Amendment Act of the Constitution was challenged in case Keshavananda Bharati vs State of Kerala which was heard by a full bench of 13 Judges. In that case the Court held that the Fundamental Rights in India can be amended by an Act passed under Article 368, the validity of a Constitution Amendment Act cannot be questioned on the ground that that Act invades or encroaches upon any Fundamental Right.

In the same judgement the court affirmed another proposition that there are certain Basic Structures of the Constitution of India, which cannot be altered in exercise of the power to amend it under Article 368. If a constitution amendment act seeks to alter the Basic Structure or framework of the Constitution, the Court would be entitled to annul it on the ground of

ultra vires, because the word "amend", in Article 368, means only changes other than altering the very structure of the Constitution, which would be tantamount to making a new constitution.

Applying this doctrine that Judicial Review is a basic feature of the Constitution of India, as such the Constitution (25th Amendment) Act, 1971, relating to Article 31(C) is invalid.

The debate did not end here. The Government of India (under the Prime Ministership of Indira Gandhi) by the 42nd Constitution Amendment in 1976, inserted Clause (4) and (5) in Article 368. Clause (5) declares that "there shall be no limitation on the constituent power of Parliament to amend" the provisions of this constitution. Clause (4) declares that, "the validity of no Constitution Amendment Act shall be called in question in any court on any ground".

But this attempt of the Parliament to limit the Judicial Review of Constitution Amendment Act was nullified by the Supreme Court, by striking down Clause 4 & 5 in the Article 368 inserted by 42nd Amendment Act, by its decision in the Minarva Mills case on the ground that Judicial Review is a 'Basic Feature' of the Indian Constitution which cannot be taken away even by amending the Constitution.

So far, the Supreme Court of India has been following the decision of the Keshavananda Bharati case in its subsequent cases and thereby has introduced the doctrine of 'Basic Structure' to the Constitution of India. However, the Supreme Court has not yet foreclosed the list of 'Basic Structure'. From the various decisions so far, the following list may be drawn up:-

- Supremacy of the Constitution
- Rule of Law
- The principle of Separation of powers
- The objectives specified in the Preamble to the Constitution
- Judicial Review, Article 32
- Federalism

- Secularism
- The Sovereign, Democratic, Republican Structure
- Freedom and Dignity of the individual
- Unity and Integrity of the Nation
- The Principle of Equality, not every feature of equality but the quintessence of equal justice
- The 'essence' of other Fundamental Rights in Part-III
- The concept of social and economic justice to build a welfare State; Part-IV in toto
- The balance between Fundamental Rights and Directive Principles
- The Parliamentary system of Government
- The principle of free and fair elections
- Limitations upon the amending power conferred by Article 368
- Independence of Judiciary
- Effective access to Justice
- Powers of the Supreme Court under Article 32, 136, 141 and 142



CHECK YOUR PROGRESS

Q 4 : Verdict of which case provided that the Fundamental Rights can be amended?

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Q 5 : Mention any six provisions which are considered to be the basic structure of the Constitution of India**.**

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2.5 LET US SUM UP

- The features of the Constitution of India reflect its ideals and philosophical foundation. Some of the basic features of the Constitution of India are- It is a written and detailed Constitution and has a Preamble.
- Some other important features of the Constitution of India are- idea of popular sovereignty, socialism, secularism, democratic state, republic state, system of federalism with a unitary spirit, incorporation of Fundamental Rights, Fundamental Duties and Directive Principles of State Policy, parliamentary form of government, bicameral legislature, universal adult suffrage, single citizenship, integrated judiciary with the power of judicial review, emergency provisions of the Constitution etc.
- The concept of basic structure implies that some basic provisions of the Constitution can not be amended. The issue of basic structure of the Constitution has been one of the most debated one. Some of the important cases related to this issue are the case of Golak Nath (Golak Nath vs State of Punjab, 1967), Keshavananda Bharati vs State of Kerala.
- After a long debate and discussion some important provisions are considered as the basic structure of the Constitution. Some of these are- supremacy of the Constitution, rule of law, the principle of separation of powers, the objectives specified in the Preamble to the Constitution, judicial review, federalism, secularism, the 'essence' of other Fundamental Rights in Part-III, the concept of social and economic justice to build a welfare State; Part-IV in toto etc.



2.6 FURTHER READING

1) Basu, Durga Das. (2015). *An Introduction to the Constitution of India.*

2) Basu, Durga Das. and Bakhi, P. M. (2013). *The Constitution of India.* New Delhi: *U*niversal Law Publishing Co.

3) Ghai, K.K. (2008). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

4) Sikri, S. L. (2002). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

2.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : By the 42nd Amendment, the term 'Secular' was incorporated in the Preamble along with other features of Indian polity. As a state, India does not give special status to any religion. There is no such thing as a state religion of India. India adopts Secularism by guaranteeing equal freedom to all religions. The Constitution grants the right to religious freedom to all the citizens without any discrimination. The state does not interfere with the religious freedom of the citizens and prohibits the levying of taxes for religious purposes.

Ans to Q. No. 2 : The Constitution of India provides for a bicameral legislature: the Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower house, whose members are directly elected by the people of the country. The maximum strength of the Lok Sabha stands fixed at 545 where 543 members are directly elected by the people and 2 are nominated members by the President of India from the Anglo-Indian community. Normally the tenure of the Lok Sabha is five years but can be dissolved earlier by the President of India on the advice of the Prime Minister. The Rajya Sabha is the upper and indirectly elected House which represents

the States. Its total membership is 250. Out of these 238 are elected by all the State Legislative Assemblies through a system of proportional representation and 12 members are nominated by the President from amongst eminent persons from the fields of Arts, Science and Literature.

Ans to Q. No. 3 : (i) Federal Structure and a Unitary Spirit: While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a 'Quasi Federation' (K.C. Wheare) or a federation with a unitary bias or even as a Unitarian federation. Like a federation, the Constitution of India provides for division of powers between the centre and the states, a written and rigid constitution, supremacy of the constitution, independent judiciary with the power of judicial review etc. but it also provides for a very strong centre, single citizenship, emergency provisions, common All India Services etc. Hence, the constitution of India is neither federal nor unitary but a mixture of the two. It is partly federal and partly unitary.

(ii) Mixture of Rigidity and Flexibility : The Constitution of India is a mixture of rigidity and flexibility. Some parts of it can be amended in a very simple way and the amendment of some other parts is very complex. Article 368 of the Constitution provides for two special methods of amendment- i) The Union Parliament can amend some provisions of the Constitution by passing the Amendment Bill and ii) for the amendment of some specified provisions, a rigid method has been provided in which the Union Parliament passes the Amendment Bill which should be ratified by the State Legislatures.

Ans to Q. No. 4 : Keshavananda Bharati vs State of Kerala

Ans to Q. No. 5 : Supremacy of the Constitution, Rule of Law, the principle of Separation of powers, the objectives specified in the Preamble to the Constitution, Judicial Review, Federalism.



2.8 POSSIBLE QUESTIONS

Q 1 : How many parts are there in the Constitution of India?

Q 2 : When the word socialism was inserted in the Constitution of India?

Q 3 : Who said India as a quasi federal State?

Q 4 : In which case the Supreme Court of India have declared that the Judicial Review is one of the provisions which constitute basic structure of the Indian Constitution?

Q 5 : Examine the concept of secularism as one of the important features of the Constitution of India.

Q 6 : India is considered as a Quasi Federal state. Why?

Q 7 : Discuss the basic features of the Constitution of India.

Q 8 : Explain the features of the Indian Constitution which seeks to establish India as a Socialist State.

Q 9 : Explain how the concept of Basic Structure to the Constitution of India has come up.

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UNIT : 3 PARLIAMENTARY DEMOCRACY-STRUCTURE AND RECENT TRENDS

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Structure of the Indian Parliament

3.4 Law Making Procedure of the Indian Parliament

3.5 Decline of the Parliament

3.6 Functioning of Parliamentary Democracy in India-Challenges and Prospects

3.7 Let Us Sum Up

3.8 Further Reading

3.9 Answers to Check Your Progress

3.10 Possible Questions

3.1 LEARNING OBJECTIVES

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

- discuss the structure of the Indian Parliament
- examine the law making procedure of the Indian Parliament
- analyse the issue of decline of the Parliament in recent times.
- examine various challenges in functioning of parliamentary democracy in India.

3.2 INTRODUCTION

The Constitution of India has provided for a Parliamentary system of government both at the Centre and the States. Accordingly there are provisions for central legislature as well as legislature for the state. The

central legislature of India is known as Parliament consisting of two Houses. The central government remains responsible to the lower house of the Parliament and the state government to the state legislature as the case may be and continues in power as long as it enjoys the confidence of the legislature. Thus, there is a close relationship between the executive and the legislature in India as can be found in a typical parliamentary form of government. Although the parliamentary form of government that we have in India is largely based on the British model, yet the framers of the Constitution of India did not copy the model in its entirety. They made certain modifications in it to suit our own political conditions and historical legacies.

3.3 STRUCTURE OF THE INDIAN PARLIAMENT

The Indian political system is Parliamentary in nature having a bi-cameral legislative body that consists of two Houses namely Lok Sabha (545 seats) and Rajya Sabha (250 seats).

- **LOK SABHA (HOUSE OF THE PEOPLE)**

  The members of the Lok Sabha are directly elected by the people of India on the basis of Universal Adult Suffrage for a period of 5 years. The President can with the advice of the Prime Minister summon, prorogue, and dissolve the House. For smooth running of day-to-day business of the House, the Constitution provides for a Speaker. The Speaker has the authority to decide about the admissibility of questions, resolutions and motions, and his/her authority in the Proceedings of the House is final.

  - **Powers and Functions of the Lok Sabha**

    Any Bill can be introduced in Lok Sabha including Money Bills. It can also legislate on all the subjects of Central and Concurrent list and it also enjoys residuary powers. The Council of Ministers can remain in power as long as it enjoys the confidence of the majority of the House as it is individually and collectively responsible to the Lok Sabha. The Lok Sabha can control the executive by asking Questions to the Ministers and criticizing the government; it also

has the power to move the Non-Confidence Motion. The Lok Sabha has the power to amend the Constitution. It decides about the taxes which would be levied, reduced or abolished. The House along with Rajya Sabha elects the President and Vice-President of India.

- **RAJYA SABHA (THE COUNCIL OF STATES)**

Rajya Sabha represents the units of the Indian Federation. The House is a permanent chamber; each member is elected for a term of six years. The Vice-President of India is the ex-offico Chairperson of the Rajya Sabha; among its members the Rajya Sabha elects one Deputy Speaker to carry on regular business in the absence of the Vice President.

- **Powers and Functions of the Rajya Sabha**

Compared to the Lok Sabha, the Rajya Sabha does not enjoy equal powers at par with the former House. No Money Bill can be introduced in the Rajya Sabha. The government is not accountable to the Upper House as the ministers are not accountable to the House. However, in some cases, it has equal powers with the lower House in matter such as election and removal of the President and the Vice President, the removal of judges of Supreme and High Courts, and the amendment of the Constitution.

The Constitution provides certain exclusive rights to the Rajya Sabha like- suggestion of transfer of a particular subject under State List either to the Central List/Concurrent List and creation of new All India Service in the national interest. Although the government is not accountable to the House, it is found that over the years the Rajya Sabha has served as the most suitable place for political education. Because of the wide range of discussions on almost all types of issues in the House that influence people it make us more conscious and responsible about day-to-day politics of the nation. Again, it serves as an organ of information as the members can ask for almost all sorts of information from the respective ministers. The House can act as an investigation agency through its various committees. As a platform of discussion, the House can raise and

discuss the issues affecting people and can act as grievances redressal agency.

3.4 LAW MAKING PROCEDURE OF THE INDIAN PARLIAMENT

Law making is the prime duty of the Parliament; both the Houses apply same procedure. Firstly, a proposal introduced in the Parliament is called as Bill. The Bill is of two types- Government Bill and Private Bill. Again there are two types of Government Bill - Money Bill and Non-Money Bill.

Any Bill to be converted into Act has to go through the following stages:-

First Stage (First Reading):- Bill is introduced in the House, later on it is published in the “Gazette of India”.

Second Stage (Second Reading):- In this stage, the Bill is discussed in details. In this stage the Bill may be referred to a Select Committee/ Joint Select Committee.

Third Stage (Committee Stage):- In this stage, the Committee examines the Bill thoroughly.

Fourth Stage (Report Stage):- Here the Committee may amend the Bill and after that it is placed for further discussion and suggestion.

Fifth Stage (Third Reading):- Here little discussion takes place. The bill is placed for voting; if it is passed then the bill is considered to be passed by the House and sent to the other House.

The Bill in the Other House and Presidential assent:- In the other House the Bill has to undergo all the above stages and procedures. However, in case of a disagreement between the two Houses, it has to be settled in a Joint Sitting. Lastly, the Bill goes to the President for her/his assent. After his/her consent the bill becomes a law.

The Budget

Each year the Finance Minister submits the Budget on the last day of February. After the budget presentation there is a general discussion on that in the Parliament. Then comes the next stage, namely that of the "Voting on Demands". At this stage, demands of each ministry are debated; at this stage the opposition may put forward a motion (Cut Motion). Next, the "Appropriation Bill" is presented in the House**.** At this stage, no amendment is moved as it has already been discussed as demands. After it has been approved by the Lok Sabha, it is sent to the Rajya Sabha; which can discuss the Budget for maximum period of 14 days and thereafter it is sent to the President, with the assent of the President the Government is empowered to draw money from the treasury.

A part of the budget deals with taxation proposals of the year. This is presented to the Houses in the form of "Finance Bill". Finance Bill also has to pass through the same stages, as the Appropriation Bill. The Finance Bill empowers the Government to collect taxes proposed in the Budget.

Amendment of Constitution

Article 368 of the Constitution deals with the amendment procedure of the Constitution. The amendment bill can originate in either House of Parliament; however Parliament has no power to amend the basic principles of the Constitution. State legislatures cannot initiate any proposal for amendment of the Constitution; it is the exclusive domain of the Parliament of India.

There are three methods by with the Constitution can be amended, like : by a simple majority of the Parliament; by 2/3 majority of both Houses of the Parliament; and by 2/3 majority of both Houses of the Parliament and ratification by half of the state legislature.

Committee System

Parliament has established a series of committees with necessary powers to scrutinise the working of the different departments of the government.

The Committees provide an ideal context for discussing controversial and sensitive matters in a non-partisan manner, away from public attention. Thus it plays a predominant role in running the business in the House.

