# INDIAN CONSTITUTION AND POLITICS: FEDERALISM, DECENTRALIZATION AND POLITICAL DYNAMICS

**III/IV SEMESTER**

**BA HISTORY/ECONOMICS/SOCIOLOGY/ PHILOSOPHY & ENGLISH**

**Complementary Course (ICP4 (3) CO2)**


*UNIVERSITY OF CALICUT*

*School of Distance Education*
*Calicut University (P.O), Malappuram,*
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# UNIVERSITY OF CALICUT

## SCHOOL OF DISTANCE EDUCATION

**Study Material**

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# MODULE-I

## INDIAN FEDERALISM

"India, that is Bharat, shall be a Union of States," declares Article 1 of the Constitution of India. Thus, the Indian State is neither a federal state nor a unitary state. It has both federal as well as unitary features. Scholars have termed it as 'Unitarianfederalism' and the nature of Indian federalism is indeed unique. K.C. Wheare has described the Indian federalism as "quasi federal" and observes that the "Indian union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features." Here it is necessary to understand the federal and unitary features of the Constitution of India.

### FEDERAL FEATURES OF THE INDIAN CONSTITUTION

1. **Written Constitution**: An essential feature of a federal system is a written and rigid Constitution. The Indian Constitution is a written document containing 395 Articles and 12 schedules. It is the supreme law of the land and all authorities in India are legally bound to respect it.

2. **Rigid Constitution**: Another essential feature of a federation is a rigid Constitution which cannot be amended by the ordinary law making process of the land. The Indian Constitution is rigid to a large extent. Those provisions of the Constitution which concern the relation between the Union and State Governments and the judicial organization of the country can be amended only by the joint action of the Indian Parliament and the State Legislatures.

3. **Dual Governments**: While in a unitary state, there is only one government, namely, the national government, in a federal state, there are two governments: the national or the federal government and the government of component states. Thus, Indian Constitution establishes a dual polity. There is a Central Government and the twenty eight units described as States. Each State has its separate governmental system. The states have been created by the Constitution. They are not a creation of the Central Government.

4. **Distribution of Powers**: A distinctive features of a federal state is a division of governmental powers between the national Government and the Constituent Units (States, Provinces, Republics, Regions or Cantons). Such division of powers is specified in the Constitution itself. The spheres of activities of both the Centre and States are clearly demarcated. There are three lists of governmental functions – the Union list, the Concurrent list, and the State list. The Indian Parliament has the exclusive power to make laws with respect to the subjects enumerated in the Union list. The States have the power to make laws in respect of subjects given in the State list.Bothhave the power to make laws in respect of all matters enumerated in the Concurrent list.

5. **Supremacy of the Constitution**: The supremacy of the Constitution is another important feature of a federal system. In India, the Constitution is sovereign. It stands at the top of the hierarchy of laws – both national and state. The Central as well as the State Governments have to operate within the limits prescribed by the Constitution.

6. **Authority of Courts**: The existence of more than one centre of authority in a federal state and the supremacy of the Constitution necessitate that there should be some authority, such as a Supreme Court, to interpret the Constitution. Supreme Court acts as the guardian of the Constitution and also interprets the Constitution and decides disputes between the Centre and States and among the States themselves. It has the power of judicial review and can declare unconstitutional any law of Parliament or of a State Legislature if it is deemed to be in conflict with the provisions of the Constitution.

7. **Bicameral Legislature**: Dual representation is another feature of a federal system. The legislatures of federal states are bicameral. One chamber represents the federating units and the other represents the people. The Indian Constitution also provides for a bicameral legislature at the Centre. The Rajya Sabha which is the upper house represents the States and the Lok Sabha represents the people of India.

## UNITARY FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution has many unitary features which have led the critics to challenge its federal character and characterized it as federal in form and unitary in spirit. The Governmental system created by the Constitution is highly centralized and the powers conferred on the units are extremely circumscribed. The important unitary features of the Constitution are as follows:

1. **The Use of the Word 'Union'**: Some scholars point out that nowhere in the Constitution the term 'federation' has been used. Article 1 simply described India as a Union of States which, in effect, meant a very strong Central Government.

2. **Single Constitution for Union and States**: The States, have no right to frame their Constitution. There is only one Constitution which includes the Constitution of the States also. This is unlike other federal states where federating units have the power to determine their own Constitutions.

3. **States Assigned Minor Role in Amendment of Constitution**: In the matter of amendment of the Constitution, the part assigned to the States is minor, as compared with that of the union. In India, the states have no power to initiate an amendment to the Constitution. The initiative rests entirely with the Parliament. There are many articles of the Constitution which can be amended by Parliament without any reference to the States. This violates the principle of equality between the centre and the States.

4. **Territorial Integrity of States not guaranteed**: In our Constitution, it is possible for Parliament to organize the States by a simple majority in the ordinary process of legislation. Parliament by law may form a new state by separation of territory from any state or by uniting two or more States or parts of States or by uniting any territory to a part of any State. However, a bill for the purpose has to be referred by the President to the

Legislature of the State whose area, boundary or name is affected by the Bill, for expressing its views thereupon. Parliament has the exclusive power to admit a state into the Union or establish new states; on terms and conditions as it thinks fit vide Art.2 of the Constitution.

5. **Single Citizenship**: Usually in other federations there are provisions for double citizenship; each citizen is not only a citizen of the federal State as such but also of the particular federating State in which he resides. But there is no dual citizenship in India.

6. **No right to Secession**: The States of the Union of India does not have the right to exercise any right of secession.

7. **No equal representation in Upper House**: There is provision for equal representation to the federating units in the upper house of the Central Legislature. But as per the Indian Constitution representation to the States in the upper house (the Rajya Sabha) is on the basis of their population.

8. **Overriding Legislative powers of the Union**: As pointed out above, there are three lists of subjects: the Union list, the State list and the Concurrent list. In respect of the subjects given in the concurrent list both Parliament and the State legislature has the power to legislate. But if both make law on the same subject and if they conflict with each other, the law made by the Parliament supersedes the State law. This makes legislative power of the Parliament formidable. The State does not enjoy full legislative freedom even in respect to the matters given in the State list.

9. **Administrative Control of the Union over the States**: In the administrative sphere also the Union Government exercises control over the State Governments even in normal times. Article 256 of the Constitution states that the executive power of the state shall be so exercised as to ensure compliance with the laws made by the Parliament. Further, the executive power of the Union extends to the giving of such directions to the State as may appear to the Government of India to be necessary for that purpose. Article 355 states that, it shall be the duty of the Union to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

10. **Financialcontrol of the Union over States**: In the financial matters also the autonomy of the States is seriously restricted. The division of taxing powers is also tilted in favour of the Union Government.

11.**State Governors act as Agents of the Centre**: The State Governor is appointed by the President. But as the President has to act on the advice of the Cabinet, the Governor is actually a nominee of the party in power at the Centre. The Governor actually acts as an agent of the Central Government which through him can control the policy and measures of the State Government.

12.**Emergency Provisions**: The emergency provisions embodied in the Constitution pose a serious challenge to the federal character of the Indian polity. The President has the power to proclaim a state of emergency. Emergency is of three kinds: (1) actual aggression

or threat of aggression (Art.352 National Emergency) (2) breakdown of the Constitutional machinery of the state (Art.356 State Emergency) (3) financial emergency (Art.360 Financial Emergency)

13.**No division of Services**: An extraordinary feature of the Indian Constitution which seriously imparts the federal character of our polity is that there is no clear-cut division of services between the Centre and the States. The majority of public servants are employed by the States, but they administer both Union and State laws as are applicable to their respective states by which they are employed.

14.**Single Centralized Judiciary**: In India there is a single unified system of courts headed by the Supreme Court which administers both the union and the state laws as are applicable to cases coming up for adjudication. The judges of the State High Courts are independent of the States who do not possess any power with regard to their appointment, removal or service conditions.

15.**Centralized machinery for Elections, Accounts and Audit:** The machinery for elections, accounts and audit is also integrated. The Constitution provides for an Election Commission whose members are appointed by the President, and the States have no say in their appointment, removal or service conditions. But the commission is responsible for the conduct, supervision, control and direction of elections not only to the Parliament but to the State Legislatures as well. Similarly, the Comptroller and Auditor General of India, is appointed by the President and the States have no say in this appointment or removal. But he is responsible for the Audit of the Accounts of the Centre as well as the States.

## CENTRE-STATE RELATIONS

The essence of federalism is division of powers between the National Government and the State Governments. The most significant feature of any federation is the division of powers between the federation and constituent units. This is also the most important feature of the Indian federation. Part XI of the Constitution of India is titled 'Relation between the Union and the States'. Its Chapter I (Article 245-255) deals with the legislative relations and distribution of legislative powers. The administrative relations are given in Chapter II (Articles 256-263). The matters related to financial relations are specified in Part XII of the Constitution.

## LEGISLATIVE RELATIONS BETWEEN CENTRE AND STATES

Constitution of India has followed a system in which there are three lists of legislative powers. One for the Centre, the other for the states and third is theconcurrent list is also added on the pattern of the Constitution of Australia.The residue is left for the Centre. This system is similar to the system that is there in the Constitution of Canada. It must be emphasized that the scheme regarding the distribution of powers and the actual division of powers is almost the same as it was in the Government of India act, 1935. The three lists are embodied in the Seventh Schedule of the Constitution.

**The Union list:** The Union List which consists of ninety seven items is the longest of the three. It includes items such as defense, armed forces, foreign affairs, citizenship, shipping and navigation, currency, inter-state trade and commerce, mineral and oil resources, Supreme Courts, High Courts, Income tax, customs duty etc. The Union Parliament has exclusive powers of legislation with regard to the items mentioned in the list. The selection of these items is made on the basis of common interest to the Union and with respect to which uniformity of legislation throughout the Union is essential.

**The State List**: The State list consists of sixty six items. Some of the more important of these items are as follows: public order, police administration of justice, prisons, local government, public health and sanitation, education, agriculture, animal husbandry, state public services, taxes on agricultural income, taxes on lands and buildings etc. The selection of these items is made on the basis of local interest and it envisages the possibility of diversity of treatment with respect to different items in the different States of the Union. The State legislature has the power of legislation with regard to every one of the items included in the State List.

**The Concurrent List**: The Concurrent list consists of forty-seven items. These are items with respect to which uniformity of legislation throughout the Union is desirable but not essential. As such, they are replaced under the jurisdiction of both the Union and the States. The list includes items such as marriage and divorce, transfer of property other than agricultural land, contacts, bankruptcy and insolvency, adulteration of foodstuffs, drugs and poisons economic and social planning etc.

The Parliament of India and the State legislatures have concurrent powers of legislation over the items included in the list. Once Parliament enacts a law on an item in the list, parliamentary law shall prevail over any state law on the item. In the federation of the United States, Switzerland and Australia the residuary powers are assigned to the federating units. While in India, like Canadian federation, the residuary powers are vested in the Union as per Art.248.

**Parliament can legislate on the subjects of state lists**

Although the States have the exclusive power of legislation over every item in the State List, there are certain exceptions to this general rule. These exceptions are:

1. Article 249 specifies the 'power of Parliament to legislate with respect to a matter in the State List in the national interest.' It provides that if the Rajya Sabha declared by a resolution supported by not less than two-thirds of the members present and voting that it was necessary or expedient in the national interest then Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it became lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter during the period the resolution remained in force. Such a resolution remained in force for such a period, not exceeding one year, as might be specified therein. The Rajya Sabha, however, could extend the period of such a resolution for a further period of one year from the date on which it would otherwise have ceased to operate.

2. Under Article 250, Parliament is empowered to make laws on any item included in the State List for the whole or any part of India while a proclamation of emergency is in operation. The maximum period for which such a law can be in force is the period for which emergency lasts and six months beyond that period.

3. Under Article 252, Parliament also became entitled to legislate for two or more states by their consent. If two or more states request the Central Government to legislate on a particular subject mentioned in the State List, in so far as their State is concerned, the Central Parliament shall legislate on these subjects as well. If any such law is to be amended or repealed, it can be done only by the Parliament alone but the initiative for it rests with the States.

4. Under Article 253, Parliament hasthe power to make any law for the whole or any part of India for implementing any treaty, agreement or convention with any other country or any decision made at any international conference, association or other body. This provision entitled Parliament to legislate even in respect of those subjects that were included in the State List.

5. The predominance of Parliament was further established by Articles 356 and 357 of the Constitution. Article 356 stipulated that if the President was satisfied that a situation had arisen in which the Government of a State could not be carried on in accordance with the provisions of the Constitution, he might declare that the powers of the Legislature of the State would be exercisable by or under the authority of Parliament. The effect of Article 356 would be that the legislature of the State in question would stand dissolved or suspended and the law-making power would rest in Parliament during the period the proclamation of emergency was in force.

6. Not only Parliament enjoyed predominance over law-making in the States, the Union executive also exercised some control. Certain bills adopted by the State Legislature would not be effective unless it had been reserved for the consideration of the President and had received his assent.

7. There is also Union control over the ordinance making power of the Governor. The Governor of a State can issue Ordinances vide Art.213 of the Constitution when the state legislature is not in session. Under certain circumstances, the Governor can issue the ordinance with the prior approval of the President, without getting the approval of the State Council of Ministers.

Thus, it is clear that in spite of division of legislative powers of the Centre and the States, the Centre has overriding powers in this sphere. The Union Parliament has powers to legislate not only on subjects in the Union and Concurrent List, but also on the subjects in the State List as per certain constitutional provisions.

## ADMINISTRATIVE RELATIONS BETWEEN CENTRE AND STATES

The executive power of the Union extends only to those matters which are mentioned in the Union List and over which the Parliament have legislative powers. In

addition, the union can exercise administrative control over the states through the following methods.

1. Article 256 of the Constitution specifies the respective obligations of the Union and the State Governments and lays down, "The executive power of every State shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such direction to the State as may appear to the Government of India to be necessary for that purpose." Thus, this Article clearly provides that the executive authority of the State shall be so exercised that the laws made by the Parliament and the existing laws of the States are properly enforced.

2. Article 257(1) lays down, "the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose." Thus, within the sphere covered by the State list, the Union government can give directions to the State Governments.

3. By Article 257(4) The Union Government can also give directions to the States regarding the construction and maintenance of means of communications declared to be of national or military importance. The Union Government can also give directions to the States regarding the measures to be taken for protecting the railways within the boundaries of the State. However, the excess expenses incurred by the State Governments are paid by the Government of the Union.

4. In case, the State Government fails to carry out any of the directions of the Union Government, the president has been empowered by Article 365 of the Constitution to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the constitution. In other words, if the state fails to carry out the orders or directions of the union, the President's rule may be imposed on that state. In such eventuality the president shall assume to himself, all or any of the functions of the State Government.

5. Delegation of Union Functions to the States is also provided in the Constitution. The President with the consent of the State Government can entrust to the officers of the State Government any function in respect to any subject over which the executive power of the Union extends. Thus, the States may be converted into agents of the Union Government. However, any extra cost incurred by the States for carrying out such an obligation is to be paid by the Union.

6. The presence of All-India Services like the Indian Administrative Service, the Indian Police Service etc. further makes the authority of the Central Government dominant over the States. The members of these All-India Services are appointed by the President of India on the basis of a competitive examination conducted by the Union Public Service Commission. The Constitution also makes provisions for the creation of new All-India

Services by the Parliament. The Parliament can create new All-India Service, if the Rajya Sabha passes a resolution by a majority of two-thirds of its members present and voting, that it is necessary in the national interest to do so.

7. The Constitution vests the President with the power to establish an Inter-State Council, to bring about co-ordination between States. Article 263 which deals with the Inter-State Council says, "If at any time it appears to the President that the public interests would be served by the establishment of a council charged with the duty of –

(a) Inquiring into and advising upon disputes which have arisen between the States

(b) Investigating and discussing subjects in which some or all of the States, or the Union and one or more of States, have common interest; or

( c) Making recommendations upon any such subject and in particular, recommendations, for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a council, to define the nature of duties to be performed by it and its organization and procedure.

8. The Constitution further ordains that full faith and credit must be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. The Parliament is authorized to make necessary laws in this regard. Further, all the final judgments or orders delivered or passed by the civil courts in any part of India are executable anywhere within India in accordance with law.

9. The Constitution has authorized the Parliament to make laws for the adjudication of the disputes relating to Inter-State Rivers or river valleys. The Parliament is also authorized to exclude such disputes from the jurisdiction of the courts, including the Supreme Court, through the enactment of necessary law.

10. During the time when emergency is proclaimed the President is authorized to give directions to the State Governments regarding the manner in which they have to exercise their executive power. Even the Parliament gets power to make laws for the whole of the country or a part thereof even in respect of matters mentioned in the State List. Thus, the federal structure provided under the Constitution is virtually transformed into a unitary one.

11. The Parliament, vide Art.307 of the Constitution, can also set up Inter-State Commerce Commission or any other such authority which it considers appropriate for enforcing the provisions of the Constitution with regard to Inter-State Trade and Commerce. It can assign such duties to such a commission or authority, as it deems fit.

## FINANCIAL RELATIONS BETWEEN CENTRE AND STATES

The Constitution of India makes an elaborate and detailed provisions as the with respect to the relationship between the Union and the States in the financial field.The Indian Constitution lays down a broad scheme for the distribution of revenue resources between the Union and the States and it is the function of the Finance Commission to

allocate the resources between the Centre and States and to the distribute the grants-in-aid.

- Union Sources of Revenue
- Duties of Customs including export duties.
- Corporation tax (Corporate tax)
- Currency, coinage and legal tender, foreign exchange
- Duties of excise on tobacco
- Foreign Loans
- Estate duty in respect of property other than agricultural land.
- Post -office savings bank.
- Railways.
- Reserve Bank of India.
- Taxes on income other than agricultural income.
- Taxes on the sale or purchase of newspapers
- Terminal taxes on goods or passengers carried by railways, sea or air
- Taxes other than stamp duties on transactions in stock exchanges
- State Sources of Revenue
- Duties in respect of succession to agricultural land.
- Duties of excise on certain goods produced in the States like alcoholic liquids
- Estate duty in respect to agricultural land.
- Land Revenue.
- Taxes on agricultural income.
- Taxes on buildings and land.
- Taxes on consumption of electricity or its sale.
- Taxes on the entry of goods
- Taxes on vehicles.
- Taxes on animals and boats
- Taxes on professions, trades and employments.
- Tolls
- Taxes on luxuries including taxes on entertainments.

The distribution of revenues between the centre and states are as follows.

Taxes levied by the Union but collected and appropriated by the States (Art.268)

Stamp duties and duties of excise on medicinal and toilet preparations (those mentioned in the Union List) shall be levied by the Government of India but shall be collected;

i. In the case where such duties are leviable within any Union Territory, by the Government of India, and

ii. In other cases, by the States within which such duties are respectively leviable.

Taxes Levied and Collected by the Union but assigned to the States (Art.269)

1. Duties in respect of succession to property other than agricultural land.
2. Estate duty in respect of property other than agricultural land.
3. Taxes on railway fares and freights.
4. Taxes other than stamp duties on transactions and on advertisements published therein.
5. Terminal taxes on goods or passengers carried by railways, sea or air.
6. Taxes on the sale or purchase of newspapers and on advertisements published therein.
7. Taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-state trade or Commerce.

Taxes which are levied and collected by the Union but which may be distributed between the Union and States (Art.270)

1. Taxes on income other than agricultural income.
2. Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List and collected by the Government of India.

Taxes on income do not include Corporation Tax. The distribution of income-tax proceeds between the Union and the States is made on the basis of the recommendations of the Finance Commission.

The Constitution of India has followed the following pattern regarding the distribution of financial resources between the Union and State Governments.

1. Taxes exclusively assigned to the Union which include; customs and export duties, income tax, excise duties on tobacco, jute etc,.Corporation tax on capital value of assets of individuals and companies; estate duty and succession duty in respect of property other than agricultural land and income from the earning departments like the railways and postal departments.

2. Taxes exclusively assigned to the States which are land revenue; stamp duty (except on documents included in the Union List); succession duty and estate duty; taxes on goods and passengers carried by road or inland waters; consumption or sale of electricity; tolls; taxes on employment; duties on alcoholic liquors for human consumption, opium; taxes on the entry of goods into local areas; taxes on luxuries entertainments, amusements, betting, gambling etc.

3. Taxes leviable by Union but collected and appropriated by States. The revenue from the following items is collected and appropriated by the States:

(i)Stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares etc.

(ii)Excise duties on medicinal, toilet preparations containing alcohol or opium or Indian hemp or other narcotic drugs. Though all the above, items are included in the Union List and the Union. Government can levy taxes on them, yet all these duties are collected by the states and from the part of the revenue of the state which collects them.

4. Taxes levied and collected by Union but assigned to the States: The taxes on the following items are levied and collected by the Union, but wholly assigned to the states within which they are levied:

(a) duties in respect of succession to property other than agricultural lands;

(b) estate duty in respect of property other than agricultural land;

(c) terminal taxes on goods or passengers carried by rail, sea or air.

(d) taxes on railways freights and fares;

(e) taxes other than stamp duties on transactions in stock exchanges and future markets;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.

5. Taxes levied and collected by Union and shared with States: The taxes from the following items are levied and collected by the Union but shared with the States in certain proportions, with a view to securing an equitable distribution of the financial resources:

(a) taxes on income other than agricultural land;

(b) excise duties, other than those on medicinal and toilet preparations.

6. Grants-in-aid: The Constitution provides that the Parliament may by law give-grants-in-aids to the needy States out of the revenue of the Central Government. The amount of such grants is determined by the Parliament in accordance with the needs of the State. The Constitution however, lays down that the cost of all the schemed aiming at the welfare of the Scheduled Tribes is to be met by the Union Government and the Union Government makes the necessary grants to the State concerned on this account. The Constitution also makes special provisions for grant to the State of Assam to enable it to meet the extra cost involved in raising the administrative level of the tribal areas. Moreover, the States of Assam, Bihar, Orissa and West Bengal are paid such sums, as prescribed by the President of India, in lieu of their share in the export duty on jute products.

7. Finance Commission: The President of India is authorized by the Constitution to appoint a Finance Commission every five years vide Art.280. This commission is expected to make recommendations regarding the allocation of revenues to the Union

Government and the State Governments, grants-in-aid by the Union Government to the State and other financial matters. However, the Constitution does not clearly provide, whether the President is bound to accept the advice and recommendations of the Finance Commission. The convention, so far, has been that the Union Government accepts all the recommendations of the Finance Commission. In fact, under the Constitution, the President is expected to place every recommendation of the Finance Commission, together with an explanatory memorandum as to the action taken by thereon, before each house of the Parliament.