The following are the important committees:-

- Business Advisory Committee
- The Rules Committee
- The Committee on Petitions
- Committee on Privileges
- Committee on Sub-ordinate Legislation
- Committee on Public Undertakings
- Committee on Government Assurances

Some other important Committees are -

- The Select Committee:- The strength of the Select Committee varies from one or another. The life of the committee also depends on the nature of the Bill. The function of the Committee is to examine the Bills referred to it and suggests amendments, if any to the House.
- Estimates Committee:- The Estimates Committee includes 30 members who are elected by the House. This committee examines the methods of public expenditure and analysis whether public money is being properly used or not.
- Public Accounts Committee:- The total strength of the Public Accounts Committee is 22 members. 15 members are from Lok Sabha and 7 from Rajya Sabha. The members of the Rajya Sabha are associated with the committee because they have no voting rights. Members are elected for a period of one year but by a convention they are also elected for the next year also. The prime duty of the committee is to examine the report of the Comptroller and Auditor General and to make suggestion for the improvements of economy in expenditure. It summarizes the Appropriation Accounts of the Government and other reports placed before it.



CHECK YOUR PROGRSS

Q 1: Write briefly about the powers and functions of the Lok Sabha.

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Q 2: State any one exclusive power of the Rajya Sabha.

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Q 3: Mention any two important Committees of the Parliament.

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3.5 DECLINE OF THE PARLIAMENT

Today the Parliament is losing its effectiveness. A lot of factors are responsible for the decline of the Parliament and erosion of its powers; some of these are as follows: -

In a parliamentary system the Parliament acts as a law–making body. However, the initiative has now been taken by the Ministers. Today it is the Ministers who control everything regarding initiation of new bills described as “official bills”; besides with the advice of Cabinet the President issues ordinances when Parliament is not in session.

The Speaker and Minister of Parliamentary Affairs determine the weekly business; discussions on the public/governmental policies are initiated by concerned ministers.

The President of India summons and prorogues the sessions of the Parliament. In his/her ‘Inaugural Address’ the President speaks about the plans and policies of the government. Again President can dissolve House of People. A Bill enacted by the Parliament can become a law only when it receives the President’s assent. President can return any bill for reconsideration or refuse assent. All the powers exercised by the President in actual practice are exercised by the Council of Ministers headed by Prime

Minister. Today the Parliament has become a “post-facto approval giving body”.

Since independence India has been ruled either by a single party or coalitions of parties. In coalition government too, one party dominance is seen. Hence the decisions and policies are decided on the party forum and only formal sanction is accorded by the Parliament. Thus the real centre of power is the High Command and the Parliament has to play secondary role. It happens because the leaderships of the dominant parties always insist on observance of the party directives by the members of the Parliamentary party. Members of Parliament are required to account and vote as per the instructions of the party leadership.

Today what we see is that very few members of the Parliament have interest for legislative work. Most of the time members of Parliament are just present in the working of the Parliament having little study and homework, in Rajya Sabha a large number of members are seen to be absent. Hence the Parliament is losing its effectiveness. As we know the nature of government business is complex and technical which needs thorough study and that is clearly missing for a large number of members. Because of that they have to rely heavily on permanent civil servants.

Weak opposition is another issue which leads to decline of the Parliament. Because of being few in numbers, absence of charismatic leaders’ and disunity among opposition parties, frequent walkouts, absence of quorum and so on, today the government is run by a single and uniform policy which seeks little discussion and dialogue.

In conclusion, one can say that the Indian Parliament is not sovereign or supreme in the sense the British Parliament is; on the other hand, in India the Constitution is supreme. It is the Constitution which defines and limits and powers of the Parliament. Again, we have division of powers between the Union and the states. Hence, the Parliament alone cannot enact laws on subject in the state list; again on some issues it cannot amend the Constitution because of the doctrine of “Basic Structure” of the Constitution. Moreover, the Parliament cannot enact all sorts of law; any

law enacted by the Parliament is liable to be declared as 'ultra vires' by the Supreme Court if it goes against the Constitution.

3.6 FUNCTIONING OF PARLIAMENTARY DEMOCRACY IN INDIA- CHALLENGES AND PROSPECTS

- **Challenges**

Certain factors have stood in the way of effective functioning of parliamentary system in India:

- **Vote Bank Politics:** India is a land of diversity with different groups of people residing in different regions of the country. Accordingly, there are different castes, class, religious and linguistic groups living in different electoral constituencies of the country. The political parties at the time of parliamentary and assembly elections try to appease and mobilise the people along caste, class, religious and linguistic lines for narrow political gains. Such political mobilisation often threatens to pit one group against the other. This, in turn, weakens the unity of the people and endangers democratic values.
- **Absence of Collective Responsibility:** The principle of collective responsibility constituting a key component of parliamentary democracy has not been observed in the Indian context. There have been instances where for major failures at the policy level, individual ministers rather than the whole cabinet was made to tender resignation. For example, in the Sino-Indian war of 1962, where India suffered serious reverses, it was only the Defence Minister, V.K.Krishna Menon who tendered his resignation rather than the entire Cabinet. There have been other instances too where individual ministers were singled out and the Cabinet as a whole declined to share responsibility for collective failures. This practice is actually a deviation from the principle of collective responsibility of the Cabinet.
- **Flouting of Parliamentary Norms**: Very often parliamentary norms and traditions are seen to be violated by the elected representatives

in the Parliament and state legislatures. Many members use methods of agitation and protests in the Parliament and state legislatures. Such members often resort to shouting and other unparliamentary behaviour like rushing to the well of the house, etc. to register their protests instead of participating in healthy debates and deliberations. Such unruly behaviour disrupts the proceedings of the house and stalls the progress of the nation due to stalemate in carrying out legislative business. Accordingly, the elected representatives must be conscious of the dignity of legislative institutions and desist from indulging in such conduct for the smooth functioning of the parliamentary institutions of the country.

- **Lack of Effective Opposition:** For democracy to survive, it is essential that there exists a healthy opposition to keep any authoritarian tendency of the government under check. The opposition must be able to offer an alternative to replace the government in case the latter is found to have made any severe lapses. However, since the opposition is composed of different political parties with differing ideologies, the opposition often remains divided, lacking the ability to effectively curtail the arbitrary exercise of power by the government when necessary.
- **Frequent resort to Ordinance Making Powers:** It is often noticed that the executive tends to use the power to make ordinances very frequently. The Constitution makers originally vested the power to issue ordinances in the President of India to make necessary laws for the country when the Parliament is not in session. However, in actual practice it is noticed that very often ordinances have been issued on the eve of the session of the Parliament or even when the Parliament is in session. For instance in 1974, the government suspended the right of the persons detained under Maintenance of Internal Security Act (MISA) to approach the court seeking enforcement of their fundamental rights through an Ordinance even though the Parliament was in session. This action of the government

was severely criticized by the Speaker of the Lok Sabha. However, inspite of such criticism, such frequent use of the ordinance making power to serve narrow political interests at times has continued both at the national and state levels , thereby undermining the authority of parliamentary institutions.

- **Lack of effective control over Delegated Legislation :** As in most other democracies, the Parliament and state legislatures pass only the broad framework of any piece of legislation. The details in terms of the necessary rules and regulations are left to the executive to frame. However, these rules and regulations framed by the executive are not always placed before the Parliament or the state legislature as the case may be which undermines the position of the legislative institutions and enhances the power of the executive.
- **Issue of Defections :** The problem of defection has also posed a threat to the smooth functioning of parliamentary system. At one stage, growing defections had resulted in increasing political instability. The Parliament therefore passed the 52nd Amendment Act in 1985 to check the menace of political defections. The Anti-Defection Law provided that if a member of a legislative party voluntarily leaves his or her party or votes against the whip of the party, he or she will lose the membership of the Parliament or of the state legislature as the case may be. However, the Anti-Defection law allowed an exception in the sense that if one-third of the members of a party leave the party, it will constitute a split and will not come under the purview of the Anti-Defection law. This left the scope for political maneuvering whereby members defected to form political parties of their own. For instance, the V.P. Singh Government fell after Chandra Shekhar along with his supporters defected from it and formed a separate party. Thus, political defections have also hampered the smooth functioning of the parliamentary system.
- **Election of undeserving candidates:** Traditional loyalties based on caste, religion, class, language, region, etc. sometimes tend to

influence certain sections of the voters in our country who tend to cast their votes along these lines. This often results in certain undeserving persons with doubtful credentials being elected to the legislative bodies. Such elected representatives may not have faith in the high ethics of public life and time-honoured conventions of parliamentary government.

- **Prospects of Parliamentary Democracy in India:**

  Let us look at some of the factors which have contributed towards the success of Parliamentary Democracy in India and which offer hope for the future:

  - **Faith in democratic values:** The people of India have deep faith in the democratic values. Periodic elections have been held in the country since the first general elections in 1951-1952 except for a short period between1975-1977 when emergency was imposed in the country. The Indian electorate has from time to time shown immense maturity in ensuring that the government remains accountable to the people and stands committed to democratic values and traditions of parliamentary governance. For instance, in 1977, the people of India voted the Congress party out of power due to its arbitrary imposition of the emergency. Thus, the people of India have taken utmost care to ensure that governance of the country always remains in the hands of a constitutional government which remains ever mindful to the needs and interests of the people in general.
  - **Free and Fair elections:** Free and fair elections constitute the bedrock of the parliamentary system. The Election Commission of India is an independent constitutional body empowered to conduct different elections across the country. The Election Commission has so far conducted sixteen general elections in a most free and fair manner. This has enabled the voters to cast their votes in favour of the candidate of their own choice without any fear. Such free and fair conduct of elections has strengthened the foundation of Indian

democracy and raised the political consciousness of the people in general.

- **Independent judiciary:** The Constitution of India has established an independent judiciary in the country. The judiciary adjudicates all constitutional cases and protects the fundamental rights of the citizens. The judiciary has guaranteed the functioning of a constitutional government in the country. The Supreme Court of India in the Indira Nehru Gandhi v. Raj Naraian and also in the Minerva Mills case defined the Parliamentary form of Government as a basic feature of the Constitution. In the Kesavananda Bharati v. State of Kerala of 1973, the Supreme Court, while laying out the "basic structure" of the Constitution held that the democratic character of the polity was an essential component of the "basic structure".
- **Political Decentralisation:** The 73rd and 74th Amendment Acts of the Constitution have put in place a decentralized political structure in India in the form of Panchayati Raj Institutions in rural areas and municipalities and town committees in the urban areas. These decentralised rural and urban local self-government bodies have enabled the people to participate and play a more active role in the management of local affairs. The Gram Panchayats serve as parliaments at the village level. Thus, political decentralisation has helped the people to get necessary administrative training at a local level. Democratic participation at the grass roots has contributed towards strengthening the foundation of parliamentary democracy in India.
- **Freedom of Press:** Freedom of press is a cornerstone of Indian democracy. The existence of a free media, whether print or electronic, has played a very important role in the successful working of democracy in India. The press has from time to time voiced the genuine concerns and demands of the people and communicated the same to the government. The government remains conscious of the news and views aired by the media and very often, important

issues, reported by the media are raised by the elected representatives of the people on the floor of the Parliament and state legislatures.

- **Multi-party system:** The Indian political system is characterised by the existence of a multi-party system. The presence of a large number of parties, whether national or regional, has contributed to the functioning of a healthy parliamentary system of government in the country. Any lapses of the government and the ruling party are pointed out by the different political parties who provide an alternative to the people at the time of elections to the Parliament and state legislatures.



CHECK YOUR PROGRSS

Q 4 : Write briefly about any two factors which are responsible for the decline of Parliament in India.

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Q 5 : Write about any two obstacles in the way of effective functioning of parliamentary system in India.

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Q 6 : Explain any two factors which have contributed towards the success of Parliamentary Democracy in India.

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3.7 LET US SUM UP

- The Constitution of India has provided for a Parliamentary system of government both at the Centre and the States. Accordingly there are provisions for central legislature as well as legislature for the state. The central legislature of India is known as Parliament consisting of two Houses- Lok Sabha and Rajya Sabha.
- While discussing powers and functions of the both Houses of the Parliament, we can see that Lok Sabha is more powerful than the Rajya Sabha.
- Law making is the prime duty of the Parliament. A Bill has to go through a numbers of stages and at the end the Bill becomes an Act after receiving assent of the President.
- Parliament has established a series of committees with necessary powers to scrutinise the working of the different departments of the government.
- The Committees provide an ideal context for discussing controversial and sensitive matters in a non-partisan manner, away from public attention.
- Certain factors have stood in the way of effective functioning of parliamentary system in India such as : Vote Bank Politics, Absence of Collective Responsibility, Flouting of Parliamentary Norms, Lack of Effective Opposition, Frequent resort to Ordinance Making Powers, Lack of effective control over Delegated Legislation, Issue of Defections, and Election of undeserving candidates.
- There some factors which have contributed towards the success of Parliamentary Democracy in India such as : Faith in democratic values, Free and Fair elections, Independent judiciary, Political Decentralisation, Freedom of Press and Multi-party system.
- Today the Parliament is losing its effectiveness. A lot of factors are responsible for the decline of Parliament and erosion of its powers.

- The position of the Indian Parliament may be described as the middle point between the Parliamentary sovereignty of Britain and the supremacy of the constitution of USA. For example, Indian Judiciary is empowered to declare a law as unconstitutional if it is not in tune with the Constitution; however the judiciary cannot ascertain wisdom of legislative policy.
- Indeed, to be a genuine democracy we must have a truly representative, efficient and effective Parliament. It is the legislature that helps people in holding the executive accountable to the legislature through sustained debate and discussion. This is the very basis of representative democracy. To make the Parliament a true forum for public discussion and representation it needs adequate time and interest on the part of the members. The Parliament of India is like a garden representing different regions of the country with diverse faiths, cultures, and ideologies with members of different castes, classes, and religious backgrounds. Despite all its limitations, the Parliament is still maintaining a high position of dignity and responsibility.



3.8 FURTHER READING

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3) Ghai, K.K. (2007). Indian Government And Politics. New Delhi: Kalyani Publishers.
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3.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1 : Any Bill can be introduced in Lok Sabha including Money Bills. It can also legislate on all the subjects of Central and Concurrent list and it also enjoys residuary powers. The Council of Ministers can remain in power as long as it enjoys the confidence of the majority of the House as it is individually and collectively responsible to the Lok Sabha. The Lok Sabha can control the executive by asking Questions to the Ministers and criticizing the government; it also has the power to move the Non-Confidence Motion. The Lok Sabha has the power to amend the Constitution. It decides about the taxes which would be levied, reduced or abolished. The House along with Rajya Sabha elects the President and Vice-President of India.

Ans to Q. No. 2 : Creation of new All India Service in the national interest.

Ans to Q. No. 3 : Business Advisory Committee, the Rules Committee

Ans to Q. No. 4 : (i) Since independence India has been ruled either by a single party or coalitions of parties. In coalition government too, one party dominance is seen. Hence the decisions and policies are decided on the party forum and only formal sanction is accorded by the Parliament. Thus the real centre of power is the High Command and the Parliament has to play secondary role. It happens because the leaderships of the dominant parties always insist on observance of the party directives by the members of the Parliamentary party. Members of the Parliament are required to account and vote as per the instructions of the party leadership.

(ii) Weak opposition is another issue which leads to decline of the Parliament. Because of being few in numbers, absence of charismatic leaders' and disunity among opposition parties, frequent walkouts, absence of quorum and so on, today the government is run by a single and uniform policy which seeks little discussion and dialogue.