8. Financial Emergency: During the proclamation of Financial Emergency, the President can suspend the provisions relating to the division of taxes between the Union and the States and the grants-in-aids to the States. When such a proclamation is made, the States are left with the revenues available in the States List. However, during such a proclamation the Union Government has the power to give directions to the States to:

(a) observe such canons of financial propriety and other safeguards as may be specifies;

(b) reduce the salaries and allowances of all persons serving in connection with the affairs of the State; including the High Court Judges;

(c) reserve for the consideration of the President all money bills passed by the State Legislature.

9. Control by the Comptroller and Auditor General of India: The Comptroller and Auditor General, who is responsible for the maintenance and audit of the union and States accounts is an official of the Central Government. He is appointed by the President. His powers and duties are determined by the Parliament. The forms for the maintenance of accounts are prescribed by the Comptroller and Auditor General of India in consultation with the President of India, and the States have no say in this matter.

It is evident from the above discussion that the States do not possess adequate financial resources to meet their requirements. Their sources are not only very limited but are also very inelastic. The Union Government on the other hand possesses very wide and ever expanding sources of revenue. This naturally places the Union Government favorable position and the States have to frequently look up to the Centre for financial assistance.

## CHALLENGES OR TENSION AREAS IN UNION- STATE RELATIONS/

The Constitution of India envisages two levels of Government- one at union level and other at the state level. From the functional stand point of the Constitution, it is a dynamic process. However, the very dynamism of the system with all its checks and balances has also brought problems and conflicts in the working of the Union-State relations. Consensus and cooperation which is a prerequisite for smooth functioning of Union-State relations is threatened by politics of confrontation. The main issues in Centre-State relations are as follows –

**1. Less revenue resources of the States and financial relations between the Union and the State:**

The division of financial resources and the system of financial relations as laid down by the Constitution have been major tension areas. The States find themselves dependent upon the Union because of their meager and limited resources and restricted field of taxation. States are dependent on the Centre for allocation of funds and grants-in-aid. The States ruled by the parties other than the party at the Centre often complaint of discriminatory treatment in the matters of allocation of funds and giving of grants-in –aid.

**2. Role of Governor:**

The Governor plays a dual role –as the agent of Centre in the State and as the Constitutional head of the State. As a central agent he has to ensure that State Governments run in accordance with the constitutional provisions, otherwise he can report to the Centre about breakdown of constitutional machinery and get the President impose State Emergency vide Art 356.The provision for the appointment and removal of the Governor by the President, who always acts upon the advice of the Union Cabinet, makes him an agent of the party in power at the Centre. The exercise of the Governor's discretionary powers has also been an issue in Centre-State relations such as dissolution of State Legislative Assemblies.

**3. Centre-State tensions over the use of Article 356:**

Article 356 empowers the President to take a decision based on the report of the Governor of the State regarding the 'breakdown of Constitutional machinery in the State'. The President is guided by the advice of the Union Government. This article has been at times misused for political purposes by the Centre.

**4. Concentration of amending powers in the hands of the Union:**

Constitutional amendments can be imitated only by the Union Parliament and not by the State Legislatures. Further, only certain amendments need approval of at least half of the state legislative assemblies. This also creates tension among them.

**5. Deployment of Central Para-military forces in the States:**

Another area of conflict between the Union and the States in India has been the issue of deployment of Central para-military forces by the Union in the States in times of crisis like communal riots, strikes or other law and order disturbances.

**6. Issue of Implementation of Union Laws by the States:**

The Constitution vests in the States the responsibility of implementing the Union laws. For this purpose, the Union can issue directives to the States. Each State has the constitutional responsibility to exercise its powers in such a way as may be helpful in securing of compliance with union laws. At times the State Governments are not quite willing to effectively implement a particular Union law which is considered to adversely affect its politics and programmes.

**7. Issue of discrimination against States:**

The States feel dissatisfied with the system of Central grants-in-aid and allocation of funds by two Central agencies – the Planning Commission and the Finance Commission. The Union Government is often charged of partiality in favour of some States and discrimination against other states which are ruled by opposition parties and regional parties.

**8. Issue of All India Services:**

The personnel of All India Services like the IAS and IPS hold key positions in the state administration. They are recruited by the UPSC and the union home ministry allocates them to various states. Their conduct is regulated by central laws and the State Governments can take only limited action against them. The Union Government can issue direction to them for carrying out its decision. Such directions can be sometimes opposed to the policies and programmes of the State Governments of which they are the administrators. Thus, the use of All India Services by the Union Government for carrying out its directions in States is a tension area in Indian federalism.

**9. Inter State disputes and the Union:**

The failure or delay in activity on the part of the Union Government to secure a settlement of several inter-state disputes has also been a cause of tension in the Union State relation.

**10. Demand for State Autonomy:**

The States have been demanding greater state autonomy in the federal structure which has worked with a Unitarian spirit. The States find the balance of power tilted in favour of Union in the federal scheme drawn by the Constitution. Therefore, the need for autonomy and transfer of some additional powers and resources to the States has been emphasized upon.

## SARKARIA COMMISSION

The Sarkaria Commission was set up in June 1983 by the Central government of India during the regime of Smt. Indira Gandhi. The Sarkaria Commission's charter was to examine the relationship and balance of power between State and Central Governments in the country and suggest changes within the framework of Constitution of India. The Commission was so named as it was headed by Justice Rajinder Singh Sarkaria, a retired judge of the Supreme Court of India. The other two members of the committee were Shri B.Shivaraman and Dr.S.R.Sen.

The Commission submitted its report in October 1987 and was published in 1988. The report contains 247 recommendations spreading over 19 Chapters dealing with Legislative Relations, Administrative Relations, Role of the Governor, Reservation of Bills by Governors for President's consideration and Promulgation of Ordinances, Emergency Provisions, Deployment of Union Armed Forces in States for Public Order

Duties, All India Services, Inter-Governmental Council Financial Relations, Economic and Social Planning, Industries, Mines and Minerals Chapter, Agriculture , Forests, Food and Civil Supplies, Inter-State River Water Disputes, Trade, Commerce and Inter-course within the Territory of India and Mass Media. In spite of the large size of its reports - the Commission recommended, by and large, status quo in the Centre-State relations.

## RECOMMENDATIONS OF THE SARKARIA COMMISSION

1. Residuary powers of legislation in regard to taxation should continue to remain exclusively in the Concurrent List, while the residuary field other than that of taxation, should be placed in the Concurrent List.

2. It favoured the retention of strong Centre and firmly rejected the demand for the curtailment of the powers of the Centre in the interest of national unity and integrity.

3. The commission rejected the demand for the transfer of certain state subjects to the Concurrent List and held that the Centre should consult the States on Concurrent subjects.

4. The commission did not favour restrictions on the powers of the Centre to deploy armed forces in the states, even though it favoured consultations with the concerned State Governments before these forces were actually deployed in the states.

5. It favoured greater co-operation between the Centre and the States in the matter of formulation of plans and their implementation. It recommended the Constitution of the Inter-State Council.

6. The report rejected the demand for the abolition of the office of the Governor and the suggestion regarding selection of Governors out of a panel of names given by the States. When a State and the Centre where ruled by different parties, the Governor should not belong to the ruling party at the Centre.

7. The report did not agree with the demand for major changes in the scheme of distribution of financial resources as provided by the Constitution.

8. The report turned down the demand for doing away with Article 356 of the Constitution under which President rule could be imposed on a State on the grounds of breakdown of constitutional machinery. However, it suggested several measures for preventing its misuse by the Centre and emphasized that is should be used very sparingly and only in extreme cases.

9. The report rejected the demand for disbanding of All India Services on the ground that it would greatly undermine the unity and integrity of the country.

10. The report suggested that the leader of the majority party in the legislature should be appointed as the Chief Minister. If no single party enjoyed a clear-cut majority in the State Legislature, the person who was likely to command a majority in the assembly be appointed Chief Minister by the Governor. The Chief Minister should seek a majority vote in the assembly within thirty days.

11. The commission recommends that in dealing with the state bill presented to the Governor under Article 200, he should not act contrary to the advice of his Council of Ministers because personally he does not like the policy embodied in the bill. Bill should be reserved only in exceptional circumstances.

12. The report favoured the implementation of the three language formula throughout the country and stressed special steps for activating the Linguistic Minorities Commission. It also favoured relaxation of Central control over the radio and television and wanted greater decentralization of authority in matters of their day-to-day operation.

## FINANCE COMMISSION

### Composition

Article 280 of the Indian Constitution provides that the President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier times as the President considers necessary, by order constitute a Finance Commission. It consists of a Chairman and four other members to be appointed by the President. The Chairman must be a person having experience in public affairs. The other four members are appointed as per the following criteria:

- A person should either be a High court judge or qualified to be appointed as a judge of HighCourt.
- One person having special knowledge of the finances and accounts of the Government.
- A person having wide experience in financial matters andadministration.
- A person having special knowledge ofeconomics.

### Functions

The function of the Commission is to make recommendations to the President regarding;

i. The distribution between the Union and the States of the net proceeds of taxes which are to be divided between them and the allocation between the States of the respective shares of suchproceeds.

ii. The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund ofIndia. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State ( inserted by the 73rd Constitutional Amendment Act,1992).

iii. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State (inserted by the 74th Constitutional Amendment Act,1992).

iv. Any other matter referred to the Commission by the President in the interests of soundfinance.

Article 281 of the Constitution provides that the President shall cause every recommendation made by the Finance Commission to be laid before each House of Parliament.The first Finance Commission was constituted in 1951 under the Chairmanship of Sri. K.C.Neogy. So far fifteen Finance Commissions have been constituted to make recommendations on the distribution of net proceeds of sharable taxes between Union and States. The Chairman of the Fifteeth Commission was headed by NK Sigh. It consists of a Chairman and four other members to be appointed by the President. The Chairman must be a person having experience in public affairs.

The other four members are appointed as per the following criteria–

- A person should either be a High court judge or qualified to be appointed as a judge of HighCourt.
- One person having special knowledge of the finances and accounts of the Government.

## NITI AAYOG

NITI Aayog (Policy Commission) orNational Institution for Transforming India was established via a Union Cabinet resolution on January 1, 2015 as a premier policy think tank of the Union Government. It is an extra-constitutional, non-statutory and advisory body.

**The key objectives to establish NITI Aayog were as follows**:

- To work as an advisory body to give directional and strategic inputs to Union Government and also State Governments on request.
- Put an end to the slow and tardy implementation of the policyby fostering inter-ministry, inter-state and centre-state coordination.
- To foster co-operative federalism on the principle of strong States make a strong nation.
- To replace the top-down development approach with bottom-top development approach.
- To design policy framework for weaker section of society that may not have benefited from economic progress.
- To create a knowledge, innovation and entrepreneurial support systemvia a community of national and international experts, practitioners and partners.
- To serve as a platform for resolution of inter-sectoral and inter-departmental issuesin order to accelerate the implementation of the development agenda.

- To monitor and evaluate the implementation of programmes, and focus on technology upgradation and capacity building.

On the basis of above, functions of NITI Aayog can be divided into four categories viz.

(1) To act as a resource centre&knowledge hub

(2) Designpolicy &programmeframework

(3) Fostercooperative federalism

(4) Monitoring and evaluation.

**Composition of NITI Ayog**

Chairperson: Prime Minister

Governing Council: Its members are Chief Ministers and Administrators of the Union Territories

Regional Councils: These are created as per need and its members would be Chief Ministers and Administrators of UTs of respective regions.

Vice-Chairperson– The vice-chairperson of the NITIAayog is appointed by Prime Minister.

Further, the NITI Aayog has full time members (number unspecified), part time members (maximum 2, these would be scholars from universities and research institutions), Ex-officio members (maximum 4, these are ministers from Union Council of Ministers), Special Invitees (appointed by PM for fixed tenure. Finally, there is a Chief Executive Officer (CEO) of the NitiAyog, who is appointed by Prime Minister and has a rank similar to Secretary to the Government of India.

**Two Hubs of NITI Aayog**

The core of NITI Aayog's creation is two hubs viz**.** Team India Hub (TIH) and the Knowledge and Innovation Hub (KIH). These two components were created by an order in August, 2015. Further, the Task force under SindhushreeKhullar had proposed to restructure NITI aayog into three components viz. TIH, KIH and a Flexi pool. The third component is currently under progress as the recruitment rules were not finalised. The objective of flex pool was to augment institution's capacity to take on new assignments.

Team India Hub consists of 6 subject matter verticals and Knowledge and Innovation Hub 10 verticals. The list of verticals is as below:

1. Administration
2. HRD, Governing Council Secretariat & Coordination
3. Agriculture & Allied Sectors
4. Data Management & Analysis
5. Governance and Research

6. Industry
7. Infrastructure-Energy, International Cooperation, General Administration & Accounts
8. Infrastructure- Connectivity
9. Natural Resources & Environment
10. Project Appraisal, Public Private Partnership and PIB
11. Rural Development
12. State Coordination & Decentralized Planning
13. Science & Technology
14. Social Sector – I (Skill Development, Labour& Employment, Urban Development)
15. Social Sector – II (Health & Nutrition, Women & Child Development)
16. Social Justice and Empowerment
17. Offices Attached To the NITI Aayog

At present, the offices attached to NITI Aayog are as follows:

1. **DMEO:**Development Monitoring and Evaluation Office (DMEO) has been constituted on 18th September, 2015 by merging the erstwhile Programme Evaluation Organization (PEO) and the Independent Evaluation Office (IEO).
2. **NILERD:**Government of India established the National Institute of Labour Economics Research and Development (NILERD) in 1962. It is a Central Autonomous Organization, now attached to NITI Aayog, Ministry of Planning.

## THE NATIONAL DEVELOPMENT COUNCIL

### Composition

The establishment of the Planning Commission led to the setting up of another extra- constitutional body, namely the National Development Council. It was set up on 6$^{th}$August, 1952 in order to promote co-ordination with the States and to associate the States in the formulation of the plans. Its main aim is to strengthen and mobilize the effort and resources of the nation in support of the plan, to promote common economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country.

In the NDC representatives of both the Central and State Government sit together to finally approve all important decisions relating to planning. The NDC is composed of the following members- Prime Minister; All state Chief Ministers; Administrators of Union Territories; Members of Planning Commission; other Ministers are also invited to participate in its discussions.

**Functions**

The NDC is working as an advisory council and has the following functions:

- To make periodical review of the working of National Plan from time to time.
- To consider important questions related to social and economic policy affecting national development.
- To recommend various measures for achieving aims and targets set out in our National Plan.
- To ensure maximum cooperation of people in the planning and improvement of administrative capacity.
- To suggest programmes and schemes for the development of less developed and backward classes and regions.
- To assess resources required for implementing plans and to suggest ways and means for raising national resources.
- To take decision regarding allocation of central assistance for planning among different States.
- To prescribe guidelines for the formulation of national plans.
- To consider national plans as formulated by the Planning Commission and to approve the same.

**Role of the National Development Council**

The National Development Council has a special role in our federal polity. It is the apex body for decision making and deliberations on development matters. The NDC enjoys an important position because it is chaired by the Prime Minister with the Chief Ministers of all the States participate in its meetings. The States get an opportunity to advance their viewpoints with respect to their specific problems and targets. This also ensures the consent of states to the proposed plan after detailed discussions and debates. It symbolizes the federal approach to planning. It is also an instrument for ensuring that the planning system adopts a national perspective. The consent of States ensures the smooth implementation of plans. The participation of States in the formulation of plans also ensures that the targets of both the Central and State Governments are fulfilled. In legal terms, the NDC is an advisory body but in reality, the NDC approves the five year plans and prescribes guidelines for the formulation of plans.

## GST COUNCIL

The GST bill seeks to set up a GST Council. The GST Council aims to develop a harmonized national market of goods and services. According the GST Bill, the President must constitute a GST Council within sixty days of this Act coming into force. The composition of the GST Council includes:

- The Union Finance Minister (as Chairman),
- The Union Minister of State in charge of Revenue or Finance, and
- The Minister in charge of Finance or Taxation or any other Minister, nominated by each State Government.

The decisions of the GST Council will be made by three-fourth majority of the votes cast. The Centre shall have one-third of the votes cast, and the States together shall have two-third of the votes cast.

The GST Council will make recommendations on:

- Taxes, cesses, and surcharges to be subsumed under the GST;
- Goods and services which may be subject to, or exempt from GST;
- The threshold limit of turnover for application of GST;
- Rates of GST;
- Model GST laws, principles of levy, apportionment of IGST and principles related to place of supply;
- Special provisions with respect to the eight North Eastern States, Himachal Pradesh, Jammu and Kashmir, and Uttarakhand; and other related matters.

The GST Council may decide the system of resolving disputes arising out of its recommendations. The GST Council will also decide when the GST would be levied on petroleum crude, natural gas, high speed diesel, aviation turbine fuel and motor spirit (petrol).

The Congress Party has opposed the composition of the council which gives the one-third weightage to the Central Government. It is demanding for the one-fourth of representation to the Central Government. The Congress Party has also proposed for an independent dispute settlement mechanism.

**GST and Issue of Dispute Resolution**

The current GST bill seeks to entrust the power of dispute resolution to the GST Council, comprising the Centre and States, instead of an independent body like GST Dispute Settlement Authority as proposed in UPA Government in draft. A dispute redressal mechanism is needed as issues are bound to come up between States, or the Centre and States, or even with local bodies. The proposed GST Council as the dispute resolution body is criticised on the ground that how can it resolve the disputes arising out of its own recommendations.

The GST Council provides veto power to Centre along with State Governments. The GST Council will give the Centre one-third voting power and the States two-thirds. Any decision will need three-fourth of the votes. Thus, neither the States together nor the Centre alone can change the GST. However, the dispute resolution body cannot work on

this principle. Because any dispute resolution mechanism would need a judicial member. The authority was supposed to have a former Supreme Court Judge or Chief Justice of a High Court as its chairman. In GST Council each state, whether big such as Uttar Pradesh or Madhya Pradesh or small such as Uttarakhand or Chhattisgarh, will have the same voting percentage with it. The weak states may sometimes become orphan as they cannot woo the stronger states to support them. Any dispute resolution mechanism whether it is independent or other way should resolve the issues in an amicable manner by giving due say to each of the parties to the dispute.

## INTER- STATE COUNCIL

Inter State Council is a constitutional body set up on the basis of provisions in Article 263 of the Constitution of India by a Presidential Order dated 28th May, 1990 on recommendation of Sarkaria Commission. Article 263 of the Constitution envisages establishment of an institutional mechanism to facilitate coordination of policies and their implementation between the Union and the State Governments.

Article 263 says that "if at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –

- inquiring into and advising upon disputes which may have arisen between States;
- investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject,
- it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure."

### Functions and Duties

Inter-State Council is a recommendatory body and it investigates and discusses such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, for better coordination of policy and action with respect to that subject. It also deliberates upon such other matters of general interests to the States as may be referred by the Chairman to the Council. Its duties include:

- Inquiring into and advising upon disputes which may have arisen between/among States.
- Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest.
- Making recommendations upon any such subject for the better coordination of policy and action with respect to that subject.

**Composition of Inter-State Council**

Prime Minister is the Chairman of the Inter-State Council. Chief Ministers of all the States and Union Territories having Legislative Assemblies, Administrators of Union Territories not having Legislative Assemblies, Governors of States under President's rule and six Ministers of Cabinet rank in the Union Council of Ministers, nominated by the Chairman of the Council, are members of the Council. Five Ministers of Cabinet rank nominated by the Chairman of the Council are permanent invitees to the Council.

**Secretariat**

The Inter-State Council is assisted by Secretariat, which is headed by a Secretary to the Government of India. The Inter-State Council Secretariat closely monitors the implementation of the recommendations made by the Inter-State Council, and places 'the Action Taken Report' before the Standing Committee/Council for consideration. Inter-State Council Secretariat also works as Secretariat of the Zonal Councils.

**Competence of Inter-State Council on Riparian Disputes**

Although this Council has several functions, it is also competent to tender advice regarding the resolution of inter-State disputes including the river dispute. The above mentioned Article 263 contemplates inquiry into, and advice upon, disputes between States, it does not bring within the scope of the article disputes between the Union and a State. Further, though it does authorize investigation and discussion of subjects of common interest and the making of recommendations upon such subjects, the body itself remains advisory and recommendatory only.

**Inter-State Council – An underutilised and ignored Constitutional body**

Till 1967, most States in India were under rule of a common party (Congress) and it was easier to resolve inter-state disputes. After 1967, other parties or coalitions than the one running at Centre or neighbouringStates started ruling. These governments with different opinions and political visions were unable to solve the disputes in inter-state problems. Setting up of this Council was based on Sarkaria Commission recommendations. It was set up in 1990 but not a single meeting was held for long time. It was only during Atal Bihari Vajpayee government tenure when the Council was revived and meetings happened almost every year. However, even today, the Inter-State Council has been largely under-utilized and ignored.

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# MODULE-II

## PANCHAYATI RAJ SYSTEM IN KERALA

India has been known to be the land of villages, as majority of the population live in villages. It is widely accepted that self-governing institutions at the local or village level are essential for national growth and for effective people's participation. Local governments are an integral and indispensable part of the democratic process. 'Grass roots of democracy', based on small units of government enables people to feel a sense of responsibility, inculcate the values of democracy and ensure people's participation in public affairs and developmental work. In a vast, diverse and complex country like India, democratic decentralization is both a political and administrative necessity. Self-governing rural local bodies are described in the Indian context as institutions of democratic decentralization or PanchayatiRaj.

### Background

The Indian Constitution enforced on January 26, 1950 gave constitutional importance to local self-government by including it in the State list in the Seventh Schedule. Also, Article 40 of the Directive Principles of State Policy entrusts the States to take steps to organise village Panchayats. The Community Development Programme was launched in 1952 and the National Extension Service in 1953, to bring all-round development of the people in rural areas and to ensure people's participation. But these programmes did not succeed, and the government appointed a committee headed by Balwant Rai Mehta in January 1957 to examine the question of reorganization of the district administration. The committee submitted its report in 1958 and recommended:

- A scheme of democratic decentralization with a three-tier structure of Local Self-Government from the village level, block level and districtlevel.
- Transfer of power and responsibility to the localgovernments.
- Adequate resources should be transferred to localbodies.
- All programmes of social and economic development should be formulated through these institutions.

Rajasthan and Andhra Pradesh were the first States to adopt PanchayatiRaj Institutions in 1959, followed by other States. However, there was no uniform pattern of PanchayatiRaj and came into existence in different States with all kinds of variations. It met with failure in many States due to political factionalism, scarcity of economic resources and bureaucratic hindrances.