Ans to Q. No. 5 : (i) Vote Bank Politics: India is a land of diversity with different groups of people residing in different regions of the country. Accordingly, there are different castes, class, religious and linguistic groups living in different electoral constituencies of the country. The political parties at the time of parliamentary and assembly elections try to appease and mobilise the people along caste, class, religious and linguistic lines for narrow political gains. Such political mobilisation often threatens to pit one group against the other. This, in turn, weakens the unity of the people and endangers democratic values.

(ii) Flouting of Parliamentary Norms: Very often parliamentary norms and traditions are seen to be violated by the elected representatives in the Parliament and state legislatures. Many members use methods of agitation and protests in the Parliament and state legislatures. Such members often resort to shouting and other unparliamentary behaviour like rushing to the well of the house, etc. to register their protests instead of participating in healthy debates and deliberations.

Ans to Q. No. 6 : (i) Free and Fair elections: Free and fair elections constitute the bedrock of the parliamentary system. The Election Commission of India is an independent constitutional body empowered to conduct different elections across the country. The Election Commission has so far conducted sixteen general elections in a most free and fair manner. This has enabled the voters to cast their votes in favour of the candidate of their own choice without any fear. Such free and fair conduct of elections has strengthened the foundation of Indian democracy and raised the political consciousness of the people in general.

(ii) Independent judiciary: The Constitution of India has established an independent judiciary in the country. The judiciary adjudicates all constitutional cases and protects the fundamental rights of the citizens. The judiciary has guaranteed the functioning of a

constitutional government in the country. The Supreme Court of India in the Indira Nehru Gandhi v. Raj Naraian and also in the Minerva Mills case defined the Parliamentary form of Government as a basic feature of the Constitution. In the Kesavananda Bharati v. State of Kerala of 1973, the Supreme Court, while laying out the "basic structure" of the Constitution held that the democratic character of the polity was an essential component of the "basic structure".



3.10 POSSIBLE QUESTIONS

Q 1 : Write briefly about the amendment procedure of the Constitution of India.

Q 2 : Mention names of any four important Committees of the Parliament of India.

Q 3 : Write briefly about Public Accounts Committee.

Q 4 : Explain powers and functions of the Lok Sabha and Rajya Sabha.

Q 5 : Explain law making procedure of the Indian Parliament.

Q 6 : Write a short note on the Committee system of the Indian Parliament.

Q 7 : Today the Parliament is losing in its effectiveness. Discuss.

Q 8 : Discuss the factors have stood in the way of effective functioning of parliamentary system in India.

Q 9 : Explain the factors that have contributed towards the success of Parliamentary Democracy in India.

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UNIT : 4 SECULAR TRADITION IN INDIAN POLITICS - ISSUES AND CHALLENGES

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Meaning of Secularism

4.4 Secularism in India

- 4.4.1 Tenant of Indian Secularism
- 4.4.2 Distinctive Character of Indian Secularism
- 4.4.3 Secular Features of the Indian Constitution

4.5 Views of Gandhi and Nehru on Secularism

4.6 Challenges to Secularism in India

4.7 Secularism in Contemporary India

4.8 Let Us Sum Up

4.9 Further Reading

4.10 Answers To Check Your Progress

4.11 Possible Questions

4.1 LEARNING OBJECTIVES

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

- explain the meaning of secularism
- discuss various theoretical aspects associated with the concept of secularism in India
- examine Gandhi's and Nehru's views on secularism
- analyse the challenges to secularism in India.

4.2 INTRODUCTION

Secularism is one of such concepts which has provided the philosophical foundation of the Constitution of India. The Constitution of India has firmly established India as a secular state. But secular tradition in India, ever since independence, has been facing a number of challenges. In this unit we shall discuss the issue of secularism in India in details.

4.3 MEANING OF SECULARISM

In political terms, secularism is a movement towards the separation of religion and government (often termed the separation of church and the state). This can refer to reducing ties between a government and a state religion, replacing laws based on scripture with civil laws, and eliminating discrimination on the basis of religion. This is said to add to democracy by protecting the rights of religious minorities.

Secular principles concentrate on realizing aims of liberty, justice, freedom and equality for the good of human being. It permits no privilege to any group. Duty and right are simultaneously observed. Secularism primarily agrees with the equal share of all people on the basis of labour, justice and the legitimacy of 'live and let live'. Secularism secures its identity by its own people. In the midst of plurality of religions in the society, secularism keeps up a balance by the pursuance of agnostic toleration, In studies of religion, modern democracies are generally recognized as secular. This is due to the near complete freedom of religion (beliefs on religion generally are not subject to legal or social sanctions), and the lack of authority of religious leaders over political decisions. Nevertheless religious beliefs are widely considered by many people to be a relevant part of the political discourse in many of these countries. This contrasts with other developed nations such as U.K, France and China where religious references are generally considered out of place in mainstream politics. The aspirations if a secular society could characterize a society as one which -

- Refuses to commit itself as a whole to any supernatural views of the nature of the universe, or the role of mankind in it.
- Is not homogenous, but is pluralistic.
- Is very tolerant of religious diversity. It widens the sphere of private decision making.
- While every society must have some common aims which implies there must be agreed upon methods of problem solving, and a common framework of law, in a secular society these are as limited as possible.
- Problem solving is approached rationally, through examination of the facts. While secular society does not set any overall aim, it helps its members realize their shared aims.

Positive ideas behind a secular society.

- Respect for individuals and the small groups of which they are a part.
- Equality of all people.
- Each person should be free to realize their particular excellence.
- Breaking down on the barrier of caste and class.

4.4 SECULARISM IN INDIA

4.4.1 Tenant of Indian Secularism

- Secularism in India means equal treatment of all religions by the state, unlike the western concept of secularism which envision separation of religion from the state.
- Secularism is divisive politically charged topic in India.

- 7th schedule of Indian Constitution places religious institutions, charities and trust in to so call concurrent list which means both central government and various state governments can make their own laws about religious institutions charities and trusts. If the conflict occurs the previous one prevails over the latter.

Indian secularism is fundamentally different from western secularism. It does not focus only on Church- State separation. The idea of inter-religious equality is crucial to the Indian conception.

There was already a culture of inter-religious 'tolerance' in India. Tolerance is compatible with religious domination. It may allow some space to everyone but such freedom is usually limited.

4.4.2 Distinctive Character of Indian Secularism

The advent of western modernity brought to the notice, neglected and marginalized notions of equality in Indian thought. It sharpened these ideas and helped us to focus on equality within the community. It also ushered ideas of inter-community equality to replace the notion of hierarchy. Its operation is done through three factors- Scientific and rational education, Legislation and Social reforms, Urbanization and Industrialization.

So, Indian secularism took on a distinct form as a result of an interaction between what already existed in a society that had religious diversity and the ideas that came from the west. It resulted in equal focus on intra-religious and inter-religious domination.

Some distinctive characteristics of Indian secularism are -

- Indian Secularism not only opposes to the oppression of dalits and women within Hinduism, it also opposes the discrimination against women within Indian Islam or Christianity and the possible threats that a majority community might pose to the rights of the minority religious communities.

- Indian Secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities i.e. individual have the right to profess religion of his /her choice. Likewise, religious minority also have a right to exist and to maintain their own culture and educational institutions.
- Indian Secularism has made room for and is compatible with the idea of state- supported religious reform. For example- Indian Constitution bans untouchability under Article 17. There is also abolition of child marriage and lifting the taboo on inter-caste marriage sanctioned by Hinduism.

The Indian state may engage with religion negatively to oppose religious tyranny. It may also choose a positive mode of engagement. Thus, the Indian Constitution grants all religious minorities, the rights to establish and maintain their own educational institutions, which may receive assistance from the state.

4.4.3 Secular Features of the Indian Constitution

The Constitution of India begins with the following words :

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, **SECULAR** DEMOCRATIC REPUBLIC and to secure to its citizen……."

Though the term 'secular' was not initially mentioned in the original Constitution, it was later incorporated by the 42nd Amendment, yet the Indian Constitution always maintained a secular nature. So, in India, it is not mutual exclusion, rather it is a complex idea that allows state to be distant from all religions so that it can promote liberty, equality and social justice**.**

The Constitution reinforces and reinvents forms of liberal individualism through Article- 19, 26, 28. The Constitution also upholds the principle of social justice without compromising on individual liberties. The constitutional commitment to caste based affirmative action program, shows

how much ahead India was compared to the other nations (as in US it began after 1964 civil rights movements).

Against the background of inter-communal strife, the Constitution upholds its commitment to group rights i.e. the right to cultural expressions. Hence, the framers of the Constitution were more than willing to face the challenges of what is to be known as multiculturalism.

The question of secularism is not one of sentiments, but one of law. The secular objective of the state was articulated through the insertion of the word 'Secular' in the Preamble by the 42nd Constitutional Amendment Act, 1976. Through the Fundamental Rights incorporated from Article 12 to 35, secularism has been given a constitutional status. Right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies are such six fundamental rights through which efforts have been made to promote secular principles of the country.

Secular attitude or attitude of impartiality towards all religions is secured by the Constitution through Article 25 to 28. These articles states that :

Firstly, there shall be no 'state religion' in India. The state will neither establish a religion nor confer any special patronage upon any particular religion. It follows from this, that-

1. The state will not compel any citizen to pay taxes for the promotion or maintenance of any particular religion or religious institution, mentioned under Article-27 of the Fundamental Rights.
2. No religious instruction shall be provided in any educational institution wholly provided by state funds.
3. Even though religious instruction is totally banned in state-owned educational institutions, in other denominational institutions(as recognized by or receiving aid from the state) it is not fully prohibited

but it must not be imposed upon people of other religions without their consent (Article 28)

Secondly, every person is guaranteed the freedom of conscience and the freedom to profess, practice and propagated his own religion, subject only-

1. To restrictions imposed by the state in the interests of public order, morality and health, so that the freedom of religion may not be abused to commit crimes or anti-social acts. For example- to commit the practice of infanticide, etc.
2. To regulations or restrictions made by the state relating to any economic, financial, political or other secular activity which may be associated with religious practise, but do not really concerned to the freedom of conscience.
3. To measure for social reform and for throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Subject to above limitations, a person in India shall have the right not only to entertain any religious but also to practice the observances dedicated by such belief and to preach his / her views to others (Article 25).

Thirdly, not only there is the freedom of the individual to profess, practice and propagate his or her religion, there is also the right guaranteed to every religious group or domination –

1. To establish and maintain institution for religious and charitable purposes;
2. To manage its own affairs in matters of religion;
3. To own and acquire movable and immoveable property; and
4. To administer such property in accordance with the law (Article 26)

It is to be noted that this guarantee is available not only to the citizens of India but to all persons including aliens.

4.5 VIEWS OF GANDHI AND NEHRU ON SECULARISM

- **Gandhi on Secularism**

Gandhi's reverence of Hinduism does not mean that he was a staunch Hindu and had hatred for other religions. In fact Gandhi believed in the inherent goodness of all religions. He was opposed to the idea of a partisan attitude of the state towards a particular religion. He was not in favor of the state coercing people to follow a particular creed or embrace a particular faith. He pleaded for, 'leaving every individual to follow that form of religion which best appealed to him without any interference from the state'.

He did not advocates "State Religion", he stated that he did not believe in state religion even though the whole community had one religion. The state interference would probably always be unwelcome. Religion was purely a personal matter. He was opposed to state aid partly or wholly to religious institutions. He was against the inculcation of denominational and sectarian religious teachings in state institution. He wanted religious education to be the exclusive concern of the religious associations. He regarded religion as a matter of private judgment. He did not like the organized agencies of the State to meddle with the religious considerations of the people .Gandhi's religious-mindedness did not detract a bit from his concept of secularism. Gandhi's interpretation of religion and non advocacy of state religion became the cornerstone of the Indian Constitution. Right to Freedom of Religion and Cultural and Educational Right – the two fundamental rights embody Gandhi's ideas, widely appreciated by the Indian leaders and the architects of the Indian Constitution. Gandhi stood for communal amity and unity. Hence he exhorted the Congress to adopt ideal of secular state. Even the worst communal riots did not deter Gandhi from holding faith in secularism and humanity. Gandhi always reminded Indians that they constituted one nation with different religions. Hence they must have mutual understanding and mutual tolerance-the base of a secular state.

- **Nehru on Secularism**

Secularism according to Nehru was not only a political doctrine but a social one, of revolutionary character, embracing all religions and communities in India. Secularism did not mean irreligion or only material well-being. It contained spiritual elements as well.

Nehru made India a Secular State. In fact, Nehru did not discriminate against any religion. He emphasized the unity of the country for which secularism was indispensable.

Nehru's concept of secularism contains the following four aspects–

(a) **Religious Freedom-** It means granting equal status to all religions in India. No religion should be granted any special privileges. No community should be deprived of its legitimate rights on the bass of religion. He also emphasized the need of elimination of all social inequalities. According to him, a caste ridden society cannot be secular. Though he was opposed to interference with anybody's personal belief yet if these beliefs became petrified in caste divisions, they affected the social structure of the state. Hence society is to be rid of such beliefs.

(b) **Neutrality of the State in Religious matters**- Secular state means a state not tied to any religion. Nehru always deprecated the talk of Hindu Raj or Muslim Raj. He stood for people's Raj. He wanted state to follow policy of co-existence of religion. The state should not try to infringe upon religious freedom. Nehru condemned the decision of the Pakistan Constituent Assembly declaring Pakistan as Islamic Republic. Such a policy was opposed to democracy as it created "two classes of citizens –one having more opportunities, the other less."

© **Secularism in Social life-** Nehru regarded secularism as the indispensable feature of a modern democratic society. Modern India was not supposed to adopt a theocratic concept of state because every state in a modern world with the exception of two or three was secular. He recognized that Hinduism and Islam had deeply penetrated into Indian social life. They

lay down codes and rules and expect every adherent to follow them because of their religious sanctity and authority. He realized that existence of different set of laws governing different religious communities was inconsistent with the ideal of a secular society. Hence, he tried to devise a uniform Civil Code for the entire Indian Community without discrimination on the basis of caste and religion. Though he took religion as a purely personal affair and did not wish to interfere with any person's belief, yet he objected strongly to intervention of religion in social and political life. He thus, worked for the establishment of a State which "protects all religions but does not favor one at the expense of others and does not itself adopt any religion as the state religion."

(d) **An attitude of mind Secularism** - According to Nehru, secularism meant a certain mental attitude on the part of various communities .India being an abode of many religions is in dire necessity of such an attitude which can bring about harmony and develop a feeling of fraternity among these religions. He did not like any religion to interfere with the other or challenge the basic conception of the state. Nehru was quite clear in his mind that the realization of the secular ideal depended largely upon the attitude of the majority community towards minorities. He strongly believed that narrow and aggressive attitude on the part of the majority community was apt to create apprehension in the minds of any minority group in India. He expected minorities also to be tolerant. He, therefore, exhorted both to cultivate broad outlook and not to adopt attitudes which are wring and detrimental to the integrity of India and unity of the Indian nation.