In this overall context, the Janata Government, in December 1977 appointed a committee, under the chairmanship of Ashok Mehta, to review the working of the Panchayati Raj set-up and recommend remedial measures. The committee submitted its report containing 132 recommendations in August 1978. In order to bring about

uniformity in the PanchayatiRaj set-up for the whole country, a model bill was prepared. However, the collapse of the Janata Government at the Centre a few months later put a full stop to any further progress in this direction.

Since the middle of 1980's, there has been a growing interest within the Union Government and several State Governments in reviving the role of PanchayatiRaj. The Planning Commission also had emphasized on the need for expanding and energizing the role of PanchayatiRaj in promotion and management of rural development. One important step taken by the Union Government in 1984 was that the Prime Minister wrote to Chief Ministers of State Governments to take appropriate steps and action without further delay for holding overdue elections to PanchayatiRaj institutions as well as for revitalising their functioning. Another important step taken by the Government was to appoint two committees - one in 1985 under the chairmanship of G.V.K.Rao and another in 1986 under the chairmanship of L.M Singhvi – to suggest ways and means for strengthening PanchayatiRaj. The Union Government also convened workshops of senior administrators concerned with panchayati affairs and conferences of PanchayatiRaj leaders.

Taking into account the views of these committees, workshops and conferences, the Union Government decided to amend the Constitution of India in order to provide a firm basis to the essential features of the PanchayatiRaj. The landmark 73rd amendment of the Constitution provided for an elaborate system of establishing Panchayats as units of self-governments. The 73rd Constitutional Amendment was passed by Parliament on 22nd December 1992. The 74th Constitutional Amendment deals with the establishment of Municipalities. These two constitutional amendments were notified by the Central Government through Official Gazette on April 20, 1993 as it got ratification by the State Legislatures and was assented by the President of India. After notification the Panchayati Raj institutions have now become part of the constitution. Madhya Pradesh was the first state to introduce the PanchayatiRaj system based on the 73rd constitutionalAmendment.

**73rd Constitutional Amendment Act, 1992**

This amendment has added a new Part IX titled 'Panchayats' in the Indian Constitution, consisting of 16 Articles – Article 243 to 243 O. It has also added the Eleventh Schedule, which elaborates Article 243 G, dealing with powers, authority and responsibilities of the Panchayats.

This Act provides that the Panchayat bodies will have duration of five years, with elections mandatory after this period. Under the Act the establishment of Panchayats and the devolution of necessary powers and authority on the Panchayati Raj Institutions are vested in the State Governments. It provides for a three-tierPanchayatiRaj system at the village, intermediate and district levels. Small states with population below twenty lakh have been given the option not to constitute the Panchayats at the intermediate level.

The 73rd Amendment Act envisages the**Gram Sabha**(Article 243A) as the foundation of the Panchayati Raj System to perform functions and powers entrusted to it by the State Legislatures. Gram Sabha means a body consisting of persons registered in the electoral rolls relating to village comprised within the area of Panchayat at the villagelevel.

Article 243 C provides for the **composition of Panchayats.** All members of the village panchayats, intermediate Panchayats and district Panchayats shall be chosen by direct election from territorial constituencies in the panchayat area. Minimum age of a person to become a member of a Panchayat is 21 years.

Article 243 D provides for the **reservation of seats**for Scheduled Castes and Scheduled Tribes and for women. One-third of the total seats in the Panchayat are reserved for women. Reservation of seats for SC's and ST's will be in proportion to their population in the state. Such reserved seats may be allotted by rotation to different constituencies.

Article 243 G provides for the **powers, authority and responsibilities** entrusted to the Panchayats to prepare plans for economic development and social justice in respect of matters listed in Eleventh Schedule of the Constitution. This schedule contains 29 items which include agriculture and allied activities, minor irrigation schemes, land reforms, water management & watershed development, khadi village & cottage industries, rural housing, roads & bridges, primary and secondary education, adult education, libraries, markets and fairs, primary health centers, family welfare, women and child development, welfare of weaker sections etc.

According to Article 243H, Panchayats have the power to impose taxes, tolls and fees and to receive finance from the State Government in the form of grants.

As a result of the enactment of the 73rd constitutional amendment about 2,27,698 Panchayats at the village level; 5906 Panchayats at intermediate level and 474 Panchayats at the district level have been constituted in the country. These Panchayats are being manned by about 34 lakh elected representatives of Panchayats at all levels, thus providing a broad representative base at the grass roots level.

**74th Constitutional Amendment Act, 1992**

The 74thConstitutional Amendment has added a new Part IX A titled 'Municipalities' in the Indian Constitution, consisting of 18 articles – Article 243P to 243 ZG. It has also added Twelfth Schedule, which elaborates Article 243 W dealing with powers, authority and responsibilities of the Municipalities.

Article 243 Q provides for the **establishment of** the following three types of **municipalities for urban a**reas:

i. A Nagar Panchayat for a transitional area, that is an area in transition from a rural area to a urbanarea;

ii. A Municipal Council for a smaller urban area;and

iii. A Municipal corporation for a larger urbanarea.

Article 243 R provides for the **composition of municipalities.** All the seats in a Municipality shall be filled by persons chosen by direct elections from territorial constituencies in the Municipal area. For this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards.

Article 243 S provides for the **constitution and composition of ward committees**, consisting of one or more wards, within the area of a Municipality having a population of three lakh or more.

Article 243T provides for **reservation of seats**for scheduled castes and scheduled tribes in every Municipality. Out of the total number of seats to be filled by direct elections, at least one third would be reserved for women. Such seats maybe allotted by rotation to different constituencies in aMunicipality.

Article 243 U provides that every Municipality shall have duration of five years, but it may be dissolved earlier.

Article 243 W provides for the **powers, authority and responsibilities**entrusted to the Municipalities to prepare plans for economic development and social justice, perform functions and implement schemes in respect of matters listed in the Twelfth schedule. This schedule contains 18 items which include urban planning including town planning, regulation of land-use, construction of buildings, roads & bridges, water supply, public health, sanitation, solid waste management, slum improvement, safeguarding the interests of weaker sections of society, burial grounds, provisions of urban amenities and facilities such as parks & playgrounds, registration of births and deaths, street lighting, parking lots, regulation of slaughter housesetc.

Article 243 X confers **powers on the Municipalities to impose taxes, duties, tolls** etc. and to receive finance from the State Government in the form of grants-in-aid. The Finance Commission shall review the financial position of the Municipalities and make the necessary recommendations.

Apart from giving constitutional recognition to Municipalities, the 74$^{th}$ Amendment lays down that in every State shall be constitutedtwo Planning Committees –

(i) At the district level, a District Planning Committee. (Article 243ZD)

(ii) In every metropolitan area, a Metropolitan Planning Committee (Article 243ZE).

Thus the 74$^{th}$ Constitutional Amendment Act, 1993 was a landmark in constituting urban Local Governments in India.

Following the 73$^{rd}$ and 74$^{th}$ Constitutional Amendment Acts significant reorganization of the PanchayatiRaj system took place in several States of India for its effective implementation. States statutory amendments have been made for providing

substantive changes in the PanchayatiRaj. Political parties are also playing an effective role in the election and working of PanchayatiRaj Institutions. There is no doubt that the present PanchayatiRaj system is certainly a step forward in the direction of decentralization of powers to the people at the grassroots level.

## PANCHAYAT RAJ INSTITUTIONS IN KERALA

Kerala has passed through several stages of political development. Apart from the institution of Kingship another important political institution which developed during early Centuries of the Christian Era was that of a 'Manram'. Each village had a 'Manram'. Its meetings were held and presided by the elders under a banyan tree while settling local disputes. Local assemblies called 'Munnuttavar', 'Anjuttavar' etc., existed during the Chera dynasty ($9^{th}$ C- $12^{th}$C A.D.). This exercised a check on the powers of the provincial governors. For administrative convenience the whole kingdom was divided into 'Nadus', 'Desams' and 'Tara'. The lowest administrative unit was the 'Tara' and it was administered by a Panchayat. The local Tara organization acted as a check on the powers of the chieftains.

Before the formation of the state in 1956, Village Panchayats were functioning in Travancore, Cochin and Malabar areas. Obviously, these were not known by the nomenclature of Panchayat. The panchayat system in Kerala existed in the form of 'Tara' or village which functioned through its 'kuttam' or Assembly. Higher than the 'Tara'were the 'Desams' and the 'Nadu' having their respective organs the 'kuttarns' for discharging routine duties such as legislative, executive andjudiciary.

The present Kerala Panchayat Act was passed in I960. It was a product of the historical evolution of the Cochin Panchayat Act, 1914, The Travancore Village Panchayat Act, 1925, The Travancore-Cochin Panchayat Act, 1950 and the Madras Village Panchayat Act, 1950. The Kerala Village Panchayat Act, 1960 came in force from January 1, 1962 in all the then 922 village panchayats and fresh panchayat elections were held in the year 1963. The Act, provides a uniform system of decentralized administration at the village level.

### Features of Kerala Panchayats

One of the salient points of difference between the Panchayats of Kerala and those from other States is that the Panchayats of Kerala are comparatively bigger in population and income. This has helped them to become viable units of Local Self-Government both administratively and financially. Village Panchayat in Kerala possesses certain unique features such as high population, with a high level of rural literacy, political consciousness and comparatively low level of rural urban dichotomy which distinguish it from the rest of India. The high level of literacy and political consciousness are also reflected in the type of leadership that these institutions have thrown up. Village Panchayats have achieved substantial progress in the fields like social education, family planning, public health, rural housing etc. Even in case of community amenities, they are much ahead when compared with their counterparts in other states. The Kerala village panchayats have built their own

infrastructure for economic development. Kerala was one of those States which have not adopted the three-tier structure of Panchayati Raj as recommended by the Balwantrai Mehta Committee(1957).

**Organizational Structure of the Kerala Village Panchayats**

The Panchayats in Kerala are constituted for one or more revenue villages and the normal population ranging between 8,000 to 45,000. Representatives to Panchayats are elected wardwise. The minimum number of each Panchayat is 8 members up to 10,000 population, with one additional representativefor every 4,500 population in excess of 10,000 subject to a maximum of 15 members. Members are elected on adult franchise with a qualifying voting age fixed at 18 years.

The term of office of the members of Panchayats is 5 years and the President and Vice- President are elected from amongst the elected members of the Panchayat. In addition to normal functions, the President of the village Panchayat has to forward an annual report of the functioning of the panchayat to the Panchayat Director and a half-yearly report to the Deputy Director.

There are special provisions in the Panchayat Act, I960, towards the reservation of seats for the Scheduled Castes, the Scheduled Tribes and Women. One seat is reserved for the Scheduled Castes in every Panchayat and also for Scheduled Tribes where their population is not less than five per cent of the total population of the Panchayat. According to the Panchayat Act, 1960, only one seat was reserved for women. Declaration about a reserved ward for women is now based on women activities in the ward. This gives authorities, an opportunity to manipulate such wards. Earlier the criterion for reservation was based on women population of the ward. The Kerala Panchayat Act, 1960, provides an effective bureaucratic network to supervise, control and carry out the decisions of the elected panchayatbodies.

Panchayats in Kerala are classified into four grades on the basis of their annual income. This classification gives a clear idea of the general financial position of Village Panchayats. It helps the State Government to transfer additional functions to panchayats based on their grades. It also helps standardization of grants and formulation of viability criteria while assigning functions to Village Panchayats. The major sources of income of Panchayats are taxes,fees and government grants. Building tax, profession tax, vehicle tax on non-motorised vehicles, land cess are the four compulsory taxes which panchayats levy. Among these, receipts from the building tax form the lion's share. In addition to these taxes, panchayats can levy fifteen different kinds of fees. They also receive grants-in-aid from the State Government such as establishment grants, building grants, block grants and road maintenance grant. In addition, they receive a long term loan facility from the State Rural Development Board. Such loans carry minimum interest and provide finance for remunerative investments and developmental activities of the panchayats.

**Implementation of Decentralization at Panchayat Level**

Kerala has been a trend setter of implementing decentralization and democratic local governance for the whole country during the last two decades. The Government of India has widely acknowledged its achievements in decentralized participatory planning and transforming local government system with innovative democratic institutions and practices. During the pre- 73rd Constitutional Amendment period the progress of implementing the Panchayati Raj system in Kerala was in no way different from that of any other Indian States. The initiative of the Left Democratic Front (LDF) government to implement democratic decentralization project in Kerala was not an accidental decision. Various motivating forces and a wide range of factors influenced the policy makers of Kerala to choose decentralization as a reform measure and policy option to strengthen the local government system. The democratization and developmental potential of decentralization to ensure participation of all sections of society in local governance was clearly accepted by the first democratic government assumed power in Kerala in 1956.

After the formation of the Kerala State, several attempts have been made to give a strong legal framework to the local government system. The political instability that existed in Kerala and the frequent change of governments and the dissolution of state legislative assemblies prevented the passing of the Panchayati Raj Act in Kerala. The first democratically elected government in Kerala strongly believed that democratic decentralization is the best possible alternative to de-bureaucratize governance and to ensure people's participation. The intrinsic values of decentralization was clearly endorsed by this government in the appointment of the first Administrative Reforms Committee (ARC) in the State formed in 1957 under the chairmanship of E.M.S. Namboodiripad, the then Chief Minister of Kerala. The effect of decentralization and its modernizing potential to transform the social and political life of the common people was clearly internalized by the first democratically elected government, which influenced the whole process of deliberation of theARC.

The legislative efforts on the part of the first democratically elected government to strengthen the Panchayati Raj system in Kerala was focused its attention to end bureaucratic domination at the district and local level and to strengthen people's representation and participation in development decision making at the district and sub-district level. Traditionally, there were self-governing units at the village level in different parts of the State of Kerala, exercising different degrees of control over the lives of the people. The northern part of Kerala, Malabar was part of the Madras Presidency and even before independence there were some efforts on the part of the British colonial rulers to give self- governing powers to the Panchayats, including authority in matters of education, revenue and other development subjects. The political and economic changes took place in the nineteenth century and the Gandhian ideals of the Panchayati- Raj system as a system favorable to promote democratic rights and self- governance of the people vis-à-vis the bureaucratic interests, contributed significantly as an environmental force to influence the policy decisions to strengthen the local government system in Kerala. Decentralization is

also influenced by the individual interests of the policy makers that control the governmental structures and other societalinstitutions.

E. M. S. Namboothiripad as the first Chief Minister of Kerala and a lead left political ideologue strongly believed that democratic decentralization is an essential part of local development, because it facilitates the protection of interests of the working class and other common people. His writings and other intellectual contributions on decentralization acted as an important motivating force in all the legislative and policy reforms of decentralization in Kerala, during more than four decades after the formation of the State. The successive State Governments in Kerala were forced to express the political will to implement decentralization reforms due to the continuous facilitative influence of this political personality. The intellectual contributions ofE.M.S. significantly influenced in designing the policy framework and systems and procedures of decentralization in Kerala.

Various environmental factors positively contributed for designing the legislative framework of democratic decentralization and local government system in Kerala. Important among them are, the long tradition of public action for political and social development, social reform movements for democratization and modernization, associational life and multiple membership of people in different political, social, religious, occupational and civic organizations, strong sentiments and faith of people in secular political culture, vibrant democratic politics, cadre based political parties and voluntary organizations with grass-roots level formation, universal education and total literacy, conscious reduction of social inequality, high density of press and media and its proximity to common people etc. have been positively contributed to create a strong legal foundation for democratic decentralization and democratizing local governance system inKerala.

**The Kerala PanchayatAct, 1960**

During 1960-61, when Shri. Pattom A. Thanu Pillai was Chief Minister, the Kerala Panchayat Act, 1960, the Kerala Municipalities Act, 1961 and the Kerala Municipal Corporation Act, 1961 were enacted unifying the existing laws in the Malabar and Travancore – Cochin regions of the State and enlarging the functions and financial resources of local bodies. The Kerala PanchayatAct incorporated several recommendations of the Balawantrai Mehta study team. The Panchayats were conceived as a political organization at the village level between the State Government and the people and they should be the institutional system through which the villagers come in to contact with the State Government. Large number of development responsibilities was entrusted to the Panchayats such as, control and supervision of elementary schools, public health and sanitation works, development of agriculture, animal husbandry and cottageindustries.

The Kerala Panchayat Act, 1960 clearly points out that the staff employed at the Panchayat level of the Government will work under the control and supervision of the

Panchayats. In accordance with the Objectives and Resources the Kerala Panchayat Act as finally passed contained an impressive list of duties and functions. The Act also provided that the Government could authorize the Panchayats to exercise other functions such as collection of land revenue, maintenance of survey and village records, collection of village statistics, supervision and control over Government primary schools, medical, public health, child welfare, maternity institutions and execution of community development work including improvement of agriculture, animal husbandry, communication and village industries. The employees of the Panchayat and officials of the different departments were not accountable to the elected council and they were totally controlled by the concerned administrative departments. As conceived by the ARC, the Kerala Panchayat Act 1960 entrusted large number of functions to the village panchayats. Village Panchayats everywhere, are found discharging a wide variety of functions which have, however, been broadly divided in to two categories viz, obligatory and discretionary, as can be seen in the concerned laws of the differentstates.

The scope and extent of functions assigned to the village panchayats by the Kerala Panchayat Act, 1960 are not confined to 'civic functions' but include 'developmental responsibilities' and other activities related to 'social welfare' of the local community. Therefore, the Kerala Panhayat Act, 1960,stipulates mandatory or obligatory functions, agency functions and regulatory functions. Even though, the panchayats in Kerala faced several institutional constraints to discharge their responsibilities, including the lack of financial resources, the legal framework designed as part of the Kerala Panchayat Act, 1960 was adequate to do large number of responsibilities relevant to the life ofpeople.

Another noteworthy feature of the Kerala Panchayat Act 1960 was the provision of reservation of seats for Scheduled Castes, Scheduled Tribes and women. Section 7 of the Kerala Panchayat Act 1960 stipulates that, where the number of electors belonging to Scheduled Castes and Scheduled Tribes in a Panchayat area is not less than five percent of the total number of electors in that Panchayat area, one seat shall be reserved in the Panchayat for Scheduled Castes and Scheduled Tribes. It was also provided in the Act that one woman member could be co- opted by the Panchayat over and above the number already fixed for it, in case no woman was already elected to the Panchayat. The Act stipulated certain powers and authority of the President and he has full access to and can deal with all records of the Panchayat and no official correspondence between the Panchayat and the Deputy Director and authorities above him may be conducted except through the President.

The powers of the President to oversee the discharge of official functions of the executive officers and their assistants are stipulated in the Act. The Act came in to force from January 1, 1962. Based on the new Kerala Panchayat Act the first Panchayat election in Kerala State was held by the end of 1963 and the new Panchayats came in to existence on January 1, 1964. Though, there was an elected council, the administration of the Panchayats had been highly bureaucratic. The executive authority of every Panchayat had been vested with the Executive Officer. He was not accountable to the elected council and

the system of transparency and responsiveness was very weak. The executive officer has been entrusted with a wide variety of duties and responsibilities as well as powers. He was directly accountable to the Taluk and District level officials of the department concerned and other higher authorities. The elected head of the Panchayat Council can only report the laxity or negligence on the part of the Executive Officer to the Deputy Director of Panchayats for necessary action. The Panchayat employees were also placed under the control of the executive officer and he is empowered to take disciplinary action against any Panchayat employee after a due process. One of the glaring features of Panchayat administration is the almost complete absence of training facilities for the staff (other than the Executive Officers) employed in various Panchayats in the State. The administrative system of the Panchayats was therefore; highly bureaucratic and democratic accountability has not been existed in the functioning of thePanchayats.

**Kerala Panchayat Raj Act – 1994**

In March 1994, the State Government introduced a Kerala Panchayat Raj bill in the State legislature. The provisions of the bill were very restrictive and led to a great deal of criticism from both the intellectuals and public men. As a result of this, considerable changes were made in the bill by the select committee. The new bill was passed in the legislature, and the new Act conformed to the mandatory provisions of the Constitution. Following are the main features of the Kerala Panchayat Raj Act 1994.

**Gram Sabha**

The Gram Sabha is made the basic spirit and soul ofthe PanchayatiRaj Institutions in the State. It will approve the annual budget and the plan of the developmental programmes, annual statement of accounts, seek clarification from the President or members about the works undertaken by the Panchayats. It is compulsory to hold at least two general meetings in a year presided over by the president of Gram Panchayat.

**Gram Panchayat**

As per Section7 of the Kerala Panchayat Raj Act, 1994, there should be a Gram PanchayatforavillageorgroupofvillagesThetotalnumberofmembersofGramPanchayats will be decided on the basis of population. Total number of members of the Gram Panchayat shall be between 8 and 15. All members are elected directly by the people. A fixed number of seats should be reserved for SC's and ST's depending on their population. The reserved constituencies should be changed on rotation basis. One third of the total seats of the Gram Panchayat should be reserved for women. The members of the Gram Panchayat will elect its President and Vice President from among themselves.

**Block Panchayat**

The Kerala Panchayat Raj Act, Section 8 states that, there should be a Block Panchayat at the block level. Total number of members in Block Panchayat shall be in between 8 and 15.

**District Panchayat**

The Kerala Panchayat Raj Act, Section 9 state that there should be a District Panchayat at the district level. Total number of members in the District Panchayat shall be in between 15 and 25.

**Officials**

According to section 179(1), every Panchayat will have a Secretary. He must be a government employee Section 179(4) also states that, State Government can transfer a secretary. If the panchayat committee passes a resolution with simple majority, the State Government should transfer the secretary. Following are the functions of the secretary.

(a) attend the meetings of the panchayat committee and standing committee without voting right.

(b) implement various decisions of the panchayat committees

(c) give administrative leadership to the subordinateemployees

**Standing committees**

The Act also envisages that, there should be a standing committee for each Grama Panchayat, Block Panchayat and District Panchayat for fixing taxes, checking accounts, and for all kinds of planning activities. Chairman of the standing committee will be elected from among its members.

**Accounts and Audit**

Section 215(1) of the Act states that, accounts of the panchayat should be kept separately by the Panchayat committee. Section 215(3) further states that, audit examiner of the local funds will be the official government auditor of Panchayats.

**Finance**

The Act also ensured that, the State Government will transfer to the Panchayat, the state annual plan and budgetary allocations for the subjects transferred to them. But with only token powers and responsibilities transferred to the Panchayats, the actual devolution of funds for them will not be even a fraction of the 40 percent transfer of the annual plan outlays for Panchayats recommended by the expert group of the National Development Council.

**Role of MP's and MLA's**

It has a provision to provide for the representation of an MP(ex-officio member) at the District Panchayat. Similarly, for the representation of MLAs (ex-officio member)at the Block Panchayats.

**Allowances**

According to section 160(4) ofthe Act, president and vice president of the panchayats are entitled to the allowances of a Class I employee of the State Government.

The Government ofKerala appointed a Finance Commission on 22nd April 1994 for the PanchayatiRaj Institutions as mandated by the 73rd Constitutional Amendment Act. The Commission submitted its report in the first week of July, 1996 with the recommendations on the following areas, viz building and property taxes, entertainment tax, fees and licenses setting up of rural and urban pools and regrouping of Panchayats. Decentralised Planning in Kerala, many brave attempts were made at district levels, to practice the principles of decentralised planning.

**Kerala Panchayat Raj Amendment Act, 1999.**

The main features of the Kerala Panchayat Raj Amendment Act, l999 are summarized below.

1. The Kerala Panchayat Raj Amendment Act, 1999 specifically insisted that, GramaSabhas should be convened at least once in every three months, (Amendment to Article-3) at the place suggested by the GramaPanchayat, and it is compulsory that the representative to the Block and District Panchayat Committee members from that ward must be invited to the meeting by the convener. The power, functions, responsibilities and rights of GramaSabhas are also explained in the sub clauses of Article 43 A and 3B.

2. The functions and responsibilities of Standing Committee members of Village Block and District Panchayat are defined clearly in sub clauses of Article 162-A, B and C respectively. Accordingly, the responsibility of planning vests on the standing committee for development in all the three tiers ofpanchayat.

3. The cancellation of resolutions passed by a Village Panchayat and the cumbersome proceduresinvolvedinitisdealtwithclearlyinArticle53,clause191,subclause(1)and(2) of the 1999 Act. It specifically mentions the role of Ombudsman and Appellate Tribunal in settling the issues. Hence the State Government can take action, only on the basis of the reports and suggestions of Ombudsman and Appellate Tribunal on thesubject.

4. Article 271 B of the Act ensures the right to information of every citizen, regarding any matter, on which he has full confidence, from the panchayat, as permitted by the law. Article 271 D(1), specifies the penalties which can be imposed upon the secretary or any other official, in case of his deliberate denial of information to thecitizen.

5. The qualification, responsibilities and duties of Ombudsman are clearly mentioned in article 271-F, 271F, 271 G, 271 H, 271 I, 271 T and 271 K. Thus the accountability and transparency of Panchayat office authorities are ensured by the institution called Ombudsman in the AmendmentAct,1999.

6. The appointment of an Appellate Tribunal for Local Self-GovernmentInstitutions is another feature of the Amendment Act of 1999. Article 271-S, T and U describes the functions and domain of activities of the Tribunals. The ultimate purpose of the Appellate Tribunal is to settle and resolve the complaints put up by people against the resolutions and actions of Local Self Government Institutions. Such Tribunals can be appointed for each district or for a group ofdistricts.

## PEOPLE'S PLANNING PROGRAMME

After the enactment of 73rd and 74th Constitutional Amendment Acts, Govt. of Kerala enacted the Kerala Panchayati Raj Act and Municipality Act 1994. These Acts have been amended during the years 1995, 1999, 2000 with a view to empower the local bodies to ensure peoples participation in the planning and development process and remove the restrictions and control upon the local bodies by the State Government.

The Act provides powers, authorities and responsibilities wider in some respects than those envisaged under the above provisions of the Indian Constitution. A peculiar feature of the Act is the predominant role given to the GramaSabha through which the common people get a direct participation in the development administration of local bodies. The important landmarks in Kerala's decentralisation, inter alia, include the transfer of powers, functions, institutions and staff to Local Self Government Institutions (LSGIs), adoption of separate budget documents for LSGIs, decision to devolve 35 to 40 percent of the Annual Plan funds to LSGIs, launching of People's Campaign in August 1996, institution building at different tiers and levels, restructuring.

In 2002-03, the People's Campaign Programme was renamed 'Kerala Development Plan'. The important features of Kerala development Plan are; 1) Institutionalisation and building sustainable capacity in LSGIs 2) Catalyzing economic development through these institutions and 3) Improving the quality of Services.

**Process of Decentralisation**:

The decentralization programme was implemented in a very systematic manner, phase by phase.

In the first phase, Gram Sabhas (Village constituencies) were convened and people at the local level were organised to report on their immediate needs.

In the second phase, development seminars were convened at the Village Panchayath level. Task Forces were formed for the preparation of the various development projects. 12,000 task forces were formed that worked out to around 12 task forces per Village Panchayat. Around 1, 20,000 people participated in these task forces.

In the third phase, development projects were prepared according to a format suggested by the Kerala State Planning Board. However, there were a number of problems faced by these Task Forces. Firstly, there was no enough number of experts at the service of the Task Forces. Secondly, the members already present in the task forces were not properly trained, especially in technical and financial aspects. Thirdly, the official participation was not up to the expectations.

At the fourth phase, from March to May 1997, it was expected to prepare five year plans for the Panchayats based on their development projects. But this was a tremendous task involving planning at the Panchayat level, and coordinating at the Block Level and District Panchayat level.

In the fifth and final phase, preparation of annual plans for Block and District panchayat was planned. It had to be done in coordination with the Block as well as Gram Panchayat levels.

The end results showed that the panchayats could not spend more than 10% by March,1998;the end of the first year of people's planning. The government extended the period for expenditure by three months and later up to 31st March, 1999.

During the second year too, the panchayats could not spend more than 10% of the earmarked funds of around Rs.750 Crore. The period of expenditure was extended by another three months to the end of June, 1998. In 1998–99, and 1999-2000, the funds allocated were Rs 970 Crore and Rs1020 crore respectively.

The budgetary provision for grant in aid to the local bodies has three components; Tribal Sub Plan (TSP), Special Component Plan (SCP) and General Sector Plan. Between rural and urban local bodies, funds were distributed on the basis of the population share. As for the rural LSGIs, the total general sector allocation is apportioned among the Grama, Block and District Panchayats in the ratio of 70:15:15. For the Special Component Plan the share of 20 per cent each was fixed for the higher tiers.

During the period, the Government also launched many programmes also in a festive mood. They may be summarised as follows:-

**Modernising Government Programme – LSG Initiatives**

The Government of Kerala began the Modernising Government Programme in 2002 as a Mission mode to bring about basic reforms in the administrative and governance machinery and to improve basic services to the citizens particularly to the poor and the marginalized. Governmentrecognises that public services have to be delivered in a manner that is people centered, efficient, effective, equitable, affordable, sustainable and accessible to all.

**Service Delivery Project**

The Service Delivery Project is a fast tract project covering 22 categories of institutions in 8 Departments. The number of institutions targeted for improvements is 2587. The Service Delivery Project (SDP) seeks to improve the quality of services in 103 Grama Panchayats, 14 municipalities and 5 Municipal Corporations under LSGD. The objective is to make them models in terms of Service Delivery.

**Asraya – The Destitute Plan**

The destituteare the lowliest of the poor who constitute less than 2% of the total population in any local body. The Government of Kerala through State Poverty Eradication Mission has designed an innovative programme to address the varying problems of the destitute families in the state. The programme is known an 'Ashraya'.

**Akshaya**

Akshaya is a programme for bridging the digital divide, promoting digital literacy, connecting communities, providing access points in an effort to establish a knowledge society in Kerala. The project intended to set up around 3000 multipurpose Community Technology Centers across the State. The project has implemented in eight districts in the State. Around 3.5 lakh people have completed the e-literacyprogramme and about 1300 AkshayaCenters have been set up in eight districts. Later yearsAkshayaalso implemented in the remaining districts.

**Information Kerala Mission**

The Information Kerala Mission (IKM), established in June 1999, for computerising the local bodies in the state had been pursuing one among the most ambitious e-governance programmes in the country. It visualised as a sequel to the decentralised plan campaign which has been acclaimed as one of the most deep rooted and extensive initiatives in strengthening grassroots level democratization.The Mission during its initial phase had put in considerable efforts in building up its perspectives and strategies. The new processes of Participatory Developmental Planning increased the workload of local government personnel substantially. Additional workload of the local government personnel was sought to be balanced by automating various local government processes. Decentralisation had created a unique paradox in the matter of expertise. It was at the grass root level that the largest chunk of plan resources was made availabale for planning and resolution of citizen problems through decentralisation. However the staffs in the civil service available at this level were the junior most, who lacked the experience of planning and developmental administration. Building up Expert Support Systems and Decision Support System was looked upon as a possible mechanism for tackling the lack of talent in the short run. The relevance of application of ICT in the context of decentralisation had emerged from these concrete necessities.

**Capacity Building: Kerala Institute of Local Administration (KILA)**

Kerala Institute of Local Administration (KILA), an autonomous institute under the Department of Local Self Governments, Govt. of Kerala is the nodal agency of training, research and consultancy in the area of local governance. Apart from training and policy oriented researchactivities, KILA organizes seminars, workshops and discussions on various issues of local governance and development. The Ministry of Panchayati Raj, Government of India has initiated steps to declare KILA as a SAARC Centre for Local Governance and Development.

**Decentralisation Support Programme**

The Decentralisation Support Programme was a project of Local Self Government Department implemented on a mission mode. The project aimed to facilitate the process of institutionalisation of decentralisation initiatives in Kerala. The project was implemented

in two phases. During the phase 1, the Decentralisation Support Programme documented and analysed the experience of decentralisation in Kerala through literature survey, stakeholder consultation and case studies. The phase II sought to address the needs, concerns and opportunities identified during phase I. The phase II was started in August 2004 and completed in November 2006. The activities taken up under phase II was confined in three main categories namely; (i) Gender and Development issues in Local Governments; (ii) Improving Planning Process in Local Governments for Sustainable and Equitable Management; and (iii) Institutional and Staffing Policy.

## IMPACT OF RESERVATION IN PANCHAYAT RAJ SYSTEM

Kerala Panchayat Raj Act also provided provisions for reservation of seats of members/councilors, offices of President/Chairperson, Standing Committee Chairman and Standing Committee members are made in the following manner:

### i) Reservation of Seats of members

Seats are reserved for Scheduled Caste and Scheduled Tribe, women belonging to Scheduled Caste, Scheduled Tribe and for women, in every Panchayat. The reservation for Scheduled Casteand Scheduled Tribe is in proportion to their respective population in the Panchayat/Municipality. Not less than 50% of the total seats (including Scheduled Cast/Scheduled Tribe women) are reserved for women. However, if the number of seats reserved for Scheduled Cast/Scheduled Tribe is only one, it need not be reserved for Scheduled Cast/Scheduled Tribe women.

The number of seats to be reserved in a Panchayat is determined by the Government. The reservation seats for each general election are allotted by rotation to different constituencies/wards by the State Election Commission or officers authorised by it. The State Election Commission has authorized the District Collectors, the Regional Joint Directors of Urban Affairs and the Director of Urban Affairs to allot the reserved seats of Panchayats, Municipal councils and Municipal Corporation respectively. The officer authorized determines the reservation of wards/constituency by draw of lots.

### ii) Reservation of offices of President/Chairperson

The offices of President/Chairman/Mayor are also reserved for Scheduled Caste, Scheduled Tribe, women belonging to Scheduled Caste, Scheduled Tribe and women. The reservation for Scheduled Caste and Scheduled Tribe are in proportion to the Scheduled Caste/Scheduled Tribe population in the Panchayats. Not less than 50% of the total offices of Presidents and Chairpersons (including Scheduled Caste, Scheduled Tribe women) reserved for women.

The number of offices of Presidents and Chairpersons to be reserved shall be determined by the Government. It shall be allotted by rotation for every level of Panchayats by State Election Commission. The rotation shall begin from the Panchayat having the highest population of Scheduled Caste/Scheduled Tribe or women and thereafter to the Panchayat having the next higher percentage of population and shall be so continued in like manner

Where the offices of Presidents and Chairpersons is reserved for women, the offices of the Vice Presidents and Deputy Chairpersons will be unreserved and where the offices of the Presidents and Chairpersons not reserved for women, the offices of the Vice Presidents and Deputy Chairpersons will be reserved for women.

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# MODULE-III

## THE PROCEDURE FOR AMENDMENT OF THE CONSTITUTION

The Constitution of any country is the fundamental document which defines the position and power of the three organs of the government, namely the legislature, executive and the judiciary. It also specifies the rights and duties of the citizens as also the distribution of powers between the centre and the states. A Constitution must also be a dynamic document which should be able to grow and change according to the changing circumstances, needs and aspirations of the society and the people. A constitution develops through amendments. The makers of the Indian Constitution provided the method of Amendment of the Constitution in the Constitution itself. The Indian Constitution, unlike the Constitution of a federal state, is partly rigid and partly flexible. The idea of amending procedure has been borrowed from the Constitution of South Africa.

A Constitution to be living must be growing. For removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity etc., amendment of the Constitution is needed

The procedure for amendment is detailed under Article 368 in Part XX of the Constitution. This article specifies the power of the Parliament to amend the Constitution. There are three ways of amending theConstitution.

1. **Amendment by simple majority**:

There are a good number of Articles in the Constitution which are of transitory nature. Though they can be changed by Parliament by passing a law by simple majority, technically speaking changes made therein, are not to be considered as amendment of the Constitution. By simple majority is meant, simple majority of the members present and voting. For example, admission or establishment of new States (Art.2), formation of new States, changes in the names and boundaries of the States (Art.3), creation or abolition of Legislative Councils in the States (Art.169), salaries and allowances of the President, Governors and Judges of Supreme Court and High Courts, etc. can be made by the Parliament by passing a law by simplemajority.

The following provisions of the Constitution also fall under the samecategory.

(i) Second schedule of theconstitution.

(ii) Article 100(3) of the Constitution which fixes the quorum of transaction of business in the Parliament.

(iii) Article 105 of the constitution which deals with powers, privileges and immunities of members of Parliament.

(iv) Article 11 regarding acquisition and termination of citizenship. Article 81 relating to the delimitation of constituencies.

**2. Amendment by special majority:**

An amendment of the Constitution may be initiated only by the introduction of a bill for the purpose in either House of Parliament. When the bill is passed in each House by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the President for his assent. When the President gives his assent, the Constitution stands amended in accordance with the terms of the bill. Part III dealing with Fundamental Rights and Part IV dealing with Directive Principles of State Policy come under this category. Also, all parts of the Constitution, with the exception of the specific provisions mentioned in Art.368 can be amended by thismethod.

**3. Amendment by special majority and ratification by the State Legislatures**:

For the amendment of certain other provisions of the Constitution, a bill has to be passed by each House of the Parliament by a majority of the total membership of that House and by a majority not less than two-thirds of the members present and voting, then the amendment must be ratified by the state legislatures of not less than one-half of the states by resolution to that effect is required before the amendment Bill is presented to the President for his assent. The following provisions of the constitution fall under thiscategory:

(i) Election and manner of election of the President (Article 54 and 55);

(ii) Extent of the executive power of the Union (Article73);

(iii) Extent of the executive power of the States (Article 162); Union Judiciary (Chapter IV of PartV);

(iv) High Courts in the States (Chapter V of partVI);

(v) Legislative Relations between Centre and States (Chapter I of PartXI) (vii). Any of the Lists in the Seventhschedule;

(vi) Representation of states in the Parliament;

(vii) Provisions dealing with the amendment of theConstitution.

**SALIENT FEATURES OF THE AMENDMENT PROCESS**

The salient features of the Amendment Process are:

- Introduction only in either house of the Parliament: The bill for the amendment of the Constitution can be introduced in either House of Parliament and not in any State assembly.
- No advance sanction of the President is necessary:To introduce a Constitution Amendment bill in the Parliament, no prior permission of the President is required.
- Both houses of Parliament must pass it separately: An Amendment bill should be passed by both Houses of Parliament separately. The Constitution cannot be

amended in case of a deadlock between the two houses. There is no provision for a joint sitting if both the Houses differ.

- Meaning of membership of total majority: The expression majority of the total membership means that it is not the majority of the actual membership of the house but the majority of the total prescribed strengths of the house notwithstanding the vacancies therein.
- Special majority at every stage of passing the bill: Whether this special majority is needed at the time of final voting of the bill or even on the earlier stages of the bill. The Constitution amendment Bill even at its introduction stage must be supported by a two-thirds majority of members present and voting which should not be less than 50 percent of the total strengths. It means special majority is needed at the passing of every stage of the bill.
- Ratification of the legislatures of not less than one-half of the states: The amendment of the Articles mentioned in the provision of Article 368, must be ratified by one-half of the state legislatures by passing resolution in that respect. The expression State Legislature does not include the legislatures of the Union Territories. Wherever the State Legislature is bicameral, the resolutions must be passed by both the houses separately and the resolutions so passes do not require the signature or assent of theGovernor.
- Presidential assent: In the final stage, the Constitution Amendment bill is presented to the President for his assent which the president cannot refuse. But there is no time limit within which the President must give his assent. He can keep it pending for some time in the first instance, though ordinarily it is expected that he gives is assent as soon aspossible.

**Basic Structure of the Constitution**

It is to be mentioned here that even though the Parliament has the power to amend the Constitution as per Art. 368, it cannot amend the basic structure of the Constitution, or, in other words, certain basic features of the Constitution. In the Golak Nath Case of 1967, the Supreme Court gave the historical ruling that the Parliament had no power to amend Part III of the Constitution even in accordance with the provisions of Art.368. This judgement gave rise to a controversy over the issue of the power of the Parliament to amend the Constitution. The Parliament passed the 24$^{th}$ and the 25$^{th}$ Amendments to assert its power to amend every part of the Constitution including Part III dealing with Fundamental Rights. The KesavanandaBharati Case, 1973 reversed its judgment in the Golak Nath case and accepted the power of the Parliament to amend Part HI and all other parts of the Constitution, however without changing the basic structure of the Constitution. It was a landmark decision of the Supreme Court of India and the basis for the power of the Supreme Court to review, and strike down, amendments to the Constitution of India passed by the Indian parliament which conflict with or seek to alter the constitution's 'basic structure'.

The basic structure of the Constitution of India includes the Preamble emphasizing upon sovereign, secular, democratic, republic, unity and integrity of the nation; supremacy of the Constitution, independence of the judiciary, federal structure, balance between Fundamental Rights and Directive Principles of State Policy, Parliaments power to amend the Constitution, judicial review of the Supreme Court and rule of law.

As of January 2020, there have been 104Amendments to the Constitution of India since it was first enacted in1950. A National Commission to Review the Working of the Constitution was set up by the Government of India in February 2000 during the regime of the NDA Government. The commission was headed by the former Chief Justice of India, Justice Venkatachaliah. It had eleven members including judges, legal luminaries, constitutional and parliamentary experts, politicians, diplomats and media representatives. The main function of the commission was to review analyze and suggest amendments in the Constitution of India within the framework of the basic structure concept. The commission submitted its report on 31st March, 2002 with severalrecommendations.

## MAJOR CONSTITUTIONAL AMENDMENTS

### 1. The First Constitutional Amendment Act 1951

The First Amendment was passed in 1951 by the Provisional Parliament, which was elected on a limited franchise. The Statement of Reasons (SOR) relating to the first Amendment said; "Challenges to agrarian laws or laws relating to land reform were pending in courts and were holding up large schemes of land legislation through dilatory and wasteful litigation."

**Important Facts**

- The First Amendment Act amended Articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376.
- It inserted Articles 31A and 31B.
- It inserted Ninth Schedule to the Constitution to protect the land reform and other laws present in it from the judicial review.
- First Amendment Act had set the precedent of amending the Constitution to overcome judicial pronouncements to implement the programmes and policies of the Government.
- It placed reasonable restrictions on fundamental rights and added three more grounds of restrictions on freedom of speech such as public order, friendly relations with foreign states and incitement to an offence.
- Article 19(1) (g) of the Constitution confers the right of citizens of India to practice any profession or to carry on any occupation, trade or business. The Amendment expressly provided that State trading and nationalization of any trade or business by the state is not being invalid on the ground of the violation of the right to trade or business.

- In response to the verdict on State of Madras v. ChampakamDorairajan Case(1951), it made provision for special treatment of educationally and socially backward classes by adding the 9th Schedule to the Constitution. It preventedthe acts listed in the 9th Schedule from being subjected to judicial review.

**Reasons for the Amendment**

The citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written constitutions, freedom of speech and of the press is not regarded as debarring the State from punishing or preventing abuse of this freedom. So, the main objective was to amend Article 19 for the purposes indicated above and to insert provisions fully securing the constitutional validity of Zamindari abolition laws in general and certain specified State Acts in particular.

It is laid down in Article 46 as a Directive Principles of State Policy that the State should promote with special care to the educational and economic interests of the weaker sections of the people and protect them from social injustice. In order that any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory.

Certain amendments in respect of Articles dealing with the convening and proroguing of the sessions of Parliament was found necessary and are also incorporated in this Act. So also a few minor amendments in respect of Articles 341, 342, 372 and 376.

**The implications of the First Amendment Act, 1951**

Under the provisions of Article 31, laws placed in the Ninth Schedule cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens.Art.31-B is also retrospective in nature. So, even if a statute which has already been declared unconstitutional by a court of law is included with in the Schedule, it is deemed to be constitutionally valid from the date of its inception. In short, the judicial decision becomes void when the statute is included in the Schedule.

Article 31(A), has vested enormous power to the State with respect to the acquisition of estates or taking over of management of any property or corporation in public interest. It sought to exclude such acquisitions or from the scope of judicial review under Articles 14 and 19.

Even though the Supreme Court has held that judicial review, as a basic structure, cannot be taken away after the KesavanandaBharati case, 1973, Articles 31(A), 31(B) and 31(C) saved land reform legislations and gave priority to the implementation of the Directive Principles rather than to the individual liberty.

Ninth Schedule was widely misused.Ninth Schedule contains more than 250

legislations receiving protection under Ninth Schedule from the judicial scrutiny. With the burgeoning laws which are placed under the Ninth Schedule, it has today become a constitutional dustbin and house for every controversial law passed by the government of the day. Such a situation was not envisaged at the time, the First Amendment was enacted. For instance, former PM Indira Gandhi made amendments to the Representation of Peoples Acts of 1951 and 1974 and placed in the Ninth Schedule along with the Election Laws Amendment Act, 1975 to make her election valid.

**2. Forty Second Amendment Act 1975**

The 42nd Amendment of Indian Constitution is most comprehensive amendment to the Constitution and carried out major changes. It is also known as 'Mini Constitution'.According to the statement of objects and reasons of the Forty Second Amendment Act, the following are the reasons for the enactment of Forty Second Amendment Act;.