It looks like Nehru's secularism was a practical necessity in India. It was the panacea of problems of religious diversities and mutual bickering and animosities which were the consequences of such diversities. Abolition of separate electorates and substitution of joint electorates was the first attempt in this direction.

Certain fundamental rights, viz right to religion, cultural and educational rights and right to equality and certain objectives incorporated in the Directive Principles constituted another attempt to develop India into a secular state.



CHECK YOUR PROGRESS

Q 1 : Mention any two positive ideas behind a secular state.

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Q 2 : State any two tenants of Indian secularism.

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Q 3 : Write briefly about any two provisions incorporated in the Constitution of India to ensure secular principle.

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Q 4 : Write briefly about any two aspects of Nehru's concept of secularism.

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4.6 CHALLENGES TO SECULARISM IN INDIA

India is well known for its cultural heterogeneity with respect to language and religion. Hindus constitute the majority while Muslims constitute the largest minority. The animosity between the Hindus and the Muslims was largely the creation of the British rulers. In order to keep themselves in power, they adopted a policy of 'divide and rule' and tried to promote feelings of hostility among the members of these two communities. After a long history of independence, at present too, the lack of proper adjustment between them has often resulted in violent outburst and communal riots, which unfortunately becomes a serious challenge to the secular identity of our country. On the other hand very often the political parties, including the national parties, too sometimes do not allow secularism to take precedence over their political interests. The electorate in India, guided by tradition, tends to be responsive to appeals based on caste, religion, and language. By announcing various schemes favoring a particular community, political parties, openly violate the idea of secularism they claim to stand for. While distributing tickets during elections, nearly all political parties take religion of a candidate into consideration. Such a practice in India poses the greatest threat to secularism.

- **Problem of Uniform Civil Code:**

A uniform civil code is essential in the direction of bringing about national identity and the integration of members of all religious communities into one bond of common citizenship. Following independence, it was hoped that this step would be taken to usher in secular society. But unfortunately till now no progress has been made in the evolution of a uniform Civil Code and today its adoption appears to be more problematic than it was at the time when the Constitution was framed.

Thus, the Muslim minority compelled the Government, in 1986, to enact legislation concerning maintenance of divorced women which it felt was closer to its Personal Law and, therefore, religiously more acceptable.

Modern secular considerations, and the opinion of those Muslims who took a secular position, were given no cognizance by the Government.

Similarly, other minorities like Christians and Sikhs, too, have given some indications that would render the formulation and enforcement of a uniform Civil Code an impossibility. Such limitations indicate that the path leading to a truly secular society in India is strewn with numerous hurdles.

- **Politics and Religion:**

The political parties in India have tended to use religion and caste factors for the promotion of their political interests and thus greatly undermined the secular values.

The growing communalism has also greatly hampered the growth of genuine secularism in India. Despite abandonment of communal electorates and a ban on the use of religion for soliciting votes, the various political parties and groups have frequently made use of communal factors to get into power. In this regard both the minorities as well as the majority communities are equally to blame. Unless this feeling of communalism is shunned, secularism cannot take firm roots in the Indian soil.

The responsibility of undermining India's limited secularism falls upon the shoulders of the leaders of the post-Nehru era, many of whom are not intellectually liberated, because of their traditional background, to understand arid appreciate genuine secularism. Due to their neo-traditional orientation, these leaders are lacking in true commitment to the secularisation of Indian society, not only in terms of developing non-religious outlook but also in terms of developing a rational and scientific temper. This failure of the leadership has thwarted the progressive separation of religion and politics in India.

- **Failure of the Government in evolving a Just Economic Order:**

The failure of the government to evolve a just economic order and eliminate poverty also gave a serious set-back to secularism. The common masses suffering from deprivation and grinding poverty could not develop any faith in the polity which failed to provide them basic necessities and consequently did not attach much importance to secular values.

- **Minority Group Perceptions:**

Apart from education and jobs, prejudice and discrimination are perceived as operating in the matter of intergroup violence and conflict. There is now ample evidence to show that at times the administrative machinery of the State does not operate impartially at the time of communal riots; those responsible for ensuring law and order act in a non-secular way and tend to victimise members of minority groups.

The minorities are in fear of the giant majority, which has the brute strength to overpower them and divests them of their distinctive characteristics. Furthermore, loyalties continue to be particularistic rather than universalistic.

- **Defective Educational System:**

The defective educational system which has encouraged the people to think in terms of groups and communities, has also failed to inculcate secular ideas in the minds of young students and promote feeling of mutual give and take.

- **Distortion of the Constitutional and Democratic Institutions:**

Distortion of the Constitutional and democratic institutions has also greatly contributed to the weakening of the secularism in India. The Constitution and the political institutions have not worked the way they were envisaged by the framers of the Constitution. For example, though use of religion is not permitted for soliciting votes, yet certain political parties have made free use of factors like religion, caste etc. to secure votes. All this has hampered the growth of a true secular polity in the country.

4.7 SECULARISM IN CONTEMPORARY INDIA

In spite of that fact that Secularism is one of the essential elements in the basic structure of our Constitution, religious feelings not only govern our mode of thinking, but get reflected in our politics and public administration, participation in religious functions and asking for votes in the name of religion.

All political parties use religion to come to power. While professing secularism, vote banks are systematically built on the basis of religion and caste. Every political party claims that it is the only secular party in India, pointing out that it takes care of the minorities better than the others. To prove their point, such parties try to implement different laws to different people resulting in a crisis where groups gravitate to their own communities and create dissatisfaction among others. This is obviously an untenable situation. Such a scenario would be ripe for fragmentation.

What is required is some unifying system that everyone can agree on so that a large community of people can be effectively controlled and ruled over. There has to be a system of law that is fair to all sections of the people without showing any bias.

A secular state in India as conceived by the Constitution was not an exclusively political – intellectual construct, but it reflected the social and cultural reality of Indian Society. Being alive to the social reality, Mahatma Gandhi and Nehru attached great importance to communal harmony for the survival of secularism in India. For secularism to survive, there must be a common principle to tolerance, and this demands a secular polity. Politics means solving people's problems through a government. Under a properly functioning secular government, people can have their problems of food, comfort or security solved easily. But interference of religious belief and spiritual considerations with the functions of a government spoils the purpose.



CHECK YOUR PROGRESS

Q 5 : Write briefly about any two challenges of secularism in India.

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4.8 LET US SUM UP

- Secularism is not just a word; it is an idea; that was espoused by the founding fathers of independent India and the architects of India's Constitution. It refers to a number of norms and values regarding the way a plural society and its state should be organized. The basic idea is that the state and its laws should not mingle with the realm of religion. Instead, each religion should offer useful anchorage to the government's secular attempts to turn out Indians into good and honest citizens.
- For India, secularism is not a simple point of view; it is a question of survival; a safeguard of peace, order and sanity in the society. Secularism in India means equal treatment of all religion by the state.
- A number of provisions have been incorporated in the Constitution of India to upheld secular tradition.
- Gandhiji opined that religion was purely a personal matter. He was opposed to state aid partly or wholly to religious institutions. He was against the inculcation of denominational and sectarian religious teachings in state institution. He wanted religious education to be the exclusive concern of the religious associations. Gandhiji was of the view that there must be mutual understanding and tolerance among all religions.
- Secularism according to Nehru was not only a political doctrine but a social one, of revolutionary character, embracing all religions and communities in India. Nehru's views on secularism contain four aspects, such as - religious freedom**,** neutrality of the state in religious matters**,** secularism in social life**,** an attitude of mind secularism.
- There are some challenges to secularism in India, such as - problem of uniform civil code, politicization of religion, failure of the government to evolve a just economic order, minority group

perceptions, defective educational system, distortion of the Constitutional and democratic institutions.



4.9 FURTHER READING

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4.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : (i) Respect for individuals and the small groups of which they are a part.

ii) Equality of all people.

Ans to Q. No. 2 : (i) Secularism in India means equal treatment of all religion by the state, unlike the western concept of secularism which envision separation of religion from the state.

(ii) The concept of secularism envisions acceptance of religious laws as binding on the state and equal participation of state in different religions.

Ans to Q. No. 3 : (i) The state will not compel any citizen to pay taxes for the promotion or maintenance of any particular religion or religious institution, mentioned under Article-27 of the Fundamental rights.

(ii) No religious instruction shall be provided in any educational institution wholly provided by state funds.

Ans to Q. No. 4 : (a) Religious Freedom- It means granting equal status to all religions in India. No religion should be granted any special privileges. No community should be deprived of its legitimate rights on the bass of religion. He also emphasized the need of elimination of all social inequalities. According to him, a caste ridden society cannot be secular. Though he was opposed to interference with anybody's personal belief yet if these beliefs became petrified in caste divisions, they affected the social structure of the state. Hence society is to be rid of such beliefs.

(b) Neutrality of the State in Religious matters- A secular state means state not tied to any religion. Nehru always deprecated the talk of Hindu Raj or Muslim Raj. He stood for people's Raj. He wanted state to follow policy of co-existence of religion. The state should not try to infringe upon religious freedom. Nehru condemned the decision of the Pakistan Constituent Assembly declaring Pakistan as Islamic Republic. Such a policy was opposed to democracy as it created "two classes of citizens –one having more opportunities, the other less."

Ans to Q. No. 5 : (i) Defective Educational System: The defective educational system which has encouraged the people to think in terms of groups and communities, has also failed to inculcate secular ideas in the minds of young students and promote feeling of mutual give and take.

(ii) Distortion of the Constitutional and Democratic Institutions: The distortion of the Constitutional and democratic institutions has also greatly contributed to the weakening of the secularism in India. The Constitution and the political institutions have not worked the way they were envisaged by the framers of the Constitution. For example, though use of religion is not permitted for soliciting votes, yet certain political parties have made free use of factors like religion, caste etc. to secure votes. All this has hampered the growth of a true secular polity in the country.



4.11 POSSIBLE QUESTIONS

Q 1 : State any two distinctive character of Indian secularism.

Q 2 : What is meant by politicisation of religion?

Q 3 : State any two ideas behind a secular society.

Q 4 : Write the meaning the meaning of secularism.

Q 5 : Write a short note on Gandhi's views on secularism.

Q 6 : Examine Nehru's views on secularism.

Q 7 : Explain the provisions incorporated in the Constitution of India to ensure secular principle.

Q 8 : Discuss the challenges to secularism in India.

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UNIT : 5 INDIAN JUDICIARY

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 The Supreme Court

5.4 The High Court

5.4.1 Subordinate Courts

5.5 Judicial Review

5.6 Public Interest Litigation

5.7 Judicial Activism

5.8 Let Us Sum Up

5.9 Further Reading

5.10 Answer to Check Your Progress

5.11 Possible Questions

5.1 LEARNING OBJECTIVES

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

- discuss the judicial system in India
- explain the process of judicial review
- analyse the new developments of the Indian judicial system, such as public interest litigation and judicial activism.

5.2 INTRODUCTION

India has established an integrated judicial system. At the top of this system stands the Supreme Court, followed by the High Courts and other lower courts. One important feature of the Indian judicial system is the provision of judicial review which enables the courts to examine the

constitutionality of the laws made by the legislature and the executive actions. In the process of working, some new features have emerged in the Indian judicial system, such as Public Interest Litigation and Judicial Activism. We are going to discuss all these in the following

5.3 THE SUPREME COURT

India has established a federal form of government. The existence of a supreme judiciary is an important feature of a federal form of government. So, in India, the Supreme Court stands at the top of the judicial system. It is the highest court of appeal in India.

- **Composition**

The Constitution has provided that the Supreme Court shall consist of the Chief Justice and other judges. At present, it has a total of 30 judges with the Chief Justice.

The Chief Justice and the judges of the Supreme Court are appointed by the President of India. The President can also appoint some *ad hoc* judges for speedy and effective delivery of judgments, at the request of the Chief Justice, and on the advice of the Union Council of Ministers.

A judge of the Supreme Court retires at the age of 65 years. He or she may also resign from his or her office at any time. A judge can be removed from his or her office by the President on the ground of 'proved misbehaviour' or 'incapacity' if such a resolution is passed in the Parliament.

To be a judge of the Supreme Court, one must have the following qualifications-

1. be a citizen of India,
2. have been a judge of a high court at least for five years,
3. have been an advocate of a high court for at least for ten years, and
4. a distinguished jurist.

- **Jurisdiction**

The Supreme Court has its original jurisdiction. It exercises its power in its original jurisdiction in settling disputes in the following matters:

A) Disputes between the centre and one or more states;

B) Disputes between the centre and any state or states on the one side and one or more other states on the other;

C) Disputes between two or more states.

Under the appellate jurisdiction, the Supreme Court can hear the following cases:-

A) Constitutional cases – an appeal can be made to the Supreme Court if a case is related to the interpretation of the Constitution.

B) Civil cases – an appeal can be made in the Supreme Court against a decision of the High Court in civil cases. Here, the High Court must certify that the case involves a question of law as to the interpretation of the Constitution.

C) Criminal cases – an appeal can be made in the Supreme Court against any judgement, final order or sentence of a High Court. Ordinarily, the High courts are the final courts of appeal in criminal cases. But the Supreme Court can hear an appeal against the decisions of the High Courts with the special power given to it by the Parliament.

The Supreme exercises some advisory powers also. It can provide its opinion to the President of India on a question of law or on a fact involving the interpretation of the Constitution when it is asked for. However, the opinion of the Supreme Court is not binding.

The Supreme Court also acts as guardian of the Constitution and the protector of the Fundamental Rights of the citizens. It has been given the power of judicial review in order to protect the Constitution from any law passed by the legislature or a decision taken by the executive. The interpretation of the Constitution made by the Supreme Court has great significance. It can issue directions,

orders and writs to protect the Fundamental Rights. The Supreme Court can issue writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari.

Keeping the records of its orders and proceedings is one of the functions of the Supreme Court. The judgements, orders, directions which it passes from time to time are to be kept for future references. They are authoritative and have great evidentiary value. They are followed by the subordinate courts.

The Supreme Court also has the power of contempt of court. According to this power, it can punish anyone for criticizing the judgements of the court, criticizing the judges and the court, passing derogatory remarks against the court, refusing to abide by the decisions of the court, etc.



LET US KNOW

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

5.4 THE HIGH COURT

The Constitution of India has provided for a High Court in every state in the country. But sometimes there may be one High Court for two or more

states. As there is an integrated judicial system in India, so High Courts stand after the Supreme Court in the hierarchy.

- **Composition**

The President appoints the Chief Justice and other judges of a High Court. There is no fixed rule so far as the number of judges of the High Courts is concerned. The President may increase the number of judges when he or she finds it necessary. The President may also appoint some additional judges.

A judge of the High Court retires at the age of 62. He or she may also resign before the expiry of his or her term. A Judge can be removed from his or her office by the President for "proved misbehavior" or "incapacity".

A judge of a High Court cannot plead or act in any court or before any authority except the Supreme Court and other High Courts.