- To amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowedto be relied upon to frustrate socio-economic reforms for implementing the directive principles.
- To specify the fundamental duties of the citizens and make special provisions fordealing with anti-national activities, whether by individuals orassociations.
- As Parliament and the State Legislatures embody the will of the people so it is essential to establish the parliamentary supremacy in enacting Constitutional amendments.
- To strengthen the presumption in favour of the constitutionality of legislation enactedby Parliament and State Legislatures by providing for requirements as to the minimum number of judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid.
- To take away the jurisdiction of High Courts with regard to determination of Constitutional validity of Central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings with regard to validity of the same Central law in different High Courts and the consequent possibility of the Central law being valid in one State and invalid in another State.
- To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economicdevelopmentand progress,itisconsideredexpedient to providefor administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution. It is also necessary to make certain

modifications in the writ jurisdiction of the High Courts under Article 226.

- To avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the Constitution.

**Important Provisions**

- It amended Articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F.
- It inserted Articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A and Parts 4A and 14A. It also amended Schedule 7.
- The preamble has been amended to substitute the words 'Sovereign, Democratic, Republic', with the words 'Sovereign, Socialist, Secular, Democratic Republic' and the words 'Unity of the Nation' was substituted with 'Unity and Integrity of the Nation'.
- The scope of Article 31C was widened to cover all the directive principles laid down in the Constitution. Earlier Article 31C saved only laws giving effect to the directive principles of State policy specified in Article 39(b) and 39(c).
- New directives was added by new Articles 39A, 43A, 48A which, respectively, provide for equal justice and free legal aid to economically backward classes, participation of workers in the management of industries, and protection and improvement of environment and safeguarding of forests and wildlife.
- New Article 31D provides for the making of a Parliamentary law to prevent or prohibit anti national activity and anti-national associations. Further it was provided that Article 31D will not be deemed to be void on the ground that it takes away or abridges any of the fundamental rights conferred by Article 14, Article 19 and Article 31.
- New Article 32A was added to provide that the Supreme Court will have no jurisdiction to decide the constitutional validity of a State law in any writ proceedings under Article 32.
- New Part IVA containing Article 51A was added to provide lists of fundamental duties of citizens.
- Article 74(1) was amended to make the President to act in accordance with the advice of the Council of Ministers.
- Article 77 and Article 166 relating to the Union Government and State Government have been amended to provide that no court or other authority will be entitled to require the production of any rules framed for the transaction of Government business.
- Article 102(1)(a) was amended to provide that a person will be so disqualified if

he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliamentary law to disqualify offices will vest in Parliament instead of in the State Legislature.

- It amended the Articles 83 and 172 to increase the duration of the LokSabha and every Legislative Assembly from five to six years during a situation of emergency.
- It provided the Union Government to deploy personnel of armed forces in any State to deal with a 'grave situation of law and order'
- It curtailed the power of the Supreme Court and High Court with regard to the issue of writs and judicial review.
- Supremacy of the Parliament was established by this Forty Second Amendment Act with regard to the amendment of the Constitution. Article 368 has been amended to provide that no Constitutional Amendment will be called in question in any court on any ground.
- It transferred subjects like forests, education, weights and measures except establishments of standards, protection of wild animals and birds from the State List to the Concurrent List. New entry 20A was added in Concurrent List which is 'Population control and family planning'.
- Article 356 was amended to enlarge the period of operation of proclamation of failure of constitutional machinery in a State which has been approved by Parliament and the period for which the approved Proclamation can be renewed at a time was increased from 6 months to one year.

### 3. Forty Fourth Amendment Act, 1978

The 44th amendment of the Indian Constitution was significant as it removed partially the distortions that were introduced into the Constitution by 42nd Amendment. It wanted to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away fundamental rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary.

### Important Facts

The fundamental rights, including those of life and liberty, granted to citizens are capable of being taken away by a transient majority. It was, therefore, necessary to provide adequate safeguards against the recurrenceof such a contingency in the future and to ensure to the peoplethemselves an effective voice in determining the form of government under which they are to live. This was one of the primary objectives of the Act.

The Act wanted to take away the Right to Property from the category of fundamental rights and to provide that no person shall be deprived of his property save

in accordance with law.

A Proclamation of Emergency under Article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and made the rights of the citizen to move the courts for the enforcement of fundamental rights including the right to life and liberty to be suspended. Adequate safeguards were, therefore, necessary to ensure that this power is properly exercised and is not abused.

**Important provisions**

- The Right to Property was taken away from the category of fundamental rights and made as a legal right. Article 19(1)(f), which guarantees the citizens the right to acquire, hold and dispose of property and Article 31 relating to compulsory acquisition of property have been omitted. It was, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.
- It amended Articles 19, 22, 30, 31A, 31C, 38, 71, 74, 77, 83, 103, 105, 123, 132, 133, 134, 139A, 150, 166, 172, 192, 194, 213, 217, 225, 226, 227, 239B, 329, 352, 356, 358, 359, 360 and 371F and inserted Articles 134A and 361A. Further removed Articles 31, 257A and 329A. It also amended Part 12 and Schedule 9.
- A new directive principle has been inserted in Article 38, which provides that State shall secure social order for promotion of welfare of the people.
- Article 74(1) was amended to include a provision that President may require the Council of Ministers to reconsider any advice tendered to him but the President has to act in accordance with the advice tendered after such reconsideration. Earlier, the President has to act in accordance with the advice tendered by the Council of Ministers.
- Article 83 and 172 was amended to restore the terms of the House of the People and the State Assemblies to five years. Earlier the 42$^{nd}$ Constitutional Amendment Act had extended the life of LokSabha and RajyaSabha from 5 to 6 years.
- Article 103 and 192 relating respectively to decisions on questions as to disqualification of members of Parliament and of State Legislatures have been replaced to provide that the decision on the question as to disqualification, by the President in the case of a member of a State Legislature, will be in accordance with the opinion of the Election Commission.
- Amendments related to High Courts
- Article 226 was amended to restore to the High Courts their power to issue writs for any other purpose besides the enforcement of fundamental rights.
- Article 227 was amended to restore to the High Courts their power of superintendence over all courts and tribunals within its territorial jurisdiction.

- Article 257A which was related to power of Central Government to send its armed forces or other forces of the Union to address a grave situation there was omitted.

**Amendments related to emergency**

Article 352 was amended with the following changes:

- The ground of *'internal disturbance'* was substituted by the ground of *'armed rebellion'*.Proclamationof Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting toarmedrebellionwould notbe a ground for the issue of a Proclamation.
- A provision was included stating that the President will not issue a Proclamation of Emergency unless the decision of the Union Cabinet that such a Proclamation may be issued has to be communicated to him in writing.
- Proclamation of emergency has to be approved within a period of one month (instead of two months) by resolutions of both Houses of Parliament and has to be passed by a majority of the total membership of each house and by a majority of not less than two-thirds of the members present and voting in each House instead of a simple majority.
- For continuance of the proclamation of emergency, approval by resolutions of both Houses will be required every six months.
- Proclamation of emergency will be revoked whenever the House of the People passes a resolution by a simple majority disapproving its continuance.
- Ten per cent or more of the Members of Lok Sabha can request a special meeting for considering a resolution for disapproving the Proclamation.

Article 356 relating to the President's power to issue a proclamation in case of failure of constitutional machinery in a State is amended with the following provisions:

- The provision with regard to the breakdown of the constitutional machinery in the States was amended so as to provide that a Proclamation issued under Article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes were made to ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

Article 358 relating to the suspension of Article 19 was amended**:**

- The provisions of Article 19 will become suspended only in case of a Proclamation of Emergency issued on the ground of war or external aggression and not in the case of a Proclamation of Emergency issued on the ground of armed rebellion.

Article 359 relating to suspension of the enforcement of the rights conferred by Part III of the Constitution during Emergencies was amended:

- Enforcement of rights under Article 20 and 21 cannot be suspended.

**Other amendments**

- Article 360 Clause (5) was omitted which states that the satisfaction of the President as to the arising of a situation whereby the financial stability or credit of the country of any part is threatened is final and conclusive.
- Article 361A was inserted to provide constitutional protection in respect of publication of a substantially true report of the proceedings of Parliament and State Legislatures. But the protection will be absent in respect of proceedings of secret sittings.
- Entries such as 87 and 130 were omitted in the ninth schedule of the constitution. Entry 87 dealt with the Representation of People Act, 1951, 1974 and Election Laws (Amendment) Act, 1975 etc. Entry 130 dealt the Prevention of Publication of Objectionable Matter Act, 1976).
- As a further check against the misuse of the Emergency provisionsand to put the right to life and liberty on a secure footing, provisions was made such that the power to suspend the right to move the court forthe enforcement of a fundamental right cannot be exercise disrespect of the fundamental right to life and liberty. The right to liberty wasfurther strengthened by the provision that a law for preventive detention cannot authorize, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there issufficient cause for such detention. Article 22 has provisions for *preventive detention.*An additional safeguard was provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations ofthe Chief Justice of that High Court.
- With a view to avoiding delays, articles 132,133 and134was amended to insert a new article 134A to provide that a HighCourtshouldconsiderthequestionof granting acertificateforappealtoSupremeCourtimmediatelyafter the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136.

**Implications**

It modified the emergency provisions of the Constitution and prevented it from being misused in the future. Supreme Court and High Courts were restored with their jurisdiction and power which they enjoyed before the 42nd Amendment Act was passed. It restored the secular and democratic ideals present in the Constitution.

**4. Fifty Second Amendment Act, 1985**

Constitution 52nd Amendment Act, 1985 provided provisions related to '*anti-defection'* in India. In this amendment, Articles 101, 102, 190 and 191 were changed. It laid down the process by which legislators may be disqualified on grounds of defection and inserted schedule 10.

**Key Provisions**

It laid down the process by which legislators may be disqualified on grounds of defection. As per this process, a Member of Parliament or state legislature can be disqualified on the following grounds:

**Members of a Political Party**

- When voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote.
- When does not vote / abstains as per party's whip. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

**Independent Members**

- If a member has been elected as "Independent", he / she would be disqualified if joined a political party.

**Nominated Members**

- Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

**Exceptions**

- If a person is elected as speaker or chairman then he could resign from his party, and rejoin the party if he demitted that post. No disqualification in this case.
- A party could be merged into another if*at least one-thirds of its party legislators voted for the merger*. The law initially permitted splitting of parties, but that has now been made two-third.

**10th schedule**

- The amendment added the Tenth Schedule to the Constitution which contains provisions as to disqualification on the ground of defection.

**Bar of jurisdiction of courts***:*

- No court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under tenth Schedule.
- Article 102 of the Constitution was amended to provide that a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule. Similarly Article 191 was amended to provide that a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

**Implications**

When this law was passed, it was met with severe oppositions on logic that it impinged on right to free speech of legislators. A Public Interest Ligation (PIL) was filed in the Supreme Court in the form of famous *Kihoto Hollohon vs Zachillhu and Others (1992)*. This PIL had challenged the constitutional validity of the law. But SC upheld the constitutional validity of 10th schedule. Court also decided that the law does not violate any rights of free speech or basic structure of the parliamentary democracy.

However, Supreme Court also made some observations on Section 2(1) (b) of the Tenth schedule. Section 2(1) (b) reads that a member shall be disqualified if he votes or abstains from voting contrary to any direction issued by the political party. The judgement highlighted the need to limit disqualifications to votes crucial to the existence of the government and to matters integral to the electoral programme of the party, so as not to 'unduly impinge' on the freedom of speech of members. This further resulted in 91st Amendment Act, 2003.

### *5.* Eighty Sixth Amendment Act, 2002(Right to Education Act)

The 86th Constitutional Amendment (2002) inserted Article 21A in the Indian Constitution which states: "The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine."

As per this, the Right to Education (RTE) was made a fundamental right and removed from the list of Directive Principles of State Policy. Thus the Right to Education is the consequential legislation envisaged under the 86th Amendment. The Article incorporates the word "free" in its title. What it means is that no child (other than those admitted by his/her parents in a school not supported by the government) is liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

The Act is completely titled 'the Right of Children to Free and Compulsory Education Act'. It was passed by the Parliament in August 2009. When the Act came into force in 2010, India became one among 135 Countries where education is a fundamental right of every child.

This Act makes it obligatory on the part of the government to ensure admission, attendance and completion of elementary education by all children falling in the age bracket six to fourteen years. Essentially, this Act ensures free elementary education to all children in the economically weaker sections of society.

**The provisions of the RTE Act are briefly described below. The Act provides for:**

- The right of free and compulsory education to children until they complete their elementary education in a school in the neighborhood.
- The Act makes it clear that 'compulsory education' implies that it is an obligation on the part of the government to ensure the admission, attendance and completion of elementary education of children between the ages of six and fourteen. The word 'free' indicates that no charge is payable by the child which may prevent him/her from completing such education.
- The Act provides for the admission of a non-admitted child to a class of his/her appropriate age.
- It mentions the duties of the respective governments, the local authorities and parents in ensuring the education of a child. It also specifies the sharing of the financial burden between the central and the State Governments.
- It specifies standards and norms for Pupil Teacher Ratios (PTR), infrastructure and buildings, working days of the school and for the teachers.
- It also says there should be no urban-rural imbalance in teacher postings. The Act also provides for the prohibition of the employment of teachers for non-educational work, other than census, elections and disaster relief work.
- The Act provides that the teachers appointed should be appropriately trained and qualified.
- The Act prohibits:
    - Mental harassment and physical punishment.
    - Screening procedures for the admission of children.
    - Capitation fees.
    - Private tuition by the teachers.
    - Running schools with no recognition.
- The Act envisages that the curriculum should be developed in coherence with the values enshrined in the Indian Constitution, and that which would take care of the all-round development of the child. The curriculum should build on the knowledge of the child, on his/her potentiality and talents, help make the child free of trauma, fear and anxiety via a system that is both child-centric and child-friendly.

**Significance of RTE**

- With the passing of the Right to Education Act, India has moved to a rights-based approach towards implementing education for all.
- This Act casts a legal obligation on the state and Central Governments to execute the fundamental rights of a child (as per Article 21 A of the Constitution).
- The Act lays down specific standards for the student-teacher ratio, which is a very important concept in providing quality education.
- It also talks about providing separate toilet facilities for girls and boys, having adequate standards for classroom conditions, drinking water facilities, etc.
- The stress on avoiding the urban-rural imbalance in teachers' posting is important as there is a big gap in the quality and numbers regarding education in the villages compared to the urban areas in the country.
- The Act provides for zero tolerance against the harassment and discrimination of children. The prohibition of screening procedures for admission ensures that there would be no discrimination of children on the basis of caste, religion, gender, etc.
- The Act also mandates that no kid is detained until class 8. It introduced the Continuous Comprehensive Evaluation (CCE) system in 2009 to have grade-appropriate learning outcomes in schools.
- The Act also provides for the formation of a School Management Committee (SMC) in every school in order to promote participatory democracy and governance in all elementary schools. These committees have the authority to monitor the school's functioning and prepare developmental plans for it.
- The Act is justiciable and has a Grievance Redressal mechanism which permits people to take action when the provisions of the Act are not complied with.
- The RTE Act mandates for all private schools to reserve 25 per cent of their seats for children from socially disadvantaged and economically backward sections. This move is intended to boost social inclusion and pave the way for a more just and equal country.
- This provision is included in Section 12(1)(c) of the RTE Act. All schools (private, unaided, aided or special category) must reserve 25 percent of their seats at the entry-level for students from the Economically Weaker Sections (EWS) and disadvantaged groups.

When the rough version of the Act was drafted in 2005, there was a lot of outcry in the country against this large percentage of seats being reserved for the underprivileged. However, the framers of the draft stood their ground and were able to justify the 25 percent reservation in private schools.

This provision is a far-reaching move and perhaps the most important step in so far

as inclusive education is concerned.This provision seeks to achieve social integration.The loss incurred by the schools as a result of this would be reimbursed by the Central Government.The Act has increased enrolment in the upper primary level (Class 6-8) between 2009 and 2016 by 19.4%.In rural areas, in 2016, only 3.3% of children in the 6 – 14 years bracket were out of school.

### 6. 101st Amendment Act, 2016

There are several Articles in the Constitution of India which define the financial relations between Union and States. Since GST bills involve a huge interest of the State Governments, such a historical tax reform cannot take place without making suitable changes into the Constitution. For this purpose, 101st Amendment of the Constitution was passed. This Act received the assent of the President of India on 8th September, 2016. The important changes made in Constitution via this law are as follows:

**Article 246 (A)**

This is a new Article inserted in the Constitution. It says that (1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the legislature of every State, hasthe power to make laws with respect to Goods and Services Tax imposed by the Union or by such State. (2) Parliament has exclusive power to make laws with respect to Goods and Services Tax where the supply of goods, or of services, or both takes place in the course of inter-state trade or commerce.

**Notable Points from Article 246A**

- Both Union and States in India now have concurrent powers to make law with respect to goods & services
- The intra-state trade now comes under the jurisdiction of both Centre and State; while inter-state trade and commerce is exclusively under Central Government jurisdiction.

This Article 269Awhich reads as follows:

(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

*Explanation*—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used forpayment of

the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place ofsupply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

**Article 279-A**

This article provides for constitution of a GST Council by president within sixty days from this Act coming into force. The GST council will constitute the following members:

- Union Finance Minister as chairman of the council
- Union Minister of State in charge of Revenue or Finance
- One nominated member from each State who is in charge of finance or taxation

The GST council will be empowered to take decisions on the following:

- The taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the Goods and Services Tax;
- The goods and services that may be subjected to, or exempted from, the GST;
- Model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;
- The threshold limit of turnover below which goods and services may be exempted from GST;
- The rates including floor rates with bands of goods and services tax;
- Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- Any other matter relating to the Goods and Services Tax, as the Council may decide.
- All decisions taken at the GST council will be taken based on voting. Process of voting is clearly articulated in detail in the Constitutional Amendment Bill.

**Changes in the 7$^{th}$ Schedule**

This amendment has made following changes in 7$^{th}$ schedule of the constitution:

**Union List:**

- The entry 84 of Union List earlier comprised the duties on tobacco, alcoholic liquors, opium, Indian hemp, narcotic drugs and narcotics, medical and toilet preparations. After this amendment, it will comprise of Petroleum crude, high speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel, tobacco and tobacco products. Thus, these are now out of ambit of GST and subject to Union jurisdiction.
- Entry 92 (newspapers and on advertisements published therein) has been deleted thus, they are now under GST.
- Entry 92-C (Service Tax) has been now deleted from union list.

**State List**

- Under State list, entry 52 (entry tax for sale in state) has been deleted.
- In Entry 54, Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.; has been now replaced by Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."
- Entry 55 (advertisement taxes) have been deleted.
- Entry 62 (Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling) has been replaced by these taxes only to be levied by local governments (panchayats, municipality, regional council or district council.
- Other Important amendments in existing articles
- The residuary power of legislation of Parliament under article 248 is now subject to article 246A.
- Article 249 has been changed so that if 2/3rd majority resolution is passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.
- Article 250 has been amended so that parliament will have powers to make laws related to GST during emergency period.
- Article 268 has been amended so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed in GST.
- Article 268A has been repealed so now service tax is subsumed in GST.

- Article 269 would empower the parliament to make GST related laws for inter-state trade / commerce.
- Further, the amendment also provided that Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years. This resulted into theCompensation Cess Bill.

# MODULE : IV

## PARTY SYSTEM AND ELECTORAL POLITICS

### PARTY SYSTEM IN INDIA

Political scientists throughout the world are divided in their opinions on the importance of parties in a democracy, but the fact remains that the parties do exist and play vital roles in all modern democratic states and indeed in most states, whatever their ideological orientation. If India is to survive as a moving generally in the democratic direction, it must evolve a healthier party system or develop some effective alternatives toparties.

Almost all modern societies, democratic or totalitarian, developed or modernizing, large or small have some sort of party system. Though the written Constitution of India, like many other written Constitutions of the world, does not acknowledge the existence of political parties, yet they are central to our political process. They are both inevitable and necessary. They are inevitable because they are the only means whereby power can be obtained and exercised in an organized way. They are necessary because they form a bridge between the government and the governed which gives meaning to representative system.

Political parties are indispensable link between society and the government. In all modern democratic systems, political parties play a decisive role. However, in the third world countries, except India, free competition for popular support between different parties is rare. In India, after six decades of representative government and general elections, it has maintained a parliamentary system based on competitive and free elections.Ina political system,parties act as the carrier of ideas, opinions and approaches to social needs and national goals. Parties provide a link between the citizens and the government, between the electorate and the representative institutions. In fact a successful democracy requires a healthy party- system for its existence. Political parties are instruments through which citizens choose those who constitute the government. They explain merits and dangers of alternate policies and provide political education to the citizens. Political parties are extra constitutional institutions which are crucial in running democratic government of a country. They are essential for the proper functioning of different types of democratic government. Thesuccessful democratic functioning of any government depends upon the healthypolitical party system.

According to Finer, Political Parties are “organised bodies with voluntary membership, their concentrated energy being employed in the pursuit of political power”. In a democratic political system the most important institution is the political party. Between the social and political systems a sub-system is being provided by political parties. The strength of political party cannot be determined by its electoral performance alone. The status of members, the assimilative capacity of its ideology, its strength in the trade union field, the capacity for propaganda, influence over the key centers of the

economy, the capacity for neutralizing the electoral strength of the other parties, etc. may be reckoned as the potential though not manifest strength of a political party.

## MEANING AND ROLE OF POITICAL PARTIES

Human beings have always organised themselves in groups and larger formations. Political parties have emerged as one of these human organisations. In modern age the ideal form of government is run through one or the other method of representative institutions. All representative governments and representative institutions require the existence of political parties. A political party is an organised body of people who share certain common principles and goals regarding the political system of a country. The main purpose of political parties is toacquire and retain political power. Political parties which run the government are calledthe ruling party. In a coalition government, there may be more than one ruling party. Thosewho sit in the opposition and criticize and analyse the performance of the ruling party/parties generally or on specific issues are called opposition parties.

A political party assuch should have the following essential features:

- It must be an organised body of people with a formalmembership;
- It must have clearly spelt out policies andprogrammes;
- Its members should agree with its ideology, policies andprogrammes;
- It must aim at getting power through the democraticprocess;
- It must have a clear and acceptable leadership;and
- It must focus on broad issues and major areas of government policies

## EVOLUTION AND NATURE OF INDIAN PARTY SYSTEM

In every state, party system is the product of its historical evolution, civic tradition, cultural orientation and economy. In India the nature of party system is based on the nature of state diversities of regional cultures, wide geographic area demands of social change and economic development.