To be a judge of a High Court, one should – i) be a citizen of India, ii) have held a judicial office in the territory of India at least for 10 years, iii) have been an advocate of a High Court or more such courts at least for 10 years.

- **Jurisdiction**

The High Courts have original jurisdiction to issue directions and orders including writs to any person, authority or any government for violation of the Fundamental Rights of the citizens. The High Courts have been given limited jurisdiction in cases related to admiralty, will, divorce, marriage, company laws and contempt of court.

The appellate jurisdiction of the High Courts extends to the hearing of appeals against the decisions of the lower courts in both civil and criminal cases. The High Courts must confirm the death sentences passed by the lower courts.

The High Courts have administrative jurisdiction also. They supervise the working of all lower courts. They can call for returns from the subordinate courts and can issue general rules to regulate their proceedings.

Like the Supreme Court, the High Courts can issue the five writs to protect the Fundamental Rights of the Indian citizens.

5.4.1 Subordinate Courts

The subordinate courts which work under the High Courts are – the Court of the District Judge, the Court of the Assistant Judges, the Court of the Sub-Judges, the Courts of Munsifs and the Court of small causes.

The Court of the District Judge is the highest court in a district. The District Judge is appointed by the Governor in consultation with the High Court of the state. He or she is called the District Judge while dealing with the civil cases and Sessions Judge while dealing with the criminal cases.

The High Courts have been given the power to exercise control over the District Court and other subordinate courts.



CHECK YOUR PROGRESS

Q 1 : Write briefly about any two jurisdictions of the Supreme Court of India.

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Q 2 : Write about the composition of the High Courts.

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Q 3 : Explain why the Supreme Court is regarded as the guardian of the Constitution and the protector of the Fundamental Rights.

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ACTIVITY 5.1

Find out the names of the states the Gauhati High Court serves.

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5.5 JUDICIAL REVIEW

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

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

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

The Indian judiciary does not have unlimited power of judicial review. It has to exercise its power by following the principle of “procedure

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

5.6 PUBLIC INTEREST LITIGATION

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

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

PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case. The persons who seek

justice may write even a postcard to the court and the court may consider the case for action if found to be fit. This is called the epistolary jurisdiction of the higher courts.

PIL can be misused for vested interest by some unscrupulous persons. The critics are also of the view that as there are no proper guidelines for admission and disposal of PIL cases, so the courts have the chances for going beyond their limits. Then the lack of follow up actions may make the PIL system ineffective even after the courts provide relief to the aggrieved. At the same time, public consciousness is also not so strong in India for proper working of such a progressive device.

5.7 JUDICIAL ACTIVISM

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

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

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

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

It has been cautioned that while becoming active the judiciary should not cross its limits set by the Constitution. It must observe restraint in its activities. It must remember its jurisdiction and respect the authority of the executive and the legislature.



LET US KNOW

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



CHECK YOUR PROGRESS

Q 4 : What is meant by Judicial Review?

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Q 5 : What is Public Interest Litigation?

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Q 6 : State the meaning Judicial Activism.

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5.8 LET US SUM UP

- India has an integrated judicial system, with the Supreme Court at the top, followed by the High Courts and other lower courts.
- The Constitution has provided that the Supreme Court shall consist of the Chief Justice and other judges. At present, it has a total of 30 judges with the Chief Justice at the head. The Chief Justice and the judges of the Supreme Court are appointed by the President of India. To become a judge of the Supreme Court a person must have certain qualifications.
- The Supreme Court of India has original jurisdiction and appellate jurisdictions. It also exercises some advisory powers. The Supreme Court also acts as guardian of the Constitution and the protector of the Fundamental Rights of the citizens. Keeping the records of its orders and proceedings is one of the functions of the Supreme Court.
- The Constitution of India has provided for a High Court in every state or for two or more states. The President of India appoints the Chief Justice and other judges of a High Court. To become a judge of the High Court a person must have certain qualifications.
- The High Courts have original and appellate jurisdictions. The High Courts have administrative jurisdiction also. They supervise the working of all lower court. The High Courts can issue five writs to protect the Fundamental Rights of the Indian citizens.
- The subordinate courts work under the High Courts. The Subordinate Courts are – the Court of the District Judge, the Court of the Assistant Judges, the Court of the Sub-Judges, the Courts of Munsifs.

- The Constitution of India has provided for a special power, i.e. judicial review, to the Supreme Court and the High Courts, through which the courts can examine whether a law passed by the legislature and an action taken by the executive are in consonance to the provisions of the Constitution or not. If the courts find that they are against the provisions of the Constitution or violate the Constitution, then they declare them as unconstitutional or invalid.
- Public Interest Litigation (PIL) has emerged as a new device in the Indian judicial system for providing speedy and affordable judicial service to the people. PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case. The persons who seek justice may write even a postcard to the court and the court may consider the case for action if found to be fit.
- The Supreme Court and the High Courts have been given the responsibility to protect the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism. The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibility towards the public.



5.9 FURTHER READING

1) Abbas, H.; Kumar, R. & Alam, M.A. (2011). *Indian Government and Politics*. New Delhi: Pearson.

2) Jha, Rajesh. (ed) (2012). *Fundamental of Indian Political System*. New Delhi: Pearson.

3) Narula, Sanjay. (2007). *The Indian Political System*. New Delhi: Murari Lal & Sons.

4) Sikri, S. L. (2002). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

5.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : (i) The Supreme Court has its original jurisdiction. It exercises its power in its original jurisdiction in settling disputes in the following matters:

a) Disputes between the centre and one or more states;

b) Disputes between the centre and any state or states on the one side and one or more other states on the other;

c) Disputes between two or more states.

(ii) Under the appellate jurisdiction, the Supreme Court can hear the following cases:

a) Constitutional cases – an appeal can be made to the Supreme Court if a case is related to the interpretation of the Constitution.

b) Civil cases – an appeal can be made in the Supreme Court against a decision of the High Court in civil cases. Here, the High Court must certify that the case involves a question of law as to the interpretation of the Constitution.

c) Criminal cases – an appeal can be made in the Supreme Court against any judgement, final order or sentence of a High Court. Ordinarily, the High courts are the final courts of appeal in criminal cases. But the Supreme Court can hear an appeal against the decisions of the High Courts with the special power given to it by the Parliament.

Ans to Q. No. 2 : The President appoints the Chief Justice and other judges of a High Court. There is no fixed rule so far as the number of

judges of the High Courts is concerned. The President may increase the number of judges when he or she finds it necessary. He or she may also appoint some additional judges.

Ans to Q. No. 3 : The Supreme Court acts as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens. It has been given the power of judicial review in order to protect the Constitution from any law passed by the legislature or a decision taken by the executive. The interpretation of the Constitution made by the Supreme Court has great significance. It can issue directions, orders and writs to protect the Fundamental Rights. The Supreme Court can issue writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari.

Ans to Q. No. 4 : Judicial Review is a special power given to the Supreme Court and the High Courts by the Constitution of India. According to this power the courts can examine whether a law passed by the legislature and an action taken by the executive are in consonance to the provisions of the Constitution or not. If the courts find that they are against the provisions of the Constitution or violate the Constitution, then they declare them as unconstitutional or invalid. This power has made the Supreme Court and the High Courts the guardian of the Indian Constitution.

Ans to Q. No. 5 : Public Interest Litigation is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case. The persons who seek justice may write even a postcard to the court and the court may consider the case for action if found to be fit. Public Interest Litigation has been designed to achieve four main objectives, such as, to make judicial system active, efficient, less costly and simple.

Ans to Q. No. 6 : Judicial activism has emerged to be an important feature of the Indian judicial system in recent years. The Supreme Court and the High Courts have been given the responsibility to protect

the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism. The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibilities towards the public.



5.11 POSSIBLE QUESTIONS

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

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

Q 3 : What are the subordinate courts in India?

Q 4 : How the process of judicial activism started in India?

Q 5 : How the PIL system works in India?

Q 6 : Write a short note on judicial review.

Q 7 : Discuss composition and powers and functions of the Supreme Court of India.

Q 8 : Discuss composition and powers and functions of the High Courts.

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UNIT : 6 FEDERAL STRUCTURE AND ITS DYNAMICS - ISSUES IN CENTRE-STATE RELATIONS

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Nature of Indian Federalism

6.3.1 Federal Features

6.3.2 Non-federal Features

6.4 Division of Power between the Centre and the States

6.4.1 Relation Between the Centre and the States

6.5 An Estimate of Indian Federalism

6.6 Let Us Sum Up

6.7 Further Reading

6.8 Answers to Check Your Progress

6.9 Possible Questions

6.1 LEARNING OBJECTIVES

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

- discuss the federal structure of the Indian Constitution
- analyse the distribution of power between the centre and the states
- make an estimate of Indian federalism.

6.2 INTRODUCTION

The Constitution of India has described India as a “Union of States”, in the very first Article of it. Nowhere in the Constitution has India been described as a federation. The Constitution of India has certain federal features as well as some non-federal features. So, India cannot be said to be a true federal state. It has been described as a “Union of States” because

the Indian federation is not the result of an agreement of the constituting units and these units do not have the right to break away from the union like that of a true federal state. In the following, we will discuss the Indian federalism in detail.

6.3 NATURE OF INDIAN FEDERALISM

When we discuss the nature of Indian federalism, we must say that it is unique in itself. The Constitution makers in India envisaged a federal form of government with a strong unitary basis. There is a centralizing tendency in the Indian federation. The Central Government has been made more resourceful and strong. The Constitution makers have provided for such type of a federal structure for various reasons. For example, India is a vast country with a diverse population. So, to maintain the unity and integrity of the country, a strong centre was deemed necessary. Again, to perform the vast responsibilities of a modern welfare state and for the economic development of a newly independent state, a strong centre equipped with sufficient resources and power was important. At the same time, to establish India at the international forums, the Central Government should be powerful enough to exercise a dominant voice.

The Constitution has made the Central Government more powerful than the states. Though we have two sets of government and power is divided between them constitutionally, that division is not equitable. The Central Government exercises more power than the states in legislative, administrative as well as in financial matters.

The Indian Constitution has certain federal features as well as certain non-federal features. They can be discussed in the following way.

6.3.1 Federal Features

The Indian Constitution is a written constitution. It has been drafted by the Constituent Assembly and adopted by it on 26 November 1949 and came into force on 26 January 1950. The provisions of

the Constitution have been discussed clearly and in detail. It is one of the longest constitutions of the world.

One of the important federal features of the Indian Constitution is that it has provided for two sets of government in the country. The Central Government works at the national level and the state governments work at the state level. They have their own spheres of activity specified by the Constitution itself.

The powers of the two sets of government have clearly been divided in the Constitution. The powers between the two governments have been divided in legislative, administrative and financial spheres. The Seventh Schedule contains three lists of subjects which specify the powers of the two governments.

Another federal feature of the Indian Constitution is the existence of a supreme judiciary for the country. The Supreme Court of India stands at the apex of the Indian judicial system. It is the highest court of justice, followed by the High Court and other subordinate courts. It is regarded as the custodian of the Constitution and the protector of the fundamental rights of the citizens.

In India, there is the supremacy of the Constitution. The Constitution is above all. It is the supreme law of the land. There cannot be any law or executive action which goes against the provisions of the Constitution.

Bi-cameral legislature is another federal feature of the Indian Constitution. The Indian Parliament consists of two Houses – the Lok Sabha and the Rajya Sabha. The Lok Sabha, which is also known as the House of People, represents the people in general. It is the lower House of the Indian Parliament. The Rajya Sabha, which represents the states of the Indian Union, is also called the Council of the States. It is the upper House.

Besides the above mentioned features, the amendment procedure for amending the federal provisions of the Constitution is rigid. This is a feature of a federal government and it is found in India.

After discussing the federal features, now we are proceeding to discuss the non-federal or unitary features of the Indian Constitution.

6.3.2 Non-federal Features

As India has adopted a federal form of government, so, it has two sets of government. The Constitution has divided powers between them. But that division is not equitable. The Central Government has been given more power than the state governments. This is a non-federal feature of the Indian Constitution.

The states, which are the constituting parts of the Indian federation, do not have their permanent existence. Some new states can be created out of the existing states at any time by the Central Government and the names can also be changed.

Though there are certain rigid procedures for the amendment of the Constitution, yet in essence the Constitution is not rigid. Most of the provisions can be amended by simple methods. The Parliament of India can amend many parts of the Constitution unilaterally without the participation of the state legislatures.

In a true federal state, there exist two constitutions - one for the federation as a whole and the other for the individual states. But in India, we have only one Constitution and that Constitution is for the states also. The states in India have no constitution of their own. Though the state of Jammu and Kashmir has a separate constitution, it works as per the provisions of the Indian Constitution.

Another non-federal feature of the Indian Constitution is the existence of a unified and integrated judicial system for the whole country. The Supreme Court stands at the apex of this judicial system and it is followed by High Courts and other subordinate courts in the states. There is no separate judicial system for the states in India.

In India, we have only one type of citizenship. That is the citizenship of India. We do not have the citizenship for our respective states.

However, in a true federal state, the citizens have two types of citizenship – one for the whole country and the other for their states.

The Central Government can give directions to the state governments regarding the administration of the states. The state governments must follow these directives and carry out administration accordingly. Article 365 of the Constitution mentions that if any state fail to follow the directives of the Centre, it will amount to the failure of the constitutional machinery in the state. Then the President of India is empowered to impose President's rule in the state under Article 356. This is another non-federal feature of the Indian Constitution.

The Governors who are the constitutional heads of the states in India are appointed by the President of India. The Governors can be said to be the agents of the centre in the states because they send reports to the President from time to time regarding the administration of the states. In a true federation, the head of the states are not appointed by the central government.

Further, the Rajya Sabha, the Upper House of the Indian Parliament, which represents the states, does not represent the states on the basis of equality. The states get representation on the basis of their population. The states with big population send more representatives to the House than the states with less population.

Thus, we can say that India is not a true federation. There are some federal features in the Indian Constitution. But there are many non-federal or unitary features too. So, India can be described as a federation with unitary spirit. The constitution makers wanted a unique federal system for India which Dr K.C. Wheare described as "quasi-federal" meaning that India is a semi federal state.



LET US KNOW

The term 'federation' has come from the Latin word 'foedus' which means a treaty or agreement. So, a federation comes into existence when some states arrive at an agreement to form a new bigger state either to protect themselves from common enemy or to ensure development by working together. It is very important that the states which form the federation must have geographical contiguity and some amount of commonality between them in matters of race, religion, language, culture, etc. and equality. As Dicey says, "A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights".



ACTIVITY 6.1

Try to find out the difference between federation and confederation.

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CHECK YOUR PROGRESS

Q 1 : Write briefly about two federal features of the Indian Constitution.

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Q 2 : Write briefly about two non-federal features of the Indian Constitution.

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Q 3 : Why India is not regarded as a true federal state? explain.

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6.4 DIVISION OF POWER BETWEEN THE CENTRE AND THE STATES

The Constitution has divided power between the centre and the states. Though the Central Government is stronger than the state governments, the latter have their own sphere of activities. In India, powers of both the governments are well-defined. The residuary powers are left for the Central Government. The division of power in legislative, administrative and financial matters can be discussed in the following way.