In India party system originated in the late 19$^{th}$ century as a response to the British colonial rule. During this period the party system represented an assertion of national solidarity for national liberation and a vision for new India. The beginning of the Indian party system can be traced to the formation of the Indian National Congress as a political platform in 1885. Later various other parties were formed. The policy of divide and rule and the introduction of separate communal electorate led to the formation of the communal and caste based parties like Hindu Mahasabha, Muslim League, Akali Dal,etc.

The political parties everywhere endeavor to replace the traditional power structure. In Kerala and, as a matter of fact in the whole of India, the traditional power structure was threatened with demolition by five factors- the nationalist movement, adult

franchise, land reforms, trade unionism and political parties. The nationalist movement sought to unify society and promised the introduction of adult franchise at the down of independence. Land reforms and trade unionism radically altered the relations between individuals, groups and more than anything between the owner of the means of production and the worker. The political parties by the maintenance of discipline and the possession of the capacity for the distribution of favour made onslaughts on the traditional powerstructure.

The successful democratic functioning of any government depends upon the healthy political party system. Bryce has remarked that "political parties are inevitable" for the successful working of democracy.

## MAIN FEATURES OF INDIAN PARTY SYSTEM

Indian party system is different from the party system in the western democracies. Some critics say that India has parties, but no party system. They argued that there are many political parties, big and small in the country. At the same time there is nothing like emotional or psychological attachment of the people to a particular party or parties.

Main features of the Indian party system are thefollowing:

### 1. One Dominant Party System:

India in the words of Morris Jones, is not a "one party state but it is a one dominant party system", since independence a large number of parties came into being, but the Congress has managed to retain a dominant position. The Indian National Congress enjoyed wide popular support all over the country till 1967 election. It was the ruling party at the Centre between 1947 and 1977, 1980-1989, and 1991-1996. Towards the last decade of both centuries, Indian party system took a new turn with a multi –party system dominated by the regional parties.

Even after the split of 1969, the Congress under the leadership of Mrs. Indira Gandhi, managed to maintain its dominant position at the Centre as well as in most of the states. In the 1971election to the LokSabha Mrs. Gandhi swept the polls and the Congress returned to power with a three –fourth majority. An extra constitutional centre of power was created under the leadership of her younger son Sanjay Gandhi. This character of the Congress party led to the declaration of internal emergency in1975.

Another election was hold in March 1977, which led to the defeat of the Congress. With the disintegration of the Janata Party in 1979, Mrs. Indira Gandhi again came to power in the 1980 LokSabha elections. In 1984 Rajiv Gandhi came to power as a result of the assassination of Mrs. Gandhi. In the 1989 election, the National Front under the Prime Minister shipof Sri.V.P. Singh came to power by defeating the Congress under Rajiv Gandhi. The Congress under the leadership of Prime Minister P.V NarasimhaRao came to

power as a result of 1991 elections. In 1996 election United Front under the leadership of Deva Gowda and later I .K Gujral came into power at the centre. The eleventh LokSabha came to an end in December 1997. In the 1998 and 1999 LokSabha elections no single party got majority. A United Front under the leadership of AtalBihari Vajpayee formed the government with the support of number of parties. Since 1998, Indian party system became a multi-party system with coalitiongovernment

**2. Mushroom growth of PoliticalParties**:

There has been a mushroom growth of national, regional, communal and personalist political parties in India. No other democratic country has such a multiplicity of parties. Most of them came into existence after the disintegration of the Janata Party in 1979. Today the Congress [I], The Communist Party of India, Communist Party of India [Marxist], The BharatiyaJanata Party and the Janata Dal, BahujanSamaj Party and National Congress Party are the only parties of national significance.In India, the law does not regulate the formation and functioning of political parties most of the political parties have no mass base.

**3. Regional PoliticalParties**

Another feature of the Indian party system is that each state has its own political parties. Most of these regional parties have no ideological commitments. They represent the interest of particular linguistic, religious, regional, and ethnic, caste or cultural groups. Some of them are communal in character, others are openlyseparatist.

Most important regional parties are National Conference in Jammu & Kashmir, DMK and AIADMK in Tamil Nadu, Akali Dal in Punjab, Telugu Desam in Andhra Pradesh, Kerala Congress and Muslim League in Kerala etc.

**4. Role of Caste and CommunalParties**

Caste and community play an important role in the working of the Indian party system. Some parties are openly communal in character. The other parties which claim to be secular are not free from caste and communal considerations. Every party chooses its candidates according to the caste and communal composition of the constituency. Even appeal to the voters as well as selection of ministers is on caste on communalbasis.

**5. Lack of Ideological Commitment**.

Ideology is considered to be the core of a political party. It is necessary for mobilizing its organization and to motivate its members. Despite functioning on the basis of ideological commitment, almost all political parties in India have stood to capture power to get power; the parties are ready even to sacrifice their ideology. Every party swears by Gandhism, democracy, socialism and secularism. Every so called secular party

join hands with communal or caste parties in the formation of governments. In 1977, Jana Sangh was a constituent of the Janata party supported by communist parties, Muslim League and so on.

6. **Role ofIndividuals**.

Certain individuals of personalities dominated Indian parties. The leader of the party is often elected by its members but once elected the party functions according to the wishes and fancies of the leader. Some of the parties bear the name of their leader. For example, Congress [I] ,Congress [S], Lok Dal[A], Lok Dal[B] , Kerala Congress[M][J] and so on.

7. **Defection.**

Defection is a pervasive feature of Indian Party System. When India became independent there were two major parties only, Indian National Congress and the Communist Party of India. They were organizationally well built and commanded loyalty of their members. Today there is no such thing as party loyalty. Political defection has ruined the Congress and all other party that came into existence after independence. This epidemic led to the passing of the Anti –defection Law1985.

8. **Organisational Drawbacks**.

Except the Communist Parties and the BJP no party in India can claim some sort of party organization. Other parties are mere crowds without definite membership, organization or discipline. Most parties maintain no membership registers, keep no accounts and hold no organizational elections. The office bearers of these parties are either self-appointed or nominated by top leaders.

9. **FragmentedOpposition**.

The opposition in India is unable to constitute an alternative to the ruling party. They have neither been able to a strong opposition nor have they succeeded in creating a United Front in 1977, for the first time the Janata constituted by a member of parties came to power but within two years it failed and disintegrated. Even today the opposition is not in a position to form a United Front because of the selfish style and interest of someleaders.

## NATIONAL POLITICAL PARTIES

In India political parties are broadly divided into All India parties and Regional parties. All India parties are national parties. National parties receive their support from various segments of society. They put up their candidates for the Lok Sabha election across state lines. Now, there were eight National Parties and 48 State Parties, recognised by the Election Commission. The Congress (I), the Communist Party of India (CPI), The Communist Party of India (Marxist), Bharatiya Janata Party, Bahujan Samaj Party and Nationalist Congress Party , All India Trinamool Congress and National People's Party are major recognised national parties.

## INDIAN NATIONAL CONGRESS

INC, also commonly called the Congress is one of the two major contemporary political parties in India, the other being the BharatiyaJanata Party. It is one of the largest and oldest democratically-operating political parties in the world. The organisation was founded during the British Colonial times in 1885.

The founders included a prominent member of the Theosophical Society, Allan Octavian Hume, DadabhaiNaoroji and DinshawWacha. In the following decades, the Indian National Congress became a pivotal participant in the Indian Independence Movement, with over 15 million members and over 70 million participants in its struggle against British colonial rule in India. After independence in 1947, it became the nation's dominant political party; in the 15 general elections since independence, the Congress has won an outright majority on six occasions, and has led the ruling coalition a further four times, heading the Central Government for a total of 49 years.There have been seven Congress Prime Ministers, the first being Jawaharlal Nehru, serving from 1947–64 and the most recent beingManmohanSingh, serving from 2004-14. The party's social liberal platform is largely considered to be on the Centre-left of the Indian political spectrum.

The Indian National Congress was established on 27th December 1885 in Bombay. The party has succeeded in creating a broad and powerful anti-imperialist movement consisting of different classes of people. The Indian National Congress, which led the freedom struggle, was more in the nature of a mass movement than a political party. The Congress represents all classes and communities in our society. It also represents different ideological viewpoints. Indian National Congress was elitist in character. The Congress under the leadership of Gandhiji was converted into a mass movement from an elite party. Under Gandhijithe Congress acquired an organizational structure, which reflects the village society of India. The Congress acquired experience in running provincial governments under the scheme of provincial autonomy during 1937-1939. This experience enabled the party to handle political power, as a ruling party, in the Independent India. After Independence, the Indian National Congress as the ruling party, further consolidated and expanded its support base. It increasedits support from the rural people and among peasants.

After the death of PanditJawaharlal Nehru in 1964 until the split in 1969, the Congress was in a crisis in both ideological and organisational terms. This was due to the failure of the Congress in the 1967 general elections. In the 1967 election the Congress returned to power at the centre at the same time it lost control over six states.

The split of 1969 resulted in the formation of two parties, the Congress (1) and Congress (0). In the 1971 General Election the Congress (I), under the leadership of Mrs. Indira Gandhi swept the Lok Sabha elections. In 1972 Assembly Election, the Congress (I) captured most of the states. This revealed that the Congress (I) led by Indira Gandhi was the successor of the Indian National Congress. The election results of 1971 and 72 made Indira Gandhi arch leader of the Congress (I) and gradually the party was converted into a

political organisation of the Supreme Leader. This was followed by the growth of some extra-constitutional centre of power created by Sanjay Gandhi. Centralisation of power and self-style leadership of the Congress led to declaration of Internal Emergency in 1975. During the period of emergency the Congress became highly unpopular.

In the 1977 election to the Lok Sabha the Congress for the first time in history, was defeated and Janata Party came to power. In 1977, LokSabha elections even Indira Gandhi lost her seat in her home constituency. This resulted in a split within the party, leading to the emergence of the Congress (1). Many of the old and experienced leaders left the party, blaming her for its humiliating defeat in the elections. As a result the new party-Congress (Indira) became completely identified with her personality. Many of the party's top decision-making agencies, such as the Congress Working Committee and the All-India Congress Committee lost their powers. Similarly, state party organisations were also brought under her direct control. She built a pyramid like organization thatwas run by her or her henchmen. Under Indira's leadership the Congress Party simply became an instrument of personal power. She also sought to use the organisation for dynastic succession. First she groomed Sanjay, heryounger son, to take over the leadership of the party, but after his accidental death in June 1980, she brought in her elder son,Rajiv Gandhi.

**Ideology and Policy Positions**

Since the 1950s, the INC has favoured liberal positions (the term ‘liberal’ in this sense describes modern liberalism, not classical liberalism) with support for social justice and mixed economy. INC strongly supportsliberal nationalism, a kind of nationalism compatible +with values of freedom, tolerance, equality, and individual rights. Historically, the party has favoured farmers, labourers, labour unions, and religious and ethnic minorities; it has opposed unregulated business and finance. In recent decades, the party has adopted a centrist economic and socially progressive agenda and has begun to advocate for more social justice, affirmative action, a balanced budget, and a market. The economic policy adopted by the modern INC is free market policies, though at the same time it is in favour of taking a cautious approach when it comes to liberalising the economy claiming it is to help ensure that the weaker sectors are not affected too hard by the changes that come with liberalisation. In the 1990s, however, it endorsed market reforms, including privatisation and the deregulation of the economy. It also has supported secular policies that encourage equal rights for all citizens, including those in lower castes. The party supports the somewhat controversial concept of family planning with birth control. Throughout much of the Cold War period, the Congress Party championed a foreign policy of nonalignment, which called for India to form ties with both the West and communist countries but to avoid formal alliances with either. Nonetheless, American support for Pakistan led the party to endorse a friendship treaty with the Soviet Union in 1971. In recent decades, the party began advocating welfare spending programs targeted at thepoor.

In 2004, when the Congress-led United Progressive Alliance (UPA) came to power, its chairperson Sonia Gandhi unexpectedly relinquished the premiership to Manmohan Singh. This Singh-led UPA – I Government executed several key legislations and projects, including the Rural Health Mission, Unique Identification Authority, the Rural Employment Guarantee scheme and The Right to InformationAct.

## THE COMMUNIST PARTY OF INDIA (CPI)

The Communist Party of India (CPI) was formed in December 26, 1926. It remained an illegal organisation until 1942 when the British accepted its support for the Allied War effort. After 1947 there were a number of changes in the party tactics and the period was marked by the splits. The first split in 1964 coincided with the schism in international communism and the new party came into being namelyCommunist Party of India (Marxist). The Party again subjected to a split and Maoist Communist Party was formed on April 22, 1969, which was Lenin's 100th birthday. It styled itself as the Communist Party of India (Marxist-Leninist) and claimed Mao as itsguide.

In 1949 the Party turned to terrorism, sabotage and strikes. In 1948, P.C. Joshi was replaced as general secretary by B.T. Ranadive, with the advancement of more militant 'left' line. Ranadiveemphasised the working class as the instrument of revolution and discounted the peasant uprising in the Telengana region of Hyderabad. During this period Nehru was denounced as a 'running dog of imperialism' and the Congress, in both its foreign and its domestic policy, as the reactionary captive of capitalist and landlord elements. But with the new political leadership in the Soviet Union and the ongoing process of de-Stalinization under Khrushchev, the Soviets decided to befriend the Nehrugovernment.

This change in Soviet foreign policy forced the CPI to alter its course of action. The CPI was officially advised to abandon its adventurist tactics. The policy shift was welcomed by those within the party notably PC. Joshi, S.A. Dange and Ajoy Ghosh, were favoured participation in the forthcoming elections. In 1951, the revisionist line won out, with the selection of Ajoy Ghosh as General Secretary of the Party. Ghosh, from a centrist position, led the party toward 'constitutional communism'. The CPI supported Indian foreign policy and extended its full support to all progressive policies and measures of the government. In 1958, the CPI adopted the Amritsar Resolution and pledged to seek power and social change through parliamentary means. The dominant faction within the party supported Nehru's 'progressive' policies, especially his foreign policy. During the 1969 split in the Congress Party, and later during the national emergency, the CPI consistently supported Indira Gandhi and hergovernment.

The CPI membership is concentrated in four States: Bihar, Andhra Pradesh, Kerala and West Bengal. Three other States have significant enrolments: Uttar Pradesh, Tamil Nadu and Punjab. In the CPI, the workers and wage-earners constituted 17 per cent of the party membership. The 1982 report of the party says that agricultural workers constitute a sizeable section of the Party membership and in some States account for more than 50 per

cent of the membership. The Party is also entrusted with the task of building mass organisations, particularly trade unions, Kisan Sabhas and Agricultural Worker's Associations.

**Ideology and Programme**

Trough now critical of the Congress policies, the CPI has lost its racialcredibility after its slavish support of the emergency. It is committed to moderate programme of parliamentary socialism and to responsive co-operation with the Congress. Its leadership aims at building a 'national democratic state' in which the political power is wielded by a coalition of progressive democratic forces including Communists. The party stands to ending indifference to the welfare of the working class, agricultural labour, Scheduled Castes and Scheduled tribes. It aims at generating more jobs, implementing radical land reforms, reducing foreign debt by restricting imports, reversing the trend of handling over public sector units to private industrialists and above all, arresting the steep rise in prices.

The CPI favours co-operation with all democratic and progressive forces including 'the centre' and 'the left' of the Congress Party. They hope to enlarge the party's parliamentary strength through electoral Pacts with the like-minded parties like BSP, SP, RJD and Congress.

**Electoral Performance**

In the first general election, next to the Congress the CPI secured the largest number of Assembly seats winning 198 seats of the 587 it contested. The Party had notable success in Travancore-Cochin, Madras, Hyderabad, Tripura and West Bengal. The Party was itself more than satisfied. The results of the second general election were even more encouraging to the Party. In these elections it emerged as the second largest party in the country, not merely in terms of seats won but also in terms of votes polled. The party captured majority in Kerala in 1957 and formed the first-democratically elected Communist government under E.M.S. Namboodiripad. The Party became the main opposition group in both houses of Parliament with 27 seats in the LokSabha. In the words of Professor Rasheeduddin Khan, "The communists were the main opposition in the LokSabha throughout the Nehru era. In the first LokSabha with 16 members, in the second and the third LokSabha with 27 and 29 members respectively. A turning point in the history of the CPI came when in1957 they won an absolute majority in the Kerala Assembly and formed the first communist government in India." The party retained the position as the largest opposition group in the LokSabha after fourth general elections in 1967.In 1971 it secured 23seats. In 1977 it secured only 7 seats. In 1980, the CPI could manage to increase its winning tally to 11 seats. In 1984, the CPI has won only 6 seats of the LokSabha. In the 1989 LokSabha elections the party won 12 seats, while in tenth LokSabha elections (1991) the Party won 14 seats. In 1996 elections for 11th LokSabha the Party has a share of 12 seats, in the 1998 LokSabha elections, the CPI obtained 9 seats and 4 seats in the 1999 LokSabha elections.

## THE COMMUNIST PARTY OF INDIA (MARXIST)

A split in the Communist Party of India in1964, led to the formation of India's second Communist Party called the Communist Party of India (Marxist). In early 1962, in the wake of the Chinese invasion of Indian territory, as criticism of the CPI mounted, the National Council resolved to condemn the Chinese action as 'aggression' and to call upon the Indian people to 'unite in defense of the motherland'. In protest the leftists resigned from the party secretariat and even EMS Namboodiripad submitted his resignation as general secretary of the party. At the National Council meeting in 1964 the left attempted, without success, to oust party chairman Dange. They came armed with a letter written by Dange in 1964, in which he had offered to co-operate with the British in exchange for his release from jail. Denouncing the letter as a forgery the Council refused to consider the charges. The left and centre, led by Namboodiripad and JyotiBasu, staged a walk-out and appealed to the party to repudiate Dange and the 'reformist line'. The split became final when all signatories to the appeals were suspended from the party. The left, organised as the Communist Party of India (Marxist), claimed to be the legitimate communist party of India.

The CPI (M) was born into a hostile political climate. At the time of the holding of its Calcutta Congress, large sections of its leaders and cadres were jailed without trial. Again on 29–30 December, over a thousand CPI (M) cadres were arrested and detained, and held in jail without trial. In 1965 new waves of arrests of CPI(M) cadres took place in West Bengal, as the party launched agitations against the rise in fares in the Calcutta Tramways and against the then prevailing food crisis. State-wide general strikes and hartals were observed on 5 August 1965, 10–11 March 1966 and 6 April 1966. The March 1966 general strike results in several deaths in confrontations with police forces.

Also in Kerala, mass arrests of CPI(M) cadres were carried out during 1965. In Bihar, the party called for a *Bandh* (general strike) in Patna on 9 August 1965 in protest against the Congress State. During the strike, police resorted to violent actions against the organisers of the strike. The strike was followed by agitations in other parts of thestate.

### Ideology and Programme

The CPM is inspired by an ideology which having shifted from a revolutionary to a reformist orientation, is committed to development with redistribution. It is characterized as a ‘developmental and democratic socialist ideology’. It emphasis is on the preservation of democratic institutions on the one hand and the ‘use of state power for facilitating development with redistribution’ on the other.

The CPM favoured a tactic of united front from below, of alliance with peasants and workers to defeat the Congress, which it regarded as a party of the bourgeoisie and landlord classes. Elections were to be used as a means to mobilise the masses; the Constitution was to be used as 'an instrument of struggle'. The Marxists sought to 'break

the constitution from within'. Today the CPM is characterised as a radical-democratic party. Its emphasis is on the preservation ofdemocratic institutions. It lays emphasis on the unity and integrity of India and favours the restructuring of Centre-State relations.

## THE BHARATIYA JANATA PARTY (BJP)

The Bharatiya Janata Party (BJP) was formed in 1980. Since then it has extended its Influence in the Hindi belt, Gujarat and Maharashtra. Since 1989, it has been trying to extend its base in South India also. Since its formation in 1980, the BJP has been increasing its number of seats in the Lok Sabha gradually. In 1984, general elections it secured only two seats. In 1989 the number of seats increased to 88. In 1991 general elections BJP's strength in the Lok Sabha increased to 122 which rose to 161 in the 1996 elections. In 1998 it won 180 seats and in 1999 its number in Lok Sabha increased to 182. In the 1999 general elections, BJP contested as an alliance partner in the National Democratic Alliance (NDA). In the 2004 general elections BJP as an alliance of NDA could not get the required majority. It played the role of the opposition party. The BJP has emerged as a significant national party but its support base as yet is limited to certain areas, rather than spread all over India. Today it occupy a dominant position in ever were in India. BJP could form government at the center in two subsequent elections 2014 and 2019 with clear majority under the coalition front NDA.

### Ideology and Programme

The BJP believes in Gandhian socialism. The party says that its socialism is inspired not only by Gandhi and JP but also by Deendayal Upadhyaya. It stands for positive secularism and clean government. While laying emphasis on the 'Hindu idiom' in its poll manifesto, the party stands for justice for all and appeasement of none.

It has accepted the principle of reservation on caste basis, of course leaving apart the creamy sections. Party promises 33 per cent reservation of seats in Parliament and State Legislatures for women. The party continues with ideal of nationalism based on 'Hindutva'. The party lays emphasis on 'Swadeshi' to encourage Indian industry and production as against multi-nationals or foreign companies. The party also favours smaller and stronger states, desires to abolish Article 370, favours uniform civil code and would like to establish Human Rights Commission.

## ALL INDIA TRINAMOOL CONGRESS

Founded in January 1998 by Mamata Banerjee, the All India Trinamool Congress (AITMC), popularly called the Trinamool Congress or AITMC, is a National political party. It has formed the present government in the 2011 Vidhan Sabha elections in the state of West Bengal, after defeating the 34-year rule of the Communist Party of India (Marxist) or CPIM. The AITMC which is a breakaway faction of the Indian National Congress, has a centre-left political position with political ideologies of secularism and populism

The AITMC is the brainchild of Mamata Banerjee. After being a member of the Congress for two decades, Banerjee formed her own party in 1998, as approved by the Election Commission of India. AITMC formed an alliance with the BJP in the NDA coalition at the Centre in 1999. Mamata Banerjee was allotted the Ministry of Railways during the NDA regime, but she resigned within a short span of time, having split with the NDA. In the general elections in 2009, the AITMC aligned with the Congress in the UPA coalition. However, due to the 'anti-people' policies of the Congress-led UPA government such as introducing FDI in retail sector, disinvestment of profit-making PSUs and increasing the price of diesel, the AITMC severed ties with the United Progressive Alliance (UPA) government in September 2012.

Today, the AITMC is the sixth largest political party in the Lok Sabha with a total of nineteen seats. It has a visible presence not only in the state of West Bengal, but other states like Tripura, Manipur and Arunachal Pradesh, where it has a significant number of MLAs in the Vidhan Sabha of these respective states. In the state Legislative Assemblies of Assam and Uttar Pradesh, the AITMC has one MLA each. It draws its mass base primarily from the states of West Bengal and Manipur.

**NATIONAL PEOPLE'S PARTY**

In January 2013, P. A. Sangma launched the party on the national level. He announced that his party would be in alliance with the National Democratic Alliance led by BharatiyaJanta Party. Sangma also reiterated that though the membership of the party is open to all, it shall be a tribalcentric party.

Sangma who has been a nine-time Member of Parliament, had announced to form a new political party soon after his expulsion from the Nationalist Congress Party in July 2012, when he refused to accept party decision to quit the 2012 Indian presidential election. Currently it is a part of North-East Regional Political Front consisting of political parties of the northeast which has supported the National Democratic Alliance.

In 2015, in a rare move election commission has suspended NPP for its failure to provide party's expenditure during Lok Sabha Elections held in 2014. NPP became first party to get suspended by EC. In September 2015, the leaders of six parties—Samajwadi Party, Nationalist Congress Party, Jan Adhikar Party, SamrasSamaj Party, National People's Party and Samajwadi Janata Party announced the formation of a third front known as the Socialist Secular Morcha. National People's Party is fighting on 3 seats as part of Socialist Secular Morcha in 2015 Bihar Legislative Assembly election.

In May 2016, after the Bharatiya Janata Party led National Democratic Alliance formed its first government in Assam, and formed a new alliance called the North-East Democratic Alliance (NEDA) with HimantaBiswaSarma as its convener. The Chief Ministers of the north eastern states of Sikkim, Assam and Nagaland too belong to this alliance. Thus, the National People's Party joined the BJP-led NEDA.The NPP contested 9 candidates in the 2017 Manipur Legislative Assembly election and won 4 seats.

In March 2018, The NPP came second behind Indian National Congress by winning 19 seats in the 2018 Meghalaya legislative assembly election. Conrad Sangma staked claim to form government with a letter of support from the 34 MLA, that included 19 from NPP, 6 from United Democratic Party, 4 from People's Democratic Front, two each from Hill State People's Democratic Party and Bharatiya Janata Party, and an independent. It was accorded national party status on 7 June 2019. It is the first political party from Northeastern India to have attained this status.

## NATIONAL CONGRESS PARTY

The National Congress party formed on 25$^{th}$May 1999 by Sharad Pawar and Tariq Anwar. Maharashtra is the influential base of the party and its current leader Shri Sharad Pawar.The partysymbol is clock. The party became the part of United progressive Alliance (UPA) government at the centre.

### Ideology and Programme

The founding principles of the party as pronounced by the party were:

1. Strengthening the forces of nationalism with an emphasis on the egalitarian and secular ethos of the Indian Republic and combating fundamentalism and sectarianism
2. Maintaining the unity and integrity of India by strengthening federalism and decentralization of power up to the village level
3. Promoting economic growth through competition, self-reliance, individual initiative and enterprises with emphasis on equality and social justice.
4. Rule of law and constitutional order based on Parliamentary and participatory democracy.
5. Empowerment of weaker sections, the scheduled Caste,Scheduled Tribes, OBCs, the disabled and the women.
6. Strengthening the forces of peace within the country attempting to secure universal and non- discriminatory disarmament and
7. Institutionalized and democratic functioning of the party.

### Electoral Performance

The State of Maharashtra is the stronghold of NCP. The NCP was a coalition partner in Maharashtra government since October 2004 assembly elections and won 71 seats. In 2004 Lok Sabha elections the party won 9 seats with 1.8% votes, while in 2019 elections the NCP won 9 seats with 2.24 % vote share though it support base increased marginally. Due to anti-incumbency against Congress and corruption charges against NCP, the NCP reduced 6 seats with 0.4% vote share in 2014 Lok Sabha election. Manifesto for the 2019 Lok Sabha elections, The Nationalist Congress Party promised to open talks with the Pakistan. The party said that if voted to power the party will discuss terrorism with Pakistan and tagline its manifesto is ‘Aao Milkar Desh Banaye’. But NCP won only 5 seats with 1.39 % vote share in 2019 Lok Sabha elections. NCP base is more skewed, with Marathas contributing 30 percent of the party’s vote.

## BAHUJAN SAMAJ PARTY

BahujanSamaj Party (BSP) is formed on 14 April 1984 as an expression of Dalit resurgence. It was formed by Kanshi Ram, a Dalit Ramdasia Sikh from Punjab. Its election symbol is an elephant. The roots of BahujanSamaj Party and consequently, its nature and ideology are different from other Dalit movements/parties. It has been emerging slowly in certain parts of the country both as a result of opportunities provided by a democratic system and failure of other national parties to provide social justice to Dalits. In late 1960s, poverty, economic backwardness and increasing atrocities on SCs by the upper and Middle caste led to the formation of most of the militant organization- Dalit Panters in Maharashtra, BhimSena and Dalit Sangarsh Samiti in Karnataka.

### Ideology and Programme

Its ideology is "Social Transformation and Economic Emancipation" of the "Bahujan Samaj". It also includes religious minorities like Sikhs, Muslims, Christians, Jains and Parsis. They see these groups as victims of the "Manuwadi" system for millennia, a system which benefited upper-caste Hindus only. B. R. Ambedkar, a champion of lower-caste rights, is an important ideological inspiration. The party claims not to be prejudiced against upper-caste Hindus. In 2008, while addressing the audience, Mayawati said: "Our policies and ideology are not against any particular caste or religion. If we were anti-upper caste, we would not have given tickets to candidates from upper castes to contest elections".Satish Chandra Mishra, a BSP senior leader, is upper caste. The party also believes in egalitarianism and holds a strong emphasis on social justice.The main propaganda plank is to fight against Bhramanical Culture or Hindu order based on the caste system, which promotes graded inequalities and social injustice.They are known as ‘Ambhedhkarite Parties’ with militant ideologies. It is based on the writings and speeches of Ambedkar but draws heavily from those of Kanshi Ram.

### Electoral Performance

The BSP entered electoral politics soon after its formation and has steadily building up its strength at the State and the national level. The 2014, Lok Sabha elections saw the BSP become the third-largest national party of India in terms of vote percentage, having 4.2% of the vote across the country but gaining no seats. The BSP has its main base in the Indian state of Uttar Pradesh where it was the second-largest party in the 2019 Indian general election with 19.3% of votes and in the 2017 and in Uttar Pradesh elections with over 22% of votes.

## REGIONAL POLITICAL PARTIES: AN OVERVIEW

One of the notable features of the Indian Party System is the presence of a large number of regional parties. By regional party we mean a party which generally operates within a limited geographical area and its activities are confined only to a single or handful of states. Further as compared to the broad ranging diverse interests of national parties, the regional parties represent the interest of a particular area. In simple words, regional parties differ from All India parties both in terms of their outlook as well as the interests they

pursue. Their activities are focused on specific issues concerning the region and they operate within the limited area. They merely seek to capture power at the state or regional level and do not aspire to control the national government. It is noteworthy that in India, the number of regional parties is much larger than the national parties and some of the States are being ruled by the regional parties, viz., Andhra Pradesh, Tamil Nadu, Odisha, West Bengal, Jammu & Kashmir etc.

It is suggested that a regional political party must satisfy three specific criteria. The first criterion must, naturally be the territorial differential. By its very nature, regional parties restrict its area of action to a single region or a state. The second criterion of a regional political party is that, typically, it articulates and seeks to defend a regionally based ethnic or religious-cultural identity. Thus DMK and AIDMK act as the voice and champions of Tamil cultural nationalism against the inroads of what is perceived as the Aryan imperialism of the north. In the third place, it is in the very nature of a regional party to be "primarily concerned with exploiting local sources of discontent or pressing a variety of prim or dial demands based on language, caste, community or religion". This is so because the electoral destiny of these parties is incapablylinked with their respective regions.

The emergence of regional parties in India has a geo-political rationale. India is a continental polity with a wide range of socio-cultural and ethnic diversities. Under condition of democratic culture, these diversities are bound to and indeed did aspire for political autonomy. One way of expression of political autonomy in a federation is the formation of regional parties and groups, in order to bargain with the center for a better regionaldevelopment.

## ROLE OF REGIONAL AND STATE PARTIES.

In India, each state has its own political parties. Most of these regional parties have no ideological commitments. They represent the interest of particular linguistic, religious, regional, and ethnic, caste or cultural groups. Generally they stand for greater autonomy for the states. Some of them are communal in character, others are openlyseparatist.

The most important of the state parties are the Dravida Munnetra Kazhagam [DMK], All India Anna Dravida Munnetra Kazhagam [AIADMK], Telugu Desham, Assam Gana Parishad, Akali Dal, Samajwadi Party, Rashtriya Janata Dal [RJD], Trinmul Congress, Tamil Manila Congress [TMC] and National Conference. Some of these are of great significance in their localities, and can give the Congress stiff competition in these areas. They usually are built around a few leading personalities and emphasize communal, caste or sectional interests andloyalties.

In their own localities a number of local parties or groupings have scored impressive victories. Notable among these were the Gantantra Parished and Utkal Congress in Orissa, the Jharkand party in Bihar, Samyukta Maharashra Samiti and the Maha Gujarat Janata Parishad in Maharashtra and Gujarat sections of Mumbai state, Shiv

Sena in Maharashtra, Akali Dal in Punjab, DMK and ANNA-DMK in Tamil Nadu, National Conference in Jammu and Kashmir, the Muslim League in Kerala and SP in Uttar Pradesh.

The Akali Dal in Punjab, the National Conference in Jammu Kashmir, and the AIDMK and DMK in Tamil Nadu have become a powerful political force in their respective states. Barely, six months after coming into existence, Telugu Desam successfully stormed the Congress stronghold in Andhra Pradesh. The Assam GanaParishad was formed in the fall of 1985, and was swept to power by the year end. For some years, Congress has had an informal alliance with the AIADMK in Tamil Nadu and it joined Farooq Abdullah's coalition government in Jammu and Kashmir. The All Party Hill Leaders Conference [APHLC], which was mainly responsible for the creation in 1970 of an autonomous tribal state of Meghalaya within the state of Assam and the Nagaland nationalist organization, which had been continuously in power since the state of Nagaland was formed in 1963, are parties of regional outlook. In West Bengal, the Bangla Congress, Forward Block and Socialist Unity Centre, the Bangla Congress and the Trinamool Congress in west Bengal, the Kerala Congress in Kerala and Tamil Manila Congress [TMC] in Tamil Nadu were outstanding examples of political groups that were formed almost exclusively by dissident Congressman. An outstanding example was the BharatiyaKranti Dal [BKD] which won 98 seats in the U.P Assembly in the mid-term elections in1969.

Regional parties in state politics are a greater force and they have captured the governmental power from the hands of All- India Parties in states like Punjab, Tamil Nadu, Andhra Pradesh, Assam, Mizoram, Sikkim, Nagaland, Goa, Orissa, Meghalaya, Manipur and Jammu and Kashmir. In Indian politics they are gradually emerging as a powerful force. For example, in the 1977 and 1980 LokSabha elections, regional parties won 52 and 35 seats respectively. After the Congress split of 1969, Mrs. Gandhis government at the centre had depended on the support of regional parties like DMK. In the 8$^{th}$LokSabha, Telugu Desam, aregional party had the largest number of MPs from the opposition bench. After the verdict of the ninth LokSabha elections, regional parties like DMK and TDP, as a partner of National Front swept to power at the Centre.

The outcome of the 12$^{th}$ and 13$^{th}$LokSabha elections [1998 and 1999] brings home the truth that the path to power in this society lies in the creation of political, regional and social alliances. The BJP with its allies has emerged as the largest vote capturer in the country. The BJP led coalition embraces the entire gamut of Indian politics- from Akali Dal to AIADMK or DMK and from Samata to Trinamul. C.P Bhambhri has very lightly observed "The LokSabha elections of 1989, 1998 and 1999 provided an opportunity to major regional parties to play an important role in mainstream politics"

**The Major Regional Political Parties**

They are number of regional parties exist here, mostly short lived and often ad hoc purpose as a bargaining century. We will now discuss in somewhat more details those

regional parties which are showing some stable characteristics.A brief sketch of the ideologies of some such parties is given below.

**1.Akali Dal**

It is the oldest and the most powerful party in Punjab. For more than 80 years it is spearheading the cause of Sikhs. The party membership is confined to Sikhs. Though of late some non-sikh members are given the party symbol to contest elections it is very rare. There is a social component involved in the structure of the party. This party is supported by rich Jat Sikh peasantry. The Scheduled Castes among the Sikhs do not find any place in the party's high ranks. The major interest of the party lies in increasing the prosperity of the Sikhpeasantry.

Historically the Akali movement started around 1920's. To begin with it was a socio-religious reform movement but soon got converted into a political one. Around 1940, it demanded an independent state for Sikhs. But after partition the demand was abandoned and instead the party insisted for forming a separate state for Punjabi speaking people. For the first time in 1950's the Akali Dal started an agitation for carving out a separate state. It was in 1966, that demand got fulfilled. It is both a religious and political party. Religiously, it wants the protection of Sikh Panth. Any interference with the affairs of Gurudwaras is treated as an attack on their Panth. The bitterness after ‘operation blue star’ is the example of Sikh sentiments. The sentiment might be shared by all the sikh people cutting across the political lines but it is the Akali Dal and such other Sikh political organizations who articulate the sentiments in a more politically profound manner.

Apart from protecting the sanctity of Sikh panth the Akali Dal also has certain definite views on constitutional provisions regarding Federal Structure. It stands for the state's autonomy. In a resolution the party demanded “centre's sphere should be limited to foreign affairs, defence and communication". In October 1973, the Akali Dal passed a resolution which comes to be known as ‘Anandapur Sahib Resolution’. This resolution gave a clear picture of the goals for which the party stands. Some of the points in the resolution are controversial as for instance treating Sikhs as a separate qaum-nation.

The main points are as under:

1) The Akali Dal is the very embodiment of the hopes and aspirations of the sikh nation (qaum). It is fully entitled to its representation.

2) The concept of a distinct and independent identity of Panth should be recognized.

3) The political goal is the pre- eminence of the Khalsa.

4) Restrict the centre's authority to defence, foreign relations, currency and communication only.

## 2. The DravidaMunnetraKazhagam(D.M.K.)

In the Tamil speaking areas of south India, a movement to stress the separate identity of Dravidians started around 20's. It was basically a revolt against Brahminical domination. E.V.R. who was with Congress left the party on ideological ground – that the party is dominated by North Indians. The party named DravidaKazhagam (D.K.) was formed in 1945. It developed a thesis that the South Indians – Dravidians are original inhabitants. The Aryans came from outside India, They drove the Dravidians down to south and established their imperialism. The North-South division is clear and candid. So the traditional Hindu religion which is based on Vedas, Sanskrit literature is denounced as cultural imperialism of Aryans. The Brahmins were accused of helping to spread Aryan culture down the south. The animosity against Brahmins made E.V.R. to deny the existence of God. The copies of Ramayana the holy book of Hindus were burnt to protest the Aryan expansion. For D.K. Ravana is a Dravidian hero. Such type of fanatical ideologies permeated around 40's and 50's. There was a time when Dravidian parties wanted to form a separate independent state out of India.

However, with the formation of Indian constitution the earlier demand for secession was given up. Now the demand is more for state autonomy. The D.K. was split and a new party the D.M.K. was formed. It faced many political upheavals. It partly moderated its demands. But the two main planks of ideology remain intact. It is totally opposed to Hindi as the national language. Its opposition to Hindi is rather based on illogical foundation. Because Hindi is supposed to be closer to Sanskrit and since Sanskrit represents Brahninical culture, the acceptance of that language would amount to enslavement to Aryan culture. Its fanatical approach to language issue remains intact. In its new demand for greater state autonomy the party wants the constitution to be amended to secure 'Utmost autonomy to the states'. A constitutional amendment to provide English to be continued as an official language and to delete the provision empowering Hindi as national language is demanded. In social field the party stands for reservation in Jobs and such pro-active measures. It is being recognized as champion of Backward Castes because to opposition to Brahmins. Though critics say the party is dominated of certain specific castes like Nadars, Mudliars and Scheduled Castes have no place in important positions in the party. D.M.K. wants the article 356 to be removed. It opposes the power of centre to impose the President's rule in states. While agreeing on almost all issues on foreign policy of Indian govt., it strongly feels for the Tamils in Sri Lanka. It is opposed to Sri- Lanka govt's policy towards the Tamils and had lent support to Tamil's right in Sri Lanka.

Recently it forced the central govt. to abandon its proclaimed policy of non-interference in other countries affairs by international organization and made the govt. to vote in favour of a U.N. resolution condemning Sri Lanka army excesses on Tamil civilians and calling for international observations. This is clearly a pressure tactics and D.M.K. uses it very calculatedly. For the party Tamils interests pre-dominants the other. Whether it is inter-state water dispute like Cauvery or the height of MuIIaperiyar dam in Kerala D.M.K. never looks beyond the narrow Tamil internets.

The party split in 1972 and a new party by the name AIADMK (All INDIAAnnaDravidaMunnetraKajagam)wasformedbyM.G.RamachandranwhofellfromD. M.K. chief Karunanidhi. The party faced many ups and downs after the demise of the founder M.G.R. but under the charismatic leadership of Jayalalita the party has become very strong and currently ruling Tamil Nadu. The party accepted 'Annaism' as the basis of its ideology. It is a combination of self-respect of Tamils, Parliamentary Democracy, rationalism and Democracy. In economics it stands for socialism and public sector. Creation of casteless society is another ideal of the party. Basically there is no difference in ideology between D.M.K. and AIADMK. But the attitudeofAIADMKtowardsissueslikeculture,language,Indianreligioussentimentsismoretol erable and flexible. It did not subscribe to the view of north vs. south. Nor it is opposed to Hindu religion and customs. Infact Jayalalita is chief minister advised the central govt. to allow Hindus to construct Ram temple at Ayodhya. The concepts of anti-Hindi, anti-north do not find much space in party's ideology.

On economic issues, the party is opposed to FDI in retail trade and criticized the fresh liberalization measures undertaken by govt. When the central govt. wanted to form a body to fight terrorist activities Jayalalita took the lead in opposing that move, as she argued it would encroach upon the powers of state. In this endeavour she joined hands with NarendraModi, the C.M. of Gujrat. So basically a federalist party AIDMK leader wants the states to have greater say on public policymeasures.

3. **Shivsena**

The party was formed by Bal Thackeray around 1967. It stands for Justice for Marathi people. Its argument is local Maharashrian Youth are denied Job opportunities because of influx of outsiders. It stands for 'sons of soil' theory which proclaims 80% jobs be reserved for local youth. Originally the party started as the anti-communist party, but later made alliances with many parties. The party takes inspirations from historical figures like Shivaji who is credited to be the pride of Marathi culture. It wants Marathi should be used in all official correspondence. It had strong views on inter-state boundary disputes. The border dispute with Karnataka is very emotional significance to the party. It had resorted to violent demonstrations seeking the merger of Marathi speaking areas like Belgam into Maharashtra. It stands for the unity of Maharashtra and is opposed to formation of Vidharbha as a separate state.

The party also exhibited fervent nationalism and has openly spoken against Muslim communalism. It was once anti-north but of late it has become anti-Muslim. The party prides itself in 'Hindutva' philosophy and has alliance with the BJP. Though many time it takes a different stand from the BJP on issues concerning Marathi interest. The party basically revivalist in nature is also trying to expand the base by forging alliance with one of the splinter group of the Republican Party of India. (Aathwale faction) The party faced split when a new faction in the name of Maharashtra NavNirmanSena wasformed.

4. **TelguDesam**:-

This is a comparatively new political phenomenon in Andhra politics which had a strong Congress foot hold, started in 1982 by the film star N. T. Rama Rao. As mentioned earlier, the party originated as a reaction to Indira Gandhi's policy of frequently changing unpopular chief ministers and imposing them on the Andhra Pradesh. The party emphasizes the Telugu people's self- respect and pride. Delhi's intervention meant the Telugu people are incapable of self- government. This had caught up with regional pride. Basically the party follows populist policies. N.T.R. started 2 rupees 'Rice Scheme', for poor people and was very popular despite heavy losses to public exchequer; similarly the reservation of lower castes, old age pensioners, was announced. Telugu Desam like all regional parties stands for greater state autonomy. But there is no animosity against other states, nor did the party ever speak of secession.

The party took a lead in forming National Front and installed a non-congress govt. at Centre. The party faced internal revolt and with the death of N.T. Rama Rao, his son-in-law who managed the revolt took the reins of the party. The new ideology of Telugu Desam is rather vague. To begin with it pleaded for technological revolution and computer knowledge for all social evils, did not give importance to agriculture and faithfully implemented the World Bank programme. After losing power the party is trying to win back popular support by announcement of populist schemes like free power supply to farmers, writing off loans to farmers and increase in reservation to the O.B.C. Recently the party wants legislative seats to be reserved to the O.B.C.s. To prove its secular image it got itself distanced from its one timely B.J.P. and announcing reservation for Muslims. Opposing liberalization, reformation measures the party is befriending with leftist forces at state and national level.

5. **National Conference**

The party is confined to Jammu and Kashmir. It wants the separate status of J& K to remain intact. It prepared a report called National Conferences' Autonomy Report (1999). Following are the main points of the report. 1) Grant permanent status to Article 370, the existing provision is deemed to be a temporary measure. 2) Put J& K out of the ambit of the Supreme Court and the Election commission. 3) Reserve all subjects except Defence, External affairs and Communication for the state. 4) Change the nomenclature of J & k Governor to Sadar e- Riyasat and chief minister to Prime Minister. 5) Review Centre – state financial relations.

Comptroller and Auditor General's, Scrutiny should not apply to J & K of course, this autonomy plan was rejected by various political parties. But the spirit behind the resolution shows the N.C. is not still prepared to accept the truth that J & K is a part of Indian Union. Though not openly advocating secession it is aiming to weaken the centre power as much as possible and wants to carve out a separate political entity for itself. There was also demand for withdrawing the army from disturbed areas and removing the Army Special Power Act. All these developments are a challenge to

Union govt. How it can win the confidence of local people and keep the unity of country intact is the crucialissue.