- **Division of Legislative Powers**

Article 246 of the Constitution has discussed the division of legislative power between the centre and the states. The Seventh Schedule includes three lists containing different subjects meant for the two governments to make legislation. These lists are – the Union List, the State List and the Concurrent List.

On the subjects which are included in the Union List, such as, defense, foreign affairs, currency and coinage, citizenship and census, the Parliament of India has been given the power to make laws. There are 96 subjects in this list. The state legislatures have no right to make laws on these subjects. The subjects included in the Union List are mainly of wider importance for the country and uniform in character.

The state legislatures can make laws on the subjects which are included in the State List. There are 61 subjects in the State List and they are subjects of local importance. They include – law and order, public health, forests, revenue, sanitation, etc. It is provided in the Constitution that on some occasions, the central legislature can also make laws on the subjects of the State List. Article 249 empowers the Parliament to make a law on the subjects of the State List in the national interest if a resolution is passed by the Rajya Sabha by 2/3 majority to that effect. Again Article 250 mentions that during proclamation of Emergency the Parliament gains the power to make laws on the subjects of the State List.

Both the Parliament and the state legislatures can make laws on the subjects which are included in the Concurrent List. There are 52 subjects in the Concurrent List. The subjects of this list are of wider importance and uniform in character. However, they may also need local attention. Some subjects of this list are – education, economic planning, social security, electricity and newspaper. In case of this list, one point is to be noted that if there is a conflict between the central law and the state law on a subject of this list then the central law will prevail over the state law.

The subjects which are not included in these three lists of subjects are termed as residuary powers. The Parliament has been given exclusive power to make laws on those subjects.

Thus, we can say that the central legislature, that is, the Parliament is more powerful than the state legislatures in matters of division of legislative power. The Parliament has exclusive power to make laws on the subjects of the Union List and in case of the residuary powers. It has also been given power to make law on subjects in the State List and it has its dominance in matters of the Concurrent List.

- **Division of Administrative Power**

In case of division of administrative power also, the Central Government has a greater share. Article 73 of the Indian Constitution mentions that the executive power of the Central Government extends to all those matters with respect to which the central legislature can make laws. Again Article 162 lays down that the state government has its executive power in all those matters in which the state legislature exercises power to make laws.

The Constitution of India has clearly mentioned that the executive power of the state must be exercised in such a way that it complies with the laws made by the Parliament. The state government cannot impede or prejudice the exercise of the executive power of the Union.

Article 258 mentions that the President may entrust either conditionally or unconditionally, with the consent of a state government,

any function to the Central Government. Again, according to Article 356, the Central Government may take necessary steps to protect any state of India from external aggression and internal disturbances. The President can exercise emergency power under this Article to take over the administration of a state if it fails to comply with the advice of the Central Government.

The Central Government can also exercise its control over the state governments through the officials who are appointed by it but who work in the states. The constitutional head of the state, the Governor, also works as a central agent in the states. Besides, the officials of the All-India services are also there.

- **Division of Financial Power**

Like that of legislative and administrative powers, in case of financial powers also the Central Government has been made more powerful than the state government. The sources of income, which mainly constituted from various taxes, are imposed and collected by the Government and are divided between the Centre and the states. This division can be discussed in the following way.

The Constitution has discussed the distribution of taxes and duties between the centre and the states from Articles 264 to 300.

There are certain taxes which are levied and collected by the states and they form the sources of income for them. Taxes like land revenues, tax on agricultural income, estate duty, etc. are levied and collected by the states. There are other taxes like stamp duty, excise on medicine, toilet preparations, etc. which are levied by the Union but collected and appropriated by the states. The taxes collected from railways, posts and telegraphs, wireless, broadcasting, etc. constitute the sources of income for the Centre. There are also taxes which are levied and collected by the Centre but assigned to the states.

The Centre exercises control over the states in financial matters in various ways. The President can make alterations in the distribution of revenues earned from income tax between the Centre and the states. The Centre can also grant loans and provide grant-in-aid to states with special

subsidy to some states. Further, the Centre can exercise financial control over the states through central agencies like Comptroller and Auditor General of India and the Finance Commission which appointed by the President after every five years to make recommendations on distribution of net proceeds of taxes between the Centre and the states.



LET US KNOW

Pandit Jawaharlal Nehru was the Chairman of the Union Powers Committee of the Constituent Assembly. In one of his speeches in the Assembly he said, "We are unanimously of the view that it would be injurious to the interest of the country to provide for weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international spheres".

6.4.1 Relation between the Centre and the States

When we discuss centre-state relation, it should be remembered that India is federal in structure and unitary in spirit. In India, we have two sets of government and there is division of power between them. However, this division of power is not in the true nature of a federal government. So far as the division of powers in India is concerned, the states have very limited areas of authority and autonomy. Therefore, a demand is always there for greater autonomy on the part of the states. The states demand that they should be given more power for self-sufficiency and development. Because of this, sometimes the relation between Centre and the states becomes strained.

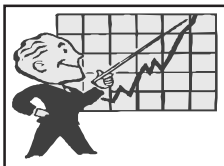
Professor Morris Jones has described Indian federalism as 'bargaining federalism'. It is because the Central Government has developed a tendency to prevail over the states and the states have

also been demanding their autonomy. The concept of bargaining federalism has got strengthened in recent years with the growth of regionalism and regional political parties in the country. Regional political parties have been formed in different regions of the country in order to enhance and protect the specific interests of the regions. They have been formed also because the national parties have failed to satisfy the various needs of the regions. So, whenever they come to power in the states, they demand more power and adequate resources so as to deal with specific needs and problems of their regions.

The intention of the Constitution makers in making the Central Government more resourceful and stronger than the states was not to curb the powers of the states. Rather they visualized the establishment of co-operative federalism in India. The Constitution of India stands on the foundation of co-operative federalism presuming interdependence of national and regional governments of a federal union instead of granting them absolute independence in the allotted spheres. Therefore, the Constitution has made institutional arrangements, such as, the National Development Council, the Finance Commission, the Inter-State Councils and the Zonal Councils where both the governments would sit together and work for solving various national and regional problems. Besides, a number of statutory bodies have also been instituted for adjudication of disputes regarding the use, distribution and control of inter-state rivers. The Constitution framers intended that both the Central Government and the state governments co-operate with one another and work harmoniously. None should encroach upon the sphere of the other. Both should respect the authority of one another.

However, the real working of the Indian federation reveals that as the Central Government has been made stronger by the Constitution itself, it has always been dominating over the state

governments by its activities. The provision for appointment of the Governor by the President, the provision of imposition of President's rule under Article 356, the provision for complying with the directives of the Central Government and such other non-federal features have been strengthening the position of the Central Government.



CHECK YOUR PROGRESS

Q 4 : Write a short note on the legislative relation between the Centre and the states.

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Q 5 : Why the Constitution makers have provided for a federal government with a strong centre?

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6.5 AN ESTIMATE OF INDIAN FEDERALISM

India continues to be a federal polity with a unitary spirit. There has always been resentment on the part of the states against the stronger position of the Central Government. They are demanding for autonomy in their own spheres and adequate power to work independently for their welfare. The Rajamanner Committee, the West Bengal Government Memorandum on Union-State Relations, the Anandpur Sahib Resolution, the Jammu and Kashmir Assembly Autonomy Resolution, and the Sarkaria Commission all have favoured granting more power to the states in comparison to the present position. The Sarkaria Commission was constituted by the Central Government in 1983 to study the question of centre-state relation and to make recommendation if necessary. The Commission accepted the need for a strong Central Government in India but recommended for devolution of more power to the states so that a co-operative federation can be established in the country.

In the recent years, we have seen the growth and development of coalition politics in India. This has happened mainly because of the emergence of various regional and local political parties and their strong position in the share of seats in both assembly and Parliamentary elections. No single national political party was able to secure absolute majority in the Lok Sabha in Parliamentary elections held between 1989 to 2014 to form a government by its own. They were compelled to form coalitions with like minded parties – national and regional to form government at the Centre. This has changed the working of the federal system in India to an extent.

Some indications of change in the working of the Indian federal polity can also be seen with the replacement of the Planning Commission with the National Institute for Transforming India or the Niti Aayog. The Planning Commission worked as a centralized mechanism. The whole planning process was carried out under the control and supervision of the Central Government. The new institution which came into existence on 1st January 2015 has been designed on the basis of the principle of co-operative-competitive federation where both the Centre and the states will actively participate for all round and rapid development of the country.



6.6 LET US SUM UP

- India is a quasi federal state. The Indian Constitution has included federal as well as many non-federal or unitary features.
- Some federal features of the Constitution of India are- written Constitution, supremacy of the Constitution, two sets of government, division of power between the Centre and the states, supremacy of the judiciary, existence of bi-cameral legislature etc.
- Some non-federal features of the Constitution of India are- existence of strong Central Government , one Constitution for the Centre as well as for the states, existence of a unified and integrated judicial

system for the whole country, single citizenship, unequal representation of the states in the Rajya Sabha etc.

- The Constitution has divided power between the Centre and the states through three list, such as the Central List, the State List and the Concurrent List. Though the Central Government is stronger than the state governments, the latter have their own sphere of activities. In India, powers of both the governments are well-defined. The residuary powers are left for the Central Government.
- The Central Government has been provided with more power than that of the states and it can exercise control over the states in many ways. However, the Constitution makers in India had envisaged a co-operative federation for the country and provisions have also been made in the Constitution for establishing such a system. Therefore, it is important that both the governments respect each other's sphere of activity and work together for the interest of the whole country.





6.7 FURTHER READING

1) Basu, Durga Das. (2015). *An Introduction to the Constitution of India.*
2) Basu, Durga Das. and Bakhi, P. M. (2013). *The Constitution of India.* New Delhi : Universal Law Publishing Co.
3) Ghai, K.K. (2008). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
4) Sikri, S. L. (2002). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

6.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : (i) One of the important federal features of the Indian Constitution is that it has provided for two sets of government in the country. The Central Government works at the national level

and the state governments work at the state level. They have their own spheres of activity specified by the Constitution itself.
(ii)The powers of the two sets of government have clearly been divided in the Constitution. The powers between the two governments have been divided in legislative, administrative and financial grounds. The Seventh Schedule contains three lists of subjects which specify the powers of the two governments.

Ans to Q. No. 2 : (i) As India has adopted a federal form of government, so, it has two sets of government. The Constitution has divided power between them. But that division is not equitable. The Central Government has been given more power than that of the state governments. This is a non-federal feature of the Indian Constitution. (ii) Though there are certain rigid procedures for the amendment of the Constitution, yet in essence the Constitution is not rigid. Most of the provisions can be amended by simple methods. The Parliament of India can amend many parts of the Constitution unilaterally without the participation of the state legislatures.

Ans to Q. No. 3 : India has never been described in the Constitution as a federation. The Article 1 of the Constitution has defined India as a "union of states". Though there are some important federal features yet many non-federal features are also there in the Indian Constitution. In India, there is division of power between the centre and the states, but the Central Government has been made more powerful than the state governments. The very existence of the states is dependent on the wishes of the Centre. There is only one Constitution for the whole country and single citizenship unlike a true federal state Because of all these reasons India cannot be called a true federal state.

Ans to Q. No. 4 : Article 246 of the Constitution has discussed the division of legislative power between the Centre and the states. The Seventh Schedule includes three lists containing different

subjects meant for the two governments to make legislation. These lists are – the Union List, the State List and the Concurrent List. The Parliament of India has been given the power to make laws on the subjects included in the Union List. The state legislatures can make laws in the subjects which are included in the State List. Article 249 empowers the parliament to make a law on the subjects of the State List for national interest if a resolution is passed by the Rajya Sabha by 2/3 majority to that effect. Again Article 250 mentions that during emergency the Parliament gains the power to make laws on the subjects of the State List. Both the Parliament and the state legislatures can make laws on the subjects which are included in the Concurrent List. One point is to be noted that if there is a conflict between the central law and the state law on a subject of the Concurrent list then the central law will prevail over the state law. The subjects which are not included in these three lists of subjects are termed as residuary powers. The Parliament has been given exclusive power to make laws on those subjects. Thus, we can say that the central legislature, that is, the Parliament is more powerful than the state legislatures in matters of division of legislative power.

Ans to Q. No. 5 : The Constitution makers in India had provided for a federation with a strong Centre mainly for the following reasons. India is a vast country with a diverse population. So, to maintain unity and integrity in the country, a strong Centre was deemed necessary. Again, to perform the vast responsibilities of a modern welfare state and for the economic development of a newly independent state, a strong Centre equipped with sufficient resources and power was important. At the same time, to establish India at the international forums, the Central Government should be powerful enough to exercise a domineering voice.



6.9 POSSIBLE QUESTIONS

Q 1 : Write about two federal features of the Indian Constitution.

Q 2 : Write about two non-federal features of the Indian Constitution.

Q 3 : Write a short not on legislative relation between centre and the states.

Q 4 : Explain administrative and financial relation between the centre and the states.

Q 5 : Discuss the relation between the centre and the states from recent developments in Indian politics.

Q 6 : Explain federal and non-federal features of the Indian Constitution.

Q 7 : Make an estimate of the Indian federal system.

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UNIT : 7 POLITICS OF DECENTALIZATION - PANCHAYATI RAJ

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Panchayati Raj Institutions

7.4 Evolution of Panchayati Raj System in India

7.5 Problems in the Working of Panchayat Raj

7.6 Let Us Sum Up

7.7 Further Reading

7.8 Answers to Check Your Progress

7.9 Possible Questions

7.1 LEARNING OBJECTIVES

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

- discuss development of the decentralised system in India and its various implications
- explain the salient features of the Panchayati Raj System
- discuss powers and functions of the Panchayati Raj System.

7.2 INTRODUCTION

The term, “Decentralization” is defined by the Merriam Webster dictionary as the dispersion or distribution of functions and powers, specifically referring to the delegation of power from a central to regional and local authorities. It is the process by which the authority is transferred to government institutions at the central, regional and local levels. This involves participation of people at the local level that encourages better decision making opportunities, devolving political power and funds, transfer of functions, etc. Participation of people is very much essential for policy

formulation and other political processes. It involves people in the decision making processes and brings people closer to the government along with increasing efficiency and transparency. In India, the need for decentralization was realized long back. The efforts to give constitutional back-up to rural local governments led to the passage of the 73rd Amendment Act. The 73rd Constitutional Amendment Act, 1992 provided for a three-tier system of the Panchayati Raj institutions at the village, intermediate and district levels. This Act brings about uniformity in the structure of the Panchayati Raj throughout the country. With the passage of the 73rd Amendment Act, in 1992, people's participation in the process of planning, decision making, implementation and delivery system in rural India has been recognised significantly.