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# MODULE V

## INDIAN CONSTITUTION AND HUMAN RIGHTS

Human Rights are those essential rights which every individual have against the State or other public authority by virtue of his being a 'member of the human family', irrespective of any other consideration. The concept of human rights is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'human rights' is of recent origin, emerging from (Post-second World War) International Charters and Conventions. It would, therefore, be logical to start with the concept of natural rights, which eventually led to the formulation of 'human rights'.

### HUMAN RIGHTS IN INDIA

Our country was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of ‘dignity of the individual’.

### HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

The Constitution of independent India came into force on 26$^{th}$ January. The impact of the Universal Declaration of Human Rights on drafting part III of the Constitution is apparent. India has acceded to the Universal Declaration of Human Rights as well as to the subsequent International Covenants of Economic, Social and Cultural rights and Civil & Political Rights adopted by the Central Assembly of the United Nations. Fundamental Rights enshrined in Part III of the Constitution have emerged from the doctrine of natural rights. The Natural Rights transformed into fundamental rights operate as a constitutional limitation or a restriction on the powers of the organs set up by the Constitution or the State action. Judicial Review, justiciabilityor enforcement became an inseparable concomitant of fundamental rights.

As no right of freedom can be absolute, limitations have been imposed to each fundamental right in the interest of securing social justice. Enforcement of fundamental rights can even be suspended or prevented in emergency. Besides Fundamental Rights, Directive Principles enshrined in Part IV of the Constitution epitomise the ideals, aspirations the sentiments, the precepts and the goals of our entire freedom movement. The wisdom of the forefathers of the Constitution was justified in incorporating non-justiciable human rights in the concrete shape of the directive principles.

### ENUMERATION OF POLITICAL AND CIVIL FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA

The political and civil rights are termed as 'Fundamental Rights' and enshrined in

Part-III of the Indian Constitution which includes the following rights:—

(1) Right to equality - Articles 14, 15 and 16.

(2) Right to six freedoms - Article 19.

(a) Freedom of speech and expression.

(b) Freedom to assemble peacefully and without arms.

(c) Freedom to form associations or unions.

(d) Freedom to move freely throughout the Territory of India.

(e) Freedom to reside and settle in any part of the territory of India.

(f) Freedom to practice any profession or carry on any occupation, trade or business.

(3) Right to life and personal liberty - Articles 20, 21 and 22.

(4) Right to freedom of religion - Articles 25, 26, 27 and 28.

(5) Cultural and educational rights - Articles 29 and 30.

(6) Right to property - Article 31. (The 44th amendment has deleted this right and re-enacted it in Article 300 A, as a legal right).

(7) Right against exploitation - Articles 23 and 24. (8) Right to Constitutional remedies - Article 32.

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**RIGHT TO LIFE AND PERSONAL LIBERTY**

**Art. 21** of our Constitution guarantees right to life and personal liberty. The Article runs asfollows:- "No person shall be deprived of his life or personal liberty except according to procedure established by law." Our Apex Court has been expanding over the decades, the dimensions of Art 21 i. e. Right to Life & Personal Liberty.

The expression 'life' does not mean animal existence. Right to life guaranteed under Art. 21 of the Constitution have certain positive aspects and as such subject to well-organised limitation apart from obligation of the State not to deprive a person of his life except in accordance with a valid law. So Article 21 has wide implications. Right to Privacy, right to fresh air, right to clean environment are implicit in this article.

**ENUMERATION OF CULTURAL, SOCIAL AND ECONOMICRIGHTS UNDER THE DIRECTIVE PRINCIPLES OF THE CON-STITUTION OF INDIA**

Part-IVoftheIndianConstitutiondetailing'DirectivePrinciplesof State Policy' lays down the following rights. The socialist and well- fare precepts have particularly been incorporated in Article 39 of theConstitution.

(1) Righttoadequatemeansoflivelihood-Article39*(a)*.

(2) Rightagainsteconomicexploitation-Article39*(e)*.Thehealth andstrengthofbothsexesandtenderageofchildrenarenot abused and are not forced by economic necessity to enter avocations unsuited to their age orstrength.

(3) Righttobothsexestoequalpayforequalwork-Article39*(d)*.

(4) Right to work - Article41.

(5) Right to leisure and rest - Article41.

(6) Right to public assistance in case of unemployment, old age sickness (Social Security) - Article41.

Part IV of the Constitution also incorporates the Directive Principles of economic and social justice and certain ideals which the State should strive to achieve. Article 38 directs the State to bring about the welfare of the people by securing and protecting effectively a social order where justice, social, political and economic shall inform all the institutions of national life.

(7) It directs the State to create conditions where there will be no concentration of wealth and means of production to the common detriment and where the ownership and control of the material resources, of the community are so distributed as best to sub-serve the common good. [Article 39 *(b)* and *(c)*].

Further,theDirectivePrinciplesareprovidedintheArticlesof the Constitution mentioned hereinbelow:

(8) *Article42*-Justandhumanconditionsofworkandmaternity leave.

(9) *Article 43* - Mandatory Payment of living wages *etc.* to workers.

(10) *Article 44* - Uniform CivilCode.

(11) *Article 45* - Free and CompulsoryEducation.

(12) *Article 46* - Promotion of educational and economicinterests of scheduled castes, scheduled tribes and other weaker sections.

(13) *Article47*-DutyoftheStatetoraisethelevelofnutritionand the Standard of living and to improve publichealth.

(14) *Article48*-Organisationofagricultureandanimalhusbandry.

(15) *Article 49* - Protection of monuments and places andobjects of nationalimportance.

(16) *Article 50* - Separation of Judiciary fromExecutive.

(17) *Article 51* - Promotion of international peace andsecurity.

By 42nd Amendment of the Constitution, three moreArticles were addedtherein:

(18) *Article 43A* - Participation of workers in management of industries.

(19) *Article 39A* - Equitable justice and free legalaid.

(20) *Article48A*-Protectionandimprovementofenvironmentand safeguarding of forests and wildlife.

**UNENUMERATEDINDIVIDUALRIGHTSOR'NATURALRIGHTS'UNDER WRITTENCONSTITUTION**

In India, the Supreme Court has propounded the ‘theory of emanation' has departed from the traditional view that Part III of theConstitutionprovidesanexhaustivelistofFundamentalRights. The theory, basically means that even though right is not specifically mentioned in PartIII, it may still be regarded as a fundamental right if it can be regarded as an integral part of an amed fundamental right; in other words, "it emanates from a named fundamental right or its existence is' necessary' in order to make the exercise of an amed fundamental right meaningful and effective”.(Maneka*vs.* Union of India, A.I.R. 1978 S.C. 597, Para77).

Applying the emanationtheory, the Supreme Court has evolved the following unenumerated rights as, Fundamental Rights:

(1) The right to privacy (as an emanation from Arts 19(1)(d)and 21).

(2) The right to human dignity (as an emanation from Arts. 14, 19,21).

(3) The right to travel abroad (as an emanation from Art.21)

(4) The right against torture, cruel or unusual punishment orde- grading treatment, (as an emanation from Art. 21); such as solitaryconfinement.

(5) The right to speedy trial (emanating from Art.21).

(6) The right to free legal aid in criminal trial (from Art.21).

(7) The right against delayedexecution.

(8) The right against custodianviolence.

(9) Therightstoshelter,todoctor'sassistance,therighttohealth.

(10) The right to pollution freeenvironment.

(11) Therighttoeducationofachilduntilheattainstheageof14.

(12) The freedom of Press, and right to listen, and right to know. (From Art. 19(1)(a)).

## CONSTITUTIONAL AND LEGISLATIVE PROVISIONS REGARDING THE MINORITIES

The Constitution of India uses the word 'minority' or its plural form in some Articles – 29 to 30 and 350A to 350B – but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens having a distinct language, script or culture". This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B – relate to linguistic minorities only.

In common parlance, the expression 'minority' means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc. The Oxford Dictionary defines,"Minority as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion". A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the "minority as those non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population."

As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities, since over 80 per cent of the population of the country professes the Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 per cent) and Sikhs (1.9 per cent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the state/union territory level. At the state/union territory level – which is quite important in a federal structure like ours – the

Muslims are the majority in the state of Jammu and Kashmir and the union territory of Lakshadweep. In the states of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the state of Punjab. No other religious community among the minorities is a majority in any other State/UT.

The National Commission for Minorities Act 1992 says that "Minority, for the purpose of the act, means a community notified as such by the Central Government" – Section 2(7). Acting under this provision, on October 23, 1993 the Central Government notified the Muslim, Christian, Sikh, Buddhist and Parsi (Zoroastrian) communities to be regarded as minorities for the purpose of this act.

The Supreme Court in TMA Pai Foundation &Orsvs. State of Karnataka &Ors (2002) has held that for the purpose of Article 30 a minority, whether linguistic or religious, is determinable with reference to a state and not by taking into consideration the population of the country as a whole. Incidentally, Scheduled Castes and Scheduled Tribes are also to be identified at the state/UT level. In terms of Articles 341 to 342 of the Constitution, castes, races or tribes or parts of or groups within castes, races or tribes are to be notified as scheduled castes or scheduled tribes in relation to the state or union territory, as the case may be.

**Rights of minorities**

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibit all kinds of discrimination – racial, religious, etc. The UN Declaration against All Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the states to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

In India, Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally i.e. every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16). However, the provisions of these two articles do take adequate cognisance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large-scale poverty and illiteracy. Obviously, an absolute equality among all sections of the people regardless of specific handicaps would have resulted in perpetuation of those handicaps. There can be equality only among equals. Equality means relative equality and

not absolute equality. Therefore the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason. Discrimination with reasons entails rational classification having nexus with constitutionally permissible objects. Article 15 permits the state to make "any special provisions" for women, children, "any socially and educationally backward class of citizens" and scheduled castes and scheduled tribes. Article 15 has recently been amended by the Constitution (93rd Amendment) Act 2005 to empower the state to make special provisions, by law, for admission of socially and educationally backward classes of citizens or scheduled castes/tribes to educational institutions, including private educational institutions, whether aided or unaided by the state, other than minority educational institutions. Article 16 too has an enabling provision that permits the state for making provisions for the reservation in appointments of posts in favour of "any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state". Notably, while Article 15 speaks of "any socially and educationally backward class of citizens" and the scheduled castes and scheduled tribes without qualifying backwardness with social and educational attributes and without a special reference to scheduled castes/scheduled tribes, Article16 speaks of "any backward class of citizens".

The words 'class' and 'caste' are not synonymous expressions and do not carry the same meaning. While Articles 15 and 16 empower the state to make special provisions for backward "classes", they prohibit discrimination only on the ground of 'caste' or 'religion'. In other words, positive discrimination on the ground of caste or religion coupled with other grounds such as social and educational backwardness is constitutionally permissible and therefore, under a given circumstance, it may be possible to treat a caste or religious group as a "class". Therefore even though Article 15 does not mention minorities in specific terms, minorities who are socially and educationally backward are clearly within the ambit of the term "any socially and educationally backward classes" in Article 15 and "any backward class" in Article 16. Indeed the Central Government and State Governments have included sections of religious minorities in the list of Backward Classes and have provided for reservation for them. The Supreme Court, in Indira Sawhney&Ors vs Union of India, has held that an entire community can be treated as a 'class' based on its social and educational backwardness. The court noted that the government of Karnataka, based on an extensive survey conducted by them, had identified the entire Muslim community inhabiting that state as a backward class and have provided for reservations for them. The expression 'backward classes' is religion-neutral and not linked with caste and may well include any caste or religious community which as a class suffered from social and educational backwardness.

Though economic backwardness is one of the most important – or perhaps the single most important – reasons responsible for social and educational backwardness alone of a class, the Constitution does not specifically refer to it in Articles 15 and 16. In the Indira Sawhney case, the Supreme Court had observed: "It is therefore clear that economic

criterion by itself will not identify the backward classes under Article 16(4). The economic backwardness of the backward classes under Article 16(4) has to be on account of their social and educational backwardness. Hence no reservation of posts in services under the state, based exclusively on economic criterion, would be valid under clause (1) of Article 16 of the Constitution."

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibit all kinds of discrimination – racial, religious, etc.

It is however notable that in the chapter of the Constitution relating to Directive Principles of State Policy, Article 46 mandates the state to "promote with special care the educational and economic interests of the weaker sections of the people… and… protect them from social injustice and all forms of exploitation." This Article refers to scheduled castes/scheduled tribes "in particular" but does not restrict to them the scope of "weaker sections of the society".

Article 340 of the Constitution empowered the president to appoint a commission "to investigate the conditions of socially and educationally backward classes" but did not make it mandatory.

**Other Constitutional Safeguards**

The other measures of protection and safeguard provided by the Constitution in Part III or elsewhere having a bearing on the status and rights of minorities are:

(i) Freedom of conscience and free profession, practice and propagation of religion (Article 25);

(ii) Freedom to manage religious affairs (Article 26);

(iii) Freedom as to payment of taxes for promotion of any particular religion (Article 27);

(iv) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28);

(v) Special provision relating to language spoken by a section of the population of a state (Article 347);

(vi) Language to be used in representations for redress of grievances (Article 350);

(vii) Facilities for instruction in mother tongue at primary stage (Article 350A);

(viii) Special officer for linguistic minorities (Article 350B).

**Article 29**

Articles 29 and 30 deals with Cultural and Educational Rights of Minorities. Article 29 provides that:

(1) any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same; and

(2) no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Unlike Article 30, the text of Article 29 does not specifically refer to minorities though it is quite obvious that the article is intended to protect and preserve the cultural and linguistic identity of the minorities. However, its scope is not necessarily confined to minorities. The protection of Article 29 is available to "any section of the citizens residing in the territory of India" and this may as well include the majority. However, India is a colourful conglomeration of numerous races, religions, sects, languages, scripts, culture and traditions. The minorities, whether based on religion or language, are quite understandably keen on preserving and propagating their religious, cultural and linguistic identity and heritage. Article 29 guarantees exactly that. There may appear to be some overlapping in language and expressions employed in Articles 15(1) and 29(2). However, Article 15(1) contains a general prohibition on discrimination by the state against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them whereas Article 29(2) affords protection against a particular species of state action, viz admission into educational institutions maintained by the state or receiving aid out of state funds.

**Article 30**

Article 30 is a minority-specific provision that protects the right of minorities to establish and administer educational institutions. It provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". Clause (1A) of Article 30, which was inserted by the Constitution (44th Amendment) Act 1978, provides that "in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause". Article 30 further provides that "the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language".

It would be worthwhile to note that minority educational institutions referred to in clause (1) of Article 30 have been kept out of the purview of Article 15(4) of the Constitution which empowers the state to make provisions by law for the advancement of any socially and educationally backward classes of citizens or scheduled castes/scheduled tribes in regard to their admission to educational institutions (including private educational institutions), whether aided or unaided.

Articles 29 and 30 have been grouped together under a common head, namely "Cultural and Educational Rights". Together they confer four distinct rights on minorities. These include the right of:

(a) any section of citizens to conserve its own language, script or culture;

(b) all religious and linguistic minorities to establish and administer educational institutions of their choice;

(c) an educational institution against discrimination by state in the matter of state aid (on the ground that it is under the management of a religious or linguistic minority); and

(d) the citizen against denial of admission to any state-maintained or state-aided educational institution.

Article 29, especially clause (1) thereof, is more generally worded whereas Article 30 is focused on the right of minorities to (i) establish and (ii) administer educational institutions. Notwithstanding the fact that the right of the minority to establish and administer educational institutions would be protected by Article 19(1)(g), the framers of the Constitution incorporated Article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and administer educational institutions. In the absence of such an explicit provision, it might have been possible for the state to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause (6) of Article 19.

**Legal Framework for Protection of Religious Minorities**

Legislation such as the Protection of Civil Rights Act 1955 [formerly known as the Untouchability (Offences) Act 1955] and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 has been enacted by the Central Government to protect persons belonging to scheduled castes and scheduled tribes from untouchability, discrimination, humiliation, etc. No legislation of similar nature exists for minorities though it may be argued that unlike the latter act, viz the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the former act, viz the Protection of Civil Rights Act 1955, is applicable across the board to all cases of untouchability-related offences regardless of religion. Therefore if a scheduled caste convert to Islam or Christianity (or any other person) is subjected to untouchability, the perpetrators of the offences may be proceeded against under the provisions of the act. However, no precise information is available in regard to the act being invoked to protect a person of a minority community.

The law enforcing agencies appear to be harbouring a misconception that the Protection of Civil Rights Act 1955 has been enacted to protect only scheduled castes against enforcement of untouchability-related offences. There is thus a case for sensitising the law enforcement authorities/agencies in this regard. Having said that, one cannot resist the impression that the Protection of Civil Rights Act 1955 has failed to make much of an impact due to its tardy implementation notwithstanding the fact that the offences under this act are cognisable and triable summarily. The annual report on the Protection of Civil Rights Act for the year 2003, laid on the table of each House of Parliament under Section

15A(4) of the act, reveals that only 12 states and UTs had registered cases under the act during that year. Out of 651 cases so registered, 76.04 per cent (495) cases were registered in Andhra Pradesh alone. The number of cases registered in nine states/UTs varied from one to 17. Only in three states, the number of cases registered exceeded 20. The report also reveals that out of 2,348 cases (out of 8,137 cases, including brought/forward cases) disposed of by courts during the year, a measly 13 cases constituting 0.55 per cent ended in conviction. This appears to be a sad commentary on the state of affairs in regard to investigation and prosecution. To say that the practice of untouchability does not exist in 23 remaining states/UTs would be belying the truth that is known to the world. It only denotes pathetic inaction on the part of law enforcing agencies. The provisions of the Protection of Civil Rights Act need to be enforced vigorously with a view to ensuring that the law serves the purpose it has been enacted for.

Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally

With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc, the Central Government had constituted a non-statutory Minorities Commission in 1978. In 1992, the National Commission for Minorities Act was enacted to provide for constitution of a statutory commission. The National Commission for Minorities was set up under the act in 1993. The functions of the commission include:

(a) evaluating the progress of the development of minorities under the union and states;

(b) monitoring the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the state legislatures;

(c) making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;

(d) looking into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;

(e) causing studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or theSGovernment; and

(h) making periodical or special reports to the central government on any matter pertaining to minorities and, in particular, difficulties confronted by them.

A Constitution amendment bill, viz the Constitution (103rd Amendment) Bill 2004, has been introduced so as to add a new article, viz Article 340A, to constitute a National Commission for Minorities with a Constitutional status. A bill to repeal the National Commission for Minorities Act 1992 has simultaneously been introduced.

The expression 'backward classes' is religion-neutral and not linked with caste and may well include any caste or religious community which as a class suffered from social and educational backwardness.

In terms of Section 13 of the Act, the Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to Central Government, and the reasons for non-acceptance, if any, of any recommendation… as soon as may be after the reports are received to be laid before each House of Parliament.

In the absence of a definite time frame for laying the annual report of the Commission, there has been considerable delay in tabling the annual reports of the commission in Parliament. The National Commission for Minorities has submitted 12 annual reports for the years 1992-93 to 2004-05. The annual reports for the years 1996-97, 1997-98, 1999-2000 and 2003-04 have been tabled in Parliament only recently, some as recently as in the winter session 2006 of Parliament. Therefore there appears to be a case for amendment of the Act so as to provide for a reasonable time frame for the recommendations to be laid, along with memorandum of action taken, before the Parliament/state legislature. It may be advisable to incorporate a suitable provision in the Constitution Amendment Bill, laying down a definite time frame for laying the annual reports of the commission on the tables of both Houses of Parliament along with action taken notes.

According to the provisions of Clause (9) of Articles 338 and 338A, the union and every State Government shall consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes on all major policy matters affecting the scheduled castes and the scheduled tribes respectively. Such a consultation is mandatory and can be construed to be an important constitutional safeguard for scheduled castes and scheduled tribes. A corresponding provision does not exist in the National Commission for Minorities Act 1992. In the absence of such a provision, the government of the day may or may not consult the National Commission for Minorities on major policy matters impacting minorities, depending on exigencies. Therefore the National Commission for Minorities Act 1992 needs to be suitably amended with a view to incorporating in it a provision analogous to the provision in Articles 338(9) and 338A(9). This may instill a sense of confidence amongst minorities about protection of their interests.

While we are on safeguards, it should be noted that a very important mechanism of ensuring the welfare of Scheduled Castes is constitution of a Parliamentary Committee on Scheduled Castes. The successive committees have been doing yeoman work towards safeguarding the interests of scheduled castes. Such a mechanism (of monitoring effective

implementation of the constitutional and legal provisions safeguarding the interests of minorities, and also implementation of general or specific schemes for the benefit of minorities by government and its agencies/instrumentalities) is expected to be an effective step for ensuring the welfare of religious minorities.

The National Commission for Minority Educational Institutions Act 2004 was enacted to constitute a Commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled university and reporting its findings to the Central Government for implementation. The Act was extensively amended in 2006 (Act 18 of 2006) inter alia empowering the commission to inquire suomotu or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational institution of its choice and any dispute relating to affiliation to a university and report its finding to the appropriate government for its implementation. The Act also provides that if any dispute arises between a minority educational institution and a university, relating to its affiliation to such university, the decision of the commission thereon shall be final.

The commission discussed the provisions of the act as amended and felt the need to make clear-cut, concrete and positive recommendations for improving and streamlining the provisions of the Act.

**RIGHT TO INFORMATION ACT**

Successful and efficient governance requires responsible and transparentadministration. Public must aware of the matters taking place at the administrationlevel and they have the right to get the information.In India, the Right to Information Act was passed in 2005 to ensure the citizen's rightto know. This Act was passed by the Parliament on 11 May, 2005, approved by thePresident of India on 15 June 2005 and came into force on 12 October 2005. It is the right of a citizen to get information under the control of authority ofPublic Authority.

The basic object of the Right to Information Act is to empower the citizens,promote transparency and accountability in the working of the Government,contain corruption, and make our democracy work for the people in real sense.It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed.The Act is a big step towards making the citizens informed about the activities of the Government.The Right to Information Act, 2005 extends to the whole of India All the Government departments and Public SectorUndertakings, including Police and Judiciary, (except Intelligence and Securityagencies as per the section 24 of the Act) come under the purview of this Act.In addition to this, all non-government or other institutions

who are substantiallyfunded directly or indirectly by the Government also come under the purviewof this Act.

To get information an application in writing can be submitted to the Public Authority. Application can also be submitted through E-mail. The right includes:

- Inspection of records, documents or activities.
- Obtain attested true copies of governmental records, documents or notes from the same.
- Obtain certified samples of materials
- Obtain computerised information in the form of CDs, diskette, floppies, tapes or video cassettes or any other electronic form or their printed form.

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