7.3 PANCHAYATI RAJ INSTITUTIONS

The institution of Panchayati Raj has been seminal to nearly all forms of political administration that large parts of India have witnessed throughout history, spanning several millennia. Panchayats are units of local government involving various administrative and financial functions. The idea of Panchayati Raj forms a basic tenet of the Gandhian philosophy that considers village Panchayats as the units of self government. During the colonial period, a few notable British authorities like Lord Mayo and Lord Ripon emphasized the role of Panchayats for efficient local administration. Therefore, Lord Ripon is known as the Father of Local Self Government in India.

Lord Ripon made remarkable contribution to the development of Local Government in India. In 1882, he abandoned the existing system of local government by the officially nominated people and put forward a new system of decentralization. According to his local self government plan, the local boards were split into smaller units to achieve greater efficiency. He also introduced an election system for the local boards in order to ensure popular participation.

Soon after independence, the task of strengthening Panchayati Raj system fell on the Indian Government. It was clear to the leaders of our country that India, a country of large number of villages, had to strengthen village Panchayats to strengthen democracy. Mahatma Gandhi who strongly believed and advocated for Gram Swaraj pleaded for the transfer of power to the rural masses. According to him, the villages should be able to govern themselves through elected Panchayats to become self sufficient. But surprisingly enough, the draft Constitution prepared in 1948 had no place for Panchayati Raj Institutions. Gandhi severely criticized this and called for immediate attention. Eventually, Panchayati Raj institutions found a place in the Directive Principles of the State Policy.

Traditionally, Panchayats have been headed by five elderly wise men whose presence and experience in administration served a useful purpose in the administration of local self governments. The Panchayati Raj Institutions are said to be the driving force for the decentralization system of the country. Decentralization is seen as a means of empowering people and involving them in the decision making process. Local issues like that of roads, transport, water and electricity are better understood and managed by the local population as they have the capability to mobilise resources quite efficiently. As a result, people can be more responsive to local needs and can make better use of available resources. The democratic system in a country can be ensured only if there is mass participation in the governance. Therefore, decentralization of power is considered as means to ensure democracy and socio-economic development of the country.



CHECK YOUR PROGRESS

Q. 1: Through which Act was the Panchayati Raj System given constitutional status in India?

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Q 2 : The …… provided for a three-tier system of the Panchayati Raj institutions at the village, intermediate and district levels.

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Q 3: Who was known as the 'Father of local self government' in India?

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7.4 EVOLUTION OF PANCHAYATI RAJ SYSTEM IN INDIA

After independence, the first major development programme to be launched in India was the Community Development Programme in 1952. The main aim was to achieve overall development of rural areas and to encourage people's participation. This programme was formulated so that the administrative framework could reach out to the district, tehsil / taluka and village level areas. All the districts of the country were divided into Development Blocks and a Block Development Officer (BDO) was made in charge of each block. Village Level Workers (VLW) were appointed to assist the BDO. However, this programme was not successful. Its failure was directly attributed to inadequate level of people's participation in local level programmes of rural development.

In India a number of Committees were constituted which have contributed in the growth of Panchayats. Some of these are -

(i) BALWANT RAI MEHTA COMMITTEE

In 1957, the Government of India appointed a Committee to examine the functioning of the Community Development Programme and the National Extension Service and to suggest ways for their improvement. This committee was headed by Balwant Rai Mehta and hence came to be known as the Balwant Rai Mehta Committee. The Committee submitted its report

in November, 1957 and recommended a scheme for democratic decentralisation which came to be known as the 'Panchayati Raj'.

The following are the recommendations of the Committee:

- There should be three tier structures of local self government bodies from village to the district level and these bodies should be linked together.
- There should be genuine transfer of power and responsibility to these bodies to enable them to discharge their responsibility.
- Adequate resources should be transferred to these bodies to enable them to discharge their responsibilities.
- All welfare and developmental schemes and programmes at all three levels should be channelled through these bodies
- The three tier system should facilitate further devolution and disposal of power and responsibility in future. These tiers should be organically linked together through a device of indirect elections. The Committee envisaged a three tier system of Panchayats known as Zilla Parishad, Panchayat Samiti and Gram Panchayats and recommended encouragement of peoples' participation in community work, promotion of agriculture and animal husbandry, promoting the welfare of the weaker sections and women through the Panchayats.
- The Panchayat Samiti should be the executive body while the Zila Parishad should be the advisory and co-ordinating body.
- The District Collector should be the chairperson of the Zila Parishad.

These recommendations were accepted by the National Development Council (NDC) in January 1958 and the Council also left it to states to evolve their own patterns suitable to them Rajasthan was the first state to establish the institution of Panchayati Raj in Nagaur district on 2nd October, 1959 followed by Andhra Pradesh.

The recommendations of the Balwant Rai Mehta Committee were implemented by many states in the country. However, it did not last very

long as a result of growing corruption, inefficiency and irregularity. The elections were no longer held regularly and moreover the participation of people was very low in these bodies.

(ii) ASHOK MEHTA COMMITTEE

In December 1977, the Janata Government appointed a Committee with Ashok Mehta as chairperson and entrusted the task of enquiring into the causes responsible for the poor performance of Panchayati Raj Institutions. The Committee submitted its report in August 1978 and made recommendations to revive and strengthen the declining system of Panchayati Raj in the country.

Recommendations of the Ashok Mehta Committee are as follows:

- A Two-tier system was proposed to replace the prior three-tier system; i.e. the Zila Parishad at the district level and below it the Mandal Panchayat consisting of a group of villages.
- The Zila Parishad should be the executive body and must be responsible for planning at the district level.
- The Panchayati Raj should have power to mobilise their own financial resources.
- There should be a regular social audit by a district level agency to supervise the allocated funds allotted for the vulnerable social and economic groups.
- State governments should not supersede the Panchayati Raj Institutions. The Nyaya Panchayats should be kept as separate bodies as from development Panchayats.
- A Panchayati Raj minister should be appointed in the State Council of Ministers to look after the affairs of the Panchayati Raj Institutions.
- Reservation for STs and SCs must be done in these institutions on the basis of their population.

Due to the fall of the Janata Government, the Ashok Mehta Committee's recommendations were not implemented. Few states including Karnataka formulated new legislations on the basis of the recommendations of this Committee. During 1980's, two important

Committees were appointed to look into local Governments namely GVK Rao Committee in 1985 and Dr. L.M. Singhvi Committee in 1986. The GVK Rao Committee recommended the revival of Panchayati Raj Institutions so that greater responsibilities of planning, implementation and monitoring of rural development programmes could be assigned to them. L.M. Singhvi Committee recommended that the Panchayati Raj Institutions should be constitutionally recognized and protected. The Committee also proposed the appointment of a finance commission and entrusting of all the rural development programmes to the Panchayati Raj Institutions by amending Schedule VII of the Constitution.

Following these developments, Rajiv Gandhi the then Prime Minister of India,introduced the 64th Amendment Bill on local on 15th May, 1989; however, it failed to get the required support in Parliament. A second attempt was made in September 1990 to pass the bill in the Parliament which failed. In September 1991, a fresh bill on Panchayati Raj was introduced by the Congress Government under P. V Narasimha Rao, the then Prime Minister. It was passed in 1992 as the 73rd Amendment Act of 1992 with minor modifications and finally came into force on 24th April 1993.

Salient Features of the 73rd Amendment Act :

- The Act corresponds to Part IX of the Constitution of India.
- The Act has added the Eleventh Schedule to the Constitution of India.
- It contains 29 functional items of the Panchayats and deals with Article 243 to 243(O).
- The Act gives a Constitutional status to the Panchayati Raj Institutions.
- The state governments are under the constitutional obligation to adopt the new Panchayati Raj System in accordance with the provisions of the Act.

- There shall be a three-tier system of Panchayat at village, intermediate and district levels.
- The provisions of the Act are to be included under two categories :

(i) The compulsory provisions of the Act are to be included in the state laws creating the requisite provision required the timely elections, reservations.

(ii) The voluntary provisions on the other hand may be included at the discretion of the states.

Provisions of the 73rd Amendment Act :

(i) Gram Sabha (Article 243A) :

This Act provides for a Gram Sabha as the foundation of the Panchayati Raj System. It is a body consisting of persons registered in the electoral rolls of the village comprised within the area of the Panchayat at the village level.

(ii) Election of the Members and Chairpersons (Article 243C)

All members of the Panchayats at the village, intermediate and district levels shall be directly elected by the people. The chairpersons of the Panchayats at the intermediate and district levels shall be indirectly elected by and amongst the elected members.

(iii) Reservation of Seats (Article 243D)

The Act provides for the reservation of seats for the Scheduled Castes and the Scheduled Tribes in every Panchayat in proportion with their population. If the States find it necessary, they can also provide for reservations for the other backward classes (OBCs). The Act provides for the reservation of not less than 1/3rd of the total number of seats for women. It is important to note that these reservations apply not merely to ordinary members in Panchayats but also to the positions of Chairpersons or '*Adhyakshas*' at all the three levels. Further, reservation of one-third of the seats for women is not merely in the general category of seats but also

within the seats reserved for Scheduled Castes, Scheduled Tribes and backward classes.

(iv) Powers and Functions (243G) :

The state legislature may endow the Panchayats with such powers and authority that may enable them to function as institutions of a self government. Such a scheme may contain provisions for the devolution of powers and responsibilities of the Panchayats, such as preparation for plan of economic development and social justice, implementation of schemes for the economic development and social justice as entrusted to them. There is also a State Finance Commission **(**under Article 243l) being appointed to look into matters of finance in the interests of the Panchayats.

For looking into the matters of decentralisation for the tribal communities of North East India a separate provision had already been provided under the Sixth Schedule, i.e**.** Autonomous District Councils. The idea behind the setting up of Sixth Schedule of the Constitution of India was to provide the tribal people of North East India with a simple administrative set up which could safeguard their customs and ways of life and to provide autonomy in the management of their affairs.

7.5 PROBLEMS IN THE WORKING OF PANCHAYATI RAJ

Panchayati Raj in India faces problems at political, social, and economic levels. These problems have stood in the way of efficient functioning of Panchayati raj institutions. Some of these problems are -

(i) There are no regular elections for panchayats. Though, the Constitution provides for election every 5 years, in some states elections take place after decades.

(ii) Factors like groupism, caste, class, etc play a dominant role in the election processes that causes hindrance in the smooth functioning of these institution.

(iii) Political interference from the state governments and administrative

agencies has become a common phenomenon. Illegal use of manpower, money power and muscle power in elections to the Panchayat system have weakened these institutions.

(iv) There is a clear absence of efficient and transparent functional jurisdiction and administrative autonomy for Panchayats.

(v) Policy of reservation for weaker section has not been of much use due to ignorance and illiteracy of the people and their representatives.

(vi) Absence of inbuilt structural and organisational strength to force the administrators to follow the decision is another hindrance to the functioning of these institutions.

(vii) Paucity of funds and resources is another problem.

(viii) A major problem for these institutions is the lack of financial autonomy to impose taxes and charges.

(ix) Diversion of funds by the state governments which were allocated for the development of the Panchayati raj institutions also creates probelms.

(x) The generic nature of devolution overlaps with the departments of DRDA, DPC and other agencies makes the process of functional devolution meaningless. Further, many functions are shared between two of three tier of PRI . These, in turn, have not only adversely affected the efficiency and effectiveness of the panchayats but also not nabled them to prepare plan for economic development and social justice as envisaged by the Constitution.

Following are few steps that can be taken in order to ensure the proper functioning of the Panchayati Raj Institutions:

i. Ensuring capacity building support to the elected members and officials of *Panchayati Raj* institution, which will significantly enhance their performance. Panchayat training must promote a culture of oneness amongst *Panchayat*

leaders and officials, through exposure visits and interactions between districts and States.

ii. PRIs need to have the minimum capacity building infrastructure along with teams of capable trainers and facilitators. Special training programmes must also be organized in areas covered by the Panchayats (Extension to Scheduled Areas) Act, 1996 so as to have regard to the cultural traditions and special needs of tribal people.

iii. Identifying major bottlenecks at the local governance level through consultative processes like group discussions, public hearings, developing participatory tools etc will also help in proper functioning of PRI. Encouraging research, studies, assessment and evaluation related to functioning of PRIs, which will suggest policy actions as well as will indicate areas of further administrative reforms.

iv. Institutionalising a system of social audit, is essential for improving local service delivery and for ensuring compliance with laws and regulations. Special efforts must be made to undertake training and awareness campaigns for Social Audit by Gram Sabhas.

v. People's participation and involvement of the people's organisations like the civil societies, community based organisations, voluntary organisations, local NGOs in governance is an essential input in all the stages of development; so more efforts need to be made in this direction.

The institutions of local governments are the agencies implementing the welfare and development schemes of the Central and State Government. Providing more power to local government means more decentralisation of power. Democracy means that power should be shared by the people; people in the villages and urban localities must have the power to decide what policies and programmes they want to adopt. Democracy means decentralisation of power and giving more and more power to the people.

The laws regarding local governments are important steps in the direction of democratisation. But the true test of democracy is not merely in the legal provisions, but in the practice of these provisions to see whether they can withstand the challenging tides of time.



CHECK YOUR PROGRESS

Q 4: State any four recommendations of the Balwant Rai Mehta Committee.

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Q 5: What are the provisions provided for the development of women in the 73rd Amendment?

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Q 6: Write briefly about any two provisions of the 73rd Amendment Act.

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Q 7: Write briefly about any four problems which put obstacles in the efficient functioning of Panchayati Raj system in India.

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7.6 LET US SUM UP

- The institution of Panchayati Raj has been seminal to nearly all forms of political administration that large parts of India have witnessed throughout history, spanning several millennia. Panchayats are units of local governance involving various administrative and financial functions.
- In India, during the colonial period, a few notable British authorities like Lord Mayo and Lord Ripon emphasized the role of Panchayats for efficient local administration.
- After independence Indian leaders emphasised on strengthening of Panchayati Raj system and a number of Committees were appointed to make this system more effective. Some of the important Committees were Balwant Rai Mehta Committee, Ashok Mehta Committee etc. These Committees made important recommendations for making Panchayati Raj institutions effective and efficient.
- In 1992 the 73rd Constitution Amendment Act was passed through which the Panchayati Raj Institutions have been provided constitutional status.
- Panchayati Raj in India faces problems at political, social, economic levels which put obstacles in the efficient function of these institutions. Active participation of people in Panchayati Raj Institutions will definitely make these institutions more effective and efficient.



7.7 FURTHER READING

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7.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : 73rd Constitution Amendment Act

Ans to Q. No. 2 : 73rd Constitution Amendment

Ans to Q. No. 3 : Lord Ripon

Ans to Q. No. 4 : (i) There should be three tier structures of local self government bodies from village to the district level and these bodies should be linked together.

(ii) There should be genuine transfer of power and responsibility to these bodies to enable them to discharge their responsibility.

(iii) Adequate resources should be transferred to these bodies to enable them to discharge their responsibilities.

(iv) All welfare and developmental schemes and programmes at all three levels should be channelled through these bodies.

Ans to Q. No. 5 : The 73rd Amendment Act provides for reservation of 1/3rd seats for women. There has also been an amendment pending that seeks to increase reservation for women upto 50%. Further, reservation of one-third of the seats for women is not merely in the general category of seats but also within the seats reserved for Scheduled Castes, Scheduled Tribes and backward castes.

Ans to Q No. 6 : (i) Gram Sabha (Article 243 A) : The 73rd Amendment Act provides for a Gram Sabha as the foundation of the Panchayati Raj System. It is a body consisting of persons registered in the electoral rolls of the village comprised within the area of the Panchayat at the village level.

(ii) Election of the Members and Chairperson (Article 243C): All members of the Panchayats at the village, intermediate and district levels shall be directly elected by the people. The

chairpersons of the Panchayats at the intermediate and district levels shall be indirectly elected by and amongst the elected members.

Ans to Q. No. 7 : (i) There is no regular elections for these institutions Though, the Constitution provides for election every 5 years, in some states elections take place after decades.

(ii) Factors like groupism, caste, class, etc play a dominant role in the election processes that causes hindrance in the smooth functioning of the institution.

(iii) Political interference from the state governments and administrative agencies has become a common phenomenon. Illegal use of manpower, money power and muscle power in elections to the Panchayat system have weakened the institutions.

(iv) There is a clear absence of efficient and transparent functional jurisdiction and administrative autonomy for Panchayats.



7.9 POSSIBLE QUESTIONS

Q 1 : Who is the Father of Local Self Government?

Q 2 : Which was the first state to adopt the Panchayati Raj institutions?

Q 3 : Write briefly about features of the 73rd Amendment Act.

Q 4 : Write a short note on the Ashok Mehta Committee.

Q 5 : What are the powers and functions of the Panchayati Raj System? Explain in short.

Q 6 : Write about the recommendations of the Balwant Rai Mehta Committee.

Q 7 : Write a note on the evolution of the Panchayati Raj Institutions.

Q 8 : What are the problems faced by the institution of the Panchayati Raj Institutions and ways to reform them?

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UNIT : 8 POLITICS OF DECENTRALISATION- 74TH AMENDMENT ACT

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 74th Amendment Act

8.4 Growth of Local Self Government in Assam

8.5 Let Us Sum Up

8.6 Further Reading

8.7 Answers To Check Your Progress

8.8 Possible Questions

8.1 LEARNING OBJECTIVES

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

- discuss the 74th Amendment Act
- describe the growth of local self government in Assam.

8.2 INTRODUCTION

In India local self government is a unique mode of decentralization of power. It gives opportunity to the people at the grassroots level to participate in the process of their governance. India has been having these institutions of local self-government since very old days. Britishers also introduced these institutions for governance. In India role of two Amendment Acts are very important in providing constitutional status to these institutions. One is 73rd Amendment Act and another is 74th Amendment Act. In the previous Unit we have discussed the 73rd Amendment Act an now this Unit will focus on the 74th Amendment Act. Along with that growth of local self government in Assam will also be discussed in this Unit.

8.3 74th AMENDMENT ACT

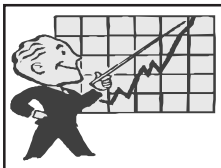
The Constitution (74th Amendment) Act, 1992 came into effect in April 1993. The core features of the Constitution (74th Amendment) Act, 1992 are as follows :

Features :

- It inserted Part IX A to the Constitution and incorporated 18 subjects under the Twelfth Schedule related to municipality.
- According to Article 243-Q, there shall be constituted in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations and all the seats of the municipality shall be filled by direct election from the territorial constituencies in the municipal area. Each municipal area shall be divided into territorial constituencies to be known as wards. The legislature of a State may by law make provision with respect to composition, manner and territorial area of wards committee.
- Seats are reserved for SCs and STs in every municipality and one-third of the total seats are reserved for women.
- Every municipality shall continue for five years from the date appointed for its first meeting. Under the Act, a municipality means an institution of self-government. As an institution of self-government, it can prepare plans and implement them for economic development and social justice.
- The legislature of a State may by law endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provision for the devolution of powers and responsibilities with respect to preparation of plan and its implementation and subjects incorporated in Twelfth Schedule for economic development and social justice. The legislature of a State may by law authorize a municipality to levy collect and appropriate such taxes, duties, tolls

and fees in accordance with such procedure and subject to such limits.

- The Finance Commission constituted under the 73rd Amendment Act shall review the financial position of the municipality. Similarly, the superintendence direction and control of the preparation of electoral rolls for and the conduct of all elections to the municipalities shall be vested in the State Election Commission.



CHECK YOUR PROGRESS

Q 1 : Which Part was incorporated in the Constitution of India as a result of enactment of the 74th Amendment Act?

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Q 2 : Write briefly about two features of the 74th Amendment Act.

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8.4 GROWTH OF LOCAL SELF GOVERNMENT IN ASSAM

The present local self government can be traced back to the British regime. During the British regime, limited powers were granted to the local institutions. The traditional system of panchayat suffered a great setback as the Britishers had little interest in the welfare of the native people. However, before the advent of Britishers, there were certain rules and regulations to administer our rural villages for protection of life and property of village people. In 1887, the Chowkidar Panchayat Act was passed and it provided for the establishment of panchayat in any village consisting of more than sixty (60) houses. The responsibility to create any panchayat in a village was entrusted to the District Magistrate. Besides, provision was

made to establish panchayat for more than two villages provided they were continuous to one another. The functions of the panchayat were confined to the chowkidari system only. It is mentionable here that in ancient Assam, chowkidari system was prevalent and chowkidar served the villages and salaries were paid from collection of taxes to secure service from them.

The history of panchayat system turned into a specific direction after 1909 both for India and Assam. Because, recommendations of the Royal Commission on De-centralisation in 1907 were accepted in 1909. The Commission suggested that more power should be conferred to the panchayat. Since then attempts had been made to establish informed village authorities. Accordingly, the Government of Assam accepted the recommendations of the Royal Commission on De-centralisation and made an attempt to delegate more powers regarding sanitation, water supply etc. These provisions were incorporated in the Local Self Government Act, 1915. But, institutions established like panchayat under this Act faced a lot of administrative and financial problems due to conflicts amongst the people of different parts of the same village.

In 1926, the Assam Rural Self-Government Act was passed with a view to provide an administrative setup where villagers could participate for solution of their own problems. Under this Act, powers were given to the panchayat and provision was made to increase the powers and functions of the panchayat in course of time in under the same Act. But, the villagers were unable to run the administration of their own affairs.

In 1948, the Assam Rural Panchayat Act was accepted and it provided for two-tier panchayat system i.e. primary panchayat and rural panchayat. Under this Act primary panchayat and rural panchayat were formed. The rural panchayats would be serving more than one village and the administrative area of the primary panchayat would be one village. But, this Act also failed to serve the villages satisfactorily.

On the recommendations of the Ashok Mehta Committee (1957) the Assam Panchayati Raj Act of 1959 provided for establishment of Mohkuma Parishad, Anchalik Panchayat and Goan Panchayat in rural areas

of Assam. Mohkuma Parishad was an advisory body at the top of the system and Anchalik Panchayat was the middle tier and at the lower level there was the Gram Panchayats. The Anchalik Panchayat could not function effectively and as a result in 1972 it was abolished. In 1972, two-tier Panchayat system was introduced and accordingly Gaon Panchayat at the village level and Mohkuma Parishad at the district level was established. The Mohkuma Parishad was entrusted with the executive functions in the field of public health, education, welfare, agriculture, small scale industry, co-operative society etc. The Goan Panchayat was entrusted with several developmental functions.

In 1986, the Assam Panchayati Raj Act was passed and it introduced a three-tier panchayat system of Gaon Panchayat, Anchalik Panchayat and Mohkuma Parishad. The Mohkuma Parishads were entrusted with several functions like security and approval of the budget of the Anchalik Panchayat, review of the work of the Anchalik Panchayat to advise the government in distribution of funds etc.

In 1992, panchayat elections were held in Assam which may be considered as landmarks in the history of panchayati raj system in Assam. In the year 1992, the Government of India introduced a new panchayati raj system by the Constitution (73rd Amendment) Act 1992. In order to take appropriate action under the 73rd Amendment, the Government of Assam replaced Assam Panchayati Raj Act 1986 with the Assam Panchayat Act 1994. Under this Act, Zila Parishads, Anchalik Panchayats and Gaon Panchayats are constituted at the District level, Block or intermediate level and village level, respectively.

The voters of the Gaon Panchayat directly elect the President and the members of the Gaon Panchayat. The President of the Anchalik Panchayat is elected from amongst the Anchalik Panchayat members. The members of the Zila Parishad are elected by the voters of Zila Parishad constituency. There is a provision of reservation of seats for SCs, STs and women also. 33% of total seats of panchayats are reserved for women. Seats are reserved for the Scheduled Tribes and Scheduled Castes

communities on the basis of population. The Act provides for setting up a State Finance Commission to review the financial position of the panchayat bodies and suggest recommendations for sharing of resources between the State and panchayats. Besides, there will be a District Planning Committee to consolidate the district plan. The Act also provides opportunities to mobilize the resources of panchayat in many ways.

The Assam Panchayat Act, 1994 mentions some functions of the three-tier Panchayati Raj Institutions . Among these, preparation of annual plans and annual budget, mobilization of relief in natural calamities, removal of encroachment on public properties, organizing voluntary labourers and contribution for community works, maintenance of essential statistics of villages and such other development works as may be entrusted are some important functions of the Gaon Panchayats.

Similarly, Anchalik Panchayats are entrusted with preparation of annual plan and annual budget which are submitted to the Zila Parishad for approval, consolidation of the annual plans of all Gaon Panchayats, execution of work entrusted by the government or the Zila Parishad, and to assist the government in relief operation in natural calamities.

The function of a Zila Parishad is to prepare plan for economic development and social justice of the district and ensure the co-coordinated implementation of such plan.

The legislature of a State may by law endow the Panchayat with such powers and authority as may be necessary to enable them to function as institutions of self-government as the State or the Central governments, reservation of seats for Scheduled Castes and Scheduled Tribes, etc., mandatory reservation of seats (not less than one-third) for women in proportion to their population, etc. To prevent executive control over powers and functions of Panchayati Raj Institutions, many State governments have enacted laws, empowering panchayats as institutions of self-government and transferred many departments to panchayats. In Madhya Pradesh, the State government transferred 22 departments to panchayats. In Assam,

the State government transferred 14 subjects out of 29 subjects to Panchayati Raj Institutions.



CHECK YOUR PROGRESS

Q 3 : Write briefly about the Assam Rural Panchayat Act of 1948.

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Q 4 : What are the three tiers of panchayats constituted under the Assam Panchayat Act, 1994.

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Q 5 : Write briefly about the functions of the Panchayati Raj Institutions as provided by the Assam Panchayat Act, 1994.

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8.5 LET US SUM UP

- The 74th Amendment Act, 1992 is considered to be one of the milestones in the field of local self-government in India. This Act constitutes a major milestone in the history of local self government as it provides political and administrative decentralization and devolution of resources and powers to local people.

- The Constitution (74th Amendment) Act, 1992 came into effect in April 1993. It inserted Part IX A to the Constitution and incorporated 18 subjects under the Twelfth Schedule related to municipality.
- Some of the important provisions of the 74th Amendment Act are- according to Article 243-Q, there shall be constituted in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations and all the seats of the municipality shall be filled by direct election from the territorial constituencies in the municipal area. This Act also provided for reservation of seats for ST, SC and women in every Municipality. Every municipality shall continue for five years from the date appointed for its first meeting.
- The legislature of a State may by law endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government.
- In Assam the growth of local self government can be traced back to the British period. Some of the important Acts which have contributed in the growth of local self government in Assam are- the Chowkidar Panchayat Act of 1887, the Local Self Government Act of 1915, the Assam Rural Self-Government Act of 1926, the Assam Rural Panchayat Act of 1948, the Assam Panchayati Raj Act of 1959, the Assam Panchayati Raj Act of 1986, the Assam Panchayat Act of 1994.



8.6 FURTHER READING

1) Jain, L.C. (2005). *Decentralisation and Local Governance.* New Delhi: Orient Longman Private Limited.
2) Jayal, N.G.; Prakash, A. And Sharma, P.K. (ed) (2006). *Local Governance In India: Decentralisation and Beyond*. New Delhi: Oxford University Press.
3) Pawar, M.R. (ed) (2013). *Panchayati Raj System in India*. New Delhi: Garima Prakashan.

4) Sharma, R. (ed) (2005). *Grass-Root Governance: Changes and Challenges in Rural India*. Jaipur: Aalekh Publishers.

8.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No. 1 : Part IX A

Ans to Q. No. 2 : (i) According to Article 243-Q, there shall be constituted in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations and all the seats of the municipality shall be filled by direct election from the territorial constituencies in the municipal area. Each municipal area shall be divided into territorial constituencies to be known as wards. The legislature of a State may by law make provision with respect to composition, manner and territorial area of wards committee.

(ii) Every municipality shall continue for five years from the date appointed for its first meeting. Under the Act, a municipality means an institution of self-government. As an institution of self-government, it can prepare plans and implement them for economic development and social justice.

Ans to Q. No. 3 : In 1948, the Assam Rural Panchayat Act was accepted and it provided for two-tier panchayat system i.e. primary panchayat and rural panchayat. Under this Act primary panchayat and rural panchayat were formed. The rural panchayats would be serving more than one village and the administrative area of the primary panchayat would be one village. But, this Act failed to serve the villages satisfactorily.

Ans to Q. No. 4 : Zila Parishads, Anchalik Panchayats and Gaon Panchayats

Ans to Q. No. 5 : The Assam Panchayat Act, 1994 mentions some functions of the three-tier Panchayati Raj Institutions . Among these, preparation of annual plans and annual budget, mobilization of

relief in natural calamities, removal of encroachment on public properties, organizing voluntary labourers and contribution for community works, maintenance of essential statistics of villages and such other development works as may be entrusted are some important functions of the Gaon Panchayats.

Similarly, Anchalik Panchayats are entrusted with preparation of annual plan and annual budget which are submitted to the Zila Parishad for approval, consolidation of the annual plans of all Gaon Panchayats, execution of work entrusted by the government or the Zila Parishad, and to assist the government in relief operation in natural calamities.

The function of a Zila Parishad is to prepare plan for economic development and social justice of the district and ensure the co-coordinated implementation of such plan.



8.8 POSSIBLE QUESTIONS

Q 1 : How many subjects have been entrusted upon the Municipality under the 74rd Amendment Act, 1992 ?

Q 2 : Write briefly about the functions of the Anchalik Panchayats as provided by the Assam Panchayat Act 1994.

Q 3 : Write briefly about the Assam Rural Self-Government Act 1926.

Q 4 : Write about any four features of the 74th Amendment Act.

Q 5 : Write briefly about the Assam Panchayati Raj Act of 1959.

Q 6 : Write a short note on the Assam Panchayat Act 1994.

Q 7 : Make a note on the 74th Amendment Act.

Q 8 : Discuss the growth of local self government in Assam.

